

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**+ WRIT PETITION Nos.4174 OF 2008; 11045, 13863, 17002, 20958,
27568 OF 2009; and 5699 of 2010**

% 18.08.2017

Smt.P.Veda Kumari and others.

...Petitioners

vs.

\$ The Sub-Registrar, Banjara Hills,
Hyderabad,
And others.

... Respondents

!Counsel for the Petitioners : Sri B.Shiva Kumar,
Sri J.Janakirami Reddy,
Sri S.Niranjana Reddy,
Sri P.Venugopal

^Counsel for the Respondents : Sri V.L.N.G.K.Murthy,
GP for Revenue,
Sri T.Sharath,
Sri R.Chandra Shekar Reddy

<Gist :

>Head Note :

? Cases referred

1. 2004 (1) ALT 174
2. AIR 2007 AP 57
3. 2017 (4) ALD 12
4. (2010) 15 SCC 207 : 2012 (1) ALD 90 (SC)
5. AIR 2011 Mad 16
6. AIR 1922 PC 56
7. AIR 1961 Ori 19
8. AIR 1960 Mad 1 (FB)
9. 2010 (6) ALT 142
10. AIR 2012 AP 163
11. (2015) 15 SCC 263
12. 2006 (2) ALD 371
13. (2016) 10 SCC 767
14. AIR 1990 Mad 251
15. (2015) 7 SCC 728

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

**WRIT PETITION Nos.4174 OF 2008; 11045, 13863, 17002, 20958,
27568 OF 2009; and 5699 of 2010**

COMMON ORDER:

The following writ petitions are filed for setting aside deeds of cancellation of sale deeds and the gift settlement deeds unilaterally by the executants.

W.P.No.	Nature of Deed	Date of Execution of Deed
4174 of 2008	Cancellation of Gift Settlement Deed	18.09.2007
11045 of 2009	Cancellation of sale deed	25.05.2009
13863 of 2009	Cancellation of sale deed	30.06.2099
17002 of 2009	Deed of Cancellation of sale deed	23.07.2009
20958 of 2009	Cancellation of sale deed	07.08.2009
27568 of 2009	Cancellation of sale deed	18.11.2009
5699 of 2010	Revocation of Gift Settlement Deed	30.01.2010

The factual aspects of the matter involved in the Writ Petitions are not necessary for the disposal of these Writ Petitions and hence they are not considered.

The consideration of the writ petitions involved the following points:

1. Whether there can be cancellation of a registered document unilaterally by the executant and registration of the same by the Registering Authorities and whether the same is valid under law?
2. Whether a Writ Petition is maintainable for setting aside such deeds of Cancellation?

There is no dispute of facts in the present cases since all the deeds were executed unilaterally by the executants and those documents were registered by the Registering Authorities. The documents fall under two categories of cases; one category of cases relates to the period prior to amendment of Rule 26(k) of the Registration Rules with effect from 02.06.2014, whereas the second category relates to the registration of documents by the Registering Authorities in violation of the said Rules after amendment.

The erstwhile State of Andhra Pradesh framed Rules called 'the Andhra Pradesh Rules under the Registration Act, 1908' under Section 69 of the Registration Act, 1908. The unamended Rule 26 reads as follows.

26. (i) Every document shall, before acceptance or registration 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) that it has been presented in the proper office (Sections 28,29 and 30);

(b) that the person is entitled to present it (Sections 32 and 40)

(c) that if it is a non-testamentary document and relates to immovable property, it contains a description of property sufficient to identify the same and fulfils the requirements of Rules 18 to 20:

(d) that if it is written in a language not commonly used in the District and not understood by the Registering Officer it is accompanied by a true translation into a language commonly used in the District and also by true copy (Section 19);

(e) that if it contains a map or plan, it is accompanied by true copies of such map or plan as required by Section 21(4);

(f) that it contains no unattested interlineations, blanks, erasures or alterations, which in his opinion require to be attested as required by Section 20(1);

(g) that if the document is one other than a will it has been presented within the time prescribed by Sections 23 to 26;

(h) that it bears the date of its execution and does not bear a date anterior to the date of purchase of stamp papers and the document is written on a date subsequent to the date of presentation.

i) that if the date is written in any document other a will presented for registration after the death of the testator according to both the British and the Indian calendars, these dates tally; and

(j) that if the presentant is not personally known to the Registering Officer, he is accompanied by such identifying witness with whose testimony the Registering Officer may be satisfied;

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.

*(k)(i) The registrating 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 the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law.

Note: See Govt. Memo Rc.No.G1/10866/2006, dt. 14.03.2008.

(ii) Save in the manner provided for above no cancellation deed of a previously registered deed of conveyance on sale before him shall be accepted for presentation for registration.

*(Ins. by Noti. No.R.R.1/2016, Pub. In A.P.Gaz. R.S.to Pt.II, Ext. No.18, dt.29-11-2006.)

In the light of the said Rule, when deeds of cancellation were executed, W.P.No.14007 of 2004 was filed before a learned single Judge of this Court challenging the acceptance of deed of cancellation of the Gift Deed dated 02.08.2004 and the learned single Judge following the decision in **Property Association of Baptist Churches vs. Sub Registrar, Jangoan**¹ dismissed the writ petition observing that a party aggrieved by a registered document of conveyance has to file a suit seeking proper declaration. The same was confirmed by Judgment dated 11.10.2004 passed in W.A.No.1486 of 2004. Thereafter, W.P.Nos.23005 and 23088 of 2004 came up for consideration before another learned single Judge, before whom, the cancellation deeds were challenged. The learned single Judge, having felt that various points were not brought to the notice of the earlier Division Bench, thought it fit to refer the matter to another Division Bench or if necessary to a Full Bench. Accordingly, in view of the decision of the earlier Division Bench, the matter was referred to a Full Bench. The Full Bench considered the following points:

1. 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?
2. Whether a writ petition is maintainable for invalidation of a Cancellation Deed or for cancellation of an instrument which purports to nullify a Sale Deed?

Both the points were held against the petitioners by a majority of the Judges of the Full Bench and the writ petitions were dismissed in **Yanala Malleshwari vs. Smt. Ananthula Sayamma**². It was held that the registering authority cannot reject the registration when a deed of

¹ 2004 (1) ALT 174

² AIR 2007 AP 57

cancellation was presented and when such an action is challenged, the writ petition is not a proper remedy.

In view of the above decision of the Full Bench, Rule 26 was amended by substituting clause (k) as follows:

“(k) That the Cancellation Deed of the previously registered deed of conveyance on sale of immovable property is executed by both the executing and the claiming parties thereof unless such Cancellation Deed is executed under the orders of a competent Court or under Rule 243.”

(Vide G.O.Ms.No.121, Rev.(Regn.I), Dept. dt.1-6-2016, w.e.f.2-6-2014)

In view of this amendment, the registering officer shall ensure the presence of all the executants and claimant parties to the previously registered conveyance before registering the deeds of cancellation. But even violating this procedure also, it appears that some registering authorities registered certain deeds of cancellation, which was challenged as aforesaid in some of the writ petitions. Though it is clear that no action of the officials is valid in view of the violation of rules, the point with regard to the remedy still remains. It necessitates the examination of the scope of remedy in such cases.

The very amendment of Rule 26(k) was challenged before this Court in **Kaitha Narasimha v. State of Andhra Pradesh** (W.P.No.3744 of 2007) on the ground that the amendment was contrary to the Judgment of Full Bench of this Court in **Yanala Malleshwari's** case (supra), but a Division Bench of this Court by order dated 13.03.2007 upheld the said amendment.

A learned single Judge of this Court in **Ediga Chandrasekar Gowd vs. State of Andhra Pradesh**³, while considering the action of the registering authority in registering cancellation deed cancelling the Agreement of Sale cum irrevocable General Power of Attorney, after

³ 2017 (4) ALD 12

tracing out the history relating to amendment to Rule 26(i)(k)(i) and considering the case of Supreme Court in **Thota Ganga Laxmi vs. Government of Andhra Pradesh**⁴, allowed the writ petition implying that a writ petition was maintainable.

The violation of procedure by the registering authority after amendment of Rule 26 may not involve any disputed questions of fact so far as the procedure is concerned but such a deed is a voidable deed. A party affected by such registration can keep quiet or challenge the same. When he/she challenges, the question of remedy arises for consideration.

An identical point which arose before a Full Bench of this Court in the above case of **Yanala Malleswari**, came up for consideration before a Full Bench of Madras High Court in **M/s.Latif Estate Line India Limited vs. Mrs.Hadeeja Ammal**⁵, wherein the validity of registration of deed of cancellation after registering a sale deed came up for consideration. Initially when the matter came up before a learned single Judge, the learned single Judge held as follows.

"i) Challenging registration of a unilaterally executed cancellation of a sale deed, a writ petition is maintainable under Article 226 of the Constitution of India.

ii) A cancellation of a sale deed executed by mutual consent by all parties to the sale deed, if presented for registration, Registering Officer is bound to register the same if the other provisions like Section 32-A of the Registration Act are complied with.

iii) The Registering Officer is obliged legally to reject and to refuse to register a unilaterally executed Deed of Cancellation of a sale deed without the knowledge and consent of other parties to the sale deed. On the basis of the aforesaid conclusion, learned single Judge held that the cancellation deed was executed unilaterally by the second respondent/appellant without the knowledge and consent of the writ petitioner and without complying the requirements of Section 32-A of the Registration

⁴ (2010) 15 SCC 207 : 2012 (1) ALD 90 (SC)

⁵ AIR 2011 Mad 16

Act. Hence, the writ petition was allowed and the registration of Cancellation Deed was quashed."

The matter was ultimately referred to a Full Bench and the Full Bench formulated the following points:

(i) Whether cancellation of a registration of a registered sale deed of a immovable property having valuation of more than one hundred rupees can be registered either under Sections 17 or 18 or any other provision of the Registration Act?

(ii) Whether for such cancellation of a registered sale deed, signature of person claiming under the document for sale of property is required to sign the document, if no such stipulation is made under the Act? and

(iii) Whether the decisions of the single Judge dated 10.02.2009 made in W.P.No.8567 of 2008 and the Division Bench dated 01.04.2009 made in W.A.No.194 of 2009 amount to amending the provisions of the Registration Act and the Rules framed thereunder, by inserting a clause for extinguishing right, title or interest of a person on an immovable property of value more than Rs.100/- in a manner not prescribed under the Rules?

As could be seen above, though the learned single Judge decided a point with regard to the maintainability of the writ petition, the same was not considered by the Full Bench. The Full Bench of the Madras High Court considered the Full Bench decision of this Court in **Yanala Malleshwari**. After considering the four Judge decision of the Privy Council in **Md.Ihtishan Ali vs. Jamna Prasad**⁶, that of the decision in **Michhu Kuanr vs. Raghu Jena**⁷ and Section 31 of the Specific Relief Act, which came up for interpretation in **Muppudathi Pillai vs. Krishnaswami Pillai**⁸, the Full Bench ultimately held as follows:

"59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:-

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right,

⁶ AIR 1922 PC 56

⁷ AIR 1961 Ori 19

⁸ AIR 1960 Mad 1 (FB)

title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons."

A perusal of the above conclusions of the Full Bench of the Madras High Court shows that a complete and absolute sale deed can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground of fraud or any other valid reasons. It does not lay down any principle with regard to maintainability of the writ petition after execution of a deed of cancellation of an earlier deed of conveyance by the registering authority.

In view of the above discussion, it is held that the unilateral execution of a document of deed of cancellation, cancelling the earlier registered document and registration of the same by the registering authority prior to the amendment can validly be done by the Registering Authority and the aggrieved party can challenge such action, whereas after the amendment the Registering Authority cannot register a

document of cancellation without following the amended Rule 26(k) of the Rules.

Regarding the remedy of the parties challenging the deeds of cancellation, it is submitted by the learned counsel for the petitioners that the writ petition is maintainable and drew support from the decision in **Ediga Chandrasekar Gowd's** case (supra). In the said decision, there was no discussion with regard to maintainability of the writ petition, and merely because a writ petition was allowed by this Court, it cannot be concluded that the writ petition was maintainable as a matter of point of law in all cases. The learned counsel for the petitioners placed reliance on the decisions of this Court **A.B.C.India Limited vs. the A.P.Industrial Infrastructure Corporation Limited**⁹, **Thota Ganga Laxmi, Fazalullah Khan vs. State of Andhra Pradesh**¹⁰ and **Satya Pal Anand vs. State of Madhya Pradesh**¹¹.

In **A.B.C.India Limited's** case (supra), the cancellation of sale deed validly executed by the A.P.Industrial Infrastructure Corporation Limited came up for consideration and a learned single Judge of this Court, who is a party to the majority Judgment of the Full Bench, held that the APIIC has no power or jurisdiction to cancel the allotment which has the effect of nullifying the sale deed and accordingly set aside the cancellation of allotment. In those cases, the petitioners were allotted industrial plots by the APIIC and sale deeds were also executed transferring title deeds in immovable property. The allotment was cancelled after five years on the ground that the conditions of sale and agreements of sale were not adhered to. The learned single Judge dealt with the issue with regard to maintainability of writ petition. He considered the effect of introducing Rule 26(k) of the Rules. He ultimately held that

⁹ 2010 (6) ALT 142

¹⁰ AIR 2012 AP 163

¹¹ (2015) 15 SCC 263

the question involved in the cases was not in relation to a contract, but in relation to the authority, power and jurisdiction of APIIC as vendor to cancel the sale, and accordingly the point raised by the learned counsel for APIIC that since the writ petitions involved disputes arising out of private contract entered into between the public authority and private parties and hence was not amenable to judicial review was negated. He held that the writ petitions were maintainable and accordingly allowed the same.

In **Thota Ganga Laxmi's** case (supra), the Supreme Court considered the Full Bench decision of this Court in **Yanala Malleshwari** but held that in cases of registration of deeds of cancellation by the registering authority, directing the aggrieved party to go to Civil Court was held to be not correct. The observations of the Supreme Court are as follows:

“4. In our opinion, there was no need for the appellants to approach the civil Court as the said cancellation deed dated 04.08.2005 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 execution of the same) and 'B' then becomes the owner of the land. If 'A' wants to subsequently get the 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.

The Supreme Court referred to the unamended Rule 26(i) (k) in the said decision.

A learned single Judge of this Court in **Fazalullah Khan's** case (supra), considered the effect of registering a deed of cancellation cancelling the deed of gift earlier executed and held that Rule 26(k) equally applies to the gift deeds also. While coming to the conclusion, the learned single Judge relied upon by the decision of the Supreme Court in **Thota Ganga Laxmi's** case (supra), which was unreported by then. When

his attention was drawn to the decision of **Valluri Anuradha vs. Sub Registrar, Saroornagar, Ranga Reddy District**¹², he held that said decision is no longer good law in view of the decision of the Supreme Court in **Thota Ganga Laxmi's** case (supra). The point involved in the said decision was only the application of Rule 26(k) to cancellation of gift deeds.

In **Satya Pal Anand's** case (supra), a two Judge Bench of the Supreme Court considered three questions and in view of the disagreement, the matter was referred to a Larger Bench and the Larger Bench decision is available in **Satya Pal Anand vs. State of Madhya Pradesh**¹³. The said reference came up before the three-Judge Bench of the Supreme Court because one of the two Judges (Dipak Misra, J) in the earlier decision held that the above Appeal challenging the order passed by the Sub Registrar was rightly dismissed by the High Court, whereas the other learned Judge (V.Gopala Gowda, J) allowed the Appeal on the ground that the Registering Authority has no power to register the Extinguishment deed presented by the respondent Society and it was *void ab initio*. Consequently, the subsequent deeds in respect of the property registered by the Sub Registrar were also held without authority and *void ab initio*.

The facts in the above case are that one plot was allotted to the mother of the appellant by a Cooperative Society which executed a registered deed of sale on 22.03.1962. She died on 12.06.1988. After her death, the Society unilaterally executed a deed of Extinguishment on 09.08.2001 cancelling the said allotment of plot in favour of the mother of the appellant due to violation of bye-laws of the Society in not raising any construction in the plot so allotted within time. On the basis of the

¹² 2006 (2) ALD 371

¹³ (2016) 10 SCC 767

Extinguishment deed, the Society executed another deed of registration in favour of the third party in respect of the same plot. However, the matter was later on compromised among the parties by exchanging money to the extent of loss. In spite of the same, the appellant raised a dispute under Section 64 of the Madhya Pradesh Cooperative Societies Act before the Deputy Registrar challenging the action of unilaterally registering the Extinguishment deed and allotting the plot in favour of the third party and sought a declaration that he continues to be the owner of the plot allotted earlier by the Society to his mother having inherited the same. During the pendency of the said writ petition, the Society permitted transfer of plot in favour of two other parties by Registered deed dated 11.07.2006 (obviously by the third party in whose favour the deed of registration was executed by the Society and whose title was accepted by the appellant by receiving consideration). The purchasers issued a notice on 12.07.2007 asking to refund the consideration amount accepted by him pursuant to the compromise dated 06.07.2004 but the appellant did not pay the amount and pursued multiple proceedings. The Sub Registrar rejected the application of the applicant. When the dispute was pending before the Deputy Registrar of Cooperative Societies, he moved an application before the Sub Registrar (Registration) asking to cancel the registration of Extinguishment deed dated 09.08.2001 and the subsequent two deeds of sale dated 21.04.2004 and 11.07.2006 respectively, by an application dated 04.02.2008. The Sub Registrar (Registration) rejected the said application on 28.06.2008 mainly holding that a dispute was pending between the parties with regard to the same subject matter before the Deputy Registrar of Cooperative Societies and he had no jurisdiction to cancel the registration of the registered document in question. He filed an appeal against the said order to the Inspector General (Registration) under Section 69 of the Registration Act and he also dismissed the Appeal

by order dated 19.09.2008. The writ petition filed by him was also dismissed by the Division Bench of the High Court since the dispute was pending before the Deputy Registrar of Cooperative Societies. The same was challenged before the Supreme Court. When the Appeal initially came up before a two-Judge Bench, as stated above, the learned two Judges differed and the matter came up before a three-Judge Bench. The three-Judge Bench noticed that one of the two Judges did not agree with the principle stated in **Thota Ganga Laxmi's** case (supra) in the absence of any specific rule in that behalf. The other learned Judge constituting the two-Judge Bench following **Thota Ganga Laxmi's** case (supra), placing reliance on Section 31 of the Specific Relief Act and in view of the period of limitation contained in Article 59 of the Limitation Act, 1953, which requires cancellation of any document within three years, held that the unilateral cancellation was impermissible in law. He also placed reliance on Article 300-A of the Constitution of India. He also observed that merely because Extinguishment deed can be challenged by approaching a civil Court, it would not denude the appellant of the relief as sought in the writ petition qua Extinguishment deed dated 09.08.2001, which was void ab initio. He also held that the compromise executed by the appellant cannot stand in his way in getting relief. After hearing the rival submissions and views of the learned two Judges, the Supreme Court framed the following questions in the fact situation of that case, which are as follows:

“23.1. (a) Whether in the fact situation of the present case, the High Court was justified in dismissing the writ petition?

23.2. (b) Whether the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is duty-bound to declare the registered deeds (between the private parties) as void ab initio and to cancel the same, especially when the aggrieved party (appellant) has already resorted to an alternative efficacious remedy under Section 64 of the 1960 Act before the competent

forum whilst questioning the action of the Society in cancelling the allotment of the subject plot in favour of the original allottee and unilateral execution of an extinguishment deed for that purpose?

23.3. (c) Even if the High Court is endowed with a wide power including to examine the validity of the registered extinguishment deed and the subsequent registered deeds, should it foreclose the issues which involve disputed questions of fact and germane for adjudication by the competent forum under the 1960 Act?

23.4. (d) Whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an extinguishment deed after it is registered? Similarly, whether the Inspector General (Registration) can cancel the registration of extinguishment deed in exercise of powers under Section 69 of the 1908 Act?

23.5. (e) Whether the Sub-Registrar (Registration) had no authority to register the extinguishment deed dated 9-8-2001, unilaterally presented by the respondent Society for registration?

23.6. (f) Whether the dictum in *Thota Ganga Laxmi [Thota Ganga Laxmi v. State of A.P., (2010) 15 SCC 207 : (2013) 1 SCC (Civ) 1063]* is with reference to the express statutory Rule framed by the State of Andhra Pradesh or is a general proposition of law applicable even to the State of Madhya Pradesh, in absence of an express provision in that regard?"

While deciding the issues (a) to (c), the three Judges agreed with the view taken by Justice Dipak Misra with the following observations in para 25.

“25. It is a well-established position that the remedy of writ under Article 226 of the Constitution of India is extraordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the appellant in pursuing multiple proceedings for the same relief and also because the appellant had an alternative and efficacious statutory remedy to which he has already resorted to. This view of

the High Court has found favour with Dipak Misra, J. We respectfully agree with that view.

In support of its reasoning to disagree with the view taken by the other learned Judge constituting two-Judge Bench, the Supreme Court observed as follows:

“29. In our considered opinion, it would be unnecessary if not inappropriate to examine any other contention at the instance of this appellant as we agree with the view taken by the High Court in summarily dismissing the writ petition with liberty to the appellant to pursue statutory remedy. At best, further observation or clarification would suffice to the effect that the competent forum before whom the dispute has been filed by the appellant shall consider all contentions available to the parties, uninfluenced by the factum of registered extinguishment deed. In that, if the competent forum was to hold that it was open to the Society to cancel the allotment and membership of the member concerned and thereafter to allot the same plot to another person enrolled as a member of the Society, no other issue would arise for consideration. On the other hand, if the competent forum was to answer the relevant fact in favour of the appellant, only then the argument of the effect of unilateral registration of the extinguishment deed followed by compromise deed voluntarily executed by the appellant may become available to the Society and to the subsequent purchasers/allottees of the subject plot. At their instance, those issues can be examined on the basis of settled legal position. Neither the observation nor the opinion recorded by one of the dissenting Judges of this Court need any further dissection nor would it be appropriate to enlarge the scope of the proceedings before this Court on those aspects. This would subserve the twin requirements. Firstly, to avoid an exposition on matters and questions which do not arise for our consideration in the fact situation of the present case at this stage; and secondly, also provide an opportunity to the parties to pursue all contentions and other remedies as may be permissible in law.

30. The exposition of the Constitution Bench of this Court in **S. Partap Singh [S. Partap Singh v. State of Punjab, AIR 1964 SC 72]** adverted to in the dissenting opinion would be attracted in cases where the State Authority acts in bad faith or corrupt motives. **Merely because some irregularity has been committed in registration of extinguishment deed unilaterally presented by the Society for registration or in respect of the subsequent deeds registered at the instance of third party without notice to the appellant, that, by itself, will not result in registration of those documents due to corrupt motives of the State Authority.** More so, in the present case, the appellant having entered into a compromise deed with the Society and third party (subsequent allottees) in respect of the subject plot, it is doubtful whether it is open to the appellant to question the act of unilateral execution and registration of the stated extinguishment deed being irregular much less void and nullity. Indisputably, the

respondent Society is a limited cooperative housing society and is governed by its bye-laws. According to the counsel for the Society, the member is obliged to erect a house on the plot allotted to him within specified time, failing which must suffer the consequence including of cancellation of allotment of plot and removal of his membership. At the time of allotment, the member executes an agreement whereunder he/she undertakes to abide by the conditions specified for erecting a house on the plot allotted to him/her in the manner prescribed therein. Whether the Society is justified in proceeding against the defaulting member by cancelling the allotment of plot as well as membership, is an issue falling within the purview of the business of the Society. The member is bound by the stipulation contained in the agreement executed by him/her and in particular the bye-laws of the Society. Any action by the Society for breach thereof is just or otherwise can be questioned before the statutory forum under the 1960 Act. Those are matters which can and must be answered in the proceedings resorted to by the appellant before the statutory forum.

(emphasis supplied)

31. The aforementioned reported decision has noted the subtle distinction between ultra vires act of the statutory authority and a case of a simple infraction of the procedural Rule. The question, whether the Society was competent to unilaterally cancel the allotment of a plot given to its member and to cancel the membership of such member due to default committed by the member, is within the purview of the business of the Society. Any cause of action in that regard must be adjudicated by the procedure prescribed in that behalf. It is not open to presume that the Society had no authority in law to take a decision in that behalf. The right of the appellant qua the plot of land would obviously be subject to the final outcome of such action. The appellant being the legal representative of the original allottee, cannot claim any right higher than that of his predecessor qua the Housing Society, which is the final authority to decide on the issue of continuation of membership of its member. The right of the member to remain in occupation of the plot allotted by the Society would be entirely dependent on that decision.”

The Supreme Court while answering (d) to (f) examined the provisions of the Registration Act in the following terms:

“34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see **Raja Mohammad Amir Ahmad Khan [State of U.P. v. Raja Mohammad Amir Ahmad Khan, AIR 1961 SC 787]**). Section 17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one such document referred to in Section 17(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses

and land by reference to government maps and surveys. There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.

36. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. **Non-presence of the other party to the extinguishment deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other party to the deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed.** Suffice it to observe that since the provisions in the 1908 Act enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the 1908 Act can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the civil court.”

(emphasis supplied)

Then the Supreme Court referred to the Full Bench decision of this Court in **Yanala Malleshwari's** case (supra) in paragraph 40 thereof. Approving the view of the Madras High Court in **Park View Enterprises vs. State of Tamil Nadu**¹⁴, the Supreme Court in para 41 thereof held that the function of the Registering Officer is purely administrative and not quasi judicial. Further, while referring to **Thota Ganga Laxmi**, it was held that the decision cannot have universal application to all States (other than the State of Andhra Pradesh) and in the absence of any such provision in

¹⁴ AIR 1990 Mad 251

the State of Madhya Pradesh, it was held that it cannot be labelled as fraudulent or nullity in law. The Supreme Court also held that the error of the Registering Officer can be called an error of procedure and when it was done in good faith, Section 87 of the Registration Act protects such Act. The observations of the Supreme Court are as follows:

“43. No provision in the State of Madhya Pradesh enactment or the Rules framed under Section 69 of the 1908 Act has been brought to our notice which is similar to the provision in Rule 26(k)(i) of the Andhra Pradesh Registration Rules framed in exercise of power under Section 69 of the 1908 Act. That being a procedural matter must be expressly provided in the Act or the Rules applicable to the State concerned. In absence of such an express provision, the registration of extinguishment deed in question cannot be labelled as fraudulent or nullity in law. As aforesaid, there is nothing in Section 34 of the 1908 Act which obligates appearance of the other party at the time of presentation of extinguishment deed for registration, so as to declare that such registration of document to be null and void. The error of the Registering Officer, if any, must be regarded as error of procedure. Section 87 of the 1908 Act postulates that nothing done in good faith by the Registering Officer pursuant to the Act, shall be deemed invalid merely by reason of any defect in the procedure. In the present case, the subject extinguishment deed was presented by the person duly authorised by the Society and was registered by the Registering Officer. Once the document is registered, it is not open to any Authority, under the 1908 Act to cancel the registration. The remedy of appeal provided under the 1908 Act, in Part XII, in particular Section 72, is limited to the inaction or refusal by the Registering Officer to register a document. The power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of documents already registered.

46. In our considered view, the decision in ***Thota Ganga Laxmi [Thota Ganga Laxmi v. State of A.P., (2010) 15 SCC 207 : (2013) 1 SCC (Civ) 1063]*** was dealing with an express provision, as applicable to the State of Andhra Pradesh and in particular with regard to the registration of an extinguishment deed. In absence of such an express provision, in other State legislations, the Registering Officer would be governed by the provisions in the 1908 Act. Going by the said provisions, there is nothing to indicate that the Registering Officer is required to undertake a quasi-judicial enquiry regarding the veracity of the factual position stated in the document presented for registration or its legality, if the tenor of the document suggests that it requires to be registered. The validity of such registered document can, indeed, be put in issue before a court of competent jurisdiction.”

The observations of the Supreme Court as highlighted in paragraphs 30 and 31 run contrary to the view taken by the Supreme Court in **Thota Ganga Laxmi's** case (supra) with regard to the procedural non-compliance and maintainability of a writ petition. What can be deduced from the above decision for examining the issue relating to maintainability of a writ petition is that the action of the registering authority in registering the document is only administrative in nature and the case of simple infraction of the procedural rule has to be distinguished from the *ultra vires* act of the statutory authority in the absence of any remedy in the statute. In the absence of any bad faith or corrupt motive, the party aggrieved by such registration of document can challenge its validity before the civil Court. This is made clear in the observations made in paragraph 36 of the above Judgment. It is also clear from the above that in view of the Rule position prevailing then, the decision of the Full Bench of this Court in **Yanala Malleshwari's** case (supra) was upheld and found to be correct.

The Full Bench in **Yanala Malleshwari's** case (supra) specifically examined the point with regard to the maintainability of writ petition for invalidation of a cancellation deed or for cancellation of an instrument, which purports to nullify the sale deed. The Full Bench examined the distinction between private law and public law and held that though the registering authorities are statutory authorities, their functions may or may not strictly come within public law. Thereafter, it examined the power of judicial review of this Court and observed as follows:

“85. Judicial Review has its own limitations and all decisions of public bodies are not amenable to this public law power. Nor is it permissible for a reviewing Court to deal with matters which lack adjudicative disposition by reason of prerogative nature of the power exercised by the public authority or exclusive entrustment of powers to a specialised body of the State. As the legislative and executive wings are prohibited from usurping the judicial functions of the State, the judiciary is not expected to discharge legislative and executive functions. The exposition of the principles of judicial review by Lord Diplock in

Council of Civil Service Unions v. Minister for the Civil Service, ((1985) AC 374), has attained the classical status of law of judicial review. While grouping the grounds of judicial review into three broad points, namely, illegality, irrationality and impropriety, the noble Lord observed:

For a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decision-making power is nearly always now-a-days a statute or subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decision-making power may still be the common law itself, i.e., that part of the common law that is given by lawyers the label of 'the prerogative'.

86. In a recent Judgment in **State of U.P. v. Johri Mal, ((2004) 4 SCC 714: 2014 AIR SCW 3888 (para 28))**, the Supreme Court of India reiterated the scope and limitations of judicial review in the following terms:

28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:

- (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.
- (ii) A petition for a judicial review would lie only on certain well-defined grounds.
- (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.
- (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.
- (v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies. (**See *Ira Munn v. State of Illinois* [94 US 113 : 24 L Ed 77 (1876)]**).

87. Apart from the limitations pointed out by the Supreme Court, the power of judicial review is not available when there is

an effective alternative remedy to the aggrieved person. When granting redressal involves adjudication of disputed questions of facts, which require adducing of evidence by the parties, then also ordinarily an application for a judicial review is not accepted. See **Whirlpool Corporation v. Registrar of Trade Marks, (AIR 1999 SC 2)**. There is justification for the principle. Clive Lewis in *Judicial Remedies in Public Law* (first edition 1992, Sweet and Maxwell, pp.229 and 230), explained the rationale for the principle as under.

The rationale for the exhaustion of remedies principle is relevant to the scope of that principle. A twofold justification has been put forward. First, that where Parliament has provided for a statutory appeals procedure, it is not for the Courts to usurp the functions of the appellate body. The principle applies equally to bodies not created by statute which have their own appellate system. Secondly, the public interest dictates that judicial review should be exercised speedily, and to that end it is necessary to limit the number of cases in which judicial review is used. To these reasons can be added the additional expertise that the appellate bodies possess. In tax cases, for example, the appellate body, the General or Special Commissioners, have wide experience of the complex and detailed tax legislation. In employment cases, for example, the system of Industrial and Employment Appeal Tribunals may be better equipped to deal with industrial issues than the High Court.”

In the instant cases, there is an alternative remedy of approaching the civil court under Section 31 of the Specific Relief Act and it cannot be said that such relief is not an effective remedy. But the learned Senior Counsel, Sri V.L.N.G.K.Murthy pointed out that a party aggrieved by an irregular act of a statutory authority cannot be driven to the remedy of civil Court and this Court can exercise its power of judicial review and set aside such act of registration of a deed of cancellation by registering authority. The decision of the three-Judge Bench of the Supreme Court in **Satya Pal Anand's** case (supra) and the observations made therein are sufficient to answer this point.

The facts in these cases are not adverted to as the writ petitions are considered and disposed on the point of law only. Even it is assumed that the action of the registering authority was accentuated by fraud, it has to be proved by specific averments and no such averment is made in these writ petitions and fraud cannot be assumed from a mere registration

of a document by the registering authority as observed by the Supreme Court.

At the cost of repetition, it is held that the act of the Registering Authority is only an administrative act and it has no option except to register a document, which was validly presented. The document may be valid at the time of presentation but is required to comply with the Rules at the time of registration and if he violated Rule 26(k) of the Rules, it can be definitely said that he committed procedural irregularity. It is well established rule of administrative law that an authority, which is vested with power, may exercise it rightly or wrongly, but this Court while exercising the power of judicial review, subject to its limitations, would interfere with such actions and one of such limitations for exercising judicial review is availability of alternative remedy and the discharge of public law duty. Merely because the respondent is a State under Article 12, this Court cannot interfere as held by the Supreme Court in **Joshi Technologies International INC v. Union of India**¹⁵. Thus, in order to exercise jurisdiction by this Court, the action of the statutory authorities must be without any alternative authority and in discharge of public law duty. Both of these are absent in the case of execution of deeds of cancellation as no public law duty is involved and Section 31 of the Specific Relief Act gives the relief. Merely because **Thota Ganga Laxmi's** case (supra) reverses the order of this Court dismissing the writ petition relating to cancellation of registration of cancellation of sale deed, it does not follow that the writ petition is maintainable in view of the observations made by three-Judge Bench of Supreme Court in **Satya Pal Anand's** case (supra).

¹⁵ (2015) 7 SCC 728

All these writ petitions are accordingly dismissed holding that the writ petitions are not maintainable. Consequently, miscellaneous petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

18.08.2017

Note: LR copy be marked.
(By order)
pln

