

CANCELLATION OF REGISTERED DOCUMENTS

INTRODUCTION:

*A three Judge Bench of the Apex Court in its decision in **Satya Pal Anand v. State of M. P. & Ors.**¹ held that in the absence of express provision under the Registration Act, 1908 or local law, it is not open to the registering authorities to cancel the registration of already registered documents.*

FACTS:

A plot of land was allotted to the Appellant's mother, Smt. Veeravali Anand by one Punjabi Housing Cooperative Society Ltd. (hereinafter referred to as the "**Society**"), vide a registered deed dated 22nd March 1962. Smt. Veeravali Anand expired on 12th June 1988. After her death, the Society through its Office Bearer executed a Deed of Extinguishment on 9th August 2001 (hereinafter referred to as the "**said Extinguishment Deed**"), unilaterally, cancelling the said allotment of plot to Smt. Veeravali Anand because of violation of the Bye-laws of the Society in not raising any construction on the plot so allotted within time. On the basis of the said Extinguishment Deed, the Society executed and got registered a deed dated 21st April, 2004 in favour of one Mrs. Manjit Kaur (Respondent No.5) in respect of the same plot. The Appellant objected to the said transaction. Thereafter, a Compromise Deed was executed between the Society and Respondent No.5 on the one hand and the Appellant on the other hand whereunder the Appellant received consideration of Rs.6,50,000/- (Rupees Six Lakh Fifty Thousand). However, notwithstanding the Compromise Deed, the Appellant filed a dispute under Section 64 of the Madhya Pradesh Cooperative Societies Act, 1960 (hereinafter referred to as the "**Act of 1960**"), before the Deputy Registrar, Cooperative Societies. The

Appellant challenged the Society's action of unilaterally registering the said Extinguishment Deed and allotting the subject plot to the Respondent No. 5; and prayed for a declaration that he continues to be the owner of the subject plot allotted by the Society to his mother, having inherited the same. Meanwhile, the Society permitted transfer of the subject plot in favour of Mrs. Meenakshi and Mr. S.C. Sharma (Respondent Nos. 6 & 7) vide a registered Deed dated 11th July 2006. Therefore, the Appellant filed an application before the Sub- Registrar (Registration) for the same aforesaid relief and also filed criminal proceedings.

Since the Appellant was perseverating the dispute, the Respondents issued a notice on 12th July 2007 asking the Appellant to refund the consideration amount accepted by him in furtherance to the Compromise Deed dated 6th July 2004 which the Appellant failed and neglected to refund and instead continued with the multiple proceedings initiated by him. In addition, the Appellant also moved an application before the Sub-Registrar (Registration) calling upon him to cancel the registration of the said Extinguishment Deed and the subsequent two deeds dated 21st April 2004 and 11th July 2006 respectively. The Sub-Registrar (Registration) by a speaking order rejected the said application mainly on two counts. Firstly, a dispute was pending between

¹ 2016 SCC OnLine SC 1202

the parties with regard to the same subject matter. Secondly, he had no jurisdiction to cancel the registration of a registered document in question for, his jurisdiction was limited to registration of the document when presented by the executant before him for that purpose. The Appellant then approached the Inspector General (Registration) by way of an application under Section 69 of the Registration Act, 1908 (hereinafter referred to as the "**Act of 1908**"). The Inspector General (Registration) vide order dated 19th September 2008 rejected the said application on the ground that powers conferred on him were limited to the general superintendence of the Registration Offices and making Rules. The Appellant thereafter approached the High Court of Madhya Pradesh, by way of Writ Petition under Article 226 of the Constitution of India challenging the order passed by the Inspector General (Registration) dated 15th September 2008 as also the order passed by the Sub-Registrar (Registration) dated 28th June 2008 and also prayed for a declaration that the subsequent deeds be declared as *void ab initio*. This Writ Petition was dismissed by the Division Bench of the High Court primarily on the ground that the Appellant had already resorted to a remedy before the appropriate Forum under the Act of 1960, which was pending; and the declaration, as sought, can be considered in those proceedings after recording of the evidence and production of other material to be relied on by the parties therein. Accordingly, the High Court held that since an alternative remedy before a competent Forum was available and was pending between the parties, it was not feasible to invoke the writ jurisdiction under Article 226 of the Constitution of India.

² (2010)15 SCC 207

The appeal had been placed before a three Judge's Bench consequent to the difference of opinion between the two learned Judges of the Division Bench of the Apex Court on the issue of whether the Registering Officer had the power to cancel already registered documents.

ISSUES FOR CONSIDERATION:

The issues for consideration before the Hon'ble Court were *inter alia* as follows:

- (a) Whether in the facts of the present case, the High Court was justified in dismissing the Writ Petition?
- (b) Whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an Extinguishment Deed after it is registered? Similarly, whether the Inspector General (Registration) can cancel the registration of Extinguishment Deed in exercise of powers under Section 69 of the Act of 1908?
- (c) Whether the Sub-Registrar (Registration) had no authority to register the Extinguishment Deed dated 9th August 2001, unilaterally presented by the Respondent Society for registration?
- (d) Whether the dictum in the case of ***Thota Ganga Laxmi & Anr. v/s. Government of India***² is with reference to the express statutory Rule framed by the State of Andhra Pradesh or is a general proposition of law applicable even to the State of Madhya Pradesh, in absence of an express provision in that regard?

SUBMISSIONS ON BEHALF OF THE APPELLANT:

The Appellant submitted that the Society could not unilaterally execute the Extinguishment Deed in relation to the subject plot and the same was in violation of the governing laws and hence *void ab initio*.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

The Respondents on the other hand submitted that the Writ Petition was justly rejected by the High Court on the ground that the Appellant was pursuing remedy for the same reliefs in substantive proceedings by way of a dispute filed under Section 64 of the Act of 1960 before the competent Forum. Besides the said proceedings, it was open to the Appellant to take recourse to other appropriate remedies before the Civil Court, to the extent necessary. The High Court in any case is not expected to enter upon the plea of declaring agreements and documents executed between private parties as illegal or for that matter *void ab initio*, which remedy is available before the cooperative Forum or the Civil Court. It was submitted that the legal position is well-settled that, the Sub-Registrar is not expected to decide the title or rights of the parties to the agreement nor is expected to examine the document to ascertain whether the same is legal and permissible in law or undertake an analytical analysis thereof. The Respondent Nos. 6 and 7 additionally submit that they are purchasers of the subject plot for consideration.

JUDGMENT:

While deciding the dispute, the Apex Court noted that the Appellant had entered into a compromise decree with the Respondents and was pursuing proceedings before the Deputy Registrar, Sub-Registrar (Registration) alongwith pursuing criminal proceedings. The court

further noted that it is well established that the remedy of writ under Article 226 of the Constitution is extraordinary and discretionary. Accordingly, the Supreme Court held that the High Court justly dismissed the Writ Petition filed by the Appellant with the liberty to pursue the statutory remedy resorted to by him under the Act of 1960 or by resorting to any other remedy as may be advised and permissible in law since an alternate efficacious remedy was available. It was stated that the question as to whether the Society was justified in proceeding against the defaulting member by cancelling the allotment of plot was an issue falling within the purview of the business of the Society and any such action of the Society can be questioned before the statutory forum under the Act of 1960.

On the powers of Registering Officer to recall registration, the Apex Court observed that there is no express provision in the Registration Act, 1908 which empowers the Registrar to recall registration. Similarly, the Inspector General's power is limited to do superintendence of registration offices and make rules in that behalf.

On the issue of whether the Sub-Registrar (Registration) had authority to register the Extinguishment Deed unilaterally presented by the Respondent Society for registration the court observed as follows:

"23. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the Extinguishment Deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitly to cause loss and harm to the other party to the Deed, is a question of fact

which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the Act of 1908 enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the Act of 1908 can be said to be fraudulent”.

The court further considered the decision in *Thota Ganga Laxmi (Supra)* and held that the case of *Thota Ganga Laxmi* will have no applicability on the present case because of two reasons. First being that *Thota Ganga Laxmi (Supra)* dealt with an express provision as applicable to the state of Andhra Pradesh and the dictum in that decision cannot have universal application to all the States. Therefore, in the absence of such an express provision in

other states the Registration officer would be governed by the Act of 1908. Second, this case is not a case of a deed for cancellation of allotment of plot by the housing society, but of an unilateral cancellation of the registered sale deed executed between private parties.

The Supreme Court held that in absence of any express provision regarding cancellation of registration once a document is registered, it is not open to any authority under the Act of 1960 to cancel the Registration of documents. Even the Sub- Registrar (Registration) and the Inspector General has no power to cancel the registration of any document which has already been registered. In view of the above observations, the Supreme Court dismissed the Appeal.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.