

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
-
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
-

WRIT PETITION No.20683/2012
AND
WRIT PETITION No.2192/2013

Between:

Gaddam Laxmaiah and others

... Petitioners

And

The Commissioner and Inspector General, Registration and Stamps, M.J Road,
Hyderabad and others

...
Respondents

DATE OF JUDGMENT PRONOUNCED: 07-04-2016

SUBMITTED FOR APPROVAL:

THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE P. NAVEEN RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment?

Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals?

Yes/No

3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment?

Yes/No

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**THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

**WRIT PETITION No.20683/2012
AND
WRIT PETITION No.2192/2013**

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COMMON JUDGMENT: (per Hon'ble The Acting Chief Justice Dilip B.Bhosale)

These two writ petitions are placed before this Bench pursuant to the common order dated 30.04.2015 passed by learned Single Judge referring the question framed therein to a Division Bench to settle its conflicting view with the judgment in **Vasudeva Realtors Pvt. Ltd. v.**

Government of Andhra Pradesh^[1]. The question referred is “whether unilateral cancellation of Development Agreement-cum-General Power of Attorney (GPA) and registration thereof under the Registration Act, 1908 (for short, ‘Registration Act’) is permissible in law?”

2. In *Vasudeva Realtors* (supra), learned single Judge of this Court considered similar question in the light of the facts that respondents therein had executed a Development Agreement-cum-GPA with the petitioners and then they unilaterally executed a deed of partial cancellation thereof and the same was registered by the registering authorities. The action of cancellation of the Development Agreement-cum-GPA was challenged in the writ petition. While dealing with the question, with reference to Rule 26 (i) (k) (i) of the Andhra Pradesh Rules under the Registration Act, 1908 (for short, ‘the Rules’), learned judge observed that “once this rule is to prevent the unilateral cancellation of concluded transactions of sale, there is no reason why, it cannot be extended to the transaction, which has all the ingredients of sale”. In any bilateral transaction, it was further observed that “mutual rights and obligations are defined for each of them. Whenever more than two persons constitute a party namely vendors and purchasers, their rights and obligations are joint and several, unless a different arrangement is indicated

in the document itself. It may be possible for a party, in its entirety, namely, vendors or purchasers, as a whole, to resile from transaction. It is however impermissible for a small portion of the parties to put an end to the entire transaction unilaterally". The observations made in paragraph-15 of the judgment are also relevant, which read thus:

15. It may be true that a cursory reading of Rule 26(i)(k) of the Rules gives an impression that the provision covers mostly the deeds of cancellation of sale deeds. **However, the use of expression "conveyance" and the circumstances that warranted making of the said rule, would lead to a conclusion that it applies not only to cancellation of sale deeds, pure and simple, but also to the transactions, that have the ingredients and characteristics of a sale.** The best way to understand its purport would be to see whether the transaction, which is sought to be cancelled conferred any final rights, may be in respect of a part of the property, on the other party. The answer is 'yes', the registration of such document gets prohibited by analogy, if not the application of the principle, underlying the rule.

(emphasis supplied)

3. When the judgment in *Vasudeva Realtors* (supra) was noticed by the learned Judge, dealing with the instant writ petitions, he expressed divergent view and referred the matter to settle the question by a Division Bench. The relevant observations made in the order of reference read thus:

"With due respect to the learned Judge, I am unable to convince myself to concur with the said view. As noted hereinbefore, the Registration Act being one of the procedural or adjutant laws governing the transfer/conveyance of properties, its predominant object is to provide orderliness, discipline and public notice in regard to transactions relating to immovable properties and protection from fraud and forgery of documents of transfer. As held by the Supreme Court in *Suraj Lamps & Industries (P) Ltd. V. State of Haryana* (2012) 1 SCC 656, mere registration of a document will not by itself take away the rights of the parties which otherwise cannot be taken away under substantive laws governing the transaction in question.

In the instant case, **if the Development Agreement-cum-GPAs have created any rights in respondent No.3, mere registration of their cancellation would not nullify the same. The only advantage that the petitioners may gain by registration of the documents proposed by them is that the bar under Section 49 of the Registration Act will not operate in respect of those documents. This being the true position in law, I do not see any reason to expand the scope of the provisions of Rule 26 (i) (k) beyond the plain and unambiguous language of the said provision. The phraseology "previously registered deed of conveyance on sale" employed in the said sub-rule is worth noticeable. While all sales of immovable properties constitute conveyances, the converse is not**

true. There may be transactions such as gifts, mortgages, leases etc., which fall under the definition “conveyance”. While every conveyance passes title to the person in whose favour the conveyance deed is executed, the rule making authority consciously limited the operation of sub-rule (k) (i) of Rule 26(i) of the Rules only to the deeds of “conveyance on sale”. If it really intended that this sub-rule must apply to all transactions involving conveyance, there was no reason for the rule making authority to cut-down on the amplitude of the definition of the phrase “conveyance” by only referring to “conveyance on sale”. It would have simply used the unqualified phrase “conveyance”.

(emphasis supplied)

4. We have heard learned counsel for the parties at considerable length and with their assistance gone through the reference order, relevant provisions of the Registration Act, relevant provisions of other enactments and judgments relied upon by learned counsel in support of their contentions.

5. Mr. E. Manohar, learned senior counsel for the petitioners in W.P.No.20683 of 2012 and W.P.No.2192 of 2013, wherein registration of a deed of cancellation of Development Agreement-cum-GPA was refused, at the outset submitted that the judgment in *Vasudeva Realtors* (supra) is contrary to the earlier judgments in **T. Viswanadham and others v.**

Commissioner (Registration & Stamps), Hyderabad and others^[2] and in

Mir Khader Ali Khan v. District Registrar, Rangareddy District^[3]. He

submitted that since the judgment delivered in *Vasudeva Realtors* (supra) is not in tune with the Rule 26 (i) (k) (i), learned single Judge, while dealing with the instant writ petitions, has rightly expressed divergent view and referred the question to a Division Bench. He submitted that the rule making authority consciously limited the operation of Rule 26 (i) (k) (i) to registration of a cancellation deed of previously registered “deed of conveyance on sale” and, therefore, under any circumstances registering authority has no power in law to refuse cancellation of any other document such as Development Agreement-cum-GPA. In other words, registering authority cannot refuse registration of a cancellation deed of any document other than a deed of conveyance on sale i.e., ‘sale deed’, including Development Agreement-cum-GPA presented by one party. He submitted that unilateral presentation

of document for registration of cancellation deed is perfectly within four corners of the provisions of the Registration Act and the Rules framed thereunder. Neither the Act nor the Rules empower the registering authority to refuse registration of document on any ground whatsoever. He submitted that once the requirements as to payment of stamp duty and registration charges are complied, the registering authority has no power to refuse registration of a deed of cancellation of any document, other than conveyance on sale. He, then, invited our attention to sub-section (1) of Section 69 to contend that, under the guise of general superintendence, Inspector General has no power to add any other document to the deed of conveyance on sale contemplated by Rule 26 (i) (k) (i) by issuing a circular/instructions. He submitted that the Inspector General, under the provisions of the Registration Act, can exercise general superintendence over all the registration offices and not registering officers, and any circular issued in exercise of general superintendence prohibiting registration of any document other than conveyance on sale would be without jurisdiction and *ultra vires* the provisions of Section 69 of the Registration Act read with Rule 26 (i) (k) (i) of the Rules.

6. Some other Writ Petitions and W.A.No.1616 of 2014 were also placed before us with the instant two writ petitions, we, however, make it clear that we are not dealing with the writ petitions and writ appeal on merits and confining ourselves to the question referred to this Bench in the reference order passed in two writ petitions. However, since issue involved in all the petitions/appeal is similar, we allowed learned counsel appearing in these matters to address the Court on the question referred to this Bench. Learned counsels opposing the circular/instructions of Commissioner and Inspector General of Registration and Stamps adopted the contentions urged by Mr. Manohar. In addition, they wanted to make submissions on merits of their cases, which permission was declined.

7. On the other hand, it was vehemently submitted by Mr. R.Raghunandan Rao, learned senior counsel for the contesting respondents in W.A.No.1616 of 2014 that the power of Inspector General, as

contemplated under sub-section (1) of Section 69, to exercise general superintendence over all registration offices and power to make rules are independent of each other, and that the Inspector General can exercise both powers. Insofar as Rule 26 (i) (k) (i) is concerned, he submitted, it was made in exercise of the second part of sub-section (1) of Section 69 which confers power to make rules. He submitted that the power of general superintendence is independent of the power to make Rules and the Inspector General in exercise of this power has every right to issue circulars/instructions issuing appropriate instructions consistent with the Registration Act to all the registering officers. In support of this contention, he placed reliance upon the judgment of this Court in **B. Ratnasundari Devi and others v. The Commissioner of Urban Land Ceiling, A.P., Hyderabad and others**^[4]. He then submitted, even if it is assumed that Rule 26 (i) (k) (i) does not empower registering authority to, unilaterally, cancel the document, other than conveyance on sale, such power is conferred on the registering authorities by the Circular dated 31.3.2010, impugned in W.P.No.20683 of 2012. He further submitted that a bilateral transaction creating rights, interest in immovable property reduced in writing and registered by participation of both the parties cannot be cancelled unilaterally by any one of the parties and if any such attempt is made the registering authority is justified in refusing to register such cancellation deeds.

8. Mr. C.V. Bhaskar Reddy, learned Government Pleader submitted that registering officer has power to refuse registration of any document on the ground that registration of such document would defeat the object of Indian Registration Act. He submitted that Registering Authority can even refuse to accept a deed of cancellation of a bilateral registered document if presented only by one of the parties to the document, particularly where the bilateral transaction creates rights and interest in immovable property and is already reduced into writing and registered by participation of both the parties. He submitted that if registration of a cancellation deed is allowed, perhaps that will lead to multiple litigations. He then submitted that the

Inspector General, in view of the powers contemplated under Section 69, is within his jurisdiction to issue circulars, including the circular under challenge. Lastly, he submitted that an agreement such as Development Agreement-cum-GPA whereunder parties have agreed for the developer to invest, construct and sell the developed property under the terms of agreement, cannot be unilaterally cancelled by one of the parties and that the registering officer is justified in refusing registration of such document in the absence of other party. Learned counsel appearing for the parties, who oppose unilateral registration of cancellation deed, adopted the submissions made by Mr. R. Raghunandan Rao, senior counsel and Mr. C.V. Bhaskar Reddy, learned Government Pleader.

9. Learned counsel appearing for both the sides placed reliance upon judgments in support of their propositions to which we would make reference at appropriate stage in the course of this judgment.

10. At the outset, we would like to reproduce the impugned circular for better appreciation of the arguments advanced by learned counsel for the parties and to address the question referred to this Bench.

"It therefore, in continuation of the instructions issued in the reference cited, the following instructions are issued that no registering Officer shall register a deed of revocation / cancellation of GENERAL POWER OF ATTORNEY coupled with previously registered documents of Agreements of Sale to safeguard the interest of the Agent / Vendee. In case if any such deeds of revocation / cancellation of General Power of Attorney combined with Agreement of Sale / Development Agreements is presented for registration, the Registering Officers are directed to refuse the document for registration citing the instructions issued in this memo.

However, these instructions do not bar for revocation of General Power of Attorney coupled with the deeds of Agreements of Sale or the Development Agreements if executed by all the parties to the previously registered document.

Sd/ B. Aravinda Reddy, I.A.S.,
Commissioner and Inspector General
Registration and Stamps : AP: HYDERABAD."

11. Challenge to this circular by learned counsel for the petitioners is on the ground that it was issued without authority of law and it is contrary to the provisions of the Registration Act. There is no provision in the Act or the

Rules conferring power on the Commissioner or the Inspector General to issue such circular. On the other hand, it was contended that the Circular was issued by the Commissioner in exercise of the power of general superintendence under sub-section (1) of Section 69.

12. Before we deal with the contentions, it would be relevant to reproduce Rule 26 (i) (k) (i) of the Rules.

26. (i) Every document shall, before acceptance for registration, be examined by the Registering Officer to ensure that all the requirements prescribed in the Act and in these rules have been complied with, for instance—

(a) to (j)

(k) (i) The registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government Orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law.

(ii)

13. Having regard to the language employed in clause (k) (i) of Rule 26 (i) it was contended that since this rule prevents unilateral cancellation of concluded contract of sale it can be extended to the other transactions, which has all the ingredients of sale, such as Development Agreement-cum-General Power of Attorney. This rule, it was further submitted enables registering authority to refuse registration of a deed of cancellation executed by only one of the parties and purports to cancel the conveyance including the transactions which have ingredients of 'conveyance on sale'. On the other hand, it was vehemently contended by learned counsel for the petitioners that by no stretch of imagination the expression 'conveyance on sale' could be extended to cover the transactions such as Development

Agreement-cum-General Power of Attorney or any other document of similar nature. It was further contended that if it really intended that rule 26 (i) (k) (i) of the Rules must apply to all transactions involving conveyance, there was no reason for the rule making authority to cut down on the amplitude of the definition of the word “conveyance” by referring to only “conveyance on sale”. Intention of the framers of this rule, it was submitted, is clear which does not to cover any document other than conveyance on sale, and therefore, registering authority cannot refuse registration of a deed of cancellation of other registered documents. It was also submitted that the Registration Act does not confer power on the registering authority to refuse registration of any document on such grounds.

14. At this stage, we make it clear that we do not propose to examine the question whether Rule 26 (i) (k) (i) of the Rules confers any power on the registering authority to register a deed of cancellation of any document such as Development Agreement-cum-GPA unilaterally. We propose to examine the question whether Commissioner / Inspector General in exercise of general superintendence over all the registration officers in the territories under the State Government can issue circulars and whether such circulars are binding on all the parties and relying on the same whether registering officers can refuse registration of unilateral presentation of a deed of cancellation of registered documents such as Development Agreement-cum-GPA.

15. Before we advert to the question in the light of the submissions advanced by the learned counsel for the parties, it would be relevant to have a glance at few judgments relied upon by the learned counsel for the parties and referred to in the reference order.

16. A full bench of this Court in **Yanala Malleshwari v. Ananthula Sayamma**^[5] considered the questions whether a person can nullify the sale by executing and registering a cancellation deed?; whether a Registering Officer, like District Registrar, and/or Sub-Registrar appointed by the State Government, is bound to refuse registration when a cancellation deed is

presented?; and when cancellation deed is registered how grievance, if any, is to be redressed in law? All these questions were addressed by the full bench exhaustively after dealing with relevant provisions and several judgments of High Courts and the Supreme Court. The Supreme Court, however, did not approve the view of the Full Bench while dealing with the appeal in **Thota Ganga Laxmi v. Government of Andhra Pradesh**^[6]. In that case, a writ petition was filed seeking a declaration that cancellation deed was illegal and that it was disposed of by the judgment impugned before the Supreme Court, holding that the appellant should approach the Civil Court. The relevant observations made in paragraph-5 of *Thota Ganga Laxmi* (supra) read thus:

5. In our opinion, there was no need for the appellants to approach the Civil Court as the said cancellation deed dated 4.8.2005 as well as registration of the same was wholly void and *non est* and can be ignored altogether. For illustration if 'A' transfers a piece of land to 'B' by a registered sale deed, then, if it is not disputed that 'A' had the title to the land, that title passes to 'B' on the registration of the sale deed (retrospectively from the date of the execution of the same) and 'B' then becomes the owner of the land. If 'A' wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request 'B' to sell the land back to 'A' but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.

17. Then the Supreme Court, after referring to Rule 26 (i) (k) (i) relating to Andhra Pradesh under Section 69 of the Registration Act, in paragraph-7 observed thus:

7. A reading of the above rule also supports the observations we have made above. It is only when a sale deed is cancelled by a competent court that the cancellation deed can be registered and that too after notice to the concerned parties. In this case, neither is there any declaration by a competent court nor was there any notice to the parties. Hence, this Rule also makes it clear that both the cancellation deed as well as registration thereof were wholly void and *non est* and meaningless transaction.

18. The Supreme Court in **Satya Pal Anand v. State of M.P. and others**^[7] considered its judgment in *Thota Ganga Laxmi* (supra) and other judgments and the learned judges expressed their divergent opinion and directed the Registry to place the matter before the Hon'ble the Chief Justice of India so that appropriate bench could be constituted for hearing the matter.

We are informed that till this date the reference has not been heard by the Supreme Court. It is not in dispute that the law laid down by the Supreme Court in *Thota Ganga Laxmi* (supra) as of today stands and is binding on this Court.

19. Our attention was also invited to the judgment of the Supreme Court in **Suraj Lamps & Industries (P) Ltd. V. State of Haryana**^[8] by learned counsel appearing for the petitioners. In this judgment, the Supreme Court in paragraph-23 observed thus:

23. Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in *Asha M. Jain v. Canara Bank (2001) 94 DLT 841*, that the “concept of power-of-attorney sales has been recognised as a mode of transaction” when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

20. Relying on the observations made in the aforementioned paragraphs, it was vehemently contended that under any circumstances, the transactions such as Development Agreement-cum-GPA, cannot be recognized as concluded transfer and is, therefore, not covered by rule 26 (i) (k) (i). The observations made by the Supreme Court in the very same judgment in paragraph-27 are also equally relevant, which read thus:

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding “SA/GPA/will transactions” are not intended to apply to such bona fide/genuine transactions.

21. From perusal of paragraph-27, it is clear that execution of the Development Agreement or Power of Attorney if regulated by law and subject to specific stamp duty and as long as such transactions are *bona fide* and genuine, the observations made in paragraph-23 of the judgment would not apply to such transactions. It is thus clear that the reliance placed on this judgment is of no avail to the petitioners.

22. Before making reference to any other judgment, we would like to have a close look at Section 69 (1) of the Registration Act.

69. Power of Inspector General to superintend registration offices and make rules:-- (1) The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the State Government, and shall have power from time to time to make rules consistent with this Act.

(a) to (j)

(2) The rules so made shall be submitted to the State Government for approval, and, after they have been approved, they shall be published in the Official Gazette, and on publication shall have effect as if enacted in this Act.

23. It was contended on behalf of the parties opposing circular/instructions of Commissioner and Inspector General of Registration and Stamps that the Inspector General, in exercise of power under this provision, made Rules and the Rules are binding on all the parties. Rule 26 (i) (k) (i) was made in exercise of the very same power under this provision. This rule only prohibits registration of a deed of cancellation of conveyance on sale unilaterally. It does not refer to any other document such as Development Agreement-cum-GPA, and therefore, it was contended that the registering authority has no power in law to refuse registration of a deed of cancellation of such agreement on the ground of the absence of other party. It was also contended that there is no provision in the Registration Act or the Rules which provide for presence of both sides for registering a deed of cancellation of any registered document which creates right in the property in favour of other party. Lastly, it was submitted that insofar as power of general superintendence is concerned, it can be exercised only over all the

registration offices and not registering officers and hence the impugned circular is without jurisdiction and cannot be acted upon. We are unable to understand this submission. In our opinion, general superintendence over all registration offices means registering officers also. Registration offices and registering authorities cannot be separated while interpreting this provision and it will have to be read to mean that general superintendence over all officers working in the registration offices. We are told that so far the Inspector General, in exercise of the power under Section 69 (1), has issued several circulars, including the circular impugned in these writ petitions, issuing instructions to the registering authorities.

24. From a plain reading of sub-section (1) of Section 69, it is clear that it defines two separate powers of the Inspector General; firstly, general superintendence over all the registration offices and, secondly, to make rules consistent with the Act in respect of different functions specified in clauses (a) to (f) thereof. Sub-section (2), does not indicate even remotely, as contended by learned counsel for the parties opposing circular/instructions of Commissioner and Inspector General of Registration and Stamps, that circulars and instructions issued by the Inspector General, in exercise of power of general superintendence under Section 69 (1) need to be published in the Official Gazette. Sub-section (2) provides for publication of only Rules framed in exercise of powers under Section 69 (1) in Official Gazette. It further provides that on publication, the Rules shall have effect as if they are enacted under the Registration Act. The contention that the impugned circular has not been published in the Official Gazette, and therefore, has no effect of law deserves to be rejected outright. In our opinion, the Inspector General has power to issue circulars. In other words, the Inspector General, under Section 69 of the Registration Act, can exercise power of general superintendence over all registering officers in the territory under the State Government by issuing directions / circulars / instructions to the registering officers in the matter of registration of particular type of document. [See *B. Ratnasundari Devi and others v. The Commissioner of Urban Land Ceiling, A.P., Hyderabad and others* 1993 (2) ALT 428 (DB)]. Even otherwise, in our opinion, instructions/circulars, issued by the competent authorities are meant to be

followed by all the subordinates.

25. At this stage, we would like to make brief reference to some provisions in the Registration Act. Section 17 clearly provides that any document, other than testamentary instruments, which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property shall be registered. Section 49 provides that no document required by Section 17 to be registered shall, affect any immovable property comprised or received as evidence of any transaction affecting such property, unless it has been registered. Registration of document give notice to the world that such document has been executed. Section 32A provides that all deeds, of which registration is compulsory, shall be signed by both the parties and same shall bear the finger prints and photographs. Subject to provisions contained in Part-VI and Sections 41, 43, 45, 69, 75, 77, 88 and 89, under Section 34 no document shall be registered unless the persons executing such document, or their representatives, assignees or agents appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26. Under Section 35, if all the persons executing the document appear personally before the registering officer and are personally known to him, or if he is otherwise satisfied that they are the persons who represent themselves to be, and if they all admit the execution of the document, or, if in the case of any person appearing by a representative, assignee or agent, such representative, assignee or agent admits the execution, or if the person executing the document is dead, and his representative or assignee appears before the registering officer and admits the execution, the registering officer shall register the document as envisaged in Sections 58 to 61. Under sub-section (3) (a) of Section 35, registering officer, *inter alia*, shall refuse to register the document if any person by whom document purports to be executed, denies its execution. Under Section 71, every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order and endorse the words

“registration refused” on the document. Under Section 72, aggrieved person can file appeal before the Registrar against such order of the registering officer. Thus, it is clear that transfer of property necessarily involves conveyance and such conveyance requires payment of stamp duty and some of the deeds of conveyance require compulsory registration.

26. The following observations made by the Supreme Court in ***Suraj Lamps & Industries (P) Ltd.*** (supra) are also relevant:

18. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.

27. The observations of the Supreme Court emphasize the importance and the purpose of registration which ensure that every person dealing with immovable property can rely with confidence upon the statements contained in the registers maintained under the Registration Act as a full and complete account of all transactions by which the title to the property may be affected.

28. As seen earlier, Section 17 of the Registration Act deals with the documents where registration is compulsory and Section 18 deals with the documents where registration is optional. Section 32A thereof provides that every document, whether its registration is compulsory or optional, shall be signed by every person such as the vendor as well as the purchaser or the parties on the first part and second part, shall also bear their finger-prints and

photographs. Section 34 mandates that registering authority to hold an enquiry in respect of validity of the document presented for registration.

Under clause (a) of sub-section (3) thereof registering authority is obliged to enquire before registration whether or not such document was executed by the persons by whom it purports to have been executed. A sale or any other document of similar nature is essentially an executed contract between two parties on mutual agreed conditions. The question is, therefore, whether such agreement can be unilaterally rescinded, particularly, in the case of a sale deed or Development Agreement-cum-GPA for that matter. In this context, we may also refer to Section 62 of the Indian Contract Act, 1872. It provides the contracts which need not be performed. According to this provision, any novation, rescission and alteration of contract can be made by the parties i.e., only bilaterally. A deed of cancellation, in our opinion, amounts to rescission of contract and if the issue in question is viewed from that angle, in the light of the provisions of Section 62 of the Indian Contract Act, 1872, any rescission must be only bilateral. We agree with the view expressed by the Madras High Court in **E.K. Kalyan v. Inspector General of**

Registration^[9]. Having regard to the above provisions, in our opinion, a registered sale deed or any other document such as Development Agreement-cum-GPA, which creates right in favour of the party in the subject-matter of document, if sought to be cancelled, registration of such deed must be at the instance of both the parties. In other words, even execution of a deed of cancellation of the registered document which created rights in favour of the other party in the subject-matter of the document, cannot be registered unilaterally but it should be bilateral. In any case, the document, which is compulsorily registerable, some restrictions, in our opinion, must be applied even for cancellation of such document as well. The Commissioner has, therefore, rightly issued the circular, restricting registration of a deed of cancellation of any document, such as Development Agreement-cum-GPA, at the instance of only one/first party to such document. We are of the considered opinion that in the absence of any provision specifically empowering registering authority to entertain a document of cancellation for registration, without signatures of both the parties, a deed of cancellation

cannot be entertained and registered and that the impugned circular issued by the Inspector General is binding on all parties. Having so observed, we find no infirmity in the impugned circular issued by the Commissioner/Inspector General, in exercise of the powers of general superintendence contemplated by Section 69(1) of the Registration Act. By issuing the impugned circular, in exercise of the powers under sub-section (1) of Section 69 of the Registration Act, this very objective, in our opinion, sought to be achieved.

29. Thus, having regard to the law laid down by the Supreme Court and provisions of the Act, in our opinion, whenever registered documents such as Development Agreement-cum-GPA, is sought to be cancelled, execution and registration of such a document/deed must be at the instance of both the parties i.e., bilaterally and not unilaterally. If a deed of cancellation is allowed to be registered without the knowledge and consent of other party to the deed/document, sought to be cancelled, such registration would cause violation to the principles of natural justice and lead to unnecessary litigation, emanating therefrom. In any case, as stated earlier, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration without the signatures of both the parties to the document, the deed cannot be entertained. Moreover, if the Registrars are allowed to entertain a deed of cancellation for registration without signatures of both the parties to the document sought to be cancelled, such power would tantamount to conferring the power to decide disputed questions between the parties. No party to the document would ever approach for cancellation of registered document unilaterally unless there is a dispute with the other party in respect of the subject matter of the document.

30. In the result, we answer the question in the negative. In other words, we hold that registration and unilateral cancellation of documents such as Development Agreement-cum-General of Power of Attorney under the Registration Act is not permissible in law.

Registry is directed to place all the writ petitions before the appropriate bench for disposal in the light of the opinion expressed on the

question referred to for our consideration.

Dilip B. Bhosale, ACJ

P. Naveen Rao, J

Dt. 07.04.2016

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- [\[1\]](#) 2012 (6) ALD 178
 - [\[2\]](#) 2009 (6) ALT 220
 - [\[3\]](#) 2012 (4) ALD 411
 - [\[4\]](#) 1993 (2) ALT 428 (DB)
 - [\[5\]](#) 2006 (6) ALT 523 (FB)
 - [\[6\]](#) 2012 (3) ALT 50 (SC)
 - [\[7\]](#) 2015 Law Suit (SC) 796 (DB)
 - [\[8\]](#) (2012) 1 SCC 656
 - [\[9\]](#) AIR 2010 Madras 18 (DB)