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

% **Date of decision: 15th December, 2021**

+ **W.P.(C) 8076/2020, CM APPL. 26256/2020(Stay)**

GUNMALA JAIN Petitioner

Through: **Mr. Abhinav Kaushik, Adv.**

versus

G.N.C.T OF DELHI & ORS. Respondents

Through: **Mr. Santosh Kumar Tripathi, SC(C),
GNCTD with Mr. Arun Panwar and
Mr. Vrinda Singh, Adv.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. The petitioner challenges the validity of a show cause notice issued by the District Magistrate, the second respondent herein. That notice calls upon the petitioner to show cause why sale deeds executed and duly registered be not cancelled on the allegation that the instruments came to be registered by concealment of material facts. While the respondents in the counter affidavit have referred to facts in support of the allegation that material particulars were not disclosed before the instruments in question was presented for registration, the principal question which falls for determination would be as to whether jurisdiction can be recognized to have the jurisdiction or authority to issue the notice impugned.

2. Before proceeding to do so, it becomes pertinent to briefly note that the allegation of concealment of facts rests on the competence of M/s G.D.

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Rathi Steels to have conveyed the property in favour of the present petitioners. The petitioners in the writ petition have referred to the litigation which ensued between their vendor and DDA and to certain orders passed by the Supreme Court in **M.C. Mehta Vs. Union of India**¹ and more particularly the order of 10 May 1996 passed in I.A. No. 22 moved in the aforesaid writ petition. According to the petitioners, their vendor derived title to the property pursuant to the orders passed in execution proceedings and the order of 26 February 2013 passed therein. The sale deed in favour of the petitioner came to be executed by M/s G.D. Rathi Steels Ltd. and was duly recorded by the Sub-Registrar concerned and accorded Registration No.1,072 in Book No.1 Vol. No. 2,951 on 27 February 2021. It is only after the aforesaid instrument had been duly registered that the impugned show cause notice came to be issued.

3. The Court firstly notes that the Registration Act of 1908 confers no authority or power upon the District Magistrate to initiate proceedings for cancellation of an instrument which has come to be duly registered. Significantly, the show cause notice impugned here has not even been shown to have been penned by the District Magistrate. The notice is also not expressed to have been issued pursuant to an order made by the District Magistrate or for and on behalf of the competent authority. The notice is merely endorsed by a Reader stated to be attached to his office.

4. Notwithstanding the above, the Court notes that the respondents have miserably failed to establish any jurisdiction or authority vesting in the

¹ (1996) 4 SCC 351

District Magistrate to seek cancellation of a document which has come to be registered in terms of the provisions made in the 1908 Act. It becomes pertinent to note that the Act specifies the enquiries to be undertaken and the duties to be discharged by registering authorities before an instrument is registered under the provisions of the statute. Those provisions do not contemplate the registering authority delving into questions of the capacity or entitlement of parties to affect a transaction in relation to the subject matter of the instrument. The Act does not empower the registering authority to undertake an enquiry with respect to the legal validity of the contract which may form the subject matter of the instrument presented for registration. The function of the registering authority is clearly administrative. This aspect was duly explained by the Supreme Court in **Satya Pal Anand Vs. State of Madhya Pradesh & Ors.**² as under:-

“36. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the extinguishment deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other party to the deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the 1908 Act enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the 1908 Act can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the civil court.

² (2016) 10 SCC 767

41. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In *Park View Enterprises [Park View Enterprises v. State of T.N., AIR 1990 Mad 251 : 1989 SCC OnLine Mad 273]* it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.

43. No provision in the State of Madhya Pradesh enactment or the Rules framed under Section 69 of the 1908 Act has been brought to our notice which is similar to the provision in Rule 26(k)(i) of the Andhra Pradesh Registration Rules framed in exercise of power under Section 69 of the 1908 Act. That being a procedural matter must be expressly provided in the Act or the Rules applicable to the State concerned. In absence of such an express provision, the registration of extinguishment deed in question cannot be labelled as fraudulent or nullity in law. As aforesaid, there is nothing in Section 34 of the 1908 Act which obligates appearance of the other party at the time of presentation of extinguishment deed for registration, so as to declare that such registration of document to be null and void. The error of the Registering Officer, if any, must be regarded as error of procedure. Section 87 of the 1908 Act postulates that nothing done in good faith by the Registering Officer pursuant to the Act, shall be deemed invalid merely by reason of any defect in the procedure. In the present case, the subject extinguishment deed was presented by the person duly authorised by the Society and was registered by the Registering Officer. Once the document is registered, it is not open to any Authority, under the 1908 Act to cancel the registration. The remedy of appeal provided under the 1908 Act, in Part XII, in particular Section 72, is limited to the inaction or refusal by the Registering Officer to register a document. The power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of documents already registered.

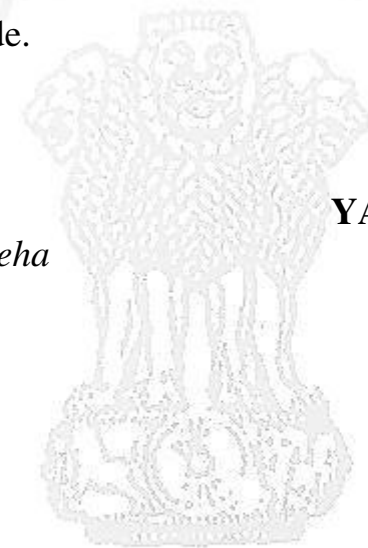
5. The judgment in **Satya Pal Anand** clearly answers the questions raised here in favour of the petitioner. Regard must also be had to the fact that the said decision further explains that the appellate power conferred by virtue of Section 72 of the Act also cannot be invoked for the purposes of cancelling a document which has come to be registered.

6. It is thus manifest that once a document comes to be duly registered, it becomes a fait accompli. The only remedy then available to an aggrieved person is to institute appropriate proceedings before a competent court for cancellation or annulment of the instrument. In any case, no provision made in the Act can be recognized as conferring authority upon the respondents to cancel a registered instrument.

7. Accordingly and for the aforesaid reasons, the writ petition is allowed. The impugned show cause notice dated 23 September 2020 shall stand quashed and set aside.

DECEMBER 15, 2021/*neha*

YASHWANT VARMA, J.



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