

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4430 OF 2014

Mr. J. S. Solomon,
the Administrator/Receiver
of T V Patel Private Limited and anr. .. Petitioners
vs.
District Registrar and Collector
Mumbai City and ors. .. Respondents

Mr. R.A. Dada, Sr. Advocaee a/w. Mr. G.A Ankhad, Mr. S.V. Doijode
and Ms F.J. Thakkar i/b Doijode Associates for the Petitioner.
Ms Vaishali Nimbalkar, AGP for Respondent Nos.1 and 6.
Mr. Rashmin Khandekar a/w. Darshan Mehata i/b M/s. Dhurve
Liladhar & Co. for Respondent No.2.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 2 March 2015

Date of Pronouncing the Judgment : 10 March 2015

JUDGMENT :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition is directed against the order dated 19/20 July 2013 made by the District Registrar and Collector, Mumbai City. On petitioners' complaint under Section 68 of the Registration Act, 1908 (said Act) in relation to the document dated 22 April 1980 (said document) registered under No.BBE/BOM/1108/1980.

3] The petitioner No.1 is the Administrator/Receiver of the assets of petitioner No.2 appointed pursuant to the orders dated 6 April 2009 and 17 April 2009 passed by this Court in Suit No.2435 of 2005.

4] On 22 April 1980, an Indenture of Lease/Sub-Lease was executed by petitioner No.2 in favour of respondent No.2 in respect of the suit property. The same was lodged for registration on 25 April 1980. However, the registration was kept pending for want of production of the following two documents:

- (i) Certificate under Section 230A of the Income Tax Act, 1962; &
- (ii) No Objection Certificate under Section 27(2) of the Urban Land Ceiling and Regulation Act, 1976 (ULC Act).

5] Several disputes have arisen between the petitioners and respondent No.2, *inter alia*, in relation to the suit property. The same are pending in various Courts, including this Court. One of the defences raised by the petitioners in the said proceedings is that the document dated 22 April 1980, being un-registered, can neither be made the foundation for the proceedings instituted by respondent No.2, nor can said the document be tendered in evidence. It is the case of the petitioners that some time in March 2007, it came to the petitioners' knowledge that respondent No.2 had obtained the registration of document dated 22 April 1980, on or about 15 March 2007, on the basis of ULC NOC, which was irrelevant in the context of the suit property. It is in fact the case of the petitioners that the ULC NOC, in respect of sub-lease of the suit property was expressly refused by the competent authorities. However, on basis of ULC NOC pertaining to the conveyance of super-structure from Bombay Builders, respondent No.2 fraudulently obtained registration in respect of the document dated 22 April 1980.

6] The petitioner No.1, filed complaint on 10 May 2010 under Section 68 of the said Act urging enquiry into the alleged fraud

involved in the registration of document dated 22 April 1980 and also for registration of offence under Section 82 of the said Act against the officials responsible for the alleged fraud. The same was responded to by the respondent No.2. The parties filed voluminous written submissions and were even heard by the District Registrar on 4 April 2013. Finally, the District Registrar has made the impugned order dated 19/20 July 2013 declining to give any decision in the matter on the ground that the Writ Petition No.890 of 2010 filed by respondent No.2 is sub-judice before this Court. Learned counsel for the parties agree that reference to Writ Petition No.890 of 2010 is a mistake, as what has been filed by respondent No.2 is Suit No.890 of 2010, seeking *inter alia*, a declaration that the Indenture of Lease/Sub-Lease dated 22 April 1980 is valid, subsisting and pending and calling upon the petitioners to do all acts and deeds, as may be necessary for the renewal of the same.

7] Mr. Rafique Dada, learned senior counsel for the petitioners, submitted that the District Registrar has not even considered the rival contentions, but merely transcribed the same in the impugned order and thereafter declined any decision, on the ground that the matter is sub-judice in Suit No.890 of 2010. Mr. Dada submitted that this is a clear case of refusal or failure to exercise statutory jurisdiction under Section 68 of the said Act. Mr. Dada pointed out that pendency of Civil Suit No.890 of 2010 is neither any bar, nor any reason for refusal to exercise jurisdiction and in any case, there is no restraint order issued by this Court in Suit No.890 of 2010 in the matter of entertainment of a complaint under Section 68 of the said Act. Mr. Dada pointed out that the petitioners' complaint in the present case, was in respect of any act or omission of the Sub-Registrar in the matter of registration of a document dated 22 April

1980. Further, this was a case where an error had crept into the registration book or the registration office in relation to the registration of the document dated 22 April 1980. In such circumstances, the District Registrar was duty bound to entertain the petitioners' complaint, rather than refuse any decision on the ground that the matter is sub-judice.

8] Mr. Rashmin Khandekar, learned counsel appearing for respondent No.2, submitted, at the outset, that the Deputy Registrar, in exercise of powers under Section 68 of the said Act has no jurisdiction or authority to order cancellation of registration. Accordingly, Mr. Khandekar submitted that very complaint of the petitioners was misconceived and was therefore, rightly not entertained by the Deputy Registrar. In this regard, Mr. Khandekar placed reliance upon the decision of Punjab and Haryana High Court in case of *Ram Rattan and anr. vs. The Deputy Commissioner and ors.*¹, then the decisions of the Lahore High Court in case of *Hussain Ali Shah vs. Sardar Ali Shah & ors.*² and High Court of Madhya Bharat in case of *Nyadar Singh vs. Chen Singh*³.

9] Mr. Khandekar further submitted that the issue as to whether the registration of document dated 22 April 1980 being legal or not, was squarely involved in Civil Suit No.890 of 2010 instituted by respondent No.2. In this view of the matter, there was absolutely no error on the part of the District Registrar in declining to entertain the petitioners' complaint under Section 68 of the said Act, on the grounds that the matter was sub-judice before this Court.

1 (2014) 173 (1) PLR 169

2 AIR 1933 LAH 786

3 AIR 1955 Madhya Bharat 205

10] The rival contentions, now fall for my determination.

11] Perusal of the impugned order would indicate that the District Registrar, after setting out the contentions of rival parties has made the impugned order by observing thus:

In view of all the above facts and with regard to points raised in respect of said document by Solomon & Co. on behalf of M/s. Tulsidas V. Patel Pvt. Ltd., decision is taken as under:

ORDER

1] *With reference to this case, Writ Petition No.890/2010 filed by M/s. I.D.B.I. Bank, Mumbai in the Hon'ble High Court is sub judice and therefore it would not be proper to give any decision in this case.*

2] *The above complaint case is closed at the level of this office.*

12] The aforesaid is hardly a satisfactory manner to either deal with or dispose of a complaint made under Section 68 of the said Act invoking the powers of Superintendence. Sub-section (1) of Section 68 of the said Act provides that every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate. Sub-section (2) of Section 68 of the said Act provides that every Registrar shall have the authority to issue, whether on complaint or otherwise, any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect the rectification of any error regarding the book or in the office in which any document has been registered.

13] Thus, the power of Superintendence vested in the Registrar of the District, extends *inter alia* to making of any order consistent with

the said Act, which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him. Further, such power also extends in respect of rectification of any error regarding the book or the office in which any document has been registered. The noun “*superintendence*” would mean *inter alia* to be responsible for the management or arrangement of an activity or to supervise and inspect⁴. The expression “*superintendence*” would imply administrative control enabling the authority enjoying such power to give directions to the subordinate to discharge its administrative duties and functions in the manner indicated in the order⁵. In case the Registrar is satisfied that the Sub-Registrar subordinate to him has committed any act or commission or omission, then the Registrar shall have the authority to issue, whether on a complaint or *suo motu*, any order consistent with the said Act. Further, in exercise of power of Superintendence, the Registrar shall have the authority to issue any order in respect of rectification of any error in the book or office in which any document has been registered.

14] The complaint of the petitioners in the present case is that the document dated 22 April 1980 ought not to have been registered for want of ULC NOC and further that there is some fraud or omission on the part of the Sub-Registrar subordinate to the District Registrar, in accepting ULC NOC unrelated to sublease of the suit property, and on the said basis registering the document dated 22 April 1980. It is also the complaint of the petitioners that on account of such fraud or act of omission on the part of the concerned Sub-Registrar, an error has crept into the registration book or in the registration office in which the document dated 22 April 1980 has been registered. At

4 The Oxford English Reference Dictionary

5 State of Bihar vs. J.A.C. Saldanna – (1980) 1 SCC 554

least *prima-facie*, it cannot be said that a complaint of such nature was not at all entertainable by the District Registrar under Section 68 of the said Act.

15] In the decisions of the Punjab and Haryana, Lahore and Madhya Bharat High Courts, upon which reliance was placed by Mr. Khandekar, learned counsel for respondent No.2, there are observations to the effect that a Registrar in exercise of powers under Section 68 of the said Act cannot order the cancellation of registration of a document. However, such observations have to be understood in the light of the facts and circumstances which obtained in the said cases. Therein, the allegations mainly related to the flaws in their document ordered for registration.

16] In case of *Ram Rattan (supra)*, the cancellation of the sale deeds was without afford of opportunity of being heard to the beneficiary of the sale deeds. Further the cancellation was on the basis of unreasoned order. In case of *Hussain Ali Shah (supra)* reference is made to the decision in case of *Sundarau Raju Dikshutulu vs. Archaka Seshadri Dikshutulu*⁶, where the question was, whether the document was a mortgage or a lease and the learned Judges applied to it the decisions formulated by the Privy Council in case of *Tassuduq Rasul Khan vs. Kashi Ram*⁷ and held that it was a lease. The High Court of Lahore by applying the same decisions came to the conclusion that the document in-question was a lease and not a mortgage. Further, the deficiency in stamp on account of its being described as mortgaged was rectified upon payment of additional fee and penalty. In these circumstances, it was observed

6 AIR 1928 MAD 35

7 (1903) (25) ALL 109

that the Registrar, acting under Section 68(2) of the said Act did not have the power or authority to cancel the registration of the document, execution of which was not denied.

17] In case of *Rajkumar Gupta vs. State of U.P. & ors.*⁸, there is reference made to the decision of the High Court Madhya Bharat in case of *Nyadar Singh (supra)*. However, the Division Bench of Allahabad High Court did not fault the Registrar exercising power under Section 68 of the said Act in a situation that fraud was alleged and some genuine pages of the will were replaced.

18] In the present case, the complaint of the petitioners is that the document dated 22 April 1980 could not have been registered unless ULC NOC was produced. Respondent No.2, relying upon ULC NOC concerning the super-structure conveyed by Bombay Builders, obtained registration of the documents dated 22 April 1980. The complaint alleges fraud, not just on the part of respondent No.2, but also Sub-Registrar who permitted registration, without verification as to whether ULC NOC pertained to the transaction recorded in the document dated 22 April 1980. It is in these circumstances that the petitioners alleged acts of omission and commission on the part of Sub-Registrar concerned. It is in these circumstances that the petitioners alleged that the error had crept in the book or the office of the Sub-Registrar before whom the document dated 22 April 1980 came to be registered.

19] The District Registrar has not rejected the petitioners' complaint on the ground that it had no power or authority to order cancellation of registration. The District Registrar has in fact refused

8 AIR 2010 ALL 135

to entertain the petitioners complaint under Section 68 of the said Act, on the ground that such issue is sub-judice before this Court in Civil Suit No.890 of 2010. Accordingly, there is really no reason to go into the issue as to whether, the District Registrar, in exercise of powers under Section 68 of the said Act, has the authority to cancel the registration of a document. The observations made in this regard are therefore, *prima-facie*.

20] However, one thing is clear that the District Registrar could not have refused to entertain the petitioners' application, merely on the ground that the issue raised therein is sub-judice in Civil Suit No.890 of 2010. In fact, the District Registrar, in making the impugned order has not even demonstrated as to what manner the very issue raised by the petitioners in their complaint under Section 68 of the said Act, was sub-judice and could not have been gone into.

21] Further, the impugned order contains no reason whatsoever, other than the observations that no decision is being taken since Civil Suit No.890 of 2010 is pending. As noted earlier, this is hardly a satisfactory manner to deal with the complaint under Section 68 of the said Act. The District Registrar has merely set out the rival contentions of the parties and thereafter proceeded to state that no decision is being taken because Civil Suit No.890 of 2010 is sub-judice before this Court. From the perusal of impugned order, it does appear that the District Registrar has not even bothered to look into the issues involved in Civil Suit No.890 of 2010.

22] For all the aforesaid reasons, the impugned order is set aside. The District Registrar is directed to consider and decide, in

accordance with law, the petitioners' complaint under Section 68 of the said Act. The District Registrar shall afford an opportunity of hearing to rival parties and take decision in the matter, as expeditiously as possible and in any case within a period of three months from today.

23] It is clarified that the observations made by this Court are only *prima-facie* and all issues and contentions are kept open for decision by the District Registrar.

24] Rule is made absolute to the aforesaid extent. There shall be no order as to the costs.

(M. S. SONAK, J.)