

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

**Judgment reserved on: September 19, 2018**

**Judgment delivered on: October 22, 2018**

+ W.P.(C) 9123/2018

**ARENESS FOUNDATION**

..... Petitioner

Through: Ms. Sanya Kapur, Adv.

versus

**GOVERNMENT OF NCT OF DELHI AND  
ANR.**

..... Respondents

Through: Mr. Ramesh Singh, Standing Counsel  
for GNCTD with Mr. Chirayu Jain,  
Adv.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**J U D G M E N T**

**V. KAMESWAR RAO, J**

1. The present petition has been filed by the petitioner with the following prayers:

*“In the above facts and circumstances, it is most respectfully prayed that this Hon’ble Court may graciously be pleased to allow the petition of the petitioner thereby:*

- i. Passing a writ of certiorari or any other writ or order thereby quashing aside NO. F.1 (92) / Regn. Br./Div.Comm./HQ/2012/PF-II/1196 dated 13/07/2016 passed by the Inspector General of Registration; and*
- ii. Setting aside all such orders, proceedings and inquiries emanating out of the aforesaid*

*impugned circular; and*  
*iii. Passing any such further orders as may deem*  
*fit in the facts and circumstances of the case and*  
*in the interest of justice.”*

2. In substance, the challenge in the writ petition is to the Circular dated July 13, 2016, whereby procedure has been evolved to be followed on complaints relating to fraudulent registration through impersonation or production of false documents and evidences, and the same is in the following manner: -

*“In the light of the above discussion, following mandatory procedure is prescribed to deal with the complaints relating to fraudulent registrations through impersonation or production of false documents and evidences.*

*a) All such complaints of fraudulent registration received by the department have to be forwarded to the respective District Registrar who shall register the same in the register of complaints relating to fraudulent registration in the following format:*

| <i>Sl. No.</i> | <i>Date</i> | <i>Name and address of applicant</i> | <i>Documents no. and SR Office name</i> | <i>Name and address of the executants claimants and witness</i> |
|----------------|-------------|--------------------------------------|-----------------------------------------|-----------------------------------------------------------------|
|                |             |                                      |                                         |                                                                 |

*b) After entering the complaints, he shall issue notices to the executants of the documents and witness to appear for enquiry along with the complainants and he shall also take witness of the registering officer and if needed, call for the records from the concerned department and also summon the respective department's official concerned to appear before him with relevant records.*

*c) Once the enquiry is completed following summary procedure and*

*it is proved that the registration has taken place through production of false effect, recording his findings and issue direction to the concerned registering officer to file FIR against the concerned person and also to make a note in the index-II of the documents which was fraudulent registered to the effect that the “registration annulled as per the proceedings of the District Registration (proceeding no. to be noted) and is shall have same effect as prescribed under Section 49 of the Registration Act.”*

- d) *After receiving the order of the District Registrar, the registering officer shall immediately file FIR and make entries as stated above in the Index II without any loss of time. The registering officer shall maintain a separate register in this regard in his office to register all such orders of the District Registrar in the following format:*

| <i>Sl. No.</i> | <i>Date of receipt of order of DR</i> | <i>Proceed ings no.</i> | <i>Doc No. of the document to be annulled</i> | <i>Date of filing FIR</i> | <i>Date of making note in Index-II</i> | <i>Signature of the registering officer.</i> |
|----------------|---------------------------------------|-------------------------|-----------------------------------------------|---------------------------|----------------------------------------|----------------------------------------------|
|                |                                       |                         |                                               |                           |                                        |                                              |

- e) *The District Registrar should complete the enquiry maximum in 02 months in each case and if the parties are not appearing for more than 2 summons, ex-parte order should be passed based upon the documents, evidences and witnesses available.*

*While issuing the summons, mode of speed post may be adopted.*

*However, these instructions will not apply to the cases where the complainant has admitted execution by himself due to whatever reasons. It is further emphasized that the procedure prescribed above is only to deal with fraudulent registration done and it should in no way be constructed to mean that the registering authority shall go into the issue of deciding title in case of rival claims on certain basis.*

3. It is the case of the petitioner and contended by the learned counsel for the petitioner that the impugned circular, which is based on the judgment of

the Andhra Pradesh High Court in the case of *Yanala Malleshwari v. Ananthalu Sayamma* 2007 (6) ALT (523), is on a misreading of the said judgment. In any case the issue is no more *res integra* in view of Para 40 of the judgment of the Supreme Court in the case of *Satya Pal Anand v. State of Madhya Pradesh* (2016) 10 SCC 767. She stated, Rule 53 of the Delhi Administration Registration Authority Manual Vol-II 1976 already provided for cancellation of a registered deed by Court under Section 31 of the Specific Relief Act, hence, the respondents accept the sole legal remedy for cancellation of a deed and still by the impugned circular, the respondents intend to take away the right of the parties to approach the Civil Court. Moreover, in its earlier circular dated November 12, 2014, vide para 8(ii), the Sub Registrars were directed not to refrain from registering a deed unless there is a Court order. However, in the present circular, the Registrars are even given powers to cancel a registered deed. According to her, Registrar becomes *functus officio* on the registration of a Deed. She stated that the Apex Court in *Satyapal Anand (supra)* has held that Registrar becomes *functus officio* the moment a deed has been registered by a Registrar, i.e. his authority comes to an end. She stated, the impugned circular is ultra vires the Registration Act, 1908 ('Registration Act' in short). She referred to the judgment in the case of *Satyapal Anand (supra)* to contend that, there is no

express provision provided by the legislation which empowers the registrar to recall registrations. Thus, the delegated legislation cannot supersede the legislation which is in play.

4. In her rejoinder arguments, the learned counsel for the petitioner had also submitted that the judgments relied upon by the Ld. Counsel for the respondents are not relevant to the present matter, as the judgment in the case of *Satyapal Anand (supra)* referred to by the petitioner is of the year 2016, that too, after the issuance of the impugned circular which clearly held that the registering authority doesn't have powers to recall its own registration. She stated, the facts / issues, in the judgments, cited by the Ld. Counsel for the respondents are not relatable with facts of the present matter and thus applying the doctrine of *Stare decisis*, this Court can dispose of the matter on the basis of *Satyapal Anand (supra)*. She stated, the respondents have misinterpreted Section 21 of the General Clauses Act, inasmuch as the said section pertains to amending, varying, altering, etc of any legislation, rule, bye-law, however the same does not confer any power to recall any act performed under a Statute which in the present matter is "*registration*" of a deed.

5. It was also the submission of the learned counsel for the petitioner that, as per the counter affidavit filed by the respondents, deeds registered

even prior to the notification of the impugned circular have been cancelled by the Registrar, hence, it is much evident that the Registrar is adjudicating upon questions of law and facts which can be done by a Judicial body only and not by the Registrar, who is not even a quasi-judicial authority.

6. She stated, the trial conducted / to be conducted by the Registrars was / is summary in nature, inasmuch as the impugned circular directs completion of an inquiry of a "*fraudulent transaction*" within 2 months. The Legislature in all its wisdom has not laid down any such summary procedure under Specific Relief Act for cancellation of a deed under Section 31 of the Act, hence, the impugned circular is against the principles of natural justice as well. She stated, the impugned circular is ultra vires the power instilled in the Inspector General and is even inconsistent with the Section 69 of the Registration Act. Even the Apex Court in *Satyapal Anand (supra)* clearly held "*that even the Inspector General has no power to cancel the registration of any document which has been already been registered*".

7. It is the case of the respondents and contended by its counsel Mr. Ramesh Singh that the present challenge by the petitioner coupled with the reliance on the judgment of Supreme Court in the case of *Satyapal Anand (supra)* is misconceived. He stated, even though there is no express power under the Registration Act to cancel / recall the registration of an

instrument, it can still be cancelled / recalled by the registering authority exercising its inherent powers, if the said registration has been obtained by playing fraud on the registering authority. This exception of “*fraud*”, being the ground for exercising inherent power, even in the absence of express provision, has been recognized by the Supreme Court in the case of ***Indian National Congress (I) v. Institute of Social Welfare (2002) 5 SCC 685***. And under the present impugned circular, the power to recall and thereby annul the original registration by the registering authority, is also based upon fraud being played on the registering authority. He stated, the source of the said power of recall of a registration on the grounds mentioned in the impugned circular is also to be found in Section 82 of the Registration Act, which makes instances like false impersonation; making false statements; delivering false copy of documents, in course of registration of an instrument, a punishable offence. He also stated, it is a well-settled legal position that if a penalty is imposed by a statute for the purposes of preventing something from being done, the thing prohibited, if done, would be treated as void. In this regard, he would rely upon the judgment of the Supreme Court in the case of ***Mannalal Khetan v. Kedar Nath Khetan (1977) 2 SCC 424***. Hence, the act of impersonation; making false statements; delivering false copy of documents, as contemplated under

Section 82 of the Act, if done, the same would result in making such registration of documents as void. In such eventuality, there is no need for the party to approach the civil court to get such registration cancelled. Such registration being void and non-est, could be wholly ignored altogether. Reliance is placed on the judgment of the Supreme Court in the case of ***Thota Ganga Laxmi v. Government of Andhra Pradesh (2010) 15 SCC 207***. According to Mr. Singh, the aforesaid dictum of the Supreme Court was made in the context of a registered document, namely, a registered cancellation deed and was not a case where the validity of the registration of the original document itself was in question. In the said case, the cancellation deed was declared non-est and void because it fell foul of the prescribed rules and the common law doctrine. According to him the judgment holds that if the registration of a document is non-est and void, there is no need to approach the civil court to have it so declared. It is also stated, even though in the aforestated circumstances the criminal machinery can be moved under Section 82, the same cannot in any manner interdict a Registrar from undertaking the investigation of fraud and coming to a conclusion of fraud under the impugned circular and consequently ordering annulment of registration, on the very same grounds on which the criminal proceedings may be going on. This is because it is well-settled legal position

that for the very same transaction, not only both criminal and civil proceedings can go on parallelly, but also findings of one is not binding on the other.

8. Mr. Singh would submit, the power to recall a registration by the registering authority on account of fraud as contemplated in the impugned circular, can also be independently traced to Section 21 of the General Clauses Act by relying on the judgment of the Andhra Pradesh High Court in *Yanala Malleshwari (supra)*. According to Mr. Singh, even though there is no express provision under the Act, to recall and accordingly cancel a registration of an instrument, the impugned circular intending to do so can still derive its said source of power from Section 69 of the Act, particularly Clause (j) of Sub-section (1) thereof. The said provision clearly empowers an Inspector-General to make rules consistent with the Act. He stated by virtue of Article 162 of the Constitution of India, an executive order to supplement a statute or cover areas to which a statute does not extend or in respect of matters required to be prescribed by rules can always be issued. In this regard, he would rely upon the judgment in the case of *Jantia Hill Truck Owners Association v. Shailang Area Coal Dealer and Truck Owner Association (2009) 8 SCC 492* and *Joint Action Committee of Air Line Pilots Association of India v. DGCA-(2011) 5 SCC 435*.

9. According to Mr. Singh, insofar as the judgment of Supreme Court in the case of *Satya Pal Anand v. State of Madhya Pradesh (supra)* as relied upon by the petitioner is concerned, the same is clearly inapplicable in the present case inasmuch as in the said case, the Supreme Court did not deal with one of the aforesaid legally well-recognised exception, namely, fraud and had no occasion to dwell into the aspect of inherent powers to undo something which has come into existence on the basis of a fraud. Further, the observations made by the Supreme Court were restricted to the case of irregularities, as is clear from paras 36, 40-41 of the said judgment; in fact, the said judgment notices much less dilutes the aforesaid judgment of the Supreme Court in *Thota Ganga Laxmi (supra)* and judgment of Full bench of Andhra Pradesh in *Yanala Malleshwari (supra)*. Moreover, the impugned circular specifically circumscribes the circumstances in which the Registrar could exercise its inherent power of recall of registration by expressly providing that the said circular only deals with "*fraudulent registrations and it should be in no way be construed to mean that the registering authority should go into the question of deciding title in case of rival claims*". In other words, the said impugned circular recognizes that in such circumstances, it is the Civil Court which has the jurisdiction. This is precisely the instance with which Section 31 of Specific Relief Act, 1963,

also deals with. He stated that insofar as the grievance that the impugned circular does not provide for a period of limitation is concerned, the same ignores Section 17 of Limitation Act, 1963, a provision dealing with effect of fraud/mistake, and inter alia prescribes that the period of limitation should not begin to run until and unless the petitioner has not discovered the said fraud/ mistake.

10. Having heard the learned counsel for the parties, at the outset, it is stated that there is no dispute that the impugned circular which has been issued by the respondents relates to procedure dealing with complaints relating to fraudulent registration through impersonation or by producing false documents and evidences. The procedure directed to be followed has already been reproduced in Para 2 above.

11. A reading of the aforesaid procedure makes it apparent that when complaints are filed, and on an enquiry by following a summary procedure, it is proved that the registration has taken place through false documents and evidences, impersonation etc., order shall be passed recording the findings, with a direction to register an FIR and annulment of the registration. The plea of the learned counsel for the petitioner primarily has been that document registered by the Sub-Registrar cannot be annulled by him as there is no stipulation empowering the Registrar to carry out the said act. The

same can be done only through the process of a Civil Court. The issue is no more *res-integra* in view of the judgment of the Supreme Court in the case of **Satya Pal Anand (supra)** wherein one of the issues which fell for consideration of the Supreme Court was whether the Sub-Registrar (Registration) has authority to cancel the registration of any document. The Supreme Court in paras 34 and 36 held as under:

***“34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan (supra). Section 17 of the Act of 1908 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 Act of 1908 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. (emphasis supplied)***

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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 deceitly 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 Act of 1908 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 Act of 1908 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)”

12. From the reading of the above paras of the judgment of the Supreme Court in **Satya Pal Anand (supra)**, the following emerges: -

- (i) The role of Sub Registrar (Registration) stands discharged, once the document is registered.
- (ii) There is no express provision in the Registration Act which empowers Registrar to recall registration.
- (iii) The fact whether the document was properly presented for registration

cannot be reopened by the Registrar after its registration.

(iv) 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.

13. We note that the impugned circular has been issued by the respondent No.1 by referring to the judgment of the Andhra Pradesh High Court in the case of *Yanala Malleshwari (supra)*. In fact, much reliance was placed by Mr. Singh also on the same. In this regard, we may note that the Supreme Court in *Satya Pal Anand (supra)* has referred to and dealt with the judgment of *Yanala Malleshwari (supra)* wherein, in para 40 of the judgment, it said as under:-

*“40. The Andhra Pradesh High Court, in the case of Yanala Malleshwari (supra) was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the 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. The fact remains that if the stipulation contained in Sections 17 and 18 of the Act of 1908 are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in Sections such as 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of*

*the document. The aggrieved party can challenge the registration and validity of the document before the Civil Court. The majority view of the Full Bench was that if a person is aggrieved by the Extinguishment Deed or its registration, his remedy is to seek appropriate relief in the Civil Court and a Writ Petition is not the proper remedy.*

*(emphasis supplied)”*

14. The said judgment is not of any help to Mr. Singh for the simple reason, in the said judgment, the Andhra Pradesh High Court was concerned with Extinguishment Deed / Cancellation Deed. The Court held, if a person is aggrieved by the Extinguishment Deed or its registration, his remedy is to seek appropriate remedy in the Civil Court.

15. Insofar as the judgment in *Thota Ganga Laxmi (supra)* is concerned, the Supreme Court was concerned with a case where reference is made to an express provision contained in the Andhra Pradesh Rules, being Rule 26(k)(i). The rules were framed by the State of Andhra Pradesh after the decision of the Full Bench in *Yanala Malleshwari (supra)*. The Supreme Court in the said judgment in paras 4 and 5 has held as under:

*“4. In our opinion, there was no need for the Appellants to approach the civil Court as the said cancellation deed dated 4.8.2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if 'A' transfers a piece of land to 'B' by a registered sale deed, then, if it is not disputed that 'A' had -the title to the land, that title passes to 'B' on the registration of the sale deed (retrospectively from the date of the execution of the same) and 'B' then becomes the owner of the land. If 'A'*

wants to subsequently get 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.

5. In this connection, we may also refer to Rule 26(i)(k) relating to Andhra Pradesh under Section 69 of the Registration Act, which states:

“(i) The registering officer shall ensure at the time of preparation 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 natural consent or orders of a competent civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale:

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

**A reading of the above rule also supports the observations we have made above. It is only when a sale deed is cancelled by a competent Court that the cancellation deed can be registered and that too after notice to the concerned parties.** (emphasis supplied) In this case, neither is there any declaration by a competent Court nor was there any notice to the parties. Hence, this rule also makes it clear that both the cancellation deed as well as registration

*thereof were wholly void and non est and meaningless transactions.”*

16. Even in ***Thota Ganga Lakshmi (supra)*** the Supreme Court clarified by referring to Rule 26 (k)(i) that it is only when a sale deed is cancelled by a competent court that the cancellation deed (in that case) can be registered and that too after notice to the parties concerned. So in view of the clear exposition of law, the impugned circular issued, giving power to the Registrar to annul the registration is ultra vires the Registration Act.

17. In so far as the other judgments in ***Indian National Congress (I) (supra)***, ***Mannalal Khetan (supra)***, ***Jantia Hill Truck Owners Association (supra)*** and ***Joint Action Committee of Air Line Pilots Association of India (supra)*** relied upon by Mr. Singh are concerned, the same are on the following propositions:

- (1) Even if there is no express power under the Registration Act to cancel / recall the registration of an instrument, it can still be cancelled / recalled by exercising inherent powers, if the registration is obtained by fraud.
- (2) The source of power to recall a registration on the grounds mentioned in impugned circular is also found in Section 82 of the Act.
- (3) The power to recall a registration by the registering authority on account of fraud as contemplated in the impugned circular can be

independently traced to Section 21 of the General Clauses Act.

18. Suffice to say in view of the law laid down by the Supreme Court in *Satya Pal Anand (supra)* it must be held that Registrar has no powers under Section 82 of the Registration Act nor can invoke Section 21 of the General Clauses Act, to annul a registration of a document. Accordingly, the circular dated July 13, 2016 to the extent it empowers the Registrar to annul a registered document is ultra vires the Registration Act, 1908 and is set aside.

19. The writ petition is allowed to the extent stated above. No costs.

**CM. No. 35206/2018**

Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**CHIEF JUSTICE**

**OCTOBER 22, 2018/jg**