

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.21925 OF 2019

Date: 16.10.2019

Between:

Smt. Dashamma w/o. Sri K.V.Jonathan,
Aged 72 years, occu: Household,
r/o. H.No.12-2-421/5, New Alapathinagar,
Mehdipatnam, Hyderabad.

.....Petitioner

And

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

.....Respondents



The Court made the following:

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ORDER:

Petitioner claims to be the sole and absolute owner of house property to an extent of 519 square yards bearing Municipal Nos.12-2-505/53 (part), 12-2-505/54, 12-2-505/55 (part) and 12-2-505/56 (part) on Plot Nos.53 (part), 54, 55 (part) and 56 (part) in Sy.Nos.14, 15, 367, 368, 384 to 387 of Gudimalkapur, Hyderabad. Petitioner claims that herself and three others, who are adjacent owner pooled their properties and have entered into a Registered Development Agreement-cum-General Power of Attorney, dated 27.07.2015 vide Document No.1582/2015 with the 5th respondent to develop residential complex with stilt + 5 floors. As per the development agreement-cum-GPA, owners to get 45% of the share of the fully developed property. According to the clause-XII (4) of the development agreement, the developer was required to complete construction and handover 45% of the constructed area to the owners within 24 months excluding the grace period of six months. In terms thereof, the time granted to the developer ended on 27.07.2017 with grace period extended to 27.01.2018. Petitioner alleges that developer has not shown any interest in developing the property. According to the petitioner, the building permission application submitted to GHMC was returned. But, 5th respondent did not comply with the objections and has not perused the matter. As per the development agreement, the time granted is over and other co-owners are not cooperating, petitioner caused legal notice on 16.07.2019 informing the 5th respondent that she seeks cancellation of development agreement to the extent

of her share. At the time of initial development agreement, 5th respondent paid 15.00 lakhs as security deposit. Petitioner offered to return the money to the 5th respondent. As there was no response to the legal notice issued, left with no option petitioner submitted deed of cancellation of development agreement-cum-GPA dated 27.07.2015 to the extent of her share. The Sub-Registrar (4th respondent) refused to register the document vide his Refusal Order No.16/2019. The reason assigned for refusal was, the document was executed unilaterally to cancel the previously registered Development Agreement-cum-General Power of Attorney dated 27.07.2015 without signature of the developer, wherein the developer has substantial interest in the subject matter and, therefore, is contrary to Section 202 of Indian Contract Act, 1872. This refusal is challenged in this Writ Petition.

2. Learned counsel for petitioner placed reliance on following decisions:

- i) **A.B.C. Laminart Pvt. Ltd., and another Vs A.P.Agencies, Salem¹** and
- ii) **Satya Pal Anand Vs State of Madhya Pradesh and others²**

3. Learned counsel for petitioner, by placing reliance on Rule 26 (i)(k)(i) of the Telangana State Rules under the Registration Act, 1908 (for short, 'the Rules'), contended that this Rule only deals with unilateral cancellation of concluded sale transaction and, therefore, is not applicable to the Development Agreement-cum-General Power of Attorney and thus it is permissible to go for

¹ (1989) 2 SCC 163

² (2016) 10 SCC 767

unilateral cancellation of such agreement and, therefore, the reason assigned by the Sub-Registrar is *ex facie* illegal and amounts to arbitrary exercise of power and authority and contrary to the mandate of the Rule.

4. The said contention is stated to be rejected in view of the decision of the Division Bench of this Court in the judgment rendered in W.P.Nos.20683 of 2012 and 2192 of 2013 dated 07.04.2016.

5. Briefly noted, in **Vasudeva Realtors Private Limited v. Government of Andhra Pradesh**³, learned single Judge of this Court held that provision in Rule 26 (i)(k)(i) of the Rules is applicable to unilateral cancellation of development agreement-cum-general power of attorney. Another learned single Judge of this Court disagreed with the view taken in **Vasudeva Realtors** (supra). According to the learned single Judge, as Rule does not contemplate the prohibition against presentation of deed of cancellation of development agreement-cum-general power of attorney, the view taken in **Vasudeva Realtors** is not correct and referred the decision to the Division Bench to settle the question. On extensive consideration of the issue, Division Bench answered the reference upholding the view taken by the learned single Judge in **Vasudeva Realtors**. In terms thereof, unilateral cancellation of Development Agreement-cum-General Power of Attorney is not permissible. The operative portion of the order of the Division Bench reads as under:

³ 2012 (6) ALD 178

“29. Thus, having regard to the law laid down by the Supreme Court and provisions of the Act, in our opinion, whenever registered documents such as Development Agreement-cum-GPA, is sought to be cancelled, execution and registration of such a document/deed must be at the instance of both the parties i.e., bilaterally and not unilaterally. If a deed of cancellation is allowed to be registered without the knowledge and consent of other party to the deed/document, sought to be cancelled, such registration would cause violation to the principles of natural justice and lead to unnecessary litigation, emanating there from. In any case, as stated earlier, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration without the signatures of both the parties to the document, the deed cannot be entertained. Moreover, if the Registrars are allowed to entertain a deed of cancellation for registration without signatures of both the parties to the document sought to be cancelled, such power would tantamount to conferring the power to decide disputed questions between the parties. No party to the document would ever approach for cancellation of registered document unilaterally unless there is a dispute with the other party in respect of the subject matter of the document.

30. In the result, we answer the question in the negative. In other words, ***we hold that registration and unilateral cancellation of documents such as Development Agreement-cum-General of Power of Attorney under the Registration Act is not permissible in law.***”

(emphasis supplied)

6. The decisions relied upon by the learned counsel for petitioner have no bearing in the facts of this case.

7. In view thereof, the contention of learned counsel for petitioner that the decision of Sub-Registrar in refusing to register the document on the ground that it was executed unilaterally and

does not contain the signature of the developer for cancellation of previously registered development agreement-cum-general power of attorney cannot be said as illegal warranting interference. In the facts of this case, it is also appropriate to notice that the development agreement was jointly executed by four owners of adjacent properties by pooling their respective properties to built a common residential complex. Therefore, the issue of *inter se* relationship between the owners and the developer is a common issue concerning all the owners of property and the developer. Further, cancellation of a portion of the development agreement may have an impact on the other owners also. They are not parties to the cancellation deed.

8. Thus, Writ Petition is dismissed. However, it is open to petitioner to work out her remedy as available in law, if so advised. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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