APHC010175462023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3328]**
(Special Original Jurisdiction)

WEDNESDAY ,THE NINETEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT
THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION NO: 8906/2023

Between:

1. SHAIK KARIMUNNISA, W/O SHAIK BASHEED, AGED ABOU 45 YEARS, R/O FLAT NO.304, GROUND FLOOR, ROAD NO.25, SHAIKPET, BESIDE BUTTER FLY PARK, JUBILEE HILLS, HYDERABAD

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REP., BY ITS PRINICPAL SECRETARY, REVENUE DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATI CAPITAL CITY, GUNTUR DISTRICT.
2. THE COMMISSIONER AND INSPECTOR GENERAL OF REGISTRATIONS AND STAMPS, 559 RK SPRING VALLEY A.P VIJAYAWADA.
3. THE DISTRICT REGISTRAR, REGISTRATION AND STAMPS, VIJAYAWADA, NTR DISTRICT.
4. THE JOINT SUB REGISTRAR, REGISTRATION DEPARTMENT, PATAMATA, VIJAYAWADA, NTR DISTRICT
5. THE SUB REGISTRAR, REGISTRATION AND STAMPS, BHEEMADOLE ELURU DISTRICT.
6. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, (ASSISTANT COMMISSIONER GST), ELURU, WEST GODAVARI DISTRICT. **...RESPONDENT(S):**

Counsel for the Petitioner:

1. SUBBA RAO KORRAPATI

Counsel for the Respondent(S):

1. GP FOR REVENUE
2. GP FOR REGISTRATION AND STAMPS (AP)
3. GP FOR COMMERCIAL TAX

The Court made the following:

ORAL ORDER:

Heard Sri Subbarao Korrapati, Ld. Counsel for the Writ Petitioner, Sri K. Arjun Chowdary, learned Assistant Government Pleader for Revenue and Land Acquisition, Stamps & Registration and Sri M.Venkata Krishna Rao, learned Government Pleader for Commercial Tax.

2. The present Writ Petition is filed seeking the following prayer:

> "Writ of Mandamus declaring the action of the Respondent 4 and 5 in not registering the document No.P1065/2023 and not releasing the same as arbitrary, illegal, for extraneous considerations, in violation of Article 14, 300-A of the Constitution of India and in violation of the provisions of the Registration Act and the law laid down by this Hon'ble Court as well as the Hon'ble Apex Court and consequently direct the Respondents 4 and 5 to Register the pending document No.P1065/2023 and

> released the same forthwith and pass such other order or orders"

3. The facts in this case are that a company by name M/s.Sanjay Kraft Paper Private Limited is the lawful owner of an extent of Ac.2.42 cents of land in Sy.No.239/4B of Gunnampalli Village. It transpires from the record that M/s.Sanjay Kraft Paper Private Limited purchased the property on 21.12.2011 by way of Registered Sale Deed No.8023/2011 from Sri Sunkavalli Sai and Ms.Manaswini. Another extent of land was purchased by M/s.Sanjay Kraft Paper Private Limited on 04.01.2012 from Sri Sunkavalli Sai and Ms.Manaswini through Registered Sale Deed No.70/2012. By the third Registered Sale Deed No.2271/2011, M/s.Sanjay Kraft Paper Private Limited has purchased an extent of Ac.6.99 cents from Smt.Nisha Devi. The fourth sale was executed through Registered Sale Deed No.69/2012, wherein Smt.Paleti Padmaja purchased an extent of Ac.0.50 cents of land in Sy.No.239/4A from Sri Sunkavalli Venkat Rao and others.

4. That, on 03.02.2012, M/s.Sanjay Kraft Paper Private Limited passed a Board Resolution giving right to one Sri Basheed Shaik, who is husband of the Writ Petitioner herein, to

transfer or sell the properties in R.S.Nos.239/5 & 6 (The Board Resolution is filed as the additional documents). On 06.03.2023, Sri Shaik Basheed executed a Dakhalu Dastaveju (Un-Registered Settlement Deed) in favour of the Writ Petitioner, transferring the properties in for an extent of Ac.3.31 cents in Sy.No.239/6B, for an extent of Ac.3.68 cents in Sy.No.239/5, for an extent of Ac.2.42 cents in Sy.No.239/4B, for an extent of Ac.0.50 cents in Sy.No.239/4A and for an extent of Ac.1.42 cents in Sy.No.239/4A of Gunnampalli Village. When the Writ Petitioner approached the District Registrar and the Joint Sub Registrar (Respondent Nos.3 and 4) for the registration of said Settlement Deed, the Official Respondents declined to register the Deed, citing a Letter from the Assistant Commissioner (ST), Jangareddy Gudem Circle, dated 15.07.2021. A copy of the said Letter is filed in the compilation submitted by the Official Respondent No.6.

5. The gist of the Letter dated 15.07.2021 from the Assistant Commissioner (ST) indicates that M/s.Sindhura Papers Private Limited, Marampalli, Twaraka Tirumala Mandal, West Godavari District was declared as defaulter in payment of GST; that the provisions of Goods and Services Tax Acts empower the Official Respondent to attach any property of any debtor of M/s. Sindhura

Papers Private Limited, Marampalli. According to the Official Respondent No.6, M/s.Sanjay Kraft Paper Private Limited is listed as a debtor in the accounts of M/s.Sindhura Papers Private Limited, Marampalli. Therefore, by virtue of the powers vested in Respondent No.6 under Section 79(1) (c) of the GST Act, 2017, the property of M/s.Sanjay Kraft Paper Private Limited was attached. Incidentally, the said proceedings from Respondent No.6, dated 15.07.2021, affected the properties that M/s.Sanjay Kraft Paper Private Limited sought to transfer through a Memorandum of Understanding dated 03.02.2012, based on the Resolution of the Board of M/s.Sanjay Kraft Paper Private Limited, dated 03.02.2012. For these reasons, the Official Respondent Nos.3 and 4 have declined to register the Dakhalu Dastaveju (Un-Registered Settlement Deed) that the husband of the Writ Petitioner sought to execute in favour of the Writ Petitioner.

6. Sri Subba Rao Korrapati, Ld. Counsel for the Writ Petitioner, has relied on Section 22-A (1) (e), Section 22-A (2), and (3) of the Registration Act, 1908. The Ld. Counsel for the Writ Petitioner submits that unless a Notification is issued under Section 22-A of the Registration Act,1908, in accordance with the

procedures prescribed by the statute, the Registering Authority cannot refuse to register the property. Section 22-A of the Registration Act is usefully extracted hereunder:

> “**22A. Prohibition of Registration of certain documents:**
>
> (1)The following classes of documents shall be prohibited from registration, namely:-
>
> > (a) documents relating to transfer of immovable property, the alienation or transfer of immovable property, the alienation or transfer of which is prohibited under any statute of the State or Central Government;
> >
> > (b) documents relating to transfer of property by way of sale, agreement of sale, gift, exchange or lease in respect of immovable property owned by the State or Central Government, executed by persons other than those statutorily empowered to do so;
> >
> > (c) documents relating to transfer of property by way of sale, agreement of sale, gift, exchange or lease exceeding (ten) 10 years n respect of immovable property, owned by Religious and Charitable Endowments falling under the purview of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 or by Wakfs falling under the Wakfs Act, 1995 executed by persons other than those statutorily empowered to do so;
> >
> > (d) Agricultural or urban lands declared as surplus under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 or the Urban Land (Ceiling and Regulation) Act, 1976;

(e) any documents or class of documents pertaining to the properties the State Government may, by notification prohibit the registration in which avowed or accrued interests of Central and State governments, Local Bodies, Educational, Cultural, Religious and Charitable Institutions, those attached by Civil, Criminal, Revenue Courts and Direct and Indirect Tax Laws and others which are likely to adversely affect these interest.

(2) For the purpose of clause (e) of sub-section 91), the State Government shall publish a notification after obtaining reasons for and full description of properties furnished by the District Collectors concerned in the manner as may be prescribed.

(3) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under clause (e) of sub-section (1).

(4) The State Government either suo moto or on an application by any person or for giving effect to the final orders of the High Court of Andhra Pradesh or Supreme Court of India may proceed to denotify, either in full or in part, the notification issued under sub-section (2).”

7. The Ld. Counsel for Respondent No.6 has referred to Rule 147 of the Andhra Pradesh Goods and Services Tax Act, 2017. Rule 147 is usefully extracted hereunder:

“**147. Recovery by sale of movable or immovable property:**

(1) The proper officer shall prepare a list of movable and immovable property belonging to the

defaulter, estimate their value as per the prevalent market price and issue an order or attachment or distraint and a notice for sale in **FORM GST DRC-16** prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due:

Provided that the attachment of any property in a debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any Court, shall be attached in the manner provided in rule 151.

(2) The proper officer shall send a copy of the order of attachment or distraint to the concerned Revenue Authority or Transport Authority or any such Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the proper officer to that effect."

8. The learned counsel for the Respondent No.6 has relied on Sub Rule (1) and Sub Rule (2) of Rule 147 of the Andhra Pradesh Goods and Services Tax Act, 2017, to state that mere correspondence is sufficient for attaching the property of a debtor of a defaulter.

9. To understand the facts of this case, it may be necessary to extract the Resolution of the Board, dated 03.02.2012.

"**Extract of Board Resolution passed by the Board of Directors of M/s. Sanjay Craft Paper**

<u>Private Limited, D.No.1-115, R.S.No.239/5&6, Lakshmi Nagar, H/O Marampalli (V), Dwaraka Tirumala (M), West Godavari District – 534202 in the Meeting held on 03-05-2010 at the registered office of the company</u>

Resolved that the name of the company i.e., M/s Sanjay Craft Paper Private Limited to execute all sale agreements, sale deeds, memorandum of understanding, statement, undertaking declaration, receipt deeds, instruments and in the year 03-05-2010 the company entered into memorandum of understanding and sale agreement and sale deeds with Basheed Saik S/o Ibrahim Shaik, SBK Group Building, Building No.304, Near Padmalaya Studio, Road No.78, Jubilee Hills, Hyderabad and to deal with all transactions, running of two factories and all business transactions shall be handover to SBK Group Building and the SBK Group building has got right to enter into business transaction and further resolve that to delegate all powers including running of factories to the SBK Group Building and the company properties situated at gunnampalli Village, Lakshmi Nagar, H/O Marampalli (V), Dwaraka Tirumala (M), West Godavari District – 534202, in R.S.No.239/5 & 6 and given full rights and possession to the SBK Group Building and further resolve that on behalf of company Basheed Saik S/o Ibrahim shaik, SBK Group Building has got every right to transfer, sale of the property to anybody in any manner whatsoever and it is further resolved that the Ibrahim shaik, SBK Group Building has got every right to transfer, sale of the property to anybody in any manner whatsoever and it is further resolved that the said SBK Group Building has paid the sale consideration full amount to the company and the company issued receipts to the SBK Group Building from time to time and further resolved that all the sale consideration amounts was transferred by the SBK Building through banks and self withdrawals and the company acknowledged same.”

10. The above Resolution indicates that M/s.Sanjay Kraft Paper Private Limited intended to transfer the property belonging to the Firm in favour of Sri Shaik Basheed. The document also states that the Firm has received the sale consideration, though the total sale consideration and the mode of its receipt are not mentioned. In any case, this document (Board Resolution dated 03.02.2012) cannot be treated as conveying or transferring any title from M/s.Sanjay Kraft Paper Private Limited to Sri Shaik Basheed. Since there was no transfer of Title by M/s.Sanjay Kraft Paper Private Limited to Sri Shaik Basheed, he has no authority to transfer the properties in favour of his wife, Smt. Shaik Karimunnisa (the Writ Petitioner herein), through the Settlement Deed, which is now sought to be registered.

11. Although this Court is only called upon to consider the power of the Registration Authorities in refusing to register the particular document, it becomes necessary for this Court to examine whether the Writ Petitioner has the *locus* to seek such registration by issuing a Writ of Mandamus. Therefore, the Court must consider the power of the vendor to validly transfer title. As noted above, the Board Resolution dated 03.02.2012 by the Board of M/s.Sanjay Kraft Paper Private Limited is an

unregistered document. Even if the Board Resolution is treated as an agreement of sale, unless it is registered, valid title would not flow from M/s. Sanjay Kraft Paper Private Limited to Sri Shaik Basheed. The Board Resolution is unclear as to whether Sri Shaik Basheed is purchasing the property from M/s.Sanjay Kraft Paper Private Limited or whether the Board is confirming a General Power of Attorney in favour of Sri Shaik Basheed to sell the property. However, Sri Shaik Basheed does not intend to sell the property, but rather intends to transfer the Title in favour of his wife through a Settlement Deed, which is now sought to be registered. On its face, this Court observes that the Resolution made by M/s.Sanjay Kraft Paper Private Limited, granting power to Sri Shaik Basheed (the husband of the Writ Petitioner) to deal with the subject property, and attempting to execute a Dakhalu Dastaveju (Un-Registered Settlement Deed) and to register the same, appears to be sham in nature. Since Sri Shaik Basheed does not have a valid Title, he has no authority to execute such a Settlement Deed and register the same.

12. In view of the above findings, this Court is not required to consider the powers vested with the Respondent No.6 in

addressing a Letter with regard to attachment of the property belonging to M/s.Sanjay Kraft Paper Private Limited.

13. In this view of the mater, this Writ Petition is devoid of merit. Accordingly, the Writ Petition is dismissed. No order as to costs.

14. Interlocutory Applications, if any, stand closed in terms of this order.

G. RAMAKRISHNA PRASAD, J

Dt: 19.02.2025.
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THE HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION No. 8906 OF 2023

19.02.2025

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