

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2111 OF 2022

1. Govind Ramling Solpure
Age: 44 Years, Occu: Agri/Business,
R/o Plot No.540, Cidco Mahanagar,
Aurangabad-431001.
2. Prakash Pralhad Gadgul
Age: 34 Years, Occu: Agri/Business,
R/o Karodi, Tq. Aurangabad,
Dist. Aurangabad.
3. Krushana Raosaheb Pawar
Age:44 Years, Occu:Agri/Business,
R/o Plot No. 540, Cidco Mahanagar,
Aurangabad.

...Petitioners.

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department
Office at : Mantralaya,
6th Floor, Madame Cama Road,
Mumbai-400032.
2. The Advocate General of Maharashtra
Office of the Advocate General,
Maharashtra State, Room No.5,
Extension Building, PWD, 1st Floor,
Bombay High Court,
Mumbai 400 032.
3. The Inspector General of Registration and
Controller of Stamps, State of Maharashtra,
Office at : Ground Floor,
Opposite Vidhan Bhavan (Council Hall),
New Administrative Building,
Pune 411001.

4. The Inspector of Stamp Duty,
Aurangabad, District Aurangabad
Behind Office of District Collector,
Aurangabad, Aalamgir Colony, St Colony,
Collector Office Campus, Aurangabad,
Maharashtra-431003.
5. The Joint District Sub Registrar-I
Aurangabad, District Aurangabad,
Behind Office of District Collector,
Aurangabad, Aalamgir Colony, St Colony,
Collector Office Campus, Aurangabad,
Maharashtra-431003.
6. The Joint District Sub Registrar-II
Aurangabad, District Aurangabad,
Behind Office of District Collector,
Aurangabad, Aalamgir Colony, St Colony,
Collector Office Campus, Aurangabad,
Maharashtra-431003.
7. The Joint District Sub Registrar-III
Aurangabad, District Aurangabad,
Behind Office of District Collector,
Aurangabad, Aalamgir Colony, St Colony,
Collector Office Campus, Aurangabad,
Maharashtra-431003.
8. The Joint District Sub Registrar-IV
Aurangabad, District Aurangabad,
Behind Office of District Collector,
Aurangabad, Aalamgir Colony, St Colony,
Collector Office Campus, Aurangabad,
Maharashtra-431003.
9. The Joint District Sub Registrar-V
Aurangabad, District Aurangabad,
Behind Office of District Collector,
Aurangabad, Aalamgir Colony, St Colony,
Collector Office Campus, Aurangabad,
Maharashtra-431003.

....Respondents.

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Mr. Rameshwar Totla, Mr. Rahul Totla, Mrs. Riya Jariwala, Mr. Swapnil Lohiya, Mr. Rajat Malu, Advocates for petitioners.

Mr. D.R. Kale, Government Pleader for respondent Nos. 1 to 9.

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CORAM : R. D. DHANUKA &

S. G. MEHARE, JJ.

RESERVED ON : 18/04/2022

PRONOUNCED ON : 05/05/2022

JUDGMENT : [PER R.D. DHANUKA, J.]

1) Rule. Mr. D.R. Kale, learned Government Pleader waives service on behalf of the respondents. By consent, Rule made returnable forthwith.

2) By this petition under Article 226 of the Constitution of India, the petitioners have prayed for declaration that Rule 44(1)(i) of the Maharashtra Registration Rules, 1961 (hereinafter referred to as 'Rules' for short) is contrary to the Registration Act, 1908 and it be struck down. The petitioners have also prayed for quashing and setting aside the impugned circular dated 12.07.2021 issued exercising the power under Rule 44(1)(i) of the Rules.

3) On 30th November 2021 the petitioner No. 1 had presented the sale deeds in respect of plot Nos. 182 to 184 from the land Gat No. 8 situated within the limits of Wadgaon Kolhati Gram Panchayat to

Joint Sub-Registrar Class II Aurangabad. The Sub-Registrar, however, refused to register the said sale deeds on the ground that the said sale deeds were in violation of circular dated 12.7.2021 and these sale deeds could be registered only upon obtaining permission from the competent authority.

4) On 19th January 2022 the petitioners presented the said sale deeds for registration at the office of Assistant Sub-Registrar, Class II, Aurangabad. However, the said registering authority also refused to register the said sale deeds on the ground that the said sale deeds were in violation of the impugned circular dated 12.7.2021. The petitioners have thus filed this writ petition for various reliefs.

5) The questions that arise for consideration of this Court is, (i) whether Rule 44(1)(i) of the Rules is in conflict with sections 34 and 35 of the Registration Act, 1908 or not, (ii) whether the impugned circular dated 12.7.2021 issued by the respondent No. 3 by exercising power under Rule 44(1)(i) of the Rules is valid and is binding upon the registering authorities/citizen, and (iii) whether the respondent No. 3 had legislative competence to issue such circular contrary to sections 34 and 35 of the Registration Act, 1908.

6) Mr. Totala, learned counsel for petitioners invited our attention to sections 34 and 35 of the Registration Act and also to Rule 44 (1)(i) of the Rules. Sections 34 and 35 of the Registration Act 1908 and Rule 44 (1)(i) of the Rules are extracted as under :-

“34. Enquiry before registration by registering officer.—

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

Provided further that, when such document is presented by electronic means, the personal appearance shall not be required.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

Provided that when such document is presented by electronic means, the enquiry shall be done as per the rules made in this behalf.

(4) Any application for a direction under the first proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

35. Procedure on admission and denial of execution respectively.—

(1)(a) If all the persons executing the document appear personally or through electronic means, as the case may be, before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the

registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61 inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

Provided that, when such document is presented by electronic means, the procedure laid down by the rules made in this behalf shall be followed for the examination of person.

(3)(a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,
the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

Provided further that the State Government may, by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to

be a Registrar for the purposes of this sub-section and of Part XII.

“44. CERTAIN REQUIREMENTS TO BE VERIFIED BEFORE ACCEPTING A DOCUMENT FOR REGISTRATION -

(1) Before accepting any document for registration, a registering officer may not concern himself with its validity, but shall ascertain-

(a) ...

(b) ...

(i) that if the transaction which is indented by the document, is prohibited by any existing act of Central or State Government, then the true copy of requisite permission or No Objection Certificate from the Competent Authority under the said Act, has been attached alongwith the document and that the document is not written in contradiction with any vital term or condition mentioned in that permission or No Objection Certificate.”

7) It is submitted by the learned counsel for the petitioners that under the impugned circular dated 12.7.2021 issued by exercising the power purported to have been granted under Rule 44 (1)(i) which mandates the enclosure of permission from the concerned authority alongwith the documents presented for registration in view of section 8(b) of the Maharashtra Prevention of Fragmentation and Consolidation of Holding (Amendment) Act, 2015. The said circular provides that the Sub-Registrar shall not register the document presented for registration unless sanctioned layout is enclosed with

such documents. He submits that relying upon the said circular dated 12.7.2021, the Sub-Registrar has refused to register the sale deeds lodged by the petitioners for registration. He submits that registering authorities have registered various sale deeds executed by the petitioners of various plots from the land bearing Gat No. 8 without insisting for compliance of the conditions prescribed in the impugned circular dated 21.7.2021. One of the plot holder has already completed the construction of the residential house after getting the possession from the petitioners by making the partial payments of consideration in respect of the said plot.

8) It is submitted that the petitioners are ready and willing to pay the necessary stamp duty, registration fees arising upon registration of the documents and in some cases, the stamp duty and registration fees have been paid in advance to the registering authorities.

9) It is submitted by the learned counsel that the powers of the registering authorities under section 34(3) of the Registration Act, 1908 are restricted and limited to the factum of execution of the document, identity of persons appearing before the registering authorities and if a person appears through a representative or agent,

then as regards right of such person to appear. He submits that section 34 prescribes the procedure for admission or denial of execution of the said document.

10) It is submitted by the learned counsel that Rule 44(1)(i) of the Rules is directly in conflict with sections 34 and 35 of the Indian Registration Act. He submits that unless and until there is an amendment to the Registration Act, 1908, the respondent No. 3, though having power under section 69 to frame rules, but by exercising those powers, cannot frame rules which are contrary to the provisions of Indian Registration Act, 1908.

11) It is submitted by the learned counsel for the petitioners that the condition prescribed under Rule 44(1)(i) of the Rules, compelling the parties to obtain No Objection Certificate from the concerned authorities itself is outside the purview of sections 34 and 35 of the Indian Registration Act, 1908. The respondent No. 3 cannot expand the jurisdiction of registering authority which is otherwise restricted and limited to the factum of execution of the document, identity of persons appearing before the registering authorities and if a person appears through a representative or agent, then as regards right of such person to appear. He submits that the impugned Rule 44

(1)(i) cannot be framed, thereby making the powers conferred by the Indian Registration Act ultra virus and being contrary to the said Parent Act. Conferment of rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

12) It is submitted by the learned counsel that the object and purpose of the Registration Act amongst other things is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligation arising or affecting a particular property and to perpetuate documents which may afterwards to be of legal importance and also to prevent fraud.

13) The learned counsel for petitioners submits that the entire scheme of the Registration Act is to consolidate the law relating to registration and to provide for the establishment of its registration. He submits that the Act lays down as to which documents require compulsory registration, mode and manner for presentation of the documents for registration etc.

14) It is submitted that the impugned circular dated 12.7.2021 issued by respondent No. 3 being contrary to sections 34 and 35 of the

Indian Registration Act and is beyond the legislative competence of respondent No. 3. He submits that Rule 44(1)(i) of the Rules thus shall be declared as contrary to the Registration Act, 1908 and it be struck down. He submits that the impugned circular dated 12.7.2021 is beyond legislative competence of respondent No. 3 and be quashed and set aside.

15) In support of submissions, learned counsel Mr. Totala placed reliance on following judgments :-

(i) Judgment of this Court at Principal Seat in the case of M/s. Sundarsons Vs. State of Maharashtra in Writ Petition No. 1955/2007 with connected matters decided on 26.6.2008.

(ii) State of Maharashtra Vs. Basant Nahata, (2005) 12 SCC 77.

(iii) Laxmi Ishwar More Vs. State of Maharashtra, (2016) 4 Mh.L.J.

(iv) K.S. Vijendran Vs. Inspector General of Registration, Chennai, 2011-2-L.W.648.

(v) Union of India Vs. S. Shrinivasan, (2012) 7 SCC 683.

16) Mr. D.R. Kale, learned Government Pleader, on the other hand, submits that no notice has been issued to the Advocate General of Maharashtra though petitioners have applied for striking down Rule

44(1)(i) of the Rules. The writ petition shall be dismissed on that ground itself. The learned Government Pleader submits that the writ petition is also not maintainable on the ground that the petitioners have alternate efficacious remedy of filing Appeal under section 71 of the Registration Act, 1908 before the District Collector being Revenue Collector i.e. Ex-Officio District Registrar and competent authority. He submits that the petitioners have also not arrayed the planning authorities i.e. CIDCO, Aurangabad Municipal Corporation and the so called purchasers as party respondents in the present writ petition. The writ petition is liable to be dismissed on the ground of non-joinder and mis-joinder of necessary parties.

17) It is submitted by the learned Government Pleader that the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holding Act, 1947 were applicable to the said sale deeds presented by the petitioners for registration. He submits that under section 8B of the said Act, no person is allowed to transfer any parcel of land situated in the areas specified under the said provision which has areas less than the standard area notified unless such parcel is created as a result of sub-division or layout approved by the planning authority or by the Collector under the provisions of Maharashtra Regional and Town Planning Act, 1966. He submits that

the petitioners have failed to demonstrate that various properties which are subject matters of the sale deeds are the proceed of subdivisions or approved layout by the planning authority or the Collector under Maharashtra Regional and Town Planning Act, 1966.

18) Learned Government Pleader placed reliance on Rule 44 of the Rules and submits that if the transaction which is prohibited by any existing Act of Central or State Government, then the true copy of requisite permission or No Objection Certificate from the competent authority under the said Act, is to be attached alongwith the document and if the said document is not written in contradiction with any vital terms or conditions mentioned in that permission or No Objection Certificate, such document, being in breach of such terms and conditions cannot be registered. The learned Government Pleader submits that the said Rule 44(1)(i) is framed with a view to consolidate the enactments relating to the registration of documents and to prevent any violation of statutes by the party applying for registration of document.

19) It is submitted by the learned Government Pleader that the Division Bench of this Court at Principal Seat at Mumbai by order dated 1.9.2017 passed in Public Interest Litigation No. 203/2016 has

directed the Inspector General and Collector of Stamp, Maharashtra State, Pune and the concerned Secretary of Revenue and Forest Department, Maharashtra State, Mantralaya, Mumbai to look into the issue and take necessary steps considering the said Public Interest Litigation as representation of the petitioner therein.

20) It is submitted that pursuant to the said directions given by this Court in Public Interest Litigation, the Inspector General and Collector of Stamp, Maharashtra State, Pune has issued office circular dated 21.5.2018, thereby directing to adhere with the provisions of the Central as well as State Acts while registering documents in respect of fragmentation of the lands. Similarly, pursuant to the said directions issued by this Court, the State Government has issued the impugned circular dated 12.7.2021. There is no illegality whatsoever in issuing the impugned circular. It is issued only to adhere with the provisions of the Central as well as State Acts while registering documents in respect of fragmentation of lands.

21) It is submitted by the learned Government Pleader that registration of the sale deeds/transfer deeds in respect of the plots/properties fall under sections 45 and 47-B of the Maharashtra Land Revenue Code have rightly been banned/prohibited by the

respondent Nos. 4 and 5 being in violation of the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.

22) Mr. Totala, learned counsel for the petitioners, in his rejoinder argument submits that notice has been already issued to Advocate General and this Court directed to issue notice to all the respondents including Advocate General of Maharashtra. The office of the Government Pleader has filed appearance for all the respondents. He submits that in any event, since the petitioners have not challenged the virus of any provision of Indian Registration Act, but has only challenged the virus of Rule 44(1) of the Rules, no notice to Advocate General is necessary. In support of this submission the learned counsel placed reliance on the judgment delivered by this Bench at Nagpur in case of **Maha Seedmen Association V. Union of India and Ors., 2018 SCC OnLine Bom 658** and particularly paragraph Nos. 66 and 67.

REASONS AND CONCLUSIONS

23) The Supreme Court in the case of **State of Rajasthan and Ors. Vs. Basant Nahata (2005) 12 SCC 77** (supra) has interpreted the provisions of the Registration Act, 1908 and also section 22-A as inserted by Rajasthan Amendment Act 16 of 1976 and also the notification issued by the State Government, authorising to declare

that any power of attorney authorising the attorney to transfer any immovable property for a term in excess of six months/three years or irrevocable or where the term is not mentioned is opposed to public policy. The Supreme Court in the said case held that section 22-A as inserted by Rajasthan Amendment Act 16 of 1976 through subordinate legislation cannot control the transaction which fall out of the scope thereof. The Act only strikes at the documents and not all the transactions. The whole aim of the Act is to govern documents and not the transactions embodied therein.

24) The Supreme Court held that the Contract Act or the Power of Attorney Act have not been amended and execution of power of attorney *per se*, therefore, is not illegal. Registration of power of attorney except in cases falling under section 17(1)(g) or 17(1)(h) is not compulsorily registerable. Sections 32 and 33 of the Registration Act also do not bar any such registration. Supreme Court held that section 22-A of the Act through subordinate legislation cannot control the transactions which fall out of the scope thereof. A subordinate legislation which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right would not be valid. It is held that essential functions of the legislature cannot be delegated and it must be judged on the touchstone of Article 14 and

Article 246 of the constitution. It is, thus, only the ancillary and procedural powers which can be delegated and not the essential legislative point.

25) In our view, the principles laid down in the case of **State of Rajasthan Vs. Basant Nahata** (Supra) applies to the facts of this case. We are respectfully bound by the principles laid down in the said judgment by the Supreme Court. In the facts of this case also, the learned Government Pleader could not point out any powers of the respondents to issue any circular by way of subordinate legislation which could be inconsistent with the provisions of Parent Act i.e. Indian Registration Act, 1908. A perusal of section 69 of the Indian Registration Act, 1908 clearly provides that though the State Government has conferred with the powers to frame Rules on the subjects specifically set out in the said provision, it is specifically made clear in that provision that such rules shall not be inconsistent with the provisions of Indian Registration Act, 1908.

26) The Division Bench of this Court in the case of **Laxmi Ishwar More Vs. State of Maharashtra and Ors.**, 2016(4) Mh.L.J. 535 (supra) has held that the provisions of section 34 of the Registration Act prescribe what enquiry can be made by the registering officer before he registers a document. The enquiry under section 34(3) of the

said Act is limited to the factum of execution of the document, identity of persons appearing before the registering authority and if a persons appears through a representative or agent, then as regards right of such person to appear. Section 35 of the said Act prescribes the procedure for admission/denial of execution of a document. This Court in aforesaid case adverted to the judgment in the case of **Gopal s/o. Dwarkaprasad Pande V. District Collector, Bhandara and Anr., 2003 (3) Mh.L.J. 883** in which it was held that the refusal to register a document by the registering authority either on the ground of absence of title to such property or on account of any defect in the title would be an illegal act on the part of the registering authority.

27) The Supreme Court in the case of **Union of India & Ors. V. S. Shrinivasan, (2012) 7 SCC 683 (supra)** has held that if a rule goes beyond rule making power conferred by the statute or supplants any provision for which power is not conferred, it becomes ultra virus. Basic test is to determine and consider the source of power which is relatable to the rule. Similarly, the rule must be in accordance with the provisions of Parent Act as it cannot travel beyond it. The principles of law laid down by the Supreme Court in the case of **Union of India & Ors. Vs. S. Shrinivasan (supra)** applies to the facts of this case.

28) In our view, Rule 44(1)(i) of the Rules, directing the registering authority to ascertain as to (i) whether the transaction which is indented by the document, is prohibited by any existing Act of Central or State Government, (ii) whether true copy of requisite permission or No Objection Certificate from the Competent Authority under the said Act has been attached alongwith the document, (iii) whether the document is not written in contradiction with any vital term or condition mentioned in that permission or No Objection Certificate, is contrary to section 34 of the Registration Act, 1908 and expressly beyond the powers conferred under section 69 of the Registration Act, 1908. The rules which can be framed cannot be beyond the rule making power conferred by the Parent statute or supplants any provision for which power is not conferred. In our view, Rule 44 (1)(i) is not in accord with the provisions of sections 34 and 35 of the Indian Registration Act and cannot travel beyond the said provisions.

29) This Court in the case of **M/s. Sundarsons V. State of Maharashtra in Writ Petition No. 1955/2007 with connected matters decided on 26.6.2008** (supra) has interpreted sections 34 and 35 of the Indian Registration Act and has held that under the said provisions there is no power given to the Collector to give directions to the Sub-

Registrar to refuse the registration of the document. The provisions regarding registration of the document are enumerated in the Registration Act, 1908. The executive instructions which are given by the State by exercising its powers under Article 162 of the Constitution of India cannot circumvent a statutory provision.

30) This Court in the said judgment considered the circular issued by the Collector directing the registering authority to insist upon the No Objection Certificate from the Collector before registration of any document. Relying on the said circular issued by the Collector, the Sub Registrar refused to register the agreement lodged by the petitioner therein. The validity of the said circular was challenged in the said writ petition as beyond the powers under Article 162 of Constitution of India. This Court accordingly held that the executive instructions which are given by the State by exercising its powers under Article 162 of the Constitution of India cannot circumvent a statutory provision. This Court held that the impugned circular did not disclose the source of power under which it had issued.

31) In our view, neither sections 34 and 35 nor section 69 of the Indian Registration Act empowers the State Government to issue

directions to the Sub-Registrar who is the statutory authority under the Registration Act to desist the registration of the document on account of breach of any terms and conditions under the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holding Act, 1947 or under any other law or without obtaining prior No Objection Certificate from the concerned authority as a pre-condition for the registration of any document.

32) In our view, the scope of enquiry made by the registering authority under sections 34 and 35 of the Registration Act is limited by the Registration Act to the factum of execution and identity of the person executing the document other than the levy of stamp duty, collection of registration charges and the completion of procedural formalities such as attestation etc. In our view, the provisions of the Registration Act are self-contained and neither any rule can be framed by the State Government which would be inconsistent with the provisions of the Parent Act conferring powers to frame the rules nor any circular can be issued which was contrary to the provisions of the Parent Act. This Court in the above judgment has held that no subordinate legislation can control the transactions which fall out of the scope of the Parent Act. The principles laid down by this Court in the said judgment of **M/s. Sundarsons Vs. State of Maharashtra** applies

to the facts of this case. We are respectfully bound by the principles laid down by this Court in the said judgment. We do not propose to take any different view in the present matter.

33) There is no substance in the submission made by the learned Government Pleader that the impugned circular is issued rightly pursuant to the directions given by this Court by order dated 1st September 2017 in Public Interest Litigation No. 203/2016. A perusal of the said order dated 1st September 2017 indicates that by the said order, this Court had directed the Inspector General of Registration and Controller of Stamps and Secretary, Revenue and Forest Department, State of Maharashtra to look into the issue and take necessary steps considering the said Public Interest Litigation as a representation of the petitioner. The said Public Interest Litigation was filed for a direction to the respondents not to allow registration of any transactions and/or documents in respect of the land below the standard area prescribed in the Maharashtra Prevention of Fragmentation and Consolidation of Holding Act, 1947.

34) In our view, the said order does not permit the State Government or to the Inspector General of Registration and Controller of Stamps to frame any rules contrary to the provisions of sections 34

and 35 of the Registration Act. The respondents, thus, cannot be allowed to take shelter of the said order dated 1st September, 2017 in support of the submission that the circular was issued pursuant to the directions issued by this Court in the said Public Interest Litigation. In our view, the respondents could not have introduced additional provisions or directions by issuing any circular or rules contrary to the provisions of sections 34 and 35 of the Registration Act.

35) In our view, there is no substance in the submissions made by the learned Government Pleader that registration of the sale deeds/ transfer deeds in respect of the plots/properties fall under sections 45 and 47-B of the Maharashtra Land Revenue Code have been rightly banned/prohibited by the respondent Nos. 4 and 5 being in violation of the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. In our view, the Sub-Registrar while registering the document under sections 34 and 35 of the Registration Act is not an adjudicating authority and has no power of adjudication as to whether the transaction which is subject matter of the document lodged for registration is validly executed or not or is prohibited by any law or not. If the respondents wanted to confer such powers upon the Sub-Registrar or registering authority, such powers would have

been conferred specifically by carrying out appropriate amendment by following due procedure in the Parent Act and not by framing rules or by issuing circular.

36) In our view, Mr. Totala, learned counsel for the petitioners is right in his submission that Rule 44(1)(i) and the impugned circular are contrary to the provisions of sections 34, 35 and 69 of the Registration Act and beyond the legislative competence of the respondents to frame such rule or issue circular contrary to the provisions of Parent Act.

37) Since the petitioner has challenged the validity of the circular dated 12th July 2021 and Rule 44 (1)(i) of the Rules as contrary to the provisions of sections 34 and 35 of the Registration Act, no such notice was required to be issued to Advocate General as pre-condition for entertaining this writ petition. Be that as it may, a perusal of the order dated 14th February 2022 passed by this Court clearly indicates that the notice was issued to all the respondents. The learned Government Pleader has filed note of appearance for all the respondents.

38) In our view, the impugned circular dated 12.7.2021, exercising the powers under Rule 44(1)(i) of the Rules being contrary to sections 34, 35 and 69 of the Registration Act, thus, deserves to be quashed and set aside. Rule 44(1)(i) of Rules deserves to be read down and not required to be followed by registering authority while registering the document under sections 34 r/w. Section 35 of the Registration Act.

39) In our view, the registering authority cannot refuse to register the document by placing reliance on Rule 44(1)(i) of the Rules or impugned circular dated 12.7.2021. We accordingly pass the following order.

ORDER

- (I) Writ petition is allowed in terms of prayer clause 'C'.
- (II) Rule 44(1)(i) of the Maharashtra Registration Rules, 1961 is read down and is declared that the same would not be applicable. The registering authority is not required to insist compliance of the conditions imposed under Rule 44(1)(i) while registering the document under section 34 r/w. section 35 of the Registration Act, 1908. The registering authority shall not reject any document on the ground of non compliance of the conditions set out in the impugned circular dated 12.7.2021 or for non compliance of Rule 44(1)(i).

(III) Rule is accordingly made absolute. No order as to costs.

Parties to act on authenticated copy of this order.

[S. G. MEHARE, J.]

[R. D. DHANUKA, J.]

ssc/