

IN THE HIGH COURT FOR THE STATE OF TELANGANA:
HYDERABAD
* * * *

W R I T P E T I T I O N N O s . 2 9 1 8 A N D 3 1 0 3 O F 2 0 1 9

W.P.No.2918 of 2019:

P.S.Parthasarathy

... Petitioner

Vs.

The State of Telangana rep. by its
Principal Secretary, Revenue
Department, Hyderabad and others

... Respondents

W.P.No.3103 of 2019:

M/s. Suvishal Power Gen Ltd.

... Petitioner

Vs.

The State of Telangana rep. by its
Principal Secretary, Revenue
Department, Hyderabad and others

... Respondents

Date of Judgment Pronouncement: 26th MARCH, 2019

S U B M I T T E D F O R A P P R O V A L :

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

1. Whether Reporters of Local newspapers
may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to
see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

* THE HONOURABLE SRI JUSTICE SANJAY KUMAR

+ WRIT PETITION NOS.2918 AND 3103 OF 2019

% DATED 26th MARCH, 2019

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... Respondents

< Gist:

> Head Note:

! Counsel for petitioner
in both cases

: Sri Vedula Venkataramana and
Sri N.M.Krishnaiah

^ Counsel for respondents
in both cases

: Learned Advocate General

? CASES REFERRED:

1. 2017 (3) ALT 420
2. (2010) 15 SCC 207
3. 2018 (2) ALD 77
4. (2004) 7 SCC 166
5. (2007) 8 SCC 449
6. (2010) 2 SCC 114
7. AIR 1966 SC 828
8. (1994) 2 SCC 647

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NOS.2918 AND 3103 OF 2019COMMON ORDER

W.P.No.2918 of 2019 was filed by P.S.Parthasarathy challenging the registered cancellation deed dated 25.05.2017, bearing Document No.150/Bk-IV/2017, executed by the Tahsildar, Serilingampally Mandal, Ranga Reddy District, purporting to cancel the registered Irrevocable General Power of Attorney (GPA) dated 15.01.2016, bearing Document No.14/Bk-IV/2016, executed in his favour. He sought a further direction to the respondents not to interfere with the sanad rights covered by the registered Irrevocable GPA.

W.P.No.3103 of 2019 was filed by M/s.Suvishal Power Gen Limited, Secunderabad, assailing the registered cancellation deed dated 25.05.2017, bearing Document No.144/Bk-IV/2017, executed by the Tahsildar, Serilingampally Mandal, Ranga Reddy District, purporting to cancel the registered deed dated 21.01.2016, bearing Document No.477/Bk-IV/2016, executed in its favour. A further direction was sought by the petitioner company to the respondents not to interfere with the transfer of sanad rights covered by the registered deed bearing Document No.477/Bk-IV/2016 dated 21.01.2016.

Heard Sri Vedula Venkataramana, learned senior counsel representing Sri N.M.Krishnaiah, learned counsel for the petitioners in these cases, and the learned Advocate General, State of Telangana, appearing for the respondent authorities in both cases.

As per the affidavit filed in support of W.P.No.2918 of 2019, P.S.Parthasarathy purchased the sanad rights given by Rasheeduddin Khan Bahadur in favour of Hazrath Quadriunnissa Begum, dated 11th Ziquada, 1297 Hijri, i.e., 16.10.1880 AD, from the successors of Nawab

Khursheed Khaisaruddin Khan through the registered Irrevocable GPA dated 15.01.2016, bearing Document No.14/Bk-IV/2016, which was registered in Book 4 on the file of the Joint Sub-Registrar, Kukatpally. According to him, this document was not a conveyance deed in relation to any specified parcel of land. Cause for grievance in this writ petition was the high-handed action of the Tahsildar, Serilingampally Mandal, Ranga Reddy District, in canceling this Irrevocable GPA dated 15.01.2016 *vide* registered cancellation deed dated 25.05.2017. As per the petitioner, Hazrath Nawab Mohammed Rasheeduddin Khan Bahadur Shamsul-Umra was the owner of the lands in Miyapur Village and three other villages. He issued a personal grant in favour of his daughter, Hazrath Quadriunnissa Begum Saheba, on 16.10.1880 AD. This sanad was recognized and reinforced by two firmans dated 02.09.1934 and 07.07.1949 issued by the then Nizam confirming the rights of the legal representative of Hazrath Quadriunnissa Begum, i.e., Nawab Khaisaruddin Khan, over the said lands. The petitioner further claims that as per the order dated 29.12.1976 of the Board of Revenue, the rights over Miyapur Village were decided in favour of Nawab Khaisaruddin Khan in file No.NA/2/78 of 1969. In 1995, two societies approached the Court constituted under the Land Grabbing (Prohibition) Act, 1982, claiming this land in Miyapur Village. These cases were filed against other private parties and were taken on file as LGC Nos.131 and 136 of 1995. By judgment dated 31.12.1997, the Special Court held that none of the private parties had title over the land and that it was a Government land, being a Jagir which had merged in the State under the Hyderabad Jagir Abolition Regulation, though it stood in the name of Nawab Khaisaruddin Khan. This judgment of the Special Court was confirmed by the High Court in W.P.No.889 of 1998 and batch, *vide* order dated 16.04.2003. The correctness of this order is now under

examination by the Supreme Court in C.A.No.10699 of 2013 and batch. According to the petitioner, M/s.Trinity Infraventures Limited entered into an agreement of sale, with regard to the lands covered by the sanad rights, with the legal heirs of Nawab Khaisaruddin Khan and he was appointed as their GPA holder. The said GPA was registered as Document No.14/Bk-IV/2016. Owing to the publicity given to the execution of this deed by the print and electronic media, the Tahsildar cancelled the same along with other documents and aggrieved thereby, the petitioner filed the writ petition. He challenged the cancellation deed on various grounds.

The affidavit filed in support of W.P.No.3103 of 2019 reflects that the petitioner company therein claimed to have purchased the sanad rights over certain land in Survey No.44 of Miyapur Village from the successors of Nawab Khursheed Khaisaruddin Khan through their GPA holder, the petitioner in W.P.No.2918 of 2019, under registered deed dated 21.01.2016, bearing Document No.477/Bk-IV/2016, which was registered in Book 4 on the file of the Joint Sub-Registrar, Kukatpally. According to the petitioner company, this is not a conveyance deed in relation to any specified parcel of land. The petitioner company set out the same facts as were set out by the petitioner in W.P.No.2918 of 2019 in relation to the grant of sanad rights and the events that took place thereafter. The same grounds of challenge which were urged in the other case were reiterated in this case.

The Tahsildar, Serilingampally Mandal, Ranga Reddy District, filed counter-affidavits in both the writ petitions. In the counter-affidavit filed in W.P.No.2918 of 2019, he stated as follows:

The writ petition was totally misconceived and was filed with an oblique motive and in gross suppression of material facts. The petitioner made an attempt to mislead this Court by twisting and tweaking the facts

to suit his convenience and to get over his misdeeds. The registered GPA dated 15.01.2016 was the first step in a larger fraud planned and executed by the petitioner. The Sub-Registrar, Kukatpally, was in collusion with the petitioner and pursuant thereto, he registered the Irrevocable GPA dated 15.01.2016 in spite of knowing that the subject matter covered thereby, being the land in Survey Nos.100 and 101 of Miyapur Village, was earlier the subject matter of LGC Nos.131 and 136 of 1995 before the Special Court, wherein judgment dated 31.12.1997 was rendered declaring that the land belonged to the Government. The Sub-Registrar knew fully well that this judgment was confirmed by the High Court, *vide* order dated 16.04.2003, and that the matter was pending before the Supreme Court, wherein an order of *status quo* was passed on 25.08.2003 (in SLP (C) No.14917 of 2003). According to the Tahsildar, the petitioner in the capacity of being a Director of M/s.Trinity Infraventures Limited, brought into existence the Irrevocable GPA so as to knock away valuable Government land. Fearing that whatever rights may have accrued by virtue of the GPA would be extinguished in the event of demise of any of the principals, the petitioner went a step ahead and brought into existence four deeds bearing Document Nos.472/IV/2016 for an extent of Ac.231.00 in Survey No.101; 474/IV/2016 for extents of Ac.109.00 and Ac.18.00 in Survey No.20; 475/IV/2016 for an extent of Ac.145.26 guntas in Survey No.28; and 476/IV/2016 for an extent of Ac.207.00 in Survey No.100 of Miyapur Village. Though these documents were in the nature of sale deeds, they were styled as simple deeds and the Sub-Registrar registered the same without calculating proper stamp duty. Upon noticing the fraud committed, the District Registrar, Medchal-Malkajgiri District, filed a complaint on 25.05.2017 before the Kukatpally Police Station leading to registration of Crime No.366 of 2017. Rollakonda Srinivas Rao,

the then Sub-Registrar, Kukatpally, was arrayed as A1 therein and the petitioner was arrayed as A2 in the said FIR, registered for offences under Sections 419, 420, 468, 471 IPC read with Section 120B IPC along with Section 82 of the Registration Act, 1908 (*for brevity*, 'the Act of 1908'). A charge sheet was filed before the learned IX Metropolitan Magistrate, Kukatpally, wherein it was stated that the investigation revealed that there was a design to knock away Government land situated in Survey Nos.20, 28, 100 and 101 of Miyapur Village through execution of these sale deeds, styled as deeds, and getting them registered without paying the requisite stamp duty in collusion with the Sub-Registrar. There was also an attempt to lay a claim over the amount deposited by the Metro Rail authorities in LAOP No.376 of 2001 for this purpose and the so-called legal heirs of Khaisaruddin Khan were brought into the picture and documents were executed in spite of the fact that the entire issue was covered by the orders of the Special Court and the High Court. The Tahsildar pointed out that the petitioner was facing prosecution in the case registered and without disclosing these crucial facts, he had approached this Court assailing the cancellation deed. According to the Tahsildar, Miyapur Village was a Jagir Village and as per Section 6 of the Andhra Pradesh (Telangana Area) Abolition of Jagir Regulations, 1358 F, all the Jagirs in the erstwhile Hyderabad State were taken over by the Government and merged into the Diwani (Government). Four villages, viz., Kesarjawala, Wakalgoan, Miyapur and Bahadurpally, were confirmed to be Jagir Villages, being sub-grants of Paigah Vicar-ul-Umrah given to Mohammed Khaisaruddin Khan, the Jagirdar, as per the judgment dated 28.10.1968 of the Nazim-e-Atiyat in File No.G/56/58 and the judgment of the Board of Revenue dated 29.12.1976 in File No.NA2/78/69. From the date of merger of the Jagirs in the Government, the powers, rights and liabilities of the Jagirs lapsed in

favour of the Jagir Administrator. According to Rule 4 of the Non-khalsa Village Rules, the name of the Jagirdar or his Hissadar or any relative of the Jagirdar should not be recorded in the Village Records unless the Jagir or Paigah lands were personally cultivated by the Jagirdars and the holder of the Paigah and any pattas existing in the concerned Village Record in contravention of the said rules were to be cancelled. The subject lands, being poramboke lands in Miyapur Jagir Village, vested in the Government consequent upon abolition of Jagirs. The commutation amounts determined in respect of the four villages were already paid to the Jagirdar, Khaisaruddin Khan, *vide* Award Verification Slip No.1495 dated 15.06.1956 (08.04.1958) with Katha No.505, as per the records of the Jagir Administrator. Viqar-ul-Umrah Paigah and the Jagir of Khaisaruddin Khan were transferred to the Government under Section 6 of the Regulation of 1358 Fasli on 15.09.1949 and 27.09.1949, and as such the lands had become Government lands along with other lands. The Tahsildar contended that in the light of these facts, the descendents of the deceased Jagirdar could not claim any rights. He pointed out that even prior to merger of the Jagir into the Diwani, the said lands were shown as Government lands classified as poramboke sarkari. As per the Sethwar 1323 F of Miyapur Village, Survey Nos.100 and 101 were classified as poramboke sarkari. After merger of the Jagir into the Diwani also, the pahanies for the years 1950-51, 1951-52, 1952-53 and 1953-54 recorded the lands as Government lands with the classification 'poramboke kancha'. The name of Raheemunnisa Begum was recorded as Khatedar/pattadar in the pahanies but according to the Tahsildar, it was done wrongly. He then referred to the litigation in LGC Nos.131 and 136 of 1995 before the Special Court and the order dated 31.12.1997 passed therein. He then adverted to the order dated 16.04.2003 passed by the

High Court, confirming the said common order of the Special Court, in W.P.No.889 of 1998 and batch. He pointed out that in the said order, the High Court gave a clear finding that the land in Survey Nos.100 and 101 of Miyapur Village belonged to the Government and not to any private societies or individuals. According to him, 20 Special Leave Petitions were filed before the Supreme Court by various parties aggrieved by the order dated 16.04.2003 and he furnished the details thereof at length. On the strength of these facts, the Tahsildar asserted that the petitioner was trying to defraud the Government by securing the Irrevocable GPA dated 15.01.2016 and getting it illegally registered with the connivance of the Sub-Registrar. He stated that he was competent to execute the cancellation deed on behalf of the Government as he was an officer competent to execute the orders of the Government and therefore, the presentation of the cancellation deed for registration could not be found fault with on the ground of incompetence on his part to represent the Government. He further stated that in the event of interference by this Court at this stage, it would hinder proceedings before the competent criminal Court and would also inspire the petitioner to take advantage of such orders so as to further indulge in fraudulent deeds. According to him, as the lands in question were Government lands, they would be covered by Section 22-A of the Act of 1908 and as such, no registrations should be entertained in relation to such lands when the documents were presented by those who were not authorized to execute them on behalf of the Government. He concluded by stating that the alleged Irrevocable GPA and the later documents executed in the year 2016 were not valid and were rightly cancelled by him and prayed for dismissal of the writ petition.

In his counter filed in W.P.No.3103 of 2019, the Tahsildar, while reiterating what he has stated in his counter filed in W.P.No.2918 of 2019,

also referred to the Khasra Pahani of 1954-55 in relation to the land admeasuring Ac.169.38 guntas in Survey No.44 of Miyapur Village, wherein the land was shown as Government land under the classification 'poramboke'. However, the name of one Abdul Baquar Khan was recorded against Sub-Division No.44/1, admeasuring Ac.151.38 guntas, in the khatedar column while the name of Khatiza Sulthana Begum Saheba was recorded against Sub-Division No.44/2, admeasuring Ac.18.00 guntas, in the khatedar column, but these entries were made wrongly. He asserted that the claim that sanad rights were given by Mohammed Rasheeduddin Khan Bahadur in favour of his daughter, Hazarath Quadrunnissa Begum, and the recognition thereon under two firmans was entirely false and baseless. He concluded the counter by stating that when the matter was pending before the Court, the Irrevocable GPA and the subsequent documents executed during the year 2016 were not valid in law and were liable for cancellation. He therefore justified the cancellation of these documents and sought dismissal of this writ petition also.

No reply affidavit was filed in either of these cases.

In the light of the aforestated narration on facts, it is clear that the status of the subject lands in Miyapur Village and the ownership thereof is now pending adjudication before the Supreme Court. The only issue that falls for consideration before this Court is as to the validity of the registered cancellation documents executed by the Tahsildar, Serilingampally Mandal, Ranga Reddy District.

It would be appropriate at this stage to note the contents of the Irrevocable GPA dated 15.01.2016 executed in favour of P.S.Parthasarathy. This document was executed by Ameerunnissa Begum, Faqrunnisa Begum, Masarathunnisa Begum, Mushahiddudin Khan, Md.Fasiuddin Khan, Md.Zakiuddin Khan, Md.Ejazuddin Khan and

Md.Kareemuddin Khan, claiming to be the legal heirs and successors of late Nawab Md. Khaisaruddin Khan, with the sole objective of equipping their purchaser/vendee with absolute power and authority to achieve the objectives detailed and mentioned in the agreement of sale executed on 15.01.2016 and they accordingly nominated P.S.Parthasarathy, a Director of M/s. Trinity Infraventures Limited, the vendee/purchaser company, as their true and lawful attorney to act on their behalf and to do and execute the acts enumerated thereunder. Perusal of the authorized acts permitted to be done on their behalf by their GPA holder indicates that there was no power delegated to the GPA holder to execute any sale deed or conveyance in favour of third parties in their name. However, one clause in this Irrevocable GPA is of relevance and it reads as under:

‘f. The executants/vendors/owners hereby declare that this General Power of Attorney is Irrevocable being coupled with consideration under the provisions of the Contract Act as per the Agreement of Sale/Contract already executed by the owners/executants with M/s. Trinity Infraventures Limited.’

The agreement of sale dated 15.01.2016 is not placed on record by the petitioners or the respondents but in any event, it was admittedly executed in favour of M/s. Trinity Infraventures Limited. In terms of Section 202 of the Indian Contract Act, 1872, where an agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. However, the facts brought on record indicate that the agreement of sale was admittedly executed by the principals in favour of M/s.Trinity Infraventures Limited, a corporate body, and P.S.Parthasarathy, the GPA holder, was only a Director therein. Therefore, in his personal capacity, the GPA holder cannot claim any interest in his own right in the property covered by the said agreement of

sale. Surprisingly, though it was not even shown as a party to the Irrevocable GPA dated 15.01.2016, the authorized signatory of M/s.Trinity Infraventures Limited signed on each page of the document under its stamp. Further, though the document is styled as an Irrevocable GPA, it was signed by the eight executants under the caption 'vendors/ executants/principals' and the authorized signatory of M/s.Trinity Infraventures Limited affixed the company's stamp and signed on its behalf under the caption 'vendee'. The import of the document was to name P.S.Parthasarathy as the attorney of the executants to act on their behalf in relation to Court proceedings and proceedings before the authorities in connection with the lands covered by the sanad. Significantly, no details were furnished in the document as to the sanad, but in the schedule to the document, it was stated as under:

'All the rights, title and interest including compensation for lands acquired, being properties under the SANAD given by Mr. Rasheeduddin Khan Bahadur in favour of Hazratha Quadriunnissa Begum dated 11th Ziquada, 1297Hijri / Firman and other relevant Firmans, Orders, Findings upholding the Sanad.'

Be it noted that as per the Merriam-Webster Dictionary, 'sanad' means an Indian Government charter, warrant, diploma, patent or deed; or a letter having the force of an edict or ordinance.

'Sanad' is popularly understood to mean a legal instrument in writing which passes, affirms or confirms an interest or right in property which is signed, attested and delivered. It is commonly associated with transferring title in property.

The Document bearing No.477/Bk-IV/16 dated 21.01.2016, executed in favour of the petitioner company in W.P.No.3103 of 2019, also makes for an interesting reading. This document was executed in the names of the eight principals who executed the Irrevocable GPA but they

are surprisingly shown as being represented by their registered GPA holder, M/s. Trinity Infraventures Limited represented by its authorised signatory, P.S.Parthasarathy, the petitioner in W.P.No.2918 of 2019. The document also records that M/s. Trinity Infraventures Limited already paid the full consideration to the eight principals. The first page of this document demonstrates that the title thereof was shown as 'deed' but it is clear that there was something written before the word 'deed' but was thereafter blocked out with whitener. The first recital in this document begins with the words 'This absolute ____ Deed is made and executed'. However, the word 'sale' is faintly visible between the words 'absolute' and 'Deed' but this word was also obliterated. The document was signed by the authorised signatory of M/s. Trinity Infraventures Limited under its stamp. The document bears various other signs of erasure and insertions, such as the words 'executants' and 'claimants' which were inserted after blocking out the words initially entered therein. Despite all the trouble taken to carry out corrections in this document, the parties stated in page 4 thereof as under:

'NOW THEREFORE THE DEED OF SALE WITNESSETH AS FOLLOWS:-'

The document further records that the parties of the first part, being the eight principals, were the joint owners and possessors of the land admeasuring Ac.20.00 guntas and Ac.5.00 guntas mentioned in Schedules A and B, situated in Survey No.44 of Miyapur Village by way of succession from Hazratha Quadriunnissa Begum Saheba as per sanad dated 11 Ziquada, 20 Hizri and that they were the only legal heirs/successors of late Nawab Khaisaruddin Khan and were alone entitled to execute this deed in favour of the party of the second part. Again, the word 'sale' is faintly visible before the word 'deed' in this sentence. The

Schedule Property A and the Schedule Property B, appended to this document, read as under:

'SCHEDULE PROPERTY – A

All that part and parcel of Land admeasuring an extent of Acres 20-00 Guntas situated in Sy.No.44, Miyapur Village, Serilingampally Mandal, Ranga Reddy District as per the Plan enclosed and bounded by:

NORTH	: Part of Sy.No.44
EAST	: Existing Road and Party of Sy. No. 101 of Miyapur
WEST	: Part of Sy. No. 44
SOUTH	: Part of Sy. No. 44 and Existing Road'

'SCHEDULE PROPERTY – B

All that part and parcel of Land admeasuring an extent of Acres 5-00 Guntas situated in Sy.No.44, Miyapur Village, Serilingampally Mandal, Ranga Reddy District as per the Plan enclosed and bounded by:

NORTH	: Existing Road
EAST	: Part of Sy. No. 44
WEST	: Part of Sy. No. 44 and Road
SOUTH	: Part of Sy. No. 44'

Clearly, the nature of this document is dubious and uncertain inasmuch as it set out to be a sale deed but was converted into a deed whereby the party of the first part gave up the sanad rights in Ac.20.00 guntas and Ac.5.00 guntas, as per Schedules A and B, in Survey No.44 of Miyapur Village, upon receiving Rs.5,00,000/- in full and final settlement. The document further records that the party of the first part put the party of the second part in actual possession of the schedule property.

Both the aforestated documents were cancelled by the Tahsildar, Serilingampally Mandal, Ranga Reddy District, in exercise of power under Rule 243, which was introduced into the Rules framed by the State under the Act of 1908, *vide* G.O.Ms.No.121, Revenue (Regn.I) Department, dated 01.06.2016, with retrospective effect from 02.06.2014. This Rule reads as under:

‘243. The Authority/Officer competent may execute a document cancelling any previously registered document executed by unauthorized persons affecting the interest in immovable properties listed in Section 22-A; and notwithstanding anything contained in the Act or these Rules, the Registering Officer shall register it.’

Though the validity of the aforestated Rule has not been called in question in either of the writ petitions, Sri Vedula Venkataramana, learned senior counsel, would contend that in exercise of power thereunder, it would not be open to the State to unilaterally undertake cancellation of documents to which it was not even a party, without even putting the parties to such document on notice. He would submit that the grant of a Power of Attorney in favour of a party would create an agency in such party by the principal and no third party would have the authority of law or the power to put an end to such an agency. He would further submit that no statutory power has been conferred under the Act of 1908 to unilaterally cancel documents in the manner done by the Tahsildar, Serilingampally Mandal, Ranga Reddy District, in the cases on hand. He would therefore assert that such action on the part of the Tahsildar is utterly high-handed and contrary to law. On facts, he would point out that mere execution of an Irrevocable GPA by eight persons who are claiming rights in the land under the sanad which is presently the subject matter of enquiry before the Supreme Court would not, in any manner, place them in a better position when it comes to establishment of title and the State could not unilaterally cancel such a document. Learned senior counsel would further contend that in the event any private party asserts rights over Government land, be it physically or otherwise, it would always be open to the State to initiate appropriate action, be it under the Land Encroachment Act, 1905, or under the Specific Relief Act, 1963, but in such a situation, the State could not unilaterally extinguish registered

documents to which it was not even a party. He would further assert that in the event the State wishes to resort to any such action, it would have to be represented by an Officer competent to do so in terms of Section 79 CPC and Article 300 of the Constitution and that the Tahsildar would have no competence to resort to such acts on behalf of the State.

Per contra, the learned Advocate General would seek to justify exercise of power by the Tahsildar under Rule 243 of the Rules framed by the State under the Act of 1908. He would point out that the petitioner in W.P.No.2918 of 2019 was charged with serious offences and that the documents executed by and between the parties in these writ petitions were uncertain to say the least. He would point out that if the registered Irrevocable GPA is taken to be one which authorised the GPA holder to sell the immovable property covered thereby, it had to suffer the same stamp duty as a conveyance under Article 42(e) of Schedule 1-A appended to the Indian Stamp Act, 1899 (*for brevity*, 'the Act of 1899'). As admittedly the document in favour of the petitioner in W.P.No.3103 of 2019 was executed on the strength of the Irrevocable GPA dated 15.01.2016, the learned Advocate General would assert that the GPA did not suffer adequate stamp duty and that a fraud was committed upon the Government in this regard. He would point out that as per Section 51 of the Act of 1908, Book 1 maintained in the Registration Office would pertain to all non-testamentary documents relating to immovable property while Book 4 is only a Miscellaneous Register. He would further point out that as per Section 51(3) of the Act of 1908, only documents registered under Clauses (d) and (f) of Section 18 of the Act of 1908 which do not relate to immovable property should be entered in Book 4. He would refer to the merits of the matter in support of his contention that valuable Government land was sought to be knocked away in the guise of these

dubious and malafide documents. He would further point out that Section 79 CPC and Article 300 of the Constitution have no relevance as they pertain to representation of the State in Court proceedings and do not relate to administrative actions. He would further state that in terms of Section 22-A(1)(b) of the Act of 1908, the very entertainment of the documents presented by the petitioners in these cases by the Sub-Registrar, Kukatpally, was in violation of the statutory mandate and that is the reason why criminal action has been initiated against all the parties concerned. He would assert that in terms of Section 22-A(1)(b) of the Act of 1908, read with Rule 26(i)(k)(i) and Rule 243 of the Rules framed thereunder, the action of the Tahsildar in cancelling the mischievous documents executed and registered by the parties in relation to the Government land in Miyapur Village was justified and valid.

In reply, Sri Vedula Venkataramana, learned senior counsel, would assert that even if a document purports to transfer title in property and its executants have no right over the same, it would not confer title, as it is wanting inherently, and unilateral cancellation by a third party of such a document is not the remedy provided in law. He would point out that Section 22-A of the Act of 1908 also does not authorise such unilateral cancellation. He would assert that in the event any fraud has been played by a party to the document in relation to payment of proper stamp duty, recovery of such deficit stamp duty is contemplated by exercise of power under Section 41-A of the Act of 1899 and not by cancellation of the document itself. He would assert that the cases in relation to ownership over the subject lands are still pending consideration before the Supreme Court and the issues pressed into service by the State to justify cancellation of the documents were therefore premature and irrelevant. He would further assert that Section 22-A(1)(b) of the Act of 1908 cannot

be pressed into service as the ownership issue is still not finalised, owing to the Supreme Court being seized of it and therefore, the sale of sanad rights cannot be set aside on the ground of lack of title. He would point out that part of the land was acquired by the authorities for establishing the Metro Rail and the compensation amount payable has been deposited before the competent Civil Court under the provisions of the Land Acquisition Act. He would further assert that this Court would be justified in granting full relief even at the interim stage as the petitioners established over and above a *prima facie* case.

Both sides relied upon case law in support of their respective contentions.

In EDI GA CHANDRASEKHAR GOWD V/ s. STATE OF ANDHRA PRADESH, REP. BY THE PRINCIPAL SECRETARY, REVENUE (REGISTRATION AND STAMPS) DEPARTMENT, HYDERABAD¹, a learned Judge of the common High Court for the States of Telangana and Andhra Pradesh was dealing with unilateral cancellation of an agreement of sale-cum-irrevocable power of attorney by one of the parties thereto. In this context, the learned Judge considered the import and scope of Rule 26(i)(k)(i) of the Rules framed by the State under the Act of 1908. The learned Judge applied Heydon's rule of interpretation of statutes (mischief rule/rule of purposive interpretation of statutes) and observed that in his opinion, Rule 26(i)(k)(i) also applied to an agreement of sale-cum-irrevocable general power of attorney. Referring to the judgment of the Supreme Court in THOTA GANGA LAXMI V/ s. GOVERNMENT OF ANDHRA PRADESH² which held to the effect that there cannot be any unilateral cancellation of registered sale deeds or registration of such

¹ 2017 (3) ALT 420

² (2010) 15 SCC 207

cancellation deeds unless all the parties to the sale deed were also parties to the cancellation deed, the learned Judge opined that the very same logic would apply to cancellation of agreements of sale/powers of attorney. The learned Judge further observed that when registrations invariably require presence of both parties, cancellation of such documents also would have to be done in the presence of both parties or through a Civil Court, and doing so would be in consonance with the principles of natural justice and would curtail unnecessary litigation emanating from *ex parte* registration of cancellation deeds. The learned Judge ultimately held that Rule 26(i)(k)(i) has to be interpreted broadly to cover agreements of sale/executory agreements of sale-cum-irrevocable General Powers of Attorney also.

In RAGAM ENTERPRISES, RANGA REDDY DISTRICT V/ s. STATE OF TELANGANA³, a learned Judge of the common High Court for the States of Telangana and Andhra Pradesh had occasion to deal with Rule 243 of the Rules framed by the State under the Act of 1908. Therein, the petitioners assailed the unilateral cancellation of their registered sale deeds in exercise of power under the said Rule. The learned Judge referred to Rule 26(i)(k)(i) as it stood prior to its amendment under G.O.Ms.No.121 dated 01.06.2016 and also took note of the amended provisions thereof, which came into force with retrospective effect from 02.06.2014. The amended Rule 26(k) reads as under:

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

³ 2018 (2) ALD 77

The learned Judge then referred to Rule 243 which was inserted in the Rule Book under the very same G.O. with effect from 02.06.2014. The learned Judge then observed as under:

'21. In my opinion, conferring power on Revenue officials not only to decide title to property, but also enabling them to execute cancellation deeds annulling previously registered documents between private parties invoking Rule 243 (by approaching Sub-Registrars taking the plea that such previously registered documents affect interest in immovable properties listed in Section 22-A), would amount to transfer of judicial functions entrusted to Courts to cancel registered conveyances/deeds (transferring interest in the immovable property invoking power under the Specific Relief Act, 1963) and this violates the doctrine of separation of powers. The said doctrine states that executive authorities of the State cannot be entrusted with power to adjudicate title or exercise judicial power.'

The learned Judge then noted the settled legal position that a person who is not a party to a document would not be bound thereby and need not even sue for its cancellation as he can always ignore it and observed that the State could always take a stand that the sale deeds executed in favour of the petitioners in that case did not bind it as it was not a party thereto and act accordingly. The learned Judge then noted the fact that no notification had been issued by the State designating the revenue officer in that case as the officer competent to execute documents cancelling the previously registered documents under Rule 243 and held that without such valid authorisation, even if it is assumed that Rule 243 is valid for the sake of argument, the revenue officer concerned could not arrogate to himself the power to execute documents cancelling previously registered documents and get them registered. The learned Judge accordingly granted interim suspension of the cancellation documents making it clear that he was not expressing any opinion on the title of either party.

S.J.S.BUSINESS ENTERPRISES (P) LTD. V/ s. STATE OF BIHAR⁴, PRESTIGE LIGHTS LTD. V/ s. STATE BANK OF INDIA⁵ and DALIP SINGH V/ s. STATE OF UTTAR PRADESH⁶ were pressed into service by the learned Advocate General in relation to the alleged suppression of material facts. However, as this Court proposes to adjudicate the issue arising in these writ petitions on merits rather than on technicalities, the decisions are eschewed from consideration.

Though RAGAM ENTERPRISES, RANGA REDDY DISTRICT³ is only an interim order and would therefore have no binding or precedential value, this Court finds itself in complete agreement with the sentiments expressed therein. History has manifested time and again that Lord Acton's prophecy that power tends to corrupt, and absolute power corrupts absolutely is a stark reality. That is the reason why power must always be clothed with concomitant accountability and lawful fetters. Though it is no doubt true that Section 79 CPC and Article 300 of the Constitution may have no application to the case on hand in relation to execution and registration of a document by an official on behalf of the State, it must be kept in mind that the power conferred by Rule 243 of the Rules framed by the State of Telangana under the Act of 1908 vests the authority/officer with untrammelled power as such authority/officer is empowered to decide as to which previously registered document was executed by unauthorised persons affecting interests in immovable properties listed in Section 22-A of the Act of 1908 and to unilaterally cancel the same. In the light of the grave consequences that would flow from exercise of such power, the State must take care to entrust it to a responsible official of sufficient stature. Admittedly, no notification has

⁴ (2004) 7 SCC 166

⁵ (2007) 8 SCC 449

⁶ (2010) 2 SCC 114

been issued by the State of Telangana naming the authorities/officers competent to exercise power under Rule 243. In the absence thereof, if every State employee is left free to exercise this power, it would lead to a chaotic situation where registered documents between private parties may be cancelled by any and every official of the State Government, be he as low as a Village Revenue Assistant or as high as a Principal Secretary. A Tahsildar would stand no better qualified in this hierarchy. However, as the *vires* of Rule 243 has not been called in question in either of these cases, this Court must necessarily stop short of making any further observations on its validity.

That being said, the facts in the cases on hand must also be given due weight. On the one hand, the Irrevocable GPA dated 15.01.2016 did not clothe the GPA holder with the power to execute deeds of sale or conveyances on behalf of the principals and it also did not create any interest in favour of the GPA holder himself, as the agreement of sale under which such an interest was created, even as per Clause (f) of the Irrevocable GPA, was executed in favour of M/s. Trinity Infraventures Limited and not P.S.Parthasarathy, the GPA holder, who was only a Director of the said company. Therefore, the document had to be treated at best as a simple GPA executed in favour of P.S.Parthasarathy authorising him to undertake certain actions either before Courts or authorities on behalf of the principals. However, this document is not free from uncertainty as it was signed by the authorised signatory of M/s. Trinity Infraventures Limited, which was not even a party thereto, under the caption 'vendee'. It is also not in dispute that in exercise of the power conferred by this Irrevocable GPA dated 15.01.2016, the dubious deed dated 21.01.2016 was executed in favour of M/s. Suvishal Power Gen Limited, Secunderabad, in the names of the principals mentioned in

the Irrevocable GPA dated 15.01.2016. Though efforts were made to obliterate the word 'sale' at most of the places that it occurred in this document, page 4 of the document clearly brought out that it was a deed of sale as it began with the sentence 'NOW THEREFORE THIS DEED OF SALE WITNESSETH AS FOLLOWS'. Further, in the body of this document, it was recorded in no uncertain terms that the parties of the first part, being the eight principals, were the joint owners and possessors of the lands in Miyapur Village detailed in Schedules A and B appended to the document. After manipulation of the document and correction of the original recitals made therein, this document purported to be a conveyance of the sanad rights over the lands detailed in Schedules A and B in favour of M/s.Suvishal Power Gen Limited, Secunderabad. The admitted fact, however, is that the Supreme Court is seized of the issue of ownership of these lands.

As matters stand, the judgments rendered by the Special Court and the High Court are in favour of the Government, holding to the effect that the said lands are Government lands. It is also not in dispute that there is no suspension of these judgments or the findings recorded therein and only an order of *status quo* has been passed by the Supreme Court. Therefore, it was not open to the principals, claiming to be the legal heirs of late Mohammed Khaisaruddin Khan, to assert ownership over the subject lands as has been done by them in the registered deed dated 21.01.2016 executed in favour of M/s. Suvishal Power Gen Limited, Secunderabad. The mischief underlying the execution of the Irrevocable GPA dated 15.01.2016 and the registered deed dated 21.01.2016 is therefore clear and unmistakable. As to what the parties thereto hope to achieve by execution of these documents is not known but the very act of

executing such documents indicates their malafide intention when the issue is yet to be settled by the Supreme Court.

It may also be noted that the GPA holder as per the Irrevocable GPA was P.S.Parthasarathy but the deed dated 21.01.2016 was executed on behalf of the principals by M/s. Trinity Infraventures Limited and not by P.S.Parthasarathy, in his individual capacity. Therefore, this document was not even executed by the person competent to represent the principals. In terms of Section 34(3) of the Act of 1908, the registering officer has to enquire whether or not a document was executed by the person by whom it purports to have been executed and also satisfy himself as to the identity of the person appearing before him and alleging that he has executed the document. As the deed dated 21.01.2016, on the face of it, was not even executed by the authorized GPA holder, it ought not to have been entertained for registration in terms of this statutory provision.

Further, it may also be noted that both the Irrevocable GPA and the deed dated 21.01.2016 were initially kept pending registration and seem to have been processed only thereafter by the Sub-Registrar, Kukatpally. It is in this context that the learned Advocate General would assert that there was collusion between the said Sub-Registrar and the parties leading to a fraud being committed. As criminal proceedings are pending before the competent Court, this Court does not deem it appropriate to enter into that controversy but it is clear that these documents were initially kept pending registration and only registered thereafter, be it for whatever reason. It may however be noted that these documents were entered in the wrong Book, viz., Book No. 4 - the Miscellaneous Register which pertains to moveable property and documents which do not require compulsory registration. However, viewed from any angle, both the documents on hand professed to convey

rights in immoveable property. Be it noted that P.S.Parthasarathy claimed in the writ affidavit that he 'purchased' the sanad rights by way of the Irrevocable GPA! These documents were therefore not to be associated with Book No. 4 at all.

Though it was projected before this Court by Sri Vedula Venkataramana, learned senior counsel, that the Irrevocable GPA authorised the GPA holder to represent the principals in the cases pending before the Supreme Court and cancellation thereof would result in his being denied the right to do so in future, this Court must also take note of the fact that though the document purported to delegate only certain functions upon the GPA holder, the later deed dated 21.01.2016 clearly demonstrated that the Irrevocable GPA is being put to other uses, wholly unauthorised thereunder. It is for the principals to protect their own interests in the pending cases given the fact that the later deed dated 21.01.2016 clearly manifested the malafide actions being undertaken pursuant to the Irrevocable GPA dated 15.01.2016.

Though this Court must agree with the view expressed in RAGAM ENTERPRISES, RANGA REDDY DISTRICT³ that Rule 243 inserted by the State of Telangana in the Rules framed under the Act of 1908 appears to be unconscionable and also hold that exercise of power thereunder by the Tahsildar, Serilingampally Mandal, Ranga Reddy District, cannot be countenanced as the said rule neither lays down any fetters on the exercise of power thereunder nor did the State issue any notification naming the authority/officer competent to exercise such power, this Court cannot also lose sight of the fact that by virtue of the Irrevocable GPA, the dubious deed dated 21.01.2016 came to be executed whereunder rights in identified land, with specified boundaries, in Miyapur Village were sold to M/s. Suvishal Power Gen Limited, Secunderabad. There was also a

recital therein to the effect that possession of the property was also physically delivered! Despite the same, the stamp duty paid on the document was only Rs.100/-. Further, this Court finds merit in the submission that Section 22-A(1)(b) of the Act of 1908 may have application. Be it noted that this provision reads as under:

'22-A. Prohibition of Registration of certain documents—(1) The following classes of documents shall be prohibited from registration, namely:

(a)

(b) documents relating to transfer of property by way of sale, agreement of sale, gift, exchange or lease in respect of immovable property owned by the State or Central Government, executed by persons other than those statutorily empowered to do so.'

It is an admitted fact that as on date, two Courts have held in favour of the Government to the effect that the subject lands in Miyapur Village belong to it and not to private parties. Unless the private parties, who are aggrieved by these findings, succeed before the Supreme Court, there is no question of their asserting any ownership rights now in relation to the said lands. Therefore, such lands would have to be treated as Government lands for the time being and the ownership of the Government in such lands cannot be equated with the 'avowed or accrued interests' that the Government may claim in any land under Section 22-A(1)(e). In the light of the presumption presently attaching to these lands to the effect that they are Government lands, the registering authority must necessarily examine as to whether any document presented in relation thereto has been executed by an authorised or competent officer. In the case on hand, the documents presented in relation to these lands were executed by private parties whose claim of title is bereft of basis as on date. Therefore, the documents ought not to

have been registered at all by the Sub-Registrar, Kukatpally, in the light of Section 22-A(1)(b).

On the above analysis, this Court therefore concludes that though exercise of power by the Tahsildar, Serilingampally Mandal, Ranga Reddy District, under Rule 243 inserted by the State of Telangana in the Rules framed under the Act of 1908, cannot be countenanced on the grounds set out *supra*, setting aside of the cancellation deeds executed and gotten registered by him would allow the parties to the Irrevocable GPA dated 15.01.2016 and the deed dated 21.01.2016 to resort to further dubious transactions in relation to the lands in Miyapur Village over which they claim title, a claim which is still sub-judice before the Supreme Court. The speculative transactions which seem to be ensuing on the strength of the Irrevocable GPA dated 15.01.2016, as is evidenced by the dubious deed dated 21.01.2016, necessarily have to be taken note of by this Court. Such transactions, apart from being speculative, are patently malafide and contrary to public interest as they purport to pre-empt the final adjudication by the Supreme Court as to the title and ownership over the lands in question in the pending cases and seek to create third party interests, innocent or otherwise.

It is well settled that this Court, in exercise of its discretionary equitable jurisdiction under Article 226 of the Constitution, would not set aside an illegality if it has the effect of restoring another illegality (See *G.VENKATESWARA RAO V/s. GOVERNMENT OF ANDHRA PRADESH*⁷).

In *A.P.STATE FINANCIAL CORPORATION V/s. GARRE-ROLLING MILLS*⁸, the Supreme Court observed that the aim of

⁷ AIR 1966 SC 828

⁸ (1994) 2 SCC 647

equity is to promote honesty and not to frustrate legitimate rights and that a Court of equity, when exercising its equitable jurisdiction under Article 226, must so act as to prevent perpetration of a legal fraud. It was further observed that Courts are obliged to do justice by promotion of good faith, as far as it lies within their power, and equity is always known to defend the law from crafty evasions and new subtleties invented to evade law.

Applying the above principle to the cases on hand, this Court has no hesitation in holding that the impugned cancellation deeds, no doubt offend the rule of law, but despite the same they are not liable to be set aside as doing so would only inspire and instigate further malafide and dubious transactions by and on behalf of parties whose rights and claims, if any, are yet to crystallize before the Supreme Court.

The writ petitions therefore fail on this ground and are accordingly dismissed. Pending miscellaneous in both cases shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

26th MARCH, 2019

Note : L.R.Copy to be marked.

(B/ O) SVV