

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NOS.3728, 3759, 3760 AND 3741 OF 2017

COMMON ORDER

The facts and the issue involved in all these writ petitions are common. Hence, they are heard together and are being disposed of by this common order.

For the sake of convenience, the averments in W.P.No.3728 of 2017 are being referred to. The petitioner herein is the absolute owner and possessor of the subject land. She entered into registered Development Agreement cum General Power of Attorney with the 3rd respondent – firm, which is a developer, dated 3.12.2008 vide document No.9553/2008. As per the agreement, the developer has to commence the work within six months from the date of agreement. The developer did not commence the said within the said period. Therefore, under the agreement, she issued notice dated 22.9.2011 giving fifteen days time for revoking the agreement. As there was no response, invoking the arbitration clause in the agreement, filed Arbitration Application No.67/2013 on the file of this court for appointment of an arbitrator. This court by order dated 9.7.2013, appointed an arbitrator and after contest, he passed award dated 3.11.2014. As the 3rd respondent failed to deliver possession, the petitioner filed E.P.No.14/2015 in A.A.No.67/2013 and the same was allowed on 10.07.2015 and the property was delivered on the said date through court bailiff. In these circumstances, the petitioner presented the deed of cancellation for cancelling the existing development agreement cum general power of attorney before the 2nd respondent – Sub Registrar, for registration. The 2nd respondent refused to

register the same on the ground deed of cancellation cannot be registered unilaterally. Hence the present writ petition.

Heard the learned counsel for the petitioners and the learned Assistant Government Pleader for Revenue. Though notice is served on the 3rd respondent, there is no appearance on its behalf.

When a document is presented for registration and if the same is in order as per law, the registering authority is obligated to register the same. Section 71 of the Registration Act, 1908 contemplates recording of reasons by the Sub-Registrar for refusal to register a document and furnishing the copy of the reasons so recorded to any person executing or claiming under that document. The said provision is as under:

71. Reasons for refusal to register to be recorded:

(1) 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 in his Book No.2 and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

Coming to the facts on hand, as already noted above, for breach of contract by the developer, the petitioners invoked the arbitration clause in the agreement and after contest, remained successful and in the execution proceedings, the land was redelivered to them from the possession of the 3rd respondent – developer. Therefore, they presented the documents to the 2nd respondent for registering the deed of cancellations. In these circumstances, without insisting the presence of 3rd respondent, since it lost in the arbitration proceedings, which attained finality, it is obligatory on the part of the 2nd respondent – Sub Registrar to receive and consider the

documents for registration provided they are in order; and, on the other hand, for any reason if he intends to refuse the registration, has to record reasons and furnish the same to the parties.

Having regard to the above facts and circumstances and the submissions of the learned counsel, the writ petition are disposed of at the stage of admission, directing the 2nd respondent to receive the deeds of cancellation presented by the writ petitions for cancelling the development agreements-cum-general power of attorneys in respect of the subject lands entered into with the 3rd respondent – firm, and consider the same for registration, without insisting the presence of 3rd respondent, provided the said documents are in order as per provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908 and the Rules made there under. In case, if he intends to refuse to register the same, shall pass orders under Section 71 of the Registration Act, 1908 recording reasons and communicate the same to the petitioners. This exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

DATE: 28—02—2017

AVS