

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 15.01.2018
Pronounced on: 17.04.2018

+ W.P.(C) 559/2016, CM APPL. 2316-2317 & 26412/2016

YOGESH KUMAR MALIK Petitioner
Through: Mr. Colin Gonsalves, Sr.
Advocate with Mrs. Sija Nair
Pal, Advocate.

versus

INDIAN OIL CORPORATION LIMITED & ANR. ...Respondents
Through: Ms. Mala Narayan and Ms.
Neha Dawar, Advocates for R-
1.
Mr. Vivekanand Mishra,
Advocate for UOI with Mr.
Kavindra Gill, Advocate.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

Prefactory Facts

1. This writ petition raises a very interesting question, which is, when does registration of a document take effect? The documents in issue in the instant case are two separate lease deeds of even date i.e., 9.10.2013. They were presented for registration before the concerned Sub Registrar on 10.10.2013, while the certificate of registration under Section 60 of the Registration Act, 1908 (in short “1908 Act”) was issued on 14.10.2013.

2. The petitioner, *inter alia*, places reliance on Section 75 (3) of the 1908 Act to contend that the registration of the aforementioned lease deeds would take effect when they were first duly presented for registration before the concerned Sub Registrar, i.e., on 10.10.2013 whereas the first respondent, i.e., Indian Oil Corporation Ltd. (in short “IOCL”) contends that since certificate of registration under Section 61 of the very same Act was issued on 14.10.2013, the registration stood completed only on that date.

3. The petitioner has also adverted to Section 47 of the 1908 Act to contend that the registration relates back to the date when the concerned document was first executed. The reason IOCL takes a contra stand is that the petitioner who was otherwise intimated that his candidature for appointment as a distributor for LPG gas had been accepted, was informed subsequently via communication dated 2.2.2015 that his candidature had been rejected, and the amount of Rs.50,000/- deposited by him stood forfeited in accordance with clause 11 (h) of the advertisement issued by it.

4. As is obvious, the petitioner, on the other hand, has taken a stand that the date given on the lease deeds and the date of presentation was important, (both of which were prior to the last date fixed for submissions of applications which was 10.10.2013) and not the date when the certificate of registration was issued.

5. The controversy in the present case, as alluded to at the outset, revolves around this piquant issue. Thus, in order to adjudicate upon

the instant petition, the following broad facts are required to be noticed: -

6. IOCL along with other oil marketing companies such as Bharat Petroleum Pvt. Ltd. (for short “BPCL”) and Hindustan Petroleum Pvt. Ltd. (for short “HPCL”) had issued a common advertisement in two newspapers having English and Hindi editions, calling for applications for appointment as LPG distributors under various categories across National Capital Territory of Delhi. As per clause 9 of the said advertisement, the applications had to be filed before the closing of office on 10.10.2013.

7. The petitioner in pursuance of the aforementioned advertisement had obtained interest in two immovable properties via two separate lease deeds of even date. One lease deed was executed for the purpose of setting up a showroom while the other was executed for the purpose of obtaining land for a godown. Insofar as the latter lease deed was concerned, the petitioner’s sister, one, Ms. Deepika was co-lessee. It is important to bear in mind that the petitioner had applied for being appointed as a LPG Distributor in the category of open government personnel which included defence personnel. This category enabled wards of the government personnel, who had lost their lives while performing their duty to apply for LPG distributorship. The petitioner had applied to be appointed as a distributor in Sector-18, Rohini, Delhi (hereafter referred to as “subject location”).

8. The petitioner, as indicated above, on 10.10.2013 presented the aforementioned lease deeds before the concerned Sub Registrar for the purposes of registration. Requisite stamp duty was paid by the petitioner. Consequent thereto, the lease deed executed for the purpose of setting up a showroom, was accorded registration no.5228, and the lease deed executed for the purpose of obtaining land for the godown, was allocated registration no.5229.

9. Having presented the lease deeds before the Sub Registrar, for the purposes of registration, the petitioner filed his applications with IOCL along with requisite enclosures and a demand draft in the sum of Rs.1000/-.

10. On 14.10.2013, the concerned Sub Registrar issued certificates under Section 60 of the 1908 Act. The certificates were issued for both lease deeds which were accorded registration nos.5228 and 5229. Since the language of the two certificates are identical, except the page numbers of the book in which their details are entered, I am setting out, for the sake of convenience, the relevant particulars of the certificate issued in the lease deed pertaining to the showroom: -

“Certificate (Section 60)

*Registration No.5228 in Book No.1, Vol. No.3,147
on page 151 to 155 on this date 11/10/2013 15:31:19 day
Friday and left thumb impressions has/have been taken
in my presence.*

Date 14/10.2013

*Sub Registrar
Sub Registrar VI B
New Delhi/Delhi
10:32:46”*

11. IOCL, on 25.7.2014, declared names of the applicants who were eligible for selection as distributors, *inter alia*, qua Sector-18, Rohini. Pertinently, the petitioner and his sister Ms. Deepika were the only applicants for the said location. Ms. Deepika, it appears, did not pursue her application which left the petitioner as the sole claimant for being appointed as a distributor in respect of the subject location.

12. Given this background, IOCL organized a draw on 18.10.2014 and declared the petitioner as a successful candidate qua the subject location.

12.1 As a result of the above, via communication dated 20.10.2014, the petitioner was requested by IOCL to deposit a sum of Rs.50,000/- towards security.

12.2 The petitioner complied with this request and deposited the amount via the demand draft dated 25.10.2014, in the sum of Rs.50,000/-, which was received by IOCL on 27.10.2014.

13. It appears that IOCL got a field verification done, whereupon, a communication dated 2.2.2015 was addressed to the petitioner. As indicated at the outset, via this communication, the petitioner's candidature was rejected and the security amount deposited by him in the sum of Rs.50,000/- was forfeited for having purportedly violated the clause 11(h) of the advertisement issued by IOCL.

14. Pertinently, in this communication, IOCL stated that the subject lease deeds were registered on 11.10.2013. There was no reference to the fact that since certificate of registration was issued on 14.10.2013,

the subject lease deeds would stand registered and/ or take effect from that date. This defence, it appears, has been taken by IOCL for the first time only in the counter affidavit filed in this Court.

15. Continuing with the narrative, the petitioner sent his response to the impugned communication dated 2.2.2015. In his response, the petitioner emphasised the fact that if one were to have regard to Section 75 (3) of the 1908 Act, the registration would take effect from the date when the document was first duly presented for the said purpose. Thus, in effect, the petitioner contended that since the subject lease deeds were presented on 10.10.2013, in terms of Section 75 (3), they would be deemed to have been registered on 10.10.2013 and not on 11.10.2013, as was indicated in the impugned communication dated 2.2.2015.

15.1 IOCL, however, did not veer from its position and consequently, by a written communication dated 18.3.2015 stuck to its stand that since the subject lease deeds were registered on 11.10.2013, which was beyond the cut-off date, i.e., 10.10.2013, the decision to reject the petitioner's candidature could not be altered.

16. Evidently, the petitioner did not rest his case even after having received the response dated 18.3.2015 from IOCL, and thus, followed it up by an undated communication wherein he placed reliance on the following three documents in support of his case. The first document that the petitioner relied upon, was the Brochure on Guidelines for Selection of Regular LPG Distributors (in short "brochure"). The second document on which reliance was placed was the Application

Format for Individual Applicants which had to be read in conjunction with General Instructions to the candidates applying for LPG Distributorship, and thirdly, the Format for Field Verification of Credentials of Individual Applicants for LPG Distributor. Based on the provisions of clause-9 of the general instructions and format for field verification, the petitioner sought to emphasise that he was required to file documents which were executed on or before the last date for submission of applications fixed by IOCL.

17. These clauses were pressed into service by the petitioner to demonstrate that the date of agreement was relevant and that as long as the document was executed on or before the last date of submission of the application, candidature of an applicant could not be rejected on the ground that the registration of the document was carried out on a day after the cut-off date setout for submission of the application.

17.1 This stand, quite obviously, the petitioner took in the alternative to the submission made that the registration of subject documents would relate back to the date when the document was first presented for registration.

18. It appears that the efforts of the petitioner did not cut much ice with IOCL and, accordingly, it rejected the petitioner's contention vide its communication dated 3.7.2015.

19. The petitioner, however, did not relent and escalated the matter by addressing communications to the Minister of State, Petroleum and Natural Gas and the Prime Minister. In fact, insofar as the Minister of

State was concerned, two communications were sent which are dated 19.8.2015 and 11.12.2015, whereas the one which was addressed to the Prime Minister is dated 22.9.2015. The record shows that these communications were marked to IOCL. The record shows that the petitioner's communications were acknowledged. The Ministry marked the petitioner's representations to IOCL, while the Prime Minister's Office marked the petitioner's representation to the Secretary, Ministry of Petroleum and Natural Gas.

20. Since, the petitioner, failed to get any redressal from IOCL qua his grievance, he has knocked on the doors of this Court by taking recourse to the instant writ petition.

21. The petition came up for hearing for the first time on 22.1.2016, when, at the request of the petitioner, it was adjourned to 8.2.2016. Though, thereafter, the matter got listed twice, it could not be taken up for hearing. Notice in the petition was issued only on 4.4.2016. Since then, counter affidavit has been filed on behalf of IOCL.

22. IOCL in its counter affidavit has, broadly, taken the following stand in resisting the reliefs sought for in the petition:

22.1 One, that clause-9 of the advertisement dated 10.9.2013, inviting applications for LPG distributorship required an applicant to file his application along with the requisite enclosures before close of office on 10.10.2013. Furthermore, reliance was placed on clause 11 (e) of the advertisement which provides that applications which were received after the cut-off date, which included delay in transmission

via post, would not be considered. The stance of IOCL is that since the lease deeds were not registered on 10.10.2013, the application was not complete and hence, rightly rejected.

22.2 Two, the acceptance of the security deposit after the petitioner had been declared as the successful candidate, was subject to the caveat that if, on completion of field verification of credentials, it was found that the information furnished in the application was false or incorrect, or did not represent the correct state of affairs, then, not only would the candidature be cancelled but also the security amount would be forfeited. This submission was supported by placing reliance on clause-11 (h) of the advertisement dated 10.9.2013.

22.3 Three, IOCL was required to act in accordance with its own rules and regulations which included advertisement conditions and since, the petitioner had infringed the same, his candidature was rightly rejected.

22.4 Four, the defect was not curable in view of the terms stipulated in the advertisement inviting applications from prospective LPG distributors.

Submissions of Counsels

23. Arguments of counsels have, principally, veered around the issue as to what would be the date of registration of the subject lease deeds given the factual matrix of this case.

24.1 The petitioner's case was propounded by Mr. Colin Gonsalves, Sr. Advocate, instructed by Mrs. Sija Nair Pal, Advocate, while IOCL

was represented by Ms. Mala Narayan. Though, respondent no.2/UOI was, strictly speaking, not a contesting party, it was represented by Mr. Kavindra Gill.

25. Mr. Gonsalves emphasised the fact that the date of registration would be the date on which the subject lease deeds were executed or in the alternative, when they were presented for registration. In support of his submissions, learned counsel relied upon the following judgments: -

- (i) *Hamda Ammal v. Avadiappa Pathar and Ors.*, (1991) 1 SCC 715
- (ii) *Gurbax Singh v. Kartar Singh & Ors.*, (2002) 2 SCC 611
- (iii) *Thakur Kisan Singh (Dead) v. Arvind Kumar*, (1994) 6 SCC 591
- (iv) *T.V. Kalyanasundaram Pillai v. Karuppa Mooppanar & Ors.*, AIR 1927 PC 42
- (v) *Venkatsubba Shrinivas Hegde v. Subba Rama Hegde*, AIR 1928 PC 86.

26. To buttress the aforesaid submissions, Mr. Gonsalves relied upon Section 47 and 75(3) of the 1908 Act, to contend, as indicated above, that the document would come into effect on the date when it was executed or in any event, when it was duly presented for registration and not from the date of actual registration. Furthermore, reliance was also placed on the instructions issued by the Ministry of Petroleum and Natural Gas dated 21.1.2015 and 25.2.2016, to contend that a hyper-technical view ought not to be taken in construing lease deeds. These circulars mandated that the 15 year period for a lease

should be reckoned from the date of advertisement; stricto-sensu this is not the issue which arises for consideration in the instant case.

26.1 Furthermore, Mr. Gonsalves also sought to place reliance on the Circular dated 12.11.2014 issued by the Office of the Inspector General of Registration, Department of Revenue. This Circular contains guidelines issued by the said office under Section 69 of the 1908 Act, for the benefit of the Sub Registrars located in NCT of Delhi. In particular, my attention was drawn to clause-16 (i) and (ii) of the guidelines. Furthermore, insofar as the Format for Field Verification of Credentials of Individual Applicants for LPG Distributor was concerned, specific emphasis was laid on Item-9 of column “C” of the said format. The relevant part of this column reads as follows: -

“Original Registered Sale Deed/ gift Deed/ lease deed. In case of inherited property verify mutation and government record Date of agreement/ mutation has to be before or on the last date for submission of application as specified in the advertisement or corrigendum (if any).”

27. Ms. Mala Narayan, who appeared for IOCL, broadly, argued in line with the stand taken in the counter affidavit. It was submitted by the learned counsel that the date of registration would be the date when a certificate for registration is issued in terms of Section 61 of the 1908 Act. According to the counsel, certificate of registration was evidence of the fact that the documents were complete in all respects as per the extant provisions of law. It was contended by the learned counsel that Section 47 of the 1908 Act which provides that

registration of the document relates back to the day of its execution, would only kick in after registration stood completed. Since, registration stood completed in the instant case only on 14.10.2013, the fact that the subject documents were executed on 9.10.2013 would not advance the case of the petitioner. In support of her submissions, learned counsel relied upon the following judgments:

- (i) *Ram Saran Lall and Ors. vs. MST Domoni Kuer and Ors.*, (1962) 2 SCR 474;
- (ii) *Hiralal Agrawal vs. Rampadarath Singh and Ors.*, (1969) 1 SCR 328;
- (iii) *Har Narain (Dead) by LRs vs. Mam Chand (Dead) by LRs and Ors.*, (2010) 13 SCC 128;
- (iv) *Commissioner of Gift Tax vs. Smt. Aloka Lata Sett and Ors.*, (1992) 103 CTR (Cal) 343; and
- (v) *Chandrika Singh (dead) through LRs vs. Arvind Kumar Singh (dead) by LRs and Ors.*, (2006) 10 SCC 404.

Reasons

28. Having heard the learned counsel for the parties, and perused the records, according to me, what emerges is as follows: -

- (i) That the subject lease deeds were executed on 9.10.2013;
- (ii) The subject lease deeds were presented in the office of the concerned Sub Registrar on 10.10.2013, when, they were accorded two separate numbers, these being: 5228 & 5229.

- (iii) The certificate of registration under Section 60 *vis-à-vis* the subject lease deeds were issued on 14.10.2013.

29. In the context of these brief undisputed facts, the argument advanced by Ms. Mala Narayan on behalf of IOCL is that the registration of a document is complete only when the endorsement and the certificate referred to and mentioned in Section 59 & 60 of 1908 Act are copied into the margin of the register-book and the copy of the map or plan (if any) mentioned in Section 21 is filed in book no.1.

29.1 Ms. Narayan further submitted, as adverted to above, that Section 47 of the 1908 Act would come into play only after registration is complete as per the provisions of Section 61 of the 1908 Act.

29.2 In support of her submissions, learned counsel relied upon certain judgments to which I would be making reference hereafter.

29.3 The first judgment on which Ms. Narayan placed reliance was the judgment of the Supreme Court rendered in *Ram Saran Lall and Others v. MST Domini Kuer and Others*. This was a case where the appellants had their house contiguous to the house owned by certain persons who, in the judgment, are referred to as 'Pandey's'. On 31.1.1946, the Pandey's executed a sale deed in favour of the respondent-purchaser before the Court in respect of their house. The appellants before the Court, even though they were Hindus (and so were the other parties to the litigation), by custom, were entitled to exercise a right of pre-emption, which they did, on account of

execution of the sale deed by Pandey's in favour of the respondent-purchaser. The exercise of the right of pre-emption by the appellants was not in dispute before the Court, but what was in dispute before the Court was, as to when it could be said that the sale stood completed in the given fact situation.

29.4 Crucially, the sale deed provided that it became operative from the date when the executants had affixed their signatures on it and that the title of the executants and their heirs with respect to the subject property had become extinct, inoperative, null and void. In effect, the sale deed provided that from the date of execution, the right, title and interest in the subject property stood transferred in favour of the respondent-purchaser.

29.5 The sale deed, it appears, was presented by Pandey's on the day it was executed and it was left with the Registrar, in the Registration Office, for incorporating necessary entries and copies in the statutory records. The appellants on becoming aware of the sale by the Pandey's, exercised their right of pre-emption by making the first demand, i.e., *talab-i-mowasibat*.

29.6 Evidently, on 7.2.1946, Pandey's handed over the receipt issued by the Registration Office to the respondent-purchaser who, thereupon, paid the balance sale consideration.

29.7 On 9.2.1946, documents were copied in the Registrar's books as provided under Section 61 of the 1908 Act. The respondent-purchaser received the sale deed from the Registrar's office on 13.2.1946. The

appellants filed a suit for pre-emption on 9.9.1946. The appellants succeeded before the trial court; a decision which was sustained by the first appellate Court. The decision of the courts below was, however, overturned by the concerned High Court in the second appeal which resulted in the dismissal of the suit. This is how the appellants approached the Supreme Court.

30. Since, the right of pre-emption was exercised under the Mohammedan Law, the Court cited Mulla's principles on Mohammedan Law which encapsulated the right of pre-emption as stated hereafter: -

“The right of pre-emption arises only out of a valid, complete and bona fide sale.”

30.1 In the context of the facts obtaining in the case, the arguments advanced on behalf of the appellants that the sale would become operative from the date of its execution once the registration was complete, was rejected. The reasoning given by the Court is contained in paragraph 8, which for the sake of convenience is extracted hereafter: -

“We do not think that the learned Attorney-General's contention is well founded. We will assume that the learned Attorney-General's construction of the instrument of sale that the property was intended to pass under it on the date of the instrument is correct. Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this

section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore we do not think that the sale in this case can be said, in view of Section 47, to have been completed on January 31, 1946. The view that we have taken of Section 47 of the Registration Act seems to have been taken in Tilakdhari Singh v. Gour Narain. We believe that the same view was expressed in Nareshchandra Datta v. Gireeshchandra Das and Gobardhan Bar v. Guna Dhar Bar.”

(emphasis is mine)

30.2 I may point out that Hon’ble Mr. Justice Ayyangar (as he then was) along with another learned Judge of the Court rendered the minority opinion. The observations of Hon’ble Mr. Justice Ayyangar on law took a diametrically opposite view. Since, the view raised an interesting counter point with regard to when a sale transaction stands completed, it would be relevant to refer to the minority view as well:

“Turning now to the provisions of the Transfer of Property Act, in the case of a sale of immovable property of the value of Rs. 100 or over (as in the case before us) Section 54 of the Act enacts that it could be effected only by a registered instrument; sale itself being defined as "transfer of ownership in exchange for a price paid or

promised or part paid and part promised". In other words, the essence of a transaction of sale consists in the transfer of ownership and this transfer has to be effected by "a registered instrument". The Transfer of Property Act while prescribing the formalities of writing and Registration, does not itself determine the point of time when a sale becomes complete. "Registered" under the Transfer of Property Act means: "registered under the law for the time being in force regulating the registration of documents" (Section 3). When one turns to the Registration Act, provision is made, inter alia, for the time within which after its execution a document could be presented for registration, the persons who could so present, the office in which the document could validly be presented and registration effected and sub-part B of Part 11 starting from Section 58 deals with the procedure on admitting documents to registration.

Section 60(1) enacts:

"After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word registered', together with the number and page of the book in which the document has been copied."

and Section 61 which follows makes provision for the copying of documents in public registers from which the word "registration" is derived and enacts:

"61. (1). The endorsements and certificate referred to and mentioned in Sections 59 and 60 shall thereupon be copied into the margin of the register book, and the copy of the map or plan (if any) mentioned in Section 21 shall be filed in Book No. 1.

(2)The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in Section 52."

Much reliance has been placed by learned Counsel for the respondent and, indeed, in the judgment of the High Court, on the words the "registration of the document shall thereupon be deemed complete" occurring in sub-section. (2) of Section 61, but in the context of the fasciculus of sections in which it appears it is clear that it refers to the fact that the registering officer had completed his duty and had no more to do with the document presented to him, beyond returning the original to the party entitled to receive the same. In our opinion, these words have nothing to do with the time from which the transaction covered by the registered document operates or with reference to the present context, when the sale evidenced by the deed, becomes complete. Specific provision is made for these in Section 47 of the Registration Act which reads:

"A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

The principles underlying Sections 61(2) and 47 are not divergent. It is not as if, that any delay by the registering officer which might take place owing to the pressure of work in his office or for other reason, has any effect on the rights of parties, quod their property or the time from when the deed operates, or as regards the effectiveness of the transaction, or the priority of transactions inter se. It is not as if, documents executed on different dates, the parties intending them to operate

at different times, have their intentions modified, if not nullified by the action or inaction of the registering officer, or any delay that might take place in his office. A contention that though the Muslim law of sale is superseded by the Transfer of Property Act and the Registration Act, but yet the provision contained in Section 47 of the Registration Act is inapplicable to determine when a sale effected by a registered instrument should be complete could not be sustained on any principle or logic, or of course on any rule of interpretation of statutes. In our opinion, no distinction is possible to be drawn between a sale which is effective and one which is complete since they are merely different forms of expressing the same concept and for the same reason between the time from when a sale becomes effective and when it should be held to be complete. As under Muslim law the talabs have to be performed only immediately after the pre-emptor receives information of the sale, the view we take of the applicability of s. 47 of the Registration Act, introduces no element of hardship in the exercise of the option. We are, therefore, clearly of the opinion that the time when the sale becomes complete so as to entitle the pre-emptor to perform the talabs should be determined by the application of the principle of intention laid down in Section 47 of the Registration Act which is as much a part of the positive law governing the right of pre-emption as the provision of Section 54 of the Transfer of Property Act which requires a registered instrument to effect a sale which gives rise to a right of pre-emption.

17. If, therefore, Section 47 of the Registration Act should apply to determine the time from which the registered document should have effect or, in other words, the time from which the sale should be held to be complete, the intention of the parties would be the crucial and only test. That has to be gathered by reference to the document itself read in the light of the surrounding circumstances, with however a proviso that if the

document were clear and its terms explicit, no evidence to contradict them would be admissible.”

(emphasis is mine)

31. Therefore, the majority view in *Ram Saran Lall’s* case turned in favour of the respondent purchaser based on the crucial fact that the right of pre-emption in Mohammedan Law would arise when the sale was complete. In other words, right of pre-emption could not be triggered till such time the registration of the sale deed stood completed as per the 1908 Act. The judgment, to my mind, did not deal with the issue as to what would be the deemed date of registration. In other words, the judgment did not expound on the issue, which is, after the completion of registration would the factum of registration relate back to the date when the document was first presented for registration. Since, this aspect did not arise for consideration, the Court had no occasion to rule on this aspect of the matter. Therefore, according to me, this judgment cannot advance the case of IOCL.

32. The second judgment i.e., the *Hiralal Agrawal* case, on which reliance was placed, came about in the background of the following brief facts:

32.1 The appellant before the Court was seeking re-conveyance of the subject property under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1962 (in short “1962 Act”). The appellant’s right of re-conveyance qua the subject property was sought to be resisted on the ground that when the

application was filed, the transfer of the subject property was not complete on account of the fact that registration of the sale deed had taken place after the date when the application for re-conveyancing the subject property, was filed. The Supreme Court following the view held in *Ram Saran Lall's* case, on the first point, found against the appellant. However, it ruled in favour of the appellant on the other issue and, ultimately, allowed the appeal. The second issue which was raised before it was, as to what would be the effect of the application for re-conveyance not being accompanied by a registered sale deed. In this context, the Court examined the provisions of Rule 19 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963 (in short "1963 Rules"). The Court came to the conclusion that, though the Rules used the word "shall" in Clause-3 of Rule 19 of 1963 Rules, inasmuch as there was a requirement that the application for re-conveyance had to be accompanied by a registered sale deed, the words were only directory as Rule 19 did not lay down the consequences of non-compliance of its provisions.

32.2 The observations, though, made by the Supreme Court in this case with respect to the first point, which as indicated above, were on the same lines as *Ram Saran Lall's* case, are set forth as follows: -

"11. When the appellant lodged his application in the Collector's office he had already deposited the requisite amount in the treasury and had annexed thereto the copy of the challan. So that the condition under Section 16 was complied with. The application was also filed within the time prescribed by the section. Under Section 16(2) and

(3), however, no transfer takes place unless the sale deed is registered. Registration is complete only when the certificate under Section 60 is given and the endorsement and copying out the said certificate under Section 61 of the Registration Act are made. But Mr. Desai argued that under Section 47 of that Act, once registration is effected, the title under the sale deed relates back to the date of its execution and therefore though registration was completed on November 30, 1964, the transferee's title under the sale deed related back to the date of its execution i.e., October 9, 1964. Assuming, therefore, that the application was presented on November 26, 1964, the transferee's title having related back to the date of the execution of the sale deed, the transfer must be deemed to be complete on that date and, therefore, it was not correct that the right of reconveyance had not accrued to the appellant on November 26, 1964 or that the Collector had no jurisdiction on that date to accept the said application. This contention, however, cannot be accepted in view of the decision in *Ram Saran Lal v. Mst. Domini Kuer* where this Court rejected an identical contention. Mr. Desai tried to distinguish that case on the ground that it was based on Mahomedan law which by custom applied to the parties there. But the decision is based not on any principle of Mahomedan law but on the effect of Section 47 of the Registration Act. The majority decision clearly laid down that the sale there was completed only when registration of the sale deed was completed as contemplated by Section 61 of the Registration Act and, therefore, the talab-i-mowasibat made before the date of completion of registration was premature and a suit based on such a demand of the right of pre-emption was premature and must, therefore, fail. Similarly, in *Radhakishan L. Toshniwal v. Shridhar* this Court laid down that where a statute providing for the right of pre-emption lays down that it accrues only when transfer of the property takes place and such transfer is not complete except through a registered deed, a suit filed before the sale deed is executed is premature as the

right of pre-emption under the statute did not accrue till the transfer became effective through a registered deed. In Bishan Singh v. Khazan Singh this Court laid down that in a suit for preemption the plaintiff must show that the right had acquired to him at the time when he exercised it.”

(emphasis is mine)

33. The third case which was cited by Ms. Mala Narayan, is the judgment rendered by the Supreme Court in *Har Narain (Dead) by LRs v. Mam Chand (Dead) by LRs and Ors.*, (2010) 13 SCC 128. This was a case in which the Supreme Court was called upon to consider whether the doctrine of *lis pendens* would apply in a case where the suit was filed after the subject sale deed was executed but before its registration. The Court, once again, following the decisions in *Ram Saran Lall* and *Hira Lal Agrawal* came to the conclusion that the doctrine of *lis pendens* would apply since the sale was completed only upon registration. The observations made in this behalf in paragraph 23 are extracted hereafter: -

*“23. In view of the above, we reach the inescapable conclusion that the sale executed by Respondent No.1 in favour of Respondents 2 to 6 on 2.8.1971 could not be termed as a complete sale until the document got registered on 3.9.1971. In view of the provisions of Section 47 of the 1908 Act the effect of registration would be that registration would relate back to the date of execution but it does not mean that sale would be complete in favour of Respondents 2 to 6 prior to 3.9.1971 i.e. the date of registration of the sale deed. In view of the above, as sale stood completed during the pendency of the suit, the doctrine of *lis pendens* is applicable in the facts and circumstances of the case. The*

courts below failed to appreciate that the fiction created by Section 47 of the 1908 Act, itself is a consequence of registration of the sale deed. More so, as the appellant had been in possession of the suit land being a mortgagee since 1970 and this fact had also been mentioned by Respondent No.1 in the sale deed dated 2.8.1971 in favour of Respondents 2 to 6, the question of Respondents 2 to 6 being bona-fide purchasers for value and paid money in good faith without notice does not arise, simply for the reason that the said respondents were fully aware that the suit land was in possession of the appellant. Thus, Respondents 2 to 6 cannot take the benefit of the provisions of Section 19(b) of the 1963 Act.”

(emphasis is mine)

34. The fourth case on which reliance was placed by Ms. Narayan was the judgment of the Calcutta High Court dated 3.7.1989, passed in Matter (Gift-tax) No.385 of 1984, titled: *Commissioner of Gift Tax v. Smt. Aloka Lata Sett and Ors.* This was a case where the Court was called upon to consider as to whether the value of immovable property gifted to the assessee via a deed executed on 13.4.1973 but registered on 13.7.1973 should be deleted from the total taxable gift of the assessee pertaining to assessment year 1974-75. The Court answered the question in favour of the revenue and against the assessee. It was the assessee's contention that the transaction should be factored in the assessment year 1973-74 and not in assessment year 1974-75 as contended by the revenue. In doing so, the Court relied upon, *inter alia*, the view taken by the Supreme Court in *Ram Saran Lall's* case. Observations made which were crucial to the disposition of the case

are contained in paragraph 7, 8 & 18 of the judgment. The relevant parts are extracted hereafter: -

“7. Section 17(1)(a) of the Registration Act provides that an instrument of gift of immovable property requires registration under the said Act whatever be the value of the property.

8. Sections 122 and 123 of the Transfer of Property Act leave no room for doubt that a transaction of transfer of immovable property will be complete only by executing a registered document subject to other conditions being fulfilled, In the present case, the document has been executed in one assessment year but it has been registered in the subsequent assessment year. Since, on a combined reading of Sections 122 and 123, it is evident that the transaction of gift would be complete provided a registered document is executed and other conditions are fulfilled, it cannot be said that the transaction was complete and a gift in the eye of law came to be made by the donor to the donee prior to the registration of the document by which the gift was made. If the donor dies before registration, the document may be presented for registration after his death. Such registration will have the same effect as registration during his lifetime. But reliance was placed on Section 47 of the Registration Act which provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. Under Section 47, a registered document operates from the date of its execution and not from the date of its registration. The result is that if two registered documents are executed by the same person in respect of the same property to two different persons at different times, the one which was executed first has priority over the other, although the former was registered subsequent to the latter. In other

words, registration of a document relates to the date of its execution. This is so between the parties to the document. But, as regards third parties, it is effective from the date of registration.

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18. In our view, the decisions of the Supreme Court squarely apply to the facts of this case. The transfer is not effective until registration of the deed of transfer, whether by gift or sale. The effective date would be the date of registration and not the date of execution. Before registration of the deed, Section 47 has no application and before registration of the deed, the gift does not become effective. As observed by the Supreme Court, the object of Section 47 is to decide which of the two or more registered instruments in respect of the same property is to have effect. Although, by virtue of Section 47, a document when registered is permitted to operate from a date anterior to registration, the gift or sale made by the said document cannot be said to have been completed earlier to the date of registration. The gift is not complete until the registration. Accordingly, the date of registration of the deed of gift would be relevant for the purpose of gift-tax assessment.”

35. The last case cited is *Chandrika Singh* which also dealt with an application preferred under Section 16 (3) of the 1962 Act. The Court following the view taken in *Ram Saran Lall* and *Hiralal Agrarwal* allowed the appeal. The relevant observations contained in paragraph 13 are extracted hereafter: -

“As noted hereinbefore, the first sale deed was executed on 10.8.1983 in favour of Paras Sah, which was registered on 14.6. 1984. Therefore, it cannot be disputed that the sale deed registered on 14.6.1984 could be pre-empted only within three months from 14.6.1984.

Admittedly, in this case, the application for pre-emption was filed on 17.7.1984 i.e. well within the limitation period of 3 months. At the same time, it is also not in dispute that the second sale deed, which was executed by Paras Sah in favour of Ghurla Kuer for a consideration of Rs.4000/- was registered on 31.8.1984, that is, after the registration of the first sale deed and after the pre-emption application, under Section 16(3) of the Act, was filed by the appellant, on 17.7.1984. Further, under Section 16(2) of the Act, a sale is complete only when the document of transfer is registered and unless the registration is complete under section 60 of the Registration Act, the transfer of the land in question would still be inchoate. From a plain reading of section 16(3) of the Act it is clear that a pre-emptor can only be permitted to file the pre-emption application within 3 months from the date of registration of transfer deed. Therefore, the right to file the pre-emption application under section 16(3) of the Act accrues only when the registration of the document is completed. In Radhakisan L. Toshniwal vs. Shridhar, this Court held that where a statute provides for a right of pre-emption, it will accrue only when the transfer of the land takes place and such transfer is not complete before the deed is registered. Accordingly, this Court held that an application for pre-emption filed before the sale deed was registered, would be pre-mature. This view was appreciated again by this Court in Ram Saran Lall vs. Domini Kuer. Further, in Hiralal Agrawal vs. Rampadarath Singh, Shelat, J. (as his Lordship then was), clearly observed that under section 16(2) and (3) of the Act, no transfer takes place unless the deed is registered. Registration is complete when the certificate under the provisions of the Registration Act is issued. That being the position, we are of the view that the right of re-conveyance accrues to the pre-emptor only on the date of the completion of the registration of the transfer deed and an application for pre-emption under Section 16(3) of the Act filed before such date would be premature. Therefore, we hold that

the pre-emptor, Chandrika Singh, appellant herein, was entitled to file the pre-emption application against Paras Sah, only after the first sale deed was registered on 14.6.1984 and not before that date. It is clear that the registration of the sale deed executed in favour of Smt. Ghurla Kuer by Paras Sah was not complete and effective, for want of registration, when the application for pre-emption was filed by Chandrika Singh against Paras Sah. Accordingly, we do not find any reason to hold that the application for pre-emption, filed by Chandrika Singh could not be maintained against Paras Sah, the first transferee.”

36. This brings me to the judgments cited by Mr. Gonsalves. The first in line is the judgment of the Supreme Court in *Hamda Ammal v. Avadiappa Pathar and Ors.*, this was a case where the appellant before the Court had purchased the suit property via a sale deed executed in her favour on 09.09.1970. This sale deed was registered on 26.10.1970. In the interregnum, the respondent no.1, before the Court, had filed a money suit on 13.09.1970 against the vendors and obtained an order of attachment before judgment in respect of the suit property on 17.09.1970. The money suit was decreed in favour of respondent no.1. Respondent no.5, one, Mr. Kadar got rights in the suit property in a Court sale when the decree obtained by respondent no.1 was sought to be executed. The question which arose before the Court was, whether the appellant could claim rights in the suit property based on the date of execution of the sale deed though the registration of the sale deed in respect of the same, took place after the money suit was instituted, and an order for attachment before judgment was passed by the suit Court. The judgments rendered by

the Supreme Court in the matter of: *Ram Saran Lal* and *Hiralal Agrawal* were cited.

36.1 The Supreme Court distinguished both these judgments. Observations in this behalf are made in paragraphs 7 to 9 of the judgment. Suffice it to say qua *Ram Saran Lal*, the Court observed that the case dealt with the question as and when the sale became complete to enable making the first demand, which is adverted to as *talab-i-mowsabit* under the mohammedan law of pre-emption.

36.2 In so far as *Hiralal's* case was concerned, the Court noted that the application for re-conveyance was taken cognizance of by the Collector only on a particular date i.e., 30.11.1964 and not on a date prior to the said date.

36.3 I am not reiterating in detail once again the judgments of the Supreme Court in *Ram Saran Lal* and *Hiralal* as they have been discussed in some detail in the earlier part of the judgment. Suffice it to say that the Supreme Court in *Hiralal's* case, granted relief in that matter, as noticed by me hereinabove, notwithstanding the fact that a copy of the registered deed was not furnished along with the application, as according to it, the Collector was not emasculated of his jurisdiction to entertain the application for re-conveyance.

36.4 Insofar the case at hand was concerned, the Court made the following crucial observations: -

“4. Section 54 of the Act defines Sale as “a transfer of ownership in exchange for a price paid or promised or

part-paid and part-promised.” Thus after the execution of the sale deed with consideration all the ingredients of sale are fulfilled except that in case of tangible immovable property of the value of Rs. 100 and upwards it can be made only by registered instrument. Now, if we read Section 47 of the Registration Act, it clearly provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. This provision makes it clear that after the registration it will relate back to the date of execution of the sale deed. The act of registration is to be performed by the registering authority. According to Section 23 of the Registration Act a document of the nature of sale deed shall be accepted for registration within four months from the date of its execution. Thus a statutory period of four months has been provided for presenting the sale deed for registration from the date of its execution. In case of dispute regarding the execution of the document an enquiry is permitted under Section 74(a) of the Registration Act and that may also take some time. The Legislature being alive of such situations has already provided in Section 47 of the Registration Act that it shall operate from the time from which it would commence to operate if no registration thereof had been required or made and not from the time of its registration. Thus in our view the vendee gets rights which will be related back on registration from the date of the execution of the sale deed and such rights are protected under Order XXXVIII Rule 10 C.P.C. read together with Section 47 of the Registration Act.

5. We cannot accept the contention of learned counsel for the respondent that till registration, the execution of the sale deed does not confer any rights whatsoever on the vendee. Even Section 49 of the Registration Act in its proviso inserted by Section 10 of the Transfer of Property (Amendment) Supplementary

Act, 1929, negatives the above contention of the learned counsel. The above provision lays down that an unregistered document affecting immovable property and required by this Act or by the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as an evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be affected by registered instrument. Thus even an unregistered document can be received as evidence for purposes mentioned in the proviso to Section 49 of the Registration Act.

6. *Learned counsel for the respondents also made the submission that even if the sale deed which is executed earlier to attachment before judgment and registered subsequently may be binding on the vendors but it would not affect the rights of such respondent who is a third party, in the sense that he was not a party to the sale deed and he got the right in the property in a court sale having taken place after the passing of final decree in the money suit filed by Avadiappa. In other words the contention is that the respondent No. 5 Shri M.S.A. Kadar got rights in the property in the court sale made in his favour after the decree passed in favour of Avadiappa in the money suit filed on 13.9.1970. We do not find any force at all in the above submission. The property in question admittedly belonged to the defendant-judgment debtors (vendors) and once it is held that a sale deed had already been executed by them in favour of Hamda Ammal on 9.9.1970 and only its registration remained, then neither the attachment before judgment nor a subsequent attachment or court sale in favour of respondent No. 5 can confer any title in his favour by preventing the relation back. The fact that the document of sale had not been registered until after the attachment makes no difference.”*

37. Similarly, *Gurbax Singh* was a case where the Supreme Court was called upon to rule whether priority of rights would be determined keeping in mind, the date of registration or the execution. In this case, two sale documents, Ex. P-2 and D-1, were executed on the same date i.e., 25.11.1991 but at different points in time. The evidence showed that, though, Ex. P-2 was executed prior in time to Ex. D-1, it was registered, apparently, at a later date.

37.1 Given these facts, the Court held that Ex.P-2 would prevail Ex.D-1. The reason furnished for reaching this conclusion was that though both documents were executed on the same date, Ex.P-2 was executed prior in point of time. The fact that Ex.P-2 was registered later, was disregarded.

38. The third case cited on behalf of the petitioner was the judgment rendered by the Supreme Court in *Thakur Kishan Singh*. The defendant in the suit for possession was the appellant before the Supreme Court. The respondent-plaintiff had a lease deed dated 5.12.1949 executed in his favour by the lambardar, which was registered on 03.04.1950.

38.1 The appellant-defendant was permitted by the respondent-plaintiff to set up a brick-kiln in the subject area. The appellant-defendant had been in possession of the subject area since 1960-61. It appears that appellant-defendant, who had set up a house in adjoining parcel of land, made encroachments in the subject area. This propelled the respondent-plaintiff to institute a suit for possession.

38.2 One of the defences which the appellant-defendant raised before the Court was that since the subject lease deed was registered by the respondent-plaintiff on 03.04.1950, it was void under the provisions of Section 6 of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 as the subject area had vested in the State on 31.03.1950 (1950 Act). Furthermore, an alternative defence of adverse possession was also raised by the appellant-defendant.

38.3 The trial court rejected the defence raised by the appellant-defendant with respect to the aspect that the lease deed had been rendered void in view of the intercession of Section 6 of 1950 Act, but thereafter, went on to dismiss the suit on the ground that the appellant-defendant had acquired rights in the subject area by way of adverse possession.

38.4 In the appeal preferred by the respondent-plaintiff, the trial court judgment was reversed, and the suit was decreed. This position continued all throughout upto the stage of second appeal which was disposed of by the concerned High Court.

38.5 It is in this background that the appellant-defendant propounded its case before the Supreme Court.

38.6 On the aspect with which we are concerned, the Supreme Court made the following observations: -

“3. The findings recorded by the High Court and the trial court have been assailed by Shri Sen, the learned Senior Counsel appearing for the appellant, and it is

claimed that the lease deed having been registered after the material date, it could not confer any title on the respondent as the right title-in-interest of the respondent's predecessor already stood vested in the State prior to registration of the lease deed. The argument does not appear to be sound. Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. (See Ram Saran Lall v. Mst Domini Kuer and Nanda Ballabh Gururani v. Smt. Maqbool Begum). Since, admittedly, the lease deed was executed on 5.12.1949, the plaintiff after registration of it on 3.4.1950 became owner by operation of law on the date when the deed was executed. Therefore, the land did not vest in the State. And the courts below did not commit any error in negating the claim of appellant."

(emphasis is mine)

38.7 I may also note, for reason of completion of narration, that on the issue of adverse possession, the Supreme Court ruled against the appellant-defendant on the ground that the entry into the subject area, to begin with, was permissive, and that there was no evidence on record that this possession had become hostile or adverse to the knowledge of the real owner i.e., respondent-plaintiff. The appeal was, accordingly, dismissed.

39. This brings me to two interesting and instructive judgments of the Privy Council cited on behalf of the petitioner. I may also note that one of these judgments, which I am going to refer immediately

i.e., *T.V. Kalyana Sundaram Pillai's* case, was cited with approval by the Supreme Court in *Hamda Ammal's* case.

40. *T.V. Kalyana Sundaram Pillai's* case involved the following brief facts:

40.1. On 09.09.1891, Vaithilingam Pillai executed a trust deed for the purpose of charity, which included maintenance of religious services in certain temples. In order to provide necessary funds for maintenance of religious services in the temples and for performance of other charitable duties which were imposed on the trustees, he set apart certain immovable properties belonging to him, the income from which was to be devoted for the purposes of the trust.

40.2 Since, Mr. Vaithilingam Pillai had no son, on 10.09.1891, he executed an adoption deed whereby he appointed the appellant before the Court, who, at that point in time, was aged 5 years, as his son. On 11.09.1891, Vaithilingam Pillai executed a deed of guardianship, followed by a deed of partition, which was executed a day after, that is, on 12.09.1891.

40.3 It was not in dispute before the Court that the vesting of immovable properties by Vaithilingam Pillai in favour of trust constituted a gift within the meaning of Section 123, and that the trust deed, which encapsulated the gift, was duly delivered to the trustees named in the trust deed. What was also not in dispute was that the trust deed was registered after the adoption of the appellant which is on 10.09.1891.

40.4 The Court was, thus, required to consider the provisions of Section 122 and 123 of the Transfer of Property Act, 1882 “(Transfer of Property Act)”. For understanding the ratio of the decision, the relevant statutory provisions are set forth hereafter:

“122. “Gift” defined.—“Gift” is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

123. Transfer how effected. -- For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.....”.

40.5. Clearly, in terms of Section 123 of Transfer of Property Act, gift of an immovable property could be effected only by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

40.6 The argument, thus, raised before the Court by the appellant, that is, the adopted son of Vaithilingam Pillai, was that since the adoption deed was executed prior to the registration of the gift deed i.e., prior to the completion of the gift, in law, it could not take effect. In other words, the argument was if the donor dies or revokes or becomes incapable of making the gift before its registration, it cannot

take effect. The respondents before the Court, however, relied upon Section 47 of the Act. The Court made the following apposite observations: -

“7. The learned Chief Justice in the Court below, after referring to the above sections, said:

The effect of these sections in my judgment is that if a title is complete except for registration, no subsequent alienation or dealing with the property by the vendor or donor as the case may be can defeat the title which on registration becomes an absolute title dating from the date of the execution of the document.

8. The other two Judges concurred in this view, making special reference to the case of Venkati Rama Reddi v. Pillati Rama, Reddi [1917] 40 Mad. 204, which, being a decision of the Full Bench, was binding upon them. In that case the donor died on the day following the execution of the deed of gift, and the deed was not presented for registration until a period of six months had elapsed from the date of his death; facts which, as it appears to their Lordships, were certainly not less cogent in favour of incompleteness than are those in the present case; and there the District Judge held that the gift deed, not having been registered by the donor during her lifetime, was void, and that the post-mortem registration was of no effect. This judgment was, however, reversed on appeal by the unanimous decision of the Full Bench. There was no express finding of fact, so far as appears from the report, that the deed of gift had been delivered to and accepted by the donee prior to the death of the donor, although, perhaps, this may be implied from the circumstances. In the present case, fortunately, there is no room for doubt on this point, because the learned Judges of the High Court remitted this question of fact to the Subordinate Judge and he reported that the deed had been delivered over, on the day of its execution, to one of

the trustees appointed under it on behalf of himself and the other trustee. The decision of the Full Bench in Venkati Rama Reddi's case is thus summarized in the head-note :-

There is nothing in Section 123 of the Transfer of Property Act which requires the donor to have the deed registered; all that is required is that he should have executed the deed. Once such an instrument is duly executed, the Registration Act allows it to be registered even though the donor may not agree to its registration, and upon registration the gift takes effect from the date of execution.

9. Their Lordships think that this statement of the law needs qualification by reference to Section 122 of the Transfer of Property Act, and is only correct upon the footing that the gift had been accepted by or on behalf of the donee during the lifetime of the donor. A deed of gift executed in accordance with the terms of Section 123 of immovable property but never communicated to the intended donee, and remaining in the possession of the grantor, undelivered, would, in their Lordships' opinion not come within the ruling of the Full Bench in the case in question.

10. The only other case to which it is necessary to refer is a Full Bench decision of the High Court of Bombay in 1924, namely, Atmaram Sakharam v. Vaman Janardhan AIR 1925 Bom. 210. The circumstances in that case were very much the same as in the present, and the decision is thus correctly expressed in the head-note :-

Where the donor of immovable property has handed over to the donee an instrument of gift duly executed and attested, and the gift has been accepted by the donee, the donor has no power to revoke the gift prior to the registration of the instrument.

11. This case was very fully argued and the argument on behalf of the appellant in the present appeal could not be better stated than it was in the dissenting judgments of Shah Acting C.J. and Mulla J.; and these arguments were all brought very forcibly under their Lordships' notice, and supplemented by the learned counsel for the appellant. Their Lordships, however, cannot accept them. They are unable to see how the provision of Section 123 of the Transfer of Property Act can be reconciled with Section 47 of the Indian Registration Act, except upon the view that, while registration is a necessary solemnity in order to the enforcement of a gift of immoveable property, it does not suspend the gift until registration actually takes place. When the instrument of gift has been handed by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective. Registration does not depend upon his consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses, must register it if it is presented by a person having the necessary interest within the prescribed period. Neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with. Their Lordships accordingly find themselves in complete agreement with the judgment of the Full Bench of the Bombay High Court in the case cited. As this decision, and the similar decision of the Full Bench of the Madras High Court, had settled the law for these Presidencies, it is unnecessary to refer to the various conflicting decisions of inferior tribunals which were overruled. Their Lordships apprehend that the Judges of the High Court of Madras, in allowing leave to the appellant in the present case to proceed with his appeal, desire to elicit an authoritative opinion as to the soundness of the two latest decisions in the Madras Courts and their Lordships think it desirable that a point which has occasioned so

much controversy in the past should be settled by a decision, which will apply to the whole of India.”

(emphasis is mine)

41. This view was followed by the Privy Council in another judgment rendered by it in *Venkatsubba Srinivas Hegde*'s¹ case.

42. Having regard to the array of judgments cited before me in my view, what emerge as the guiding principles are as follows: -

(i) A registered document shall operate from the time it is intended to operate by the parties if no registration thereof had been required in law or made, and not from the date of its registration. Having said so, Section 47 of the 1908 Act would kick in only upon the subject document being registered.

(ii) While registration accords necessary solemnity to the subject document for the purpose of enforcing the rights encapsulated therein, the transfer of rights from one party to the other, in this case from lessor to the lessee, would not remain in suspension until registration is actually effected.

(iii) Registration of a document is not consent centric, once the document is executed, the concerned statutory authority must register it if it is presented by the person having interest in it in accordance with the applicable provisions of law.

¹ AIR 1928 PC 86

43. This principle ties in with Section 107 of the Transfer of Property Act, which requires that in case of lease of an immovable property, from year to year or for any term exceeding one year or reserving an yearly rent, can only be made by a registered instrument.

43.1 Section 17(1)(d) of the 1908 Act requires such documents, provided other pre-requisites are fulfilled, to be compulsorily registered. The effect of non-registration of such documents, that is, documents which are required to be compulsorily registered under Section 17 or under the provisions of Transfer of Property Act, is set out in Section 49² of the 1908 Act.

² 49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: ⁵⁴ [Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) ⁵⁵, ⁵⁶ [***] or as evidence of any collateral transaction not required to be effected by registered instrument.] State Amendment Uttar Pradesh: In section 49,—
 - (i) in the first paragraph, after the words “or by any provision of the Transfer of Property Act, 1882” insert the words “or of any other law for the time being in force”,
 - (ii) substitute clause (b) as under: “(b) confer any power or create any right or relationship, or”,
 - (iii) in clause (c), after the words “such power”, insert the words “or creating such right or relationship”,
 - (iv) in the proviso, omit the words “as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or”. [Vide Uttar Pradesh Act 57 of 1976, sec. 34 (w.e.f. 1-1-1977)].

43.2 A perusal of the aforesaid provision would show that in the absence of registration of lease deeds, which are the subject documents in the instant case, those documents, in law, could not be relied upon for enforcement of rights and/ or obligations or tendered as evidence except in circumstances adverted to in the proviso to Section 49 of 1908 Act.

43.3 This, however, would not, in law, mean that the transfer of interest, whether in a lease, gift or sale, has not taken place inter-se the parties.

43.4 This is for the reason that the registration of documents such as sale deed, lease deed or a gift deed is not dependent on the vendor, donor or the lessor seeking registration. If otherwise, the document in issue meets the requirements necessary for obtaining registration, the registering officer is duty bound to register the document. (See *Kalyana Sundaram Pillai and Venkatsubba Shrinivas Hegde's case*).

43.5 In this behalf, sub-Section (1) of Section 75 of 1908 Act provides a clue. The said section requires the Registrar to register the subject document if he finds that the document in issue has been executed and the requirements thereto have been complied with. Sub-section (2) of Section 75 goes on to state that if the document is duly presented for registration within 30 days after making of such order, that is, order under Sub-section (1) of Section 75, the Registering Officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60.

Therefore, if registration is carried out in the manner indicated above, sub-Section (3) of Section 75, shall take effect as if the document had been registered, when, it was first duly presented for registration.

43.6 That the date of first presentation is important from point of view of ascertaining the date of registration can be discerned from the provisions of sub-section (4) of Section 75 which gives power to the Registrar to summon and enforce the attendance of witnesses and compel them to give evidence as if he were a Civil Court for the purposes of inquiry under Section 74. An inquiry under Section 74 would be necessary where the Registrar is required to ascertain: -

- (a) Whether the subject document has been executed.
- (b) The requirements of law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

43.7 Necessarily, where inquiry is conducted, there would be a hiatus between the date of presentation and the registration of the document in issue. It is quite possible that inquiry may return findings which favour the person seeking registration of a document - should then the period utilized in carrying the inquiry shift the date of registration? The answer would have to be in the negative if one were to taken into account the provisions of Section 75(3) of the 1908 Act.

44. Clearly, a perusal of the aforesaid provisions would show that once an order for registration has been made, and the extant requirements of law are fulfilled, then the registration is to take effect as if the document had been registered when it was first duly presented for registration. If this statutory logic and rationale is not followed, it would lead to complications and at times, iniquities which are best avoided.

44.1 The provisions of Section 60 which deals with the certificate of registration and Section 61 which requires the endorsement and certificates referred to and mentioned in Section 59 and 60, to be copied in the margin of the register book would have to be understood in the light of provisions of Section 75(3) of the 1908 Act. No doubt Section 47 of the 1908 Act would kick in, as indicated above, after the completion of the registration and when, perhaps, there are competing rights of priority qua two or more documents, section 75(3) of 1908 Act would undoubtedly come to the aid of the applicant in fixing the date of registration, which would be the date when the subject document was first presented. In other words, the difference between Section 47 and 75(3) of 1908 Act, is that, while the former fixes the date of operation of the subject document after its registration the latter, that is, fixes the date of registration.

45. In the given case, as noted in my narration above, IOCL's own document appears to be consistent with the aforesaid exposition of the law.

45.1 In this connection a regard may be had to the following:

Brochure

“6. *ELIGIBILITY CRITERIA FOR INDIVIDUAL APPLICANTS*

All applicants fulfilling the eligibility criteria will become eligible for the draw for selection of the LPG distributorship. The eligibility Criteria is as under: -

6.1. Common Eligibility Criteria for all Categories applying as Individual

The applicant should

- i.*
- ii.*
- iii.*
- iv.*
- v.*
- vi.*
- vii. Should own as on the last date for submission of application as specified in the advertisement or corrigendum (if any):*

A plot of land of minimum dimensions 25 M x 30 M (within 15 km from municipal/ town/ village limits of the location offered in the same State) for construction of LPG Godown for storage of 8000 Kg of LPG in cylinders. The plot of land for construction of godown not meeting the minimum dimensions of 25 M x 30 M will not be considered.

or

- viii. Own a suitable shop of minimum size 3 metres by 4.5 metre in dimension or a plot of land for construction of showroom of minimum size 3 metres by 4.5 metre as on the last date for submission of application as specified in the advertisement or corrigendum (if any) at the advertised location or locality mentioned in the advertisement. It should be easily accessible to general public through a suitable approach road.

In case

Reference vii & viii above:

'Own' means having ownership title of the property or registered lease agreement for minimum 15 yrs in the name of applicant/ family member (as defined in multiple distributorship norm of eligibility criteria) as on the last date for submission of application as specified in the advertisement or corrigendum (if any). In case of ownership/ co-ownership by family member(s) as given above, consent in the form of a Notarized Affidavit from the family member(s) will be required.

General Instructions

General Instructions to the candidate applying for LPG Distributorship		
Item No	Instructions	Supporting Documents to be provided by applicant at the time
1	x	x

2	X	x
3	x	X
4	X	x
5	x	X
6	X	x
7	x	X
8	X	x
9	<i>Details of the plot of Land for godown or ready made godown which meets the following requirement:-</i> <i>The applicant should own (as per ownership criteria defined in clause No. 6.1 (vii) & (viii) 7.1 (x) & (xi) 7.2 (ix) & (x) of the Brochure as applicable) :</i> <i>a plot of land of minimum dimensions 25 M x 30 M (within 15 km from municipal/town/village limits of the location offered in the same State) for construction of LPG Godown for storage of 8000 Kg of LPG in cylinders. The plot of land for construction of godown not meeting the minimum dimensions of 25 M x 30 M will not be considered.</i>	<i>Documents pertaining to land/Godown in the name of applicant or member of 'family unit' Registered sale Deed/Gift Deed/ Lease Deed (15yrs minimum)/Mutation and government record etc.</i> <i>The Date of the documents have to be on or before the last date for submission of application as mentioned in the advertisement or corrigendum, if any.</i> <i>In case land is in the name of member of 'family unit' consent from the family member in form of Notorized Affidavit (Appendix 2) is required to be attached with the application.</i> <i>In case land is jointly owned by</i>

	<i>Or</i> <i>A ready LPG cylinder storage godown (within 15 Km from municipal/town/village limits of the location offered in the same State) of 8000 Kg capacity.</i> <i>(Note: In case there are any state specific requirement/norms applicable for construction of the LPG Godown, then the same will be applicable for the respective Regular Distributorship locations and revised minimum dimensions of the plot of land will be required as specified in the advertisement of that respective State).</i> <i>The plot of land or ready LPG cylinder storage godown should be freely accessible through all wheather motorable approach road (public road or private road connecting to the public road). It should also be plain, in one</i>	<i>the applicant/member of the Family Unit with any other person(s) or jointly leased in the name of the applicant/member of the Family Unit & any other person(s) and the share of such land in the name of the applicant/member of the Family Unit meets the requirement of land for godown then an NOC in the form of an affidavit from the joint owner(s)/joint lessee is to be provided as per Appendix-4</i> <i>‘Family Unit’ is defined below in important Note.</i>
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	<i>contiguous plot, free from live overhead power transmission or telephone lines.</i> <i>Canal/Drainage/Nallahs should not be passing through the plot. The land for construction of LPG godown should also meet the norms of various statutory bodies such as PWD/Highway authorities/ Town and Country Planning Department etc.</i> <i>Regular Distributor would require a storage Godown approved and licensed by Chief Controller of Explosives of Petroleum and Explosives Safety Organisation (PESO) for storage of 8000 kg LPG in cylinders</i>	
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Format for Field verification

Format for Field verification of Credentials of Individual Applicants for LPG Distributor

<i>Item No.</i>	<i>Particulars to be verified</i>	<i>Documents to be verified</i>	<i>Documents provided by the applicant Yes/ No.</i>	<i>Information given in the application is verified with original document and</i>

				<i>found correct/ incorrect- Remark</i>
<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>
<i>1,2,3</i>	<i>Name of the location, District, State</i>	<i>As per advertisement</i>	<i>Not required</i>	
4	x	x	x	x
5	x	x	x	x
6	x	x	x	x
7	x	x	x	x
7,1 to 7.5	x	x	x	x
7.6	x	x	x	x
7.7 & 7.8	x	x	x	x
8	x	x	x	x
9	<i>Physically verify the land for godown / godown as mentioned in the application and confirm the general suitability of site for LPG Distributorship. Take consent from the Family member in the form of affidavit, wherever applicable.</i> <i>If land is not suitable, then ask for alternate land</i>	<i>Original Registered Sale Deed/ gift Deed/ lease deed. In case of inherited property verify mutation and government record. Date of agreement/ mutation has to be before or on the last date for submission of application as specified in the advertisement</i>		

	<i>in the name of applicant/ member of the 'family unit' which is on or before the last date for submission of application as specified in the advertisement or corrigendum (if any) and check for its suitability.</i> <i>The FVC committee members shall measure themselves the dimensions of the plot and satisfy the requirement; However, in case of land having ambiguity with respect to dimension, the help of Engineering Department of Divisional/ Regional/ Zonal Office can be taken for measurement.</i>	<i>or corrigendum (if any).</i> <i>In case of joint ownership Notarized Affidavit as per format Appendix-2/ Appendix 4 of the Application format should be available. If not take it at the time of FVC.</i>		
10	X	X	X	X

46. A close perusal of the extracts from the documents referred to above, would show that IOCL is reading Clause 6 of the brochure without adverting to the provisions made in the other two documents, that is, the General Instructions to the candidate to applying for LPG, Distributorship, and in the Format for Field Verification of Credentials of Individual Applicants for the LPG Distributor. Clearly, while the obligation on the applicant applying for LPG Distributorship, was to place on record a registered document, it is the date given on the document which matters and not the date of registration. The applicant was required to ensure that the date which the document bears is either the last date prescribed for submission of the application or a date prior to the said date.

47. As a matter of fact, there is no requirement that the registration date should precede the date and time prescribed for submission of application in the advertisement issued by the IOCL. The instant case stands on a better footing as the date of execution of subject lease deeds are not only prior to the last date prescribed for submission of the application, but that the first presentation for registration was also made prior to the close of office hours, albeit, on the last date prescribed for the submission of applications. The narration of facts above would show that the subject documents were executed on 9.10.2013. They were presented for registration to the concerned statutory authority at 11.59.25 a.m. on 10.10.2013. Concededly, on the last date of submission, the office hours would go beyond noon. Thus, the application alongwith the requisite enclosures, contrary to

what is being held in the impugned communications of IOCL, was filed prior to the cut-off date given in the advertisement.

48. Therefore, in view of the aforesaid discussion, I am of the opinion that the writ petition would have to be allowed. Accordingly, the impugned communications dated 02.02.2015, 18.03.2015 and 03.07.2015 are set aside. Since, the petitioner herein was the only claimant for issuance of a Letter of Intent (LOI) in his favour qua the subject location, and there was no other impediment placed in his way other than the legal issue discussed above, IOCL will consider issuance of an LOI in favour of the petitioner within two weeks of receipt of the copy of this judgment. There shall, however, be no order as to costs.

RAJIV SHAKDHER
(JUDGE)

APRIL 17, 2018
/vikas/hs