

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 9th September, 2011

+ **W.P.(C) 6592/2011**

% **SHEO MURTI SHUKLA** Petitioner
Through: Mr. S.R. Padhy, Adv.

Versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Ms. Zubeda Begum, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner avers that the respondent Sub-Registrar of Assurances, Sub-District-VI, Alipur, Delhi is refusing to accept the documents of cancellation of General Power of Attorney and cancellation of Will presented by the petitioner for registration. Mandamus is sought to the said Sub-Registrar to register the said documents.

2. In my opinion, this writ petition is not maintainable for the reason of the alternative remedy of appeal against the order of Sub-Registrar being available under the Registration Act, 1908. Though I have been taking the said view but find many such petitions being filed before this Court and there does not appear to be any pronouncement of this Court on the subject. It is thus deemed expedient to deal exhaustively with the subject.

3. Part XI of the Act deals with the “Duties and Powers of Registering Officers”. Section 51 thereunder mandates the Registering Officer to maintain Book 2 titled “Record of reasons for refusal to register”. Section 52 requires the Registering Officer to issue to the person presenting a document for registration a receipt for the same. Sections 58 to 70 prescribe the procedure to be followed when a document is admitted to registration.

4. Part XII of the Act deals with “Refusal to Register”. Section 71 thereunder requires the Sub Registrar, refusing to register a document, except on the ground that the property to which it relates is not situated within his sub-district, to make an order of refusal and record his reasons for such order in Book No.2 and endorse the words “registration refused” on the

document and to furnish to the applicant, the copy of the reasons recorded for refusing registration.

5. Section 72 provides for, “Appeal to the Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution”; the appeal is required to be preferred within 30 days from the date of the order and the Registrar is empowered to reverse or alter the order appealed against; if the Registrar directs the documents to be registered, the Sub Registrar is mandated to obey the same and register the document. However, if registration is refused by the Registrar also, Section 77 provides for a suit for a decree directing the document to be registered.

6. The question which arises for consideration is whether the refusal of the Sub-Registrar to even accept the documents for registration, can be said to be appealable under Section 72 (supra) to the Registrar. The counsels often contend that since no order in writing refusing registration has been issued / passed by the Sub Registrar, the remedy of appeal is not available and hence a writ petition would be maintainable. The Act, as aforesaid, does not empower the Sub-Registrar to at the threshold only, refuse to even

accept the document. The Act requires the Sub-Registrar to accept each and every document presented to him for registration and to issue receipt thereof and to thereafter proceed, either to register the document or, if finds the document to be not registrable, refuse registration by recording reasons therefor. The gravamen of the argument aforesaid is, whether such refusal which is in contravention of the procedure prescribed and is verbal and without reasons, can be said to be a refusal within the meaning of Section 72 of the Act, so as to be appealable.

7. In my opinion, a refusal to even accept the document for registration, is also a refusal of registration for grounds other than of denial of execution. Merely because such refusal is in a manner not contemplated under the Act would not make it anything other than refusal. I am unable to carve out any distinction between a refusal as contemplated under the Act and a refusal in a manner not contemplated under the Act. The effect of both, is the same. The only exception to Section 72 is when such refusal is on the ground of denial of execution. Thus refusal of registration by non acceptance at the threshold only of document would be covered by the refusal against which

appeal is provided. Once the legislature has vested appellate powers in the Registrar to whom the Sub-Registrar is subordinate, it will be immaterial, whether such refusal is in accordance with the procedure prescribed or in violation thereof.

8. The limitation provided in Section 72 of presenting the appeal within 30 days from the date of the order would not limit the otherwise wide amplitude of the appellate power. It cannot be urged that an appeal under Section 72 lies only when there is an order, date whereof is visible and not where refusal is verbal and by non acceptance at the very threshold of the documents. Appeal against such verbal refusal is also to be preferred within 30 days. A person seeking registration of document, unless refused, would not prefer an appeal and thus an appeal to Registrar, without copy of reasons for refusal, and merely on averment of verbal refusal, would lie. Significantly, no form of appeal is prescribed.

9. The Registrar is not only the Appellate Authority of Sub-Registrar but under Section 68, also has supervisory powers over the Sub-Registrar. Section 68 requires every Sub-Registrar to perform the duties of his office

under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situated and Section 68(2) empowers the Registrar to issue (whether on complaint or otherwise) any order consistent with the Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him. It therefore follows that against the refusal of the Sub-Registrar to even accept the documents for registration, not only can the Registrar be approached in his appellate jurisdiction but even in his supervisory jurisdiction and the Registrar when so approached is required to deal with the complaint and to issue the necessary orders / directions to the Sub-Registrar.

10. The Division Bench of the Bombay High Court as far back as in ***Hussain Abdul Rahman & Co. Vs. Lakhmichand Khetsey*** AIR 1925 Bom 34 was also concerned with the difference between refusal of registration and refusal to accept the document for registration. It was held that there is no difference between the two inasmuch as in effect it amounts to refusal to register the documents and the ultimate remedy whereagainst is a suit under Section 77 of the Act. It was held that the expression “refusing to admit a

document to registration” in Section 72 is comprehensive enough to include not only a refusal to register but a refusal to accept a document for registration and even a refusal to accept registration is appealable under Section 72. I respectfully concur with the said view.

11. The Andhra Pradesh High Court in *K. Surender Rao Vs. Govt. of Andhra Pradesh* MANU/AP/0881/2007 was also concerned with writ petitions impugning the action of the Sub-Registrar of raising repeated objections to registration. The said High Court also held that under the Act, the Sub-Registrar was obligated to either register the document or to refuse registration and in which event the remedy of appeal would be available.

12. Mere non existence of a written order does not negate the maintainability of a statutory appeal. It was so held by the Division Bench of the Karnataka High Court though in the context of some other statute, in *P.E. Manjunath Vs. Chitradurga Distt. Ambedkar Education Socceity* ILR 1990 KAR 2021. Even this High Court, in the context of appeals before the Appellate Tribunal MCD, has in *ANZ Grindlays Bank Plc. V.*

Commissioner, MCD 1995 (34) DRJ 492 held that the appeal lies even in the absence of any order of demolition / sealing having been passed or served.

13. A complete machinery for redressal of grievance as made in this petition being available under the Act, I am loath to entertain the writ petition without the petitioner even availing the remedies prescribed under the Act. It is settled principle of law that availability of alternative efficacious remedy is a ground for refusing to entertain the writ petition.

14. The writ petition is therefore held to be not maintainable and is dismissed with liberty to the petitioner to avail of the alternative remedies aforesaid.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 09, 2011

bs/gsr.

(corrected and released on 20th September, 2011)