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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4136 OF 2011

1. Aashirwad Developers,
A partnership firm, having its office
at B-705, Surya Kirti Tower,
85, Tilak Nagar, Chembur,
Mumbai 400 089.

Through its partners :

- (a) Minal Manish Ved,
Aged 41 years, Occ. Business,
 - (b) Manish Karsandas Ved,
Aged 44 years, Occ. Business,
 - (c) Parag Pravin Shah,
Age Adult, Occ. Business
- ... Petitioners

V/s.

1. State of Maharashtra,
through Additional Chief Secretary (R & R),
Department of Revenue & Forest, Mumbai.
2. Inspector General of Registration & Controller
of Stamps for the State of Maharashtra,
Pune Council Hall, Pune.
3. Sub Registrar of Assurances & Administrative
Officer, Mumbai, Old Custom House,
Shahid Bhagatsingh Road, Fort,
Mumbai 400 001.
4. Dy. Inspector General of Registration & Stamps,
Mumbai, Old Custom House, Shahid Bhagatsingh
Road, Fort, Mumbai 400 001.
5. Dy. Inspector General of Registration &

Deputy Controller of Stamps,
Konkan Division, Thane.

..Respondents

Mr. Ghanshyam Upadhyay i/by Law Juris for the petitioners.

Mr. V.S. Gokhale, AGP for the respondent nos. 1,2 4 and 5.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.
DATED : OCTOBER 07, 2015**

JUDGMENT (Per V.L.ACHLIYA,J.) :-

1. The petitioners have preferred this petition under Article 226 of the Constitution of India challenging the order dated 1st January, 2011 passed by the Inspector General of Registration and Controller of Stamps for the State of Maharashtra i.e. respondent no. 2 mainly on the ground that the order passed is cryptic, unreasoned and not sustainable in law.

2. A few facts leading to the filing of this writ petition are as under :

(a) The petitioners claim to have purchased a plot of land bearing Plot No. 28/91 situated at Tungarli, Lonavala from one Chandulal Shantilal Parikh (HUF) by the deed of conveyance which was duly registered with the office of the Sub Registrar of Assurances, Lonavala at Sr. No. 1424/07

(hereinafter referred to as “said property/plot”) after completing all formalities such as search report and public notice inviting objections from the public. Since nobody has raised the objection and in the record maintained with the concerned office, the title to said property recorded in the name of Chandulal Shantilal Parikh (HUF), the petitioners got executed the conveyance in their favour.

(b) After getting the possession of the said plot, the petitioners got their names mutated in the relevant records. Thereafter they entered into Development agreement with M/s. Abrol Foundation. The development agreement was duly registered at Sr. No. 5287/2007 with the office of the Sub Registrar, Registration (Lonavala) on 21/11/2007. The said developer then presented an application to Lonavala City Municipal Council for grant of IOD and CC, which was duly granted in the month of March, 2008. When the developer started construction activity, they started receiving obstructions initially from the caretaker of the plot and then from the local Corporater who wanted to extract money from petitioners. He issued threats to the petitioners that if his demands are not satisfied, he would create multiple obstructions and make the

adverse claim against the property. Therefore, the petitioners filed complaint with Lonavla Police Station. It was learnt from the officer of police station that there are two other registered documents bearing Nos. 1341/1981 and 5454/2008 registered in respect of same plot of land by which other claimants are claiming as owners of said plot of land. It was also learnt that the alleged conveyance Deed was registered with the office of the Registrar of Assurances, at Mumbai, though the property situated within the jurisdiction of Lonavala Municipal Council, the said Conveyance Deed purported to be executed in the year 1981 was simply presented to the Registrar of Assurances of Mumbai while the conveyance of 2008 was presented in the Lonavala. According to the petitioners, the person who sold the property in the year 2008 to Mr. Raisonni and Mr. Lodha, i.e. Mr. Pokarna, he had no right, title and interest in said property. His name was only mentioned in the 7/12 extract as an obstructionist which according to the petitioners create no title in his favour.

(c) According to the petitioners, the existence of the name of Shri. Pokarana as obstructionist in 7/12 extract lost its credential and the evidential value as a document and

enforceability as soon as the scheme of TPS was introduced and implemented by the department of City Survey. Shri. Pokarana who sold the property in the year 2008 in favour of Mr. Lodha and Mr. Raisonni had acquired no title and interest in the said property as they purchased the property from the person who himself had no right, title and interest in the said property. According to the petitioners, the claim of Mr. Raisonni and Lodha in respect of said plot was baseless, bogus and procured by adopting deceptive and deceitful tactics with the officials of the Registrar of Assurances at Mumbai who had no authority to register the conveyance. Since the ownership of the petitioners was challenged on the basis of the fraudulent documents by practicing fraud with the registering authority, they immediately filed complaint with respondent no. 2. The respondent no. 2 directed the respondent nos.3 to 5 to conduct enquiry and file report. According to petitioners, the respondent nos.3 to 5 conducted the enquiry and filed separate reports with respondent no. 2. In all those reports, they consistently observed that the fraud has been practiced upon the Registering Authority in registering the document and suggested action under section 82 of the Registration Act. According to petitioners, the reports submitted by respondent

no. 3 to 5 were more than sufficient to act upon by the respondent no. 2, still instead of deciding the issue and taking action, respondent no. 2 started de novo enquiry and passed the order which was communicated to the petitioners vide letter dated 1.1.2011. By communication dated 1.1.2011, the petitioners were informed that the sanction to file criminal case against Mr. Jaikumar Pokarna and Mr. Lodha cannot be granted under section 83 of the Registration Act, 1908 as the subject matter of the complaint do not come within the meaning of offence under section 82 of the Indian Registration Act, 1908. Respondent no. 2 advised the petitioners to approach the competent Civil Court.

(d) Aggrieved by the communication/order dated 1.1.2011 the petitioners have preferred this petition on various grounds as set out in the petition. In nutshell, it is the contention of the petitioners that the order passed by Respondent No. 2 is per se illegal and not sustainable in law as the same is cryptic, unreasoned and without following the principles of natural justice. It is the contention of the petitioners that the respondent no. 2 ought to have considered the reports submitted by respondent no. 3 to 5, who

consistently observed in their reports that the fraud has been committed in registering the documents. According to the petitioners, the order passed by respondent no.2 deserves to be set aside and matter be relegated to respondent no.2 for passing fresh order as he has not recorded reasons to arrive to such decision.

3. On behalf of respondent nos. 1 to 5, Mr. Dilip Salunke, Deputy Inspector General of Registration, Mumbai, Mumbai Division, Old Custom House, Mumbai filed affidavit in reply. In nutshell, it is stated that after receipt of the complaint from the petitioner, the complaint was duly enquired. The reports received from respondent no. 3 to 5 were duly considered by the respondent no. 2 before passing the impugned order. On due consideration of the complaint, reports received from respondent nos. 3 to 5 and the conclusions drawn by them, the respondent no.2 has reached to conclusion that no offence as contemplated under section 82 of the Registration Act, 1908 has been made out and therefore, refused to grant permission to initiate prosecution as contemplated under section 83 of the Registration Act.

4. We have heard the learned counsel for the petitioners as well

as the learned AGP representing respondent nos. 1 to 5. We have carefully considered the submissions advanced in the light of the provisions of section 82 and 83 of the Registration Act, 1908.

5. In order to properly appreciate the submissions advanced, it is necessary to consider the purport of section 82 and 83 of the Registration Act, 1908 which read thus :

“82. Penalty for making false statements, delivering false copies or translations, false personation and abetment – Whoever –

(a) Intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or

(b) Intentionally delivers to a Registering Officer in any proceeding under [this Act or the rules made there under] a false copy or translation of a document or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(d) abets anything made punishable by this Act;

shall be punishable with imprisonment of a term which may extend to seven years, or with fine, or with both.

83. Registering Officer may commence prosecutions
- (1) A prosecution for any offence under this Act coming to the knowledge of a Registering Officer in his official capacity may be commenced by or with the permission of the Inspector General, the Registrar, or the sub registrar, in whose territories, district or subdistrict, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any court or officer exercising powers not less than those of a Magistrate of the Second Class."

6. Plain reading of section 82 spells out that the said section has been enacted with an object to punish the acts as specified in clause (a) to (d) of section 82. Only in the eventuality, the acts as referred in the said provisions are found to be committed by the person during the course of registration of the document, the competent Authority specified under section 83 of the Registration Act, 1908 with the permission of Inspector General, Registrar or Sub Registrar, in whose territorial District or sub District, as the case may be, the offence has been committed may direct to initiate prosecution against the person/s responsible for such offence. The acts specified in clauses (a) to (d) of section 82 no way contemplates that the Registering Authority to look into the correctness of the statements or facts stated in the document tendered for registration. The Registering Authority is not expected to hold an enquiry in respect of the title of the person to the property or to verify the correctness

of the factual statements made in the complaint. If we look into the complaint made by the petitioner seeking prosecution under section 82 of the Registration Act, 1908, then the complaint nowhere makes out that acts as specified in clause (a) to (d) of section 82 committed by the alleged person. Therefore, the impugned decision taken by the respondent no. 2 cannot be said to be arbitrary, illegal so as to call for interference in exercise of writ jurisdiction. In exercise of writ jurisdiction, the Writ Court is not expected to sit as Court of appeal over the decision arrived at by the quasi judicial Authority.

7. If we consider the overall case of the petitioners and acts complained of, then it is clear that the petitioners have approached with a case that conveyance executed in favour of Mr. Lodha and Mr. Rasoni by Mr. Pokarana in respect of the said plot of land got executed by practicing fraud. According to the complaint lodged by the petitioners, they have obtained conveyance from one Mr. Chandulal Parekh (HUF) after taking all precautions and conducting enquiry such as search of the record and publishing public notice before executing the deed of conveyance. The entries recorded in revenue record maintained in respect of the property was showing ownership of Chandulal Parekh (HUF). Therefore, they purchased the property as title to property was clear and marketable. The

developer appointed by the petitioners when proceeded to develop the property, they were obstructed to proceed with the construction on the said plot by raising claim in respect of same property by others. Therefore, petitioners had filed a complaint with Police Station at Lonavala, where he was informed that there are two other claimants who also claim to be the owners of the said plot on the basis of the documents executed in their favour.

8. The material allegations made in the complaint dated 1st September, 2008 on the basis of which the petitioners claim that offence u/s 82 of Registration Act, 1908 committed, reads as under :

“(n) The disclosure of criminality to practice fraud have been revealed but not investigated which are enumerated herein below.

I. As recorded in earlier in para 3(b) as aforesaid Ajanta Builder was owner of the plot since 1978. However, by forged and fabricated document one Shri. Jaykumar Uttamchand Pokarana (hereinafter referred to as “Pokarana”) claimed that he has purchased the said plot by way of Deed of Conveyance dated 2.6.1981. Hereto annexed and marked Annexure “5” is the copy of the Deed of Conveyance bearing Registration No. 1341/81 dated 2.6.1981.

II. This alleged deed of conveyance is intentionally dated 2.6.1981 to defeat the registered deed of conveyance dated 7.02.1986 between Ajanta Builders and Chandu Shantilal Parekh.

III. The said Deed of Conveyance between Ajanta Builders and Pokarana was registered in the year 1990 in the office of the Sub Registrar of Assurance, Mumbai dated 7.8.1990. The registration serial No. as mentioned was 1341/81 but the date of

registration is of 1990. The said registration stamp discloses number of pages 1 to 19 while the document procured by the undersigned from the Department as a certified copy discloses No. of pages 1 to 19 with sanctioned plan through shown to be registered, but not numbered and the same is not tallied with the number of pages. This registration in the office of Sub Registrar of Assurances at Mumbai is contrary to the provisions of Section 28 of the Registration Act, 1908 as no portion of the property to which such document relates is situated and follow up steps to get the said plot transferred in the name of said Pokarana have not been effected by th said Pokarana and Sub Registrar of Assurances, Mumbai also had not forwarded the said document to the concerned Sub Registrar of Assurances at Loanvala to give proper effect the said registration as directed in Section 66 of the Registration Act.

IV. It is pertinent to note that the alleged conveyance of 1981 between Ajanta Builders and said Pokarana which subsequently got registered in 1990 suffers from failure of annexures to prove that Ajanta Builders was owner of the said plot in 1990 before the registering authority. This documents have been intentionally suppressed nor the registering authority insisted for the said documents for unknown reason and without enquiry got the document permitted to be registered. However, if this document would have been insisted then the document of 1986 of Conveyance between Ajanta Builders and Chandu Shantilal Parekh HUF would speak volume of ownership which cannot be further transferred by way of registration in the year 1990. Thus the first offence was knowingly and intentional effected in the year 1990 having link of 1981 document to bypass the registered document of 1986 which was duly registered with the Sub Registrar of Assurances having local jurisdiction at Mavel. This required enquiry by Noticee No. 1 who is the head of the institution having all powers to scrutinize how this offence was allowed to be committed. The very mens rea of getting the documents registered in the City of Mumbai, though the question immovable property being situated at Lonavala within the jurisdiction of Sub Registrar of

Assurances, Lonavala.

V. It is also required for the noticee no. 1 to refer Section 49(c) of Registration Act, 1908 which clearly indicates that all immoveable property required registration which is mandatory and if not registered then it is not having any evidential value of any transaction effecting such property or such power and having no retrospective effect from its subsequent registration as in this case the involved plot was sold by Ajanta Builders by registered deed of conveyance to Chandu Shatilal Parekh (HUF) in the year 1986 which was well within the knowledge of said Pokarana and he remained quiet for all this periods even after 1990 till date.

VI. The alleged registration in 1990, have never been given any effect in any of the record of the Lonavala Municipality, City Survey Office and Revenue Office.

VII. When the undersigned have purchased the property by registered deed of conveyance in the year 2007 after compliance of all the legal formalities including news paper publicity, search title of the property and title certificate from the lawyer where no where the name of said Pokarana have ever been mentioned or Pokarana registered his claim before executing the deed of conveyance in response to the public notice is issued at the behest of the undersigned or at the behest of developer.

VIII. The Municipal authority subsequently approved the I.O.D. and granted C.C. for execution of the project of construction even to that department so there is no reference or whisper of such deed of conveyance alleged to have been executed by the said Pokarana.

IX. In furtherance of the criminal conspiracy said Pokarana in connivance with Raju Choudhari have further executed Deed of Conveyance in the year 2008 and sold and conveyed the said property by registered document bearing No. 5454 of 2008 and registered on 17th June, 2008 with Sub Registrar of Assurances, Vadgaon, Maval in favour of one Mr. Subhash Hastimal Lodha and Mr. Pravin Bansilal Raisonni (hereinafter referred to as "Lodha & Raisonni"). Hereto annexed and marked Annexure "6" is the copy

of the Deed of Conveyance bearing No. 5454 of 2008 an registered on 17th June, 2008.

X. While getting the said Conveyance registered the executants viz. Lodha, Raisonni along with Pokarana made a false statement which are as under :

a) Marketable title and possession is with Mr. Pokarana who was knowing it fully well that at no time he paid any municipal duties, taxes as it is on record that the same were paid and discharged by Chandu Shantilla Parekh (HUF). Thus the statement was false within their knowledge.

b) The alleged Deed of Conveyance of 1981 executed between Ajanta Builders and Pokarana was restricted to balance portion of the plot excluding the plots with three bungalows sold to others by Anajta Builders and the balance plot was sold to Pokarana and however, the present conveyance of 2008 executed between Pokarana on one hand and Lodha & Raisonni on the other discloses that entire plot of Ajanta Builders was shown to be owned and sold by Pokarana which in fact is contrary to the Conveyance executed in the year 1981.

c) The said Pokarana while executing the conveyance of 2008 more over in recital refers to that the conveyance between Ajanta Builders and Pokarana was registered at Sr. No. 1341 of 1981, however, he has intentionally suppressed to create an impression that document was registered in the year 1981, but in reality it was not so and the conveyance of Ajanta Builders and Chandu Shantilal Parekh HUF was registered in the year 1986 and with the Sub Registrar of Assurances having territorial jurisdiction. If the conveyance was executed in 1981 between Ajanta Builders and Pokarana then it ought to have been registered within four months as contemplated under section 23 of

the Registration Act and the grace period of further four months with penalty which has been contemplated under Section 25 of the Registration Act, 1908, but under no circumstances it could have been registered in the year 1990 (after nearly 10 years of execution). The registration documents fails to disclose of payment of fine or delay application for cause for delay and such other relevant documents to prove that the document which was registered in the year 1990 was in reality executed in the year 1981. The entire registration mechanism suffers from such glaring deficiencies which cannot be cured by taking advantage of any provision of Registration Act. Irregularity can be regularized but illegality cannot be legalized.

d) The conveyance with enclosures placed before Registering Authority in the year 2008 (5454 of 2008) of 7/12 extract in which the name of Chandu Shantilal Parekh HUF is referred to along with Pokarana which is recorded at the extreme end apart from this the property is converted from agricultural land to Non-agricultural and therefore, the 7/12 Extract has lost its evidential value and the property card reflects the name of Chandu Shantilal Parekh HUF only which is having the correct record maintained by the City Survey Office concerning the owner of the property.

e) In the conveyance for registration though there is a positive statement that possession at the time of conveyance was with the Pokarana for which he relied upon further statement that all taxes, dues, charges have been paid by said Pokarana to the concerned municipality but not a single document is annexed or enclosed in the said Deed of Conveyance but there is a positive statement that all these taxes and dues have been paid by said Pokarana, however, the

municipal record discloses that all its payments, taxes, dues and charges have been paid and discharged by Chandu Shatilal Parekh (HUF).

f) The conveyance and agreement for sale having two different entity discloses the finality of all the performances of the respective parties and part performance concluded and part to be concluded in future respectively. In this case when there is an conveyance then the amount of Rs.8.75 laksh is to be paid by end of 2013 having period of five year and therefore, it cannot be treated as conveyance which have been registered by the Registering Authority.

4. When the Advocate for the undersigned have taken the search of the records in the office of Talathi, Lonavala in the year 2007 and accordingly issued Title Certificate but as soon as the land grabbers group started actively conspired, immediately the entire records of the Talathi have seen the change in the entries so effected which was the beginning of giving shape to the design to grab the property.

5. In view of the aforesaid it is therefore, incumbent upon your goodself to adopt inquiry and investigation and if there is sufficient substance available then all the concerned staff for their total failure of statutory duty and prosecute them by invoking Section 81 and Section 82 invoke against the executants i.e. Pokarana, Lodha and Raisonni under the Registration Act. As the offence is committed knowingly and intentionally by giving go by to the territorial and all other statutory and mandatory provisions and therefore, the offence being serious in nature the record be forthwith impounded for investigation by a competent person so that similar mischief can be un-earthed for appropriate action."

9. Thus if we consider the contents reproduced

hereinabove of the complaint dated 1.1.2009 lodged with respondent no. 2, then it can be seen that the grievance of the petitioners is that the deed of conveyance dated 2.6.1981 executed in between Ajanta Builders and Jaikumar Pokarna is forged and fabricated document prepared with an intention to defeat the registered deed of conveyance dated 7.2.1986 executed between Ajanta Builders and Chandulal Parikh i.e. the person from whom the petitioners have purchased the suit plot/land in the year 2007. It is further case of the petitioner that the deed of conveyance between Ajanta Builders and Pokarana though shown to be executed on 2.6.1981, it was registered in the office of the Sub Registrar of Assurances, Mumbai on 7.8.1990. According to the petitioner, some of the annexures to the said document found to be missing which leads to an inference that there was suppression of certain facts at the time of registration of the document. On these counts, the petitioners have sought an enquiry by respondent no. 2. The petitioners have further called for the enquiry on the ground that the certain facts stated in the deed of conveyance executed between Shri. Pokarana on the one hand and Shri. Lodha and Rasoni on the other hand, are incorrect and false statements which were not enquired into by the Registering Authority at the time of accepting the document for registration. In our view, the

Registering Authority is not expected to look into the correctness of the statement of facts made in the document tendered for registration. So also the Registering Authority is not expected to ascertain as to whether the document is made with some ulterior motive. It is not the duty of the Registering Authority to look into each and every statement of fact mentioned in the document and ask the party concerned to produce the documents in support of the recitals made in the document. Thus if we consider the grievance made in the complaint in totality, then none of the acts complained amounts to an act specified in clause (a) or (b) or (c) or (d) of Section 82 of the Registration Act, 1908. Therefore, the respondent no.2 was fully justified in refusing to grant permission for prosecution. In view of this, the order impugned dated 1.1.2011 passed by respondent no. 2, cannot be said to be illegal, arbitrary, contrary to law or the same has been passed in violation of principles of natural justice. The complaint made by the complainant was thoroughly enquired. The respondent no.2 has passed the impugned order after due consideration of the complaint made by the petitioners, the reports of enquiry obtained from respondent nos. 3 to 5 as well as the enquiry conducted on his own. In view of this, the order passed cannot be said to be an unreasoned order or passed without proper application of mind. We are therefore, not

inclined to accept the contention of the learned counsel for the petitioners that the order passed by respondent no.2 is arbitrary, illegal and against the principles of natural justice.

10. The learned counsel for the petitioners has referred to and relied upon the decision of the High Court of Madras in the case of **A. Nazaar Vs. Inspector General of Registration**¹. We have perused the judgment. In our view, the ruling cited have no bearing on the facts of the present case. In the ruling cited, enquiry was not conducted. In the case in hand, the respondent no.2 has passed the order after conducting the enquiry.

11. In view of the discussion made in the foregoing paragraphs, we are of the view that no case has been made out to exercise the powers under Article 226 of the Constitution of India to quash the impugned order dated 1st January, 2011 passed by the respondent no.2 or to relegate the matter to respondent no. 2 with a direction to pass a fresh order in the matter. We find no merit in the petition. Accordingly petition is rejected. There shall be no order as to costs. Rule is discharged.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)

¹ (2012) 5 MLJ 487