

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

WRIT PETITION NOS. 26137, 22303, 26207 & 26236 of 2019

W.P.No.26137 of 2019:

Between:

T. Ganesh, S/o Ramaiah, aged about 53 years,
Occ: Agriculture, R/o Pedda Shapur Village,
Shamshabad Mandal, Ranga Reddy District.

.....Petitioner

and

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

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 23.01.2020

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

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.... Respondents

!Counsel for the petitioners : Sri A.Venkatesh, counsel for
petitioners in W.P.Nos.26137,
26207 and 26236 of 2019;
Sri Krishna Mohana Sikharam
counsel for petitioners in
W.P.No.22303 of 2019

Counsel for the Respondents : Govt.Pleader for Revenue

<Gist :

>Head Note:

? Cases referred:

MANU/AP/0582/2008
MANU/AP/0852/2008
(2009) 4 SCC 193
WP 4099 and 4229 of 2013 dt 12.2.2013
MANU/SC/1222/2013
(2012 (4) ALD 142)
(2008) 13 SCC
MANU/AP/0380/1993

HON'BLE SRI JUSTICE P NAVEEN RAO

Writ Petitions Nos.26137, 22303, 26207 & 26236 of 2019

COMMON ORDER:

Heard Sri A.Venkatesh, learned counsel for petitioners in W.P.Nos.26137, 26207 and 26236 of 2019 (hereinafter referred to as counsel for petitioners), and Sri Krishna Mohana Sikharam learned counsel for petitioners in W.P.No.22303 of 2019/ respondent no.3 in W.P.Nos.26137, 26207 and 26236 of 2019 (hereinafter referred to as counsel for respondent), and learned Government Pleader for Revenue for official respondents.

2. In W.P.Nos.26137, 26207, 26236 of 2019 petitioners are aggrieved by action of registering authority in not registering and receiving the sale deeds dated 01.08.2018, each for Ac.1.00 guntas in Sy.No.133 of Kothwalguda village. In W.P.No.22303 of 2019, petitioners are opposing release of pending documents concerning land in Sy.Nos.130, 131 and 133 of Kothwalguda village. In W.P.Nos.26137, 26207, 26236 of 2019 land to an extent of Acs.3.00 guntas in Sy.No.133 of Kothwalguda village is only in issue.

3. Facts as averred by petitioners in W.P.Nos.26137, 26207, 26236 of 2019 would disclose, the petitioners purchased Ac.1.00 guntas each in Survey No.133, situated in Kothwalguda Village, Kavvaguda Gram Panchayat, Shamshabad Mandal, Ranga Reddy District through Respondent No.4. Respondent No.3 is the owner of the land and respondent No.4 is holding power of attorney executed by respondent no.3. Accordingly, sale deeds with respect to such sale on individual extents of land executed by Respondent

No.4 were presented before the Sub Registrar, Shamshabad/ Respondent No.2 for registration and release of the said documents. These Writ petitions are filed aggrieved by the inaction of the respondent no.2 in registering and releasing the sale deeds dated 01.08.2018 executed between the petitioners and their vendors.

4.1. According to learned counsel for petitioners the action of Respondent No.2 in refusing to register the document on the ground that O S No. 1260 of 2017 is filed in the Court of XIII Additional District and Sessions Judge RR District at L.B. Nagar by Respondent No. 3 praying to cancel Agreement of Sale-cum-General Power of Attorney with possession dated 17.09.2014 executed in favour of respondent no.4 as illegal; would amount to arbitrary exercise of power and authority.

4.2. According to learned counsel, there was no interlocutory order of restraint against registration of deed of conveyance in the said suit at the time of presentation of the documents that could have impeded the execution of the Sale Deed in favour of petitioners. He would further urge that the Hon'ble XIII Additional District and Sessions Judge RR District at L.B. Nagar granted interlocutory orders of *status quo*, to be maintained by the parties, on 12.6.2019 whereas the said Sale Deed dated 01.08.2018 was executed prior to the interlocutory order of 12.06.2019. He would submit that based on a caution notice/legal notice dated 01.08.2018 issued to Respondent No.2 by Respondent No.3, documents could not have been refused for registration and release the said Sale Deeds. Even the interlocutory order only

applies to protection of the property by both the parties until the disposal of the suit.

4.3. It is further contended that as the Registering Authority is not a party to the suit, the injunction order dated 12.6.2019 in I A No. 1324 of 2017 is not binding on the Registering Authority and therefore, the Registering Authority cannot refuse to register the documents presented before him on the ground that injunction order is operating.

4.4. Learned counsel for petitioner placed reliance on the following decisions:

Thummalachetty Builders and Developers Pvt. Ltd v. Commissioner and Inspector General of Stamps and Registration and ors¹; Tirumala Venkata Reddaiah Chowdary and others Vs Potla Krishna Prasad and others²; Kaliaperumal Vs Rajagopal and another³; Parasa Nagamalleswara Rao Vs The Sub Registrar, Eluru and another⁴; and Union of India and others Vs Ashok Kumar Aggarwal⁵.

5. *Per contra*, learned Government Pleader would submit that in view of S.O.219 (b), which governs procedure to be followed by registering authorities, whenever the Registering Authority is informed that on the same property which is the subject matter of document presented before the Registering Authority, competent Court granted injunction/ restraint order, he cannot register and release the document. He would submit that it is not necessary

¹ MANU/AP/0582/2008

² MANU/AP/0852/2008

³ (2009) 4 SCC 193

⁴ WP 4099 and 4229 of 2013 dt 12.2.2013

⁵ MANU/SC/1222/2013

that Registering Authority should be a party to the suit. He would further submit that the two decisions relied upon by learned counsel for petitioners are no more good law in view of the subsequent decision of this Court in **Venkannagiri Naveen Rao v. Joint-Registrar Sangareddy and Anr**⁶. He also submitted that the Commissioner issued clarification orders on 10.3.2010 and in view of the same the action of the Registering Authority is valid.

6. Learned counsel Sri Krishna Mohana Sikharam for respondents further submitted that in view of injunction order granted by trial Court, registering authority cannot be compelled to process the documents presented for registration and no mandamus can be issued directing registering authority to register and release the document when civil litigation is pending on the same property.

7. The issue for consideration is whether action of Sub Registrar/2nd respondent in refusing to process the documents presented before him which cover Acs.3.00 guntas of land in Survey No.133 of Kothwalguda village on the ground that trial Court granted injunction is justified ?

8. It is not in dispute that by the time documents were presented for registration, there was no injunction granted by trial Court. However, document was not processed and released before injunction order was granted, and as of now injunction order is in force.

⁶ (2012 (4) ALD 142)

9. The role of Registering Authority is to process the document presented before him for registration in accordance with Indian Stamp Act 1899 and the Indian Registration Act, 1908. While processing the document, it is not open to him to go into minute details on title to property or other aspects of the transaction. He has to scrutinize the document as per the provisions of the Stamp Act, Registration Act, the Registration Rules and Standing Orders. His role is confined to authentication of a transaction between two parties present before him. He is not concerned with sanctity of the said transaction. In view of Section 17 read with Section 49 of the Registration Act, any transaction on immovable property whose value is 100/- and more has no legal validity if it is not registered. By virtue of registration of a document, the world is informed that two parties to the transaction are bound by the terms of the document. If transaction relates to a landed property and is a deed of conveyance it would be amounting to vendor accepting conveyance of right vested in him on the property to vendee.

10. The Registration Act and the Rules made under the Act are silent on the course to be adopted by Registering Authority if litigation is pending on the landed property on which a document is presented before him for registration. The Government notified standing orders which guide the Registering Authority to process the document presented before them. For these cases, S.O. 219 (b) is relevant.

11. The Standing Order 219 reads as follows:

“An order restraining a person from alienating certain property does not operate as a prohibition to the

registering officer against the registration of a document executed by such person effecting such property,

(b)“If the Andhra Pradesh High Court or any other Civil Court restrains a person from alienating a property and if such orders are brought to the notice of the Registering Officer or served on the Registering Officer, the Registering Officer is estopped from going ahead with the Registration”.

12. The scope of this standing order and the effect of injunction order on processing a document presented before Registering Authority, when he is not a party, was considered by this Court in the following decisions:

12.1. In **Thummalachetty Builders and Developers Pvt. Ltd** (supra), this Court held as under:

“17. Though the learned Assistant Government Pleader for Revenue representing respondent No. 3, sought to justify the order of respondent No. 3 and respondent No. 1, refusing to register the document, by placing reliance on S.O. No. 219, which prohibited the Registering Officer from entertaining documents for registration when there is an injunction order granted by the competent Civil court or the High Court, the fact remains, the said S.O. 219 can be pressed into service only when there is an order of injunction granted by the competent civil Court or High Court against the Registering Officer from entertaining any document for registration in respect of the property covered by its orders. In the instant case, neither the petitioner nor the Registering Officer has been made party to the suit in O. S. No. 455 of 2005 on the file of 1 Additional Senior Civil Judge, Ranga Reddy District, and the injunction orders dated 26-4-2005 granted therein operated only against the parties to the said suit, and not to any other person, much less the Registering Officer. This apart, it is brought to the notice of the Court by the learned Counsel for the petitioner that the said suit was dismissed for default on 1-4-2008. In fact, under the provisions of the Registration Act, the Registering Officer, cannot refuse to register a document when presented for registration, except in the case, the property sought to be registered under the document, is covered by the properties mentioned in Section 22A of the Registration Act, and in the event, the Registering Officer, refuses to register a document, he has to pass an order under Section 71 of the Registration Act by recording his reasons for refusal to register, which is appealable under Section 72 of the Registration Act, and any person aggrieved by the order passed in the appeal by the appellate authority, has to approach the competent Civil Court under Section 77 of the Registration Act.”

12.2. The same principle is reiterated in **Tirumala Venkata Reddaiah Chowdary and Ors.** (supra).

“10. In the instant case, though the petitioners filed suit in O.S. No. 495 of 2008 on the file of the Junior Civil Judge, Vijayawada, and obtained interim injunction orders in IA. No. 269 of 2008, the fact remains, they obtained such an order only against the respondent No. 1, and not respondent No. 2-Sub Registrar. S.O. 219 of the A.P. Registration Manual, prohibits the Registering Officer from registering documents only when there is an order of injunction operating against him. The petitioners, admittedly, leave alone obtaining orders of temporary injunction against respondent No. 2-Sub Registrar, have not even made him party-defendant in the said suit. The petitioners having not made respondent No. 2-Sub Registrar as party-defendant in the suit filed by them, and there being no order of interim injunction granted operating against them by the civil Court, cannot seek directions to respondent No. 2-Sub Registrar not to register any documents, in respect of the property covered by the orders in I.A. No. 269 of 2008 in O.S. No. 495 of 2008, and no exception can be taken to the action of respondent No. 2 in taking steps to stop the registration of the property, particularly when under the provisions of the Registration Act, the Registering Officer, is not empowered to refuse to register a document when presented for registration, except in the case, the property sought to be registered under the document, is covered by any of the properties mentioned in Section 22-A of the Registration Act, and in the event, the Registering Officer, refuses to register a document, he has to pass an order under Section 71 of the Registration Act by recording his reasons for refusal to register, which is appealable under Section 72 of the Registration Act, and any person aggrieved by the order passed in the appeal by the appellate authority, has to approach the competent civil Court under Section 77 of the Registration Act. Therefore, no directions can be given to the registering officer not to register the documents to be presented in respect of the land in question.”

12.3. This very issue has come up for consideration in **Venkannagiri Naveen Rao**. Learned single Judge considered earlier view of this Court in **Tirumalashetty Builders** followed in **Tirumala Venkata Reddaiah Chwodary**, extracted above and held as under:

“5. Once it emerges that an order of temporary injunction restraining a specific individual from executing sale deed or otherwise transferring the properties has been passed by a Court of competent jurisdiction, the question of the Sub-Registrar admitting the documents executed by the defendants for registration, does not arise. For the injunction to be operative, it is not necessary that the Sub-Registrar must be a party to the suit, nor the purchasers. It is enough if the persons who are executing the documents are made as parties to the suit and to the Interlocutory applications.

6. The petitioners relied upon an observation made by this Court in *Thummlachetty Builders and Developers (Pvt) Ltd's case* (supra). This Court did not held that an order of

temporary injunction passed by a civil Court does not operate, unless the Sub-Registrar concerned is not made a party. It is only in the course of narration of facts that the Court was observing that neither the petitioners in the writ petition nor the Sub-Registrar were made parties to the suit in which an order of temporary injunction was granted. The principal ground which weighed with the Court in refusing the relief in the writ petition was that the suit, in which an order of temporary injunction was granted at one point of time, has been dismissed for default.”

12.4. In **Venkannagiri Naveen Rao**, this Court observed that there was no proposition laid down in **Tirumala Shetty Builders** that an order of injunction passed by a Civil Court would not operate if the sub-registrar was not made a party, but instead as a narration of facts that was recorded in the order. The Court also noted that in the said case Court also noted that ultimately the suit where temporary injunction was granted was also dismissed.

13. The decision in **Venkannagiri Naveen Rao** is later to the above two decisions and view taken by learned single Judge stood the test of times. The said decision is binding on me. I am not persuaded to take a different view. I am in respectful agreement with the view expressed by learned single Judge in **Venkannagiri Naveen Rao**.

14. When a property is subject matter of a case pending before competent Court and such Court passed restraint order, no transactions should be permitted to frustrate the litigation and affect the rights of a party to the litigation. It would also prevent vexatious litigation and third party claims. Though registration of a deed of conveyance cannot vest a better title on the vendee than what was vested in the vendor and transactions made during the pendency of a suit would abide the result of the suit, it is

unfortunate but true that registered deed of conveyance is made basis for all further claims; transactions; changing physical features etc. Further, it is always open to a party to the litigation to file appropriate application before the Court which granted injunction to seek modification/ vacation of the order/ to permit to undertake conveyance of the property in issue.

15. Registering Authority has no role in a dispute between two parties on a landed property and parties are free to agitate/ resolve their disputes in the court of law. Registering Authority cannot even be a proforma party to a civil litigation where no relief is sought against him. No declaration can be sought against him. He is only required to discharge his statutory function vested in him under the Registration Act while processing a document presented before him. He does not assess the validity of claims of parties to the document. His role is limited to verifying compliance of Stamp Act and the Registration Act to the document presented before him. As a statutory authority vested with power to deal with registration of documents presented before him, once he is informed that competent Court granted injunction concerning the subject property, he should not undertake processing of the document and should leave it to that Court to regulate the proceedings in the dispute. In view thereof, it is no more open to petitioners to contend that as Registering Authority is not a party to the suit, the injunction order cannot be an obstacle to process the document.

16. The Standing Order 219 (b) also sub-serves larger public interest. It seeks to prevent vexatious litigation flowing out

of registration of a document and such course cannot be held as amounting to illegal exercise of power. The stark reality is registration of a document concerning immovable property spins off multiple transactions and generates third party claims/litigation. In the present context of long pending litigation in Courts, it is helping the fraudsters to create multiple transactions and spinning off more litigation. All this can be averted if the registering authority exercises his restraint. All this spin off can be averted if registration of the document, concerning a property which is subject matter of a case pending in competent Court and that Court granted injunction, is denied. It may be true that the litigation instituted on the property is vexatious/fraudulent and intend to blackmail/harass a true owner of the property and deprive him from enjoying the property, but this is for the competent Court to assess and to pass appropriate orders. It is no part of the registering authority's job to go into those aspects.

17. The Commissioner and Inspector General of Registration and Stamps AP Hyderabad in his circular memo dated 10.03.2010 issued following clarification:

"Instances have come to the notice of the Commissioner & Inspector General of Registration and Stamps, that in certain cases the Sub Registrars registered documents when an injunction order issued by the Civil Court is in force. The explanation given is such cases by the Sub Registrars is that the injunction is given to the other parties and not to the Sub Registrar. The contention of the Sub Registrar is not correct. The instructions issued in the reference 1st and 2nd cited are reiterated. The Standing Order No.219(b) speaks as follows: (b) If the Andhra Pradesh High Court or any other Civil Court restrains a person from alienating a property and if such orders are brought to the notice of the Registering Officers or served on the Registering Officer. The Registering Officer is estopped from going ahead with the Registration". Therefore, all the Registering Officers are requested to follow the instructions issued the said standing Order scrupulously."

18. While in **Venkannagiri Naveen Rao** this Court interpreted the standing order as it stood, the above instructions reiterate earlier instructions and makes the purpose of the SO clear.

19. The next issue for consideration is what is the effect of Circular Memo ? Does it purports to nullify law laid down by the Court ?

20. Learned counsel for petitioners vehemently contended that no circular memo and administrative instruction can nullify law laid down by the High Court and in view of clear enunciation of law by this Court in **Tirumalashetty Builders** followed in **Tirumala Venkata Reddaiah Chwodary**, the Circular Memo dated 10.03.2010 has no legal sanctity and cannot be relied upon. In support of this contention, he placed reliance on the decision of Supreme Court in **CCE v. Ratan Melting & Wire Industries**⁷.

21. In **Venkannagiri Naveen Rao**, learned single Judge considered earlier decisions and has held that in view of S.O.219 (b), when an injunction order is issued by competent Court imposing restraint on alienation, it is not necessary that Registering Authority should be a party to the suit and by referring to said injunction order, he can refuse to register deed of conveyance.

22. Before considering the contention of learned counsel for petitioners on validity of circular instructions dated 10.03.2010, it is necessary to clear the aspect of competence to

⁷ (2008) 13 SCC

issue such circular instructions. Power to issue circular instructions by the Commissioner is traceable to Section 69 of the Registration Act. To the extent relevant Section 69 reads as under:

“69. Power of Inspector-General to superintend registration offices and make rules.—

(1) The Inspector-General shall exercise a general superintendence over all the registration offices in the territories under the [State Government], and shall have power from time to time to make rules consistent with this Act —

23. Scope of power to issue such instructions was considered by the Division Bench of this Court in **D.Ratnasundari Devi and Others Vs. The Commissioner of Urban Land Ceiling and others**⁸. Division Bench held :

“4. After hearing counsel on both sides and perusing the judgment of our learned brother Eswara Prasad, J., in W.P.8421/1991, referred to above, we are not in a position to agree with the view expressed in the above judgment that the Inspector General of Registration has no power to issue directions of general nature to the Registering Officers in the State. ***We make it clear that Section 69 confers on the Inspector General of Registration, the power of general superintendence over all registering officers in the territory under the State Government. We are of the opinion that the power of general superintendence conferred on the Inspector General of Registration in such general terms enables him to issue directions to the registering officers in the matter of registration of particular type of documents in respect of particular type of lands and in respect of his obligation to register or to refuse registration in cases of particular types of disputes involved in the transactions in question.*** We therefore overrule the judgments in W.P.8421/91 dt.5-10-91 and W.P.15308/91 dt.10-12-1991 on this point.”

(emphasis supplied)

24. In view of the law laid down by the Division Bench, it is beyond pale of doubt that the Commissioner is competent to issue instructions on various aspects of registration of documents by registering authorities.

⁸ MANU/AP/0380/1993

25. At this stage, it is apt to consider two decisions relied by learned counsel for petitioners on effect of circular instructions/clarifications on an issue decided by the Court.

25.1. In **Ratan Melting & Wire Industries**, on legality of circular instructions, Supreme Court held as under:

*“7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. **So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.**”*

(emphasis supplied)

25.2. In **Ashok Kumar Agarwal**, Supreme Court noted in paragraph-38 as under:

*“38. The law laid down above has consistently been followed and **it is a settled proposition of law that an authority cannot issue orders/ office memorandum/executive instructions in contravention of the statutory Rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions.** (vide: **Union of India and Ors. V. Majji Jangamayya and Ors.** MANU/SC/0470/1976: AIR 1977 SC 75; **P.D. Aggarwal and Ors. V. State of U.P. and Ors.** MANU/SC/0671/1987 : AIR 1987 SC 1676; **Paluru Ramkrishnaiah and Ors. V. Union of India and Anr.** MANU/SC/0405/1989 : AIR 1990 SC 166; **C.Rangaswamaiah and Ors. V. Karnataka Lokayukta and Ors.** MANU/SC/0441/1998 : AIR 1998 SC 2496; and **JAC of Airlines Pilots Association of India and Ors. V. The Director General of Civil Aviation and Ors.** MANU/SC/0543/2011 : AIR 2011 SC 2220).”*

(emphasis supplied)

25.3. There is no quarrel with the above proposition of law. At this stage, it is also appropriate to note further observation of Supreme Court in paragraph-40 of decision in **Ashok Kumar Aggarwal**. It reads as under:

“40. In Nagaraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal and Anr. MANU/SC/0346/1991 : AIR 1991 SC 1507, this Court has explained the scope of circulars issued by the Ministry observing that it is binding on the officers of the department particularly the recommendations made by CVC.”

26. It is thus safe to assume that circular instructions can be issued to fill the gaps in rules governing the subject or where no rule is made on the subject or to clarify an earlier administrative order/instruction and all circular instructions are binding on the subordinates. These circular instructions are not binding on the Courts of law and the Courts have to interpret relevant provision of the Act, the Rules/the standing orders/in a given case circular instructions. When a decision is made by the Court interpreting them and proposition is laid down by the court on such interpretation, subsequent circular instructions on the same aspect purporting to clarify an earlier order/instruction/scope of a Rule are not valid in law and law decided by Court would prevail on the same subject notwithstanding such clarification.

27. However, in **Venkannagiri Naveen Rao** the earlier view taken by another learned single Judge, relied by learned counsel for petitioners, was considered and held that there was no opinion expressed on the issue whether an injunction order granted by competent court would bind a registering authority even if he is not a party. In **Venkannagiri Naveen Rao**, this Court held that it is not necessary that registering authority needs to be a party to a litigation where injunction is granted by competent Court for him to refuse to register a document concerning the property on which injunction was granted. Thus, there is no contrary decision on the scope of S.O. 219(b). Therefore, the S.O. 219 (b) and orders of the Government/Circular instructions of the

Commissioner and Inspector General of Registration and Stamps cannot be said as inconsistent with view taken by this Court and the Registering Authority can rely upon S.O. 219(b) to refuse to register a document when he was informed that competent Court granted injunction order on the same property.

28. Further, circular Memo dated 10.3.2010 only directs compliance of S.O.219 (b). It only refer to earlier instructions issued in G.O.Ms.No.497 Revenue (Regn.I) Department dated 07.04.2003 and G.O.Ms.No.6290 Revenue (Regn.I) Department dated 28.09.2003 and directs the subordinate officers to follow them scrupulously. Even without this Memo, on a plain reading of S.O.219 (b), it is apparent that Registering Authority can refuse to register a document, if inter parties, litigation is pending before competent Court and that Court imposed restraint.

29. The issue can be looked into from another perspective also. Wide amplitude of powers are vested in the registering authority in dealing with document presented before him for registration. In the process of discharge of his authority, he also has wide discretion to deal with the matter arising before him. In exercise of his powers, if original authority takes a decision, Act provides remedy of appeal to aggrieved person. Such decision can also be tested before this Court in a petition under Article 226 of the Constitution of India.

30. In a writ petition assailing the decision of quasi-judicial authority this Court undertakes judicial review of such decision within well laid down parameters of judicial review. Not every decision of administrative authority is amenable to judicial

review. The writ Court do not sit in appeal over such decisions. Perforce, an administrative authority must have discretion to decide an issue brought before him. He must have '*a play in the joints*'. But, he must exercise such discretion objectively and in valid exercise of power vested in him. Ordinarily, writ Court do not nullify a decision made by quasi-judicial authority, more so, if such decision is made in valid exercise of discretion vested in him unless such decision is proved to be perverse, exercised in a biased manner, without jurisdiction/in excess of jurisdiction and competence. Though a decision tested before the Court may not attract any of the above infirmities, but it can still be nullified if it was made in arbitrary exercise of power. In other words, in similar circumstances same authority entertained the document, registered and released, but refused to entertain and release the document in issue. In such a case, if no justification is shown to take such a dramatically opposite view, it can be declared as amounting to arbitrary exercise of power. One other parameter for judicial review of administrative action/decision is unguided power.

31. The following two decisions succinctly put the scope of judicial review of administrative decisions.

32.1. In **Commissioner of Police v. Syed Hussain**⁹, dealing with scope of judicial review of administrative action, Supreme Court held as under:

“10. It is one thing to say that order passed by the statutory authority is wholly arbitrary and thus violative of Article 14 of the

⁹ (2006) 3 SCC 173

Constitution and thus liable to be set aside, but it is another thing to say that the discretionary jurisdiction exercised by such authority should not ordinarily be interfered with by a superior court while exercising its power of judicial review unless one or the other ground upon which and on the basis whereof the power of judicial review can be exercised, exists.

11. It is not the contention of the learned counsel for the respondent that the impugned order of punishment smacks of arbitrariness so as to attract the wrath of Article 14 of the Constitution. The jurisdiction of the disciplinary authority to impose such punishment is also not in question.

12. Thus, even assuming that a time has come where this Court can develop administrative law by following the recent decisions of the House of Lords, we are of the opinion that it is not one of such cases where the doctrine of proportionality should be invoked. In *ex p Daly* [(2001) 3 All ER 433 (HL)] it was held that the depth of judicial review and the deference due to the administrative discretion vary with the subject-matter. It was further stated: (All ER p. 447, para 32)

It may well be, however, that the law can never be satisfied in any administrative field merely by a finding that the decision under review is not capricious or absurd.

As for example in *Huang v. Secretary of State for the Home Deptt.* [(2005) 3 All ER 435] referring to *R. v. Secretary of State of the Home Deptt., ex p Daly* (supra), it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than *Wednesbury* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation.*, (1947) 2 All ER 680 : (1948) 1 KB 223 (CA)], but involves a full-blown merits judgment, which is yet more than [what] *ex p Daly* (supra) requires on a judicial review where the court has to decide a proportionality issue.

13. It is, therefore, beyond any doubt or dispute that the doctrine of proportionality has to be applied in appropriate case as the depth of judicial review will depend on the facts and circumstances of each case.

31.2. In **Lalit Popli v. Canara Bank**¹⁰, Supreme Court delineated scope of judicial review as under:

¹⁰ (2003) 3 SCC 583

“17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.”

33. In the cases on hand, in exercise of discretion vested in him, the registering authority refused to register and release the document on the ground that injunction order of civil Court in a pending suit is operating, where the subject property is the suit schedule property. Such discretion is guided by S.O. 219(b), Government orders, circular instructions of the Commissioner and declaration of this Court in **Venkannagiri Naveen Rao**. Therefore, it cannot be said that such discretion is unguided. Further, it cannot be said that discretion was not validly exercised and is illegal. No patent illegality vitiating the decision of registering authority is noticed to interdict the said decision in exercise of power of judicial review.

34. Learned counsel for petitioners also placed reliance on the decision of Supreme Court in **Kaliaperumal** (supra) in support of his contention that title can validly pass on even if part sale consideration is paid. No opinion is expressed on this aspect since inter parties O.S.No.1260 of 2017 is pending in the Court of XIII Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar.

35. For all the aforesaid reasons, W.P.Nos.26137, 26207, 26236 of 2019 are dismissed.

36. In view of the dismissal of W.Ps.26137, 26207 and 26236 of 2019, no orders need be passed in I.A.No.2 of 2019 in W.P.No.22303 of 2019 to amend the prayer and the same is accordingly dismissed. In view of the dismissal of W.P.Nos.26137, 26207 & 26236 of 2019, W.P.No.22303 of 2019 is disposed of. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 23.01.2020

tvk/kkm

L.R.Copy to be marked: Yes



HONOURABLE SRI JUSTICE P.NAVEEN RAO



W.P.NOs.26137, 22303, 26207 & 26236 of 2019

Date: 23.01.2020

Tvk/kkm

