



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
16.03.2022 17.03.2022 18.03.2022 01.04.2022	06.04.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 12950 OF 2009, W.P. NOS. 33892 OF 2012, W.P. NO.16203
OF 2014 W.P. NOS.6516, 10832, 27491 & 30919 OF 2015, W.P. NO.
27695 OF 2016

W.P. NO. 6686 OF 2018, W.P. NOS. 2916, 3943, 4780, 5222 & 7866
OF 2022

&

W.M.P. NOS. 23850 OF 2016, 4086, 4888, 4889, 5318 & 7864 OF 2022

Mrs. Dayanandhini

... WP.No.12950 of 2009

D. Sachidanandam

... WP.No.33892 of 2012

1. B.Chandiravelan

2. B. Nithiyanandam

... Petitioners 1 and 2 in WP.No.33892 of 2012

Mr.S.saravamurthy

... WP.No.6516 of 2015

1. Manjamma

2. Shanthi

Rep. by their Power of Attorney S.K.Shailesh

... Petitioners 1 and 2 in WP.No.10832 of 2015

S.K. Shahul hameed

... WP.No.6516 of 2015

R.Jawahar

... WP.No.30919 of 2015

Minor.S.Pooja

Rep.by her mother and Natural Guardian

mrs.S.Vijayalakshmi

... WP.No.27695 of 2016

N.Ayyappan

... WP.No.6686 of 2018



R.Selvi

... WP.No.2916 of 2022

V. Pasudevan

... WP.No.3943 of 2022

1. L.Mariappan

2. M. Rathinavalli

... Petitioners 1 and 2 in WP.No.4780 of 2022

C.Prabakar

... WP.No.5222 of 2022

T.Manimuthu

... WP.No.7866 of 2022

-VS-

1 THE SUB REGISTRAR
OFFICE OF THE SUB REGISTRAR MYLAPORE
CHENNAI 600004

2 S. VASU ... Respondents 1 and 2 in
WP.No. 12950 of 2009

1 THE REGISTRAR/INSPECTOR
GENERAL OF REGISTRATIONS SANTHOME HIGH ROAD
MYLAPORE CHENNAI 4

2 THE SUB REGISTRAR
SUB REGISTRAR OFFICE AMBATTUR CHENNAI 53

3 A.K.DURUVASAN
S/O.KUMARA KUPPANNA MUDALIAR ... 3rd Respondents 1 and 3 in
WP.No.33892 of 2012

1 THE SUB REGISTRAR
O/O.SUB REGISTRAR SRIPERUMBUDUR
KANCHEEPURAM DISTRICT.

2 KRISHNAVENI AMMAL
W/O.LATE BALARAMAN ... Respondents 1 and 2 in
WP.No.16203 of 2014

1 The Sub Registrar
Sub Registrar Office Triplicane Chennai.

2 Mr. S.Ramamurthy
Son of Subramanian

3 Mrs. R.Janaka
Wife of Mr. S.Ramamurthy



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- 1 The Sub-Registrar
Pallavaram Chennai.
... Respondents 1 and 3 in
WP.No.6516 of 2015
- 2 T.Sreenivasan
S/o.Thambaiyah
... Respondents 1 and 3 in
WP.No.10832 of 2015
- 1 The Sub Registrar
Padapai Sriperumbudur Taluk Kancheepuram
District
- 2 M/s.Latif Estate Line India
Ltd. rep. by its Vice President Haji
Sadakathullah No.16 Millers Road Kilpauk
Chennai-10
... Respondents 1 and 3 in
WP.No.27491 of 2015
- 1 The Inspector General
of Registration No.100 Santhome High Road
Pattinapakkam Chennai-28.
- 2 The District Registrar
Cuddalore-2 Cuddalore District.
- 3 The Sub Registrar
Panruti Cuddalore District.
- 4 A.R.R.Rajaramanan
S/o. A.R.Ranganatha Chettiar
... Respondents 1 and 4 in
WP.No.30919 of 2015
- 1 D.Katchen S/o.Darman
- 2 The Sub-Registrar
Virugambakkam Chennai.
... Respondents 1 and 2 in
WP.No.27695 of 2016
- 1 The Sub Registrar
Sub Registrar Office Rishivanthiyam
Sankarapuram Taluk Villupuram District.
- 2 P.Nagaraaj
S/o.Perumal Chettiar
... Respondents 1 and 2 in
WP.No.6686 of 2018



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1 The District Registrar
O/o.District Registrar Namakkal Post
Namakkal.

2 The Sub Registrar
O/o.Paramathi Sub Registrar Paramathi
Vellore Taluk Namakkal District.

... Respondents 1 and 2 in
WP.No.2916 of 2022

1 THE INSPECTOR GENERAL OF REGISTRATION
O/o. Inspector General of
Registration Chennai 04

2 The District Registrar
O/o. District Registrar Salem District

3 The Sub-Registrar
O/o. Sub-Registrar Mettur

4 Senbagavalli
W/o. Nagaraj

... Respondents 1 and 4 in
WP.No.3943 of 2022

1 The Sub Registrar
Royapuram Sub-Registrar Office Royapuram
Chennai 600 003.

2 L.Muniyandi
S/o.A.Lakshmanan

... Respondents 1 and 2 in
WP.No.4780 of 2022

1 Inspector General of Registration
Santhome Chennai 28

2 The Sub Registrar
Office of Sub Registrar Salem West Junction
Salem district

3 S.Chandrasekaran
S/o. Late Sivaprakasam

4 B.Tharani
W/o. S.Chandrasekaran

... Respondents 1 and 4 in
WP.No.5222 of 2022

1 The District Registrar
Tiruppur District Tiruppur.



2 The Sub Registrar/Joint II
Tiruppur District Tiruppur.

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3 Chandrika
w/o.Loganathan

... Respondents 1 and 3 in
WP.No.7866 of 2022

Prayer in WP.No. 12950 of 2009

This Writ Petition filed under Article 226 of the Constitution of India a writ of certiorari call for the proceedings of the first respondent dated 19.2.2009 registering the cancellation deed executed by the second respondent as document No. 347/2009 on the file of the SRO Chennai 600004 in violation of section 32A of the Registration Act 1908 and quash the same.

Prayer in WP.No.33892 of 2012

This Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the respondents to cancel the proceedings of registration pertaining to the Doc. No.7086 of 2012 dated 28.6.2012 registered on the file of the 2nd respondent and the subsequent entries if any with regard to the property situate in Old Survey. No. 446/1 and 2 New Survey No. 446/1A1A1A/1E measuring about 3120 sq.ft. with the lands and building comprised in Door NO.5 Plot No.8 1 st Main Road Lenin Nagar Ambattur with in the Tirumullaivoyal Village Ambattur Taluk Tiruvallur District

Prayer WP.No.16203 of 2014

This Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus Calling for the records relating to the registration of unilateral cancellation of settlement deed dated 17.12.2013 registered as Doc.No.14911/13 in the office of the 1st respondent and quash the same as null and void.

Prayer WP.No.6516 of 2015

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus Calling for the records of the First Respondent relating to the unilateral cancellation of settlement deed executed by the 2nd



respondent vide Doc.No.118 of 2015 and subsequent settlement deed executed by the 2nd respondent in favour of 3rd respondent vide document No.160 of 2015 on the file of the First Respondent and quash the same as illegal arbitrary and non est in law and consequently direct the first respondent to delete the entry of unilateral cancellation of settlement deed dated 29.1.2015 vide Document No.118 of 2015 and subsequent settlement deed dated 5.2.15 vide document No.160 of 2015 in the encumbrance register maintained in the first respondent office.

Prayer WP.No.10832 of 2015

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the entire records relating to the impugned proceedings relating to the registration of unilateral cancellation deed dated 19.2.2013 vide Document No.1154/2013 on the file of the first respondent and quash the same to the registration of the above document dated 19.2.2013 and consequently direct the first respondent to revoke the registration done in respect of the above said property.

Prayer WP.No.27491 of 2015

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent pertaining to registration of unilateral cancellation deed dated 22.8.2007 registered as Document No.6236 of 2007 executed by the 2nd respondent in the light of the dictum laid down by this Honourable court in M/s. Latif Line Estate India Ltd. vs Mrs.Haeja Ammal and other reported in (2011) 2 MLJ 569 (FB) and quash the same.

Prayer WP.No.30919 of 2015

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus Calling for records pertaining to the Cancellation Deed dated 14.01.2015 registered as Document No.83 of 2015 on the file of the 3rd Respondent herein and quash the same and consequently direct the Respondents 1 to 3 to remove the unilateral Cancellation of Settlement Deed executed by the 4th Respondent in Document No.83/2015 in the encumbrance Certificate of the properties comprised in T.S.Nos.13 & 16 Block No.50 Ward No.A Door No.1 and 1A Thatchar Street @ Tagore Street Panruti Cuddalore District and also further direct the Respondents 1 and 2 to take stringent action against the 3rd Respondent for illegal registration of Cancellation Deed.



Prayer WP.No.27695 of 2016

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare the unilateral cancellation of the settlement deed by way of cancellation deed No.2448/2015 dated 08.04.2015 registered in the 2nd respondent office as null and void and consequently direct the 2nd respondent to restore the settlement deed No.461 of 2014 dated 28.01.2014.

Prayer WP.No.6686 of 2018

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus Calling for the records relating to the impugned deed of unilateral cancellation of the settlement deed dated 13.09.2017 (Doc.No.1711/2017) and the return order dated 21.11.2017 in respect of the sale deed dated 03.11.2017 (Pending Doc.No.14/2017) passed by the 1st respondent quash the same and consequently direct the 1st respondent to register and release the original sale deed dated 03.11.2017 (Pending Doc.No.14/2017)

Prayer WP.No.2916 of 2022

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus Directing the respondents to dispose petitioner representation dated 08.10.2021 and the remainder representation dated 22.01.2022.

Prayer WP.No.3943 of 2022

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus call for the records in pertaining to the unilateral cancellation deed 609/2015 dated 9.04.2015 on the file of the 3rd respondent and quash the same and direct the respondents to remove the all entries in the encumbrance in the property situated in S.No. 749/2 Konur East Village Mettur Sub-Registration Salem District.

Prayer WP.No.4780 of 2022

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Calling for the records of the 1st Respondent relating to the registration of the Deed of cancellation of Settlement Deed dated 23.05.2014



bearing Doc. No. 1561 / 2014 on the file of SRO Royapuram in respect of the property being the land measuring an extent of 490 sq.ft (7X70 sq.ft.) together with super structure bearing Door No. 626 and 627 Later Door No. 627 / 2 New Door No. 526 Thiruvottiyur High Road Tondiarpet comprised R.S. No. 3934 / 7 of Tondiarpet vilalge Fort Tondiarpet Taluk chennai District and to quash the same as illegal and Null and Void.

Prayer WP.No.5222 of 2022

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus call for the records pertaining to the Unilaterally executed cancellation Deed dated 16.7.2014 registered as Document No. 2442 of 2014 on the file of the Joint SRO-IV Salem the 2nd respondent herein and quash the same and consequently direct the respondents 1 and 2 to remove the unilateral cancellation of Settlement Deed executed dated 16.7.2014 registered as Doc. No. 2442/2014 and further execution of a Deed of Settlement dated 16.7.2014 registered as Doc. No. 2443/2014 and the Deed of Rectification dated 15.10.2014 registered as 3464/2014 from the encumbrance certificate of the land and building at Plot No. 7 comprised in R.S. no. 6/2C/ 3A and 7/1A. Hasthampatti Village Salem Taluk and District and district admeasuring and extent of 1710 sq.ft

Prayer WP.No.7866 of 2022

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus Calling for the records of the impugned Document No.3681/2009 dated 27.08.2009 passed by the 2nd respondent to be quash the same and consequently direct the 2nd respondent to remove the entry available in the register.

For Petitioners : Mr. V.Manohar in WP 33892/12
Mr. D.Bharathy in WP 2916/2012
Mr.Muthamizh Selvakumar in WP 3943/22
Mr. A.C.Kumaragurubaran in WP 4780/22
Ms. S.P. Arthi in WP 5222/22
Mr. M.Muthappan in WP 16203/14
Mr. R.Gopinath for M/s.MaGan Law Associates in WP 12950/19
Mr.S.Rajkumar in WP 7866/2022
Mr. P.Manikannan in WP 6516/15
Mr. T.Panchatsaram in WP 10832/15
Mr.R.Chandrasekaran in WP 27491/15
Mr. S.L.Sudarsanam in WP 30919/15



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Mr. D.Muthukumar in WP 27695/16

Mr. N.Manokaran in WP 6686/18

For Respondents : Mr. Yogesh Kannadasan, Spl. GP in all Wps
for State of TN

Mr. M.Santharaman for RR-2 & 3
in WP 6516/13

Mr. D.Balachandran in WP 6686/18

Mr. R.Mubarak Bash for R4

in WP 30919/2015

COMMON ORDER

The writ petitions, which were listed on different dates, were heard, separately, but as the issue involved in all the writ petitions being common, questioning the registration of the cancellation deeds executed by the respective settlor in favour of the settlee and seeking cancellation of the said registered cancellation deeds, they are being dealt with by this common order.

2. In all the petitions, the respective petitioners have filed representation before the respective respondent/Registering authority for cancelling the deed in and by which the property settled in favour of the respective petitioners by execution of Settlement Deed was cancelled unilaterally by the Settlor without reference to the petitioners, who are the Settlees' by registration of the deed of cancellation and on the rejection of the said representation of the petitioners by the respondent/registering authority, aggrieved thereby, the petitioners have invoked the inherent jurisdiction of this Court by filing these petitions. Insofar as W.P. No.7866 of 2022 is concerned, the cancellation deed has been registered cancelling the release deed executed in favour of the petitioner and in all other aspects, the issue is similar to the other writ petitions.

3. The facts in the present case are broadly common, in that, due to the relationship between the respective settlor and the settlee, the respective settlement deeds have been entered into initially, either unilaterally or bilaterally, but at the instance and wish of the respective settlor, but after a period of time, the settlor had unilaterally cancelled the said settlement by submitting cancellation deed, which has been entertained by the Registering Authority leading to the registration of the said document. Though facts in the petitions are different, but as the issue relates to unilateral cancellation of the respective settlement deed by the registration of the respective cancellation deed, which, having



been negatived, is put in issue before this Court and the said issue being a legal issue, this Court is not advertent to the individual facts.

4. The respective learned counsel appearing for the petitioners submitted that the issue relating to unilateral cancellation of a deed of sale was held to be bad by the Full Bench of this Court in the case of *Latif Estate Line India Ltd. & Ors. - Vs - Hadeeja Ammal & Ors.* (2011 (2) CTC 1). It is the submission of the learned counsel that the Full Bench had not only held that unilateral cancellation of a deed of sale is invalid, but also held that a writ petition challenging the same is maintainable. It is therefore the submission of the learned counsel that the present petitions are not only maintainable, but in view of the ratio laid down by the Full Bench of this Court, the unilateral cancellation of the deed, which has been registered by the respective registering authority is wholly invalid.

5. It is the further submission of the learned counsel for the petitioners that the above ratio laid down by the Full Bench having been consistently followed by this Court and, therefore, this Court may quash the respective order passed by the respective registering authority and direct cancellation of the cancellation deed executed unilaterally by the settlor.

6. Per contra, learned counsel for respondent in WP No.6516/13 submitted that the proper course for the petitioners is to approach the Civil Court by seeking appropriate remedy relating to the extinguishment deed or its registration and a writ petition is not maintainable. In this regard, learned counsel placed reliance on the decision of the Hon'ble Supreme Court in *Staya Pal Anand - Vs - State of M.P. & Ors.* (2016 (10) SCC 767), wherein it has been laid down that the remedy to the affected party with regard to the cancellation of a deed of sale by registration of a cancellation deed is only available before the Civil Court and not by way of a writ petition.

7. Learned counsel for the respondent also placed reliance on the decision of the Division Bench of this Court in the case of *P.Rukumani & Ors. - Vs - Amudhavalli & Ors.* (W.A. No.229 of 2018 - Dated 17.07.2019), wherein, the Division Bench, taking note of the decisions in *Satya Pal's* case and *Latif's* case (supra), has held that the remedy available is only before the civil court as it involves the rights of the parties relating to disputes and the proper course open for the aggrieved party is to file a civil suit and a writ petition is not maintainable.



8. Learned Special Government Pleader appearing for the official respondents submitted that the respective registering authority, in exercise of the powers conferred on them under the Indian Registration Act, are duty bound to register the cancellation deed presented before them and they cannot deny registration of the same, so long as the said documents are within the framework of the Registration Act and denial to register the same would be nothing but a violation of their statutory duty.

9. On the basis of the aforesaid contention, what fructifies is the fact that the issue put before this Court is the acceptance of the cancellation deed filed unilaterally by the settlor without the consent of the settlee, for registration and its consequent registration, which is assailed to be unsustainable. In essence, the contention is that the settlor cannot cancel the deed unilaterally by registering the cancellation deed and acceptance of the said document by the registering authority is per se unsustainable.

10. Before advertting to the issue in the backdrop of the above contentions, the decisions on which reliance has been place needs to be looked into to have a holistic appreciation of the issue.

11. The petitioners place reliance on the decision of the Full Bench in *Latif's case* (supra). That was a case, which was placed before the Full Bench on a reference made by the Division Bench doubting the correctness of an order passed by a learned single Judge in W.P. No.8567/2008 and by a Bench of equivalent composition in W.A. No.194/09. The matter pertained to the cancellation of a registered sale deed by one of the party, without the consent of the other party to the said sale deed, which was answered in the affirmative by the learned single Judge in W.P. No.8567/08 holding that unilateral cancellation is impermissible without the consent of the other party. In the above scenario, the following issues were referred to the Full Bench for its authoritative pronouncement :-

“(i) Whether cancellation of a registration of a registered sale deed of a immovable property having valuation of more than one hundred rupees can be registered either under Sections 17 or 18 or any other provision of the Registration Act?

(ii) Whether for such cancellation of a registered sale deed, signature of person claiming under the document for sale of property



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is required to sign the document, if no such stipulation is made under the Act? And

(iii) Whether the decisions of the single Judge dated 10.2.2009 made in W.P.No.8567 of 2008 and the Division Bench dated 1.4.2009 made in W.A.No.194 of 2009 amount to amending the provisions of the Registration Act and the Rules framed thereunder, by inserting a clause for extinguishing right, title or interest of a person on an immovable property of value more than Rs.100/- in a manner not prescribed under the Rules.?"

12. Answering the said reference, while the Full Bench adverted to a plethora of decisions and also referred to the various provisions of the Indian Registration Act, Specific Relief Act, Indian Contract Act and the Transfer of Property Act, also after exhaustive discussion on the law laid down on the issue relating to unilateral cancellation of a registered sale deed, held as under :-

"59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such



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instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons."

(Emphasis Supplied)

13. A careful perusal of the aforesaid order clearly reveals that the Full Bench, in extenso, had deliberated upon the effect and the legality of unilateral cancellation of a registered sale deed by registration of a cancellation deed and had arrived at the above findings. The above findings lay down the ratio that insofar as sale deeds, which have been registered pursuant to a bilateral contract by the vendor and the vendee upon receipt of valuable consideration and following the provisions of Sections 17 and 18 of the Registration Act, the said registered deed cannot be cancelled unilaterally by the transferor and the title conferred upon the transferee cannot be divested unto the transferor upon the registration of a deed of cancellation. In fact, the Full Bench has gone on to hold that the said registered sale deed cannot be cancelled even with the consent of the parties and the proper course would be to reconvey the property by a deed of reconveyance by the transferee in favour of the transferor. Further, the Full Bench has held that a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

14. However, the ratio laid down by the Full Bench was deliberated upon in an appeal before a Division Bench of this Court in Rukumani's case (supra), which arose against the order passed by a learned single Judge, wherein also the issue that fell for consideration related to legality of the cancellation deed which was registered unilaterally annulling the sale deed executed in favour of the respondents therein.

15. The Division Bench had occasion to consider the decision of the Full Bench in Latif's case (supra) and also the subsequent decision of the Hon'ble Apex Court in Satya Pal's



case (supra) and held that in case of dispute about the rights of the parties with regard to a cancellation deed, the only appropriate remedy for the parties is to approach the Civil Court by way of a civil suit as the act of registration of a document is a consequential act, which will be subject to the decree of Civil Court in case such dispute arises. Further, the Division Bench had also categorically held that such private rights of the parties cannot be made a subject matter of writ jurisdiction as writ petitions under Article 226 of the Constitution of India lie only against the State or instrumentality of the State as defined under Article 12 of the Constitution of India and relying more on Clause (iv) of paragraph 59 of the decision of the Full Bench in Latif's case (supra), held that the decision of the Full Bench, in effect, strengthens the findings and reasoning arrived at by the Bench, which view also finds support from the decision of the Hon'ble Apex Court in Satya Pal's case (supra). In fine, it was held by the Division Bench that the remedy available in case of unilateral cancellation of a registered sale deed by registration of a cancellation deed is only to file a civil suit before the appropriate Civil Court.

16. Two views, divergent in nature, but meeting on the point of unilateral cancellation of a sale deed, one rendered by the Full Bench and another rendered by the Division Bench stare on the face of this Court, the decision of the Hon'ble Apex Court in Satya Pal's case (supra) has been pressed into service by the respondents. In the said case, the issue before the Apex Court related to the cancellation of the plot allotted to the appellant by the Society on certain conditions, which conditions, having not been complied with, cancellation deed was filed, which was registered and the plot was allotted to the 5th respondent therein. During pendency of the said petition, society was permitted to transfer the subject plot vide registered deed in favour of the 6th and 7th respondents and compromise deed was entered into between the society and the appellant, which was accepted by the appellant, but, however, without paying any heed to the said compromise decree, the petitioner instituted multiple proceedings seeking cancellation of the extinguishment deed, which was rejected by all the forums and ultimately landing before the Apex Court.

17. Initially, the matter was listed before two learned Judges of the Hon'ble Apex Court and due to difference of opinion, the matter was placed before the three Judges Bench. After considering the various decisions and the provisions of law vis-à-vis its judicial exposition in the said case, the Hon'ble Apex Court propounded its proposition as under :-



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"28. 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 Act of 1908. In the case of Park View Enterprises (supra) 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."

18. In the backdrop of the aforesaid decisions, this Court is called upon to analyze the facts in the present set of petitions to find out the applicability of the decisions to the cases on hand.

19. It is trite to point out that the decisions, which have culminated in the aforesaid orders have all dealt with the cancellation of a registered sale deed. However, in the case on hand, the cancellation deed has been registered pertaining to registered settlement deeds, which have been executed by the settlor in favour of the settlee in the respective petitions.

20. While it is the paramount submission of the learned counsel for the petitioners that unilateral cancellation of a settlement deed is impermissible, however, the prayer sought for in the present petitions relate to questioning the authority of the respondent/registering authority to register the said cancellation deeds and the relief sought for is for setting aside the order passed by the registering authority in negating their representation and consequentially for a direction to the registering authority to cancel the cancellation deeds.

21. In the above backdrop, the following questions arises for consideration in the present petitions :-

i) Whether the Registering Authority can desist from registering a cancellation deed submitted before him by the settlor alone for cancelling



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the registered Settlement Deed in the absence or consent of the settlee?

ii) Whether the Registering Authority has the power to cancel a document vide the cancellation deed, and insist the settlor and settlee to appear at the time of registration of the document, in the absence of any provision of law?

iii) Whether a writ petition is maintainable questioning such registration?

iv) What is the remedy available to the parties in the event of registration of a cancellation deed unilaterally by the settlor?

22. To answer the issues framed above, before adverting to the decisions, which, according to the learned counsel on either side, would not only support their respective cases, but are directly on the issue raised in the present writ petitions, it would be apposite to refer to the relevant provisions of the Registration Act, 1908, which have a bearing on the issue to find out the source of power drawn by the Registering authority to register the cancellation deeds.

23. Section 17 of the Registration Act, 1908 (for short 'the Act') relates to the documents, which are compulsorily registrable and the same reads as under:-

"PART III OF REGISTERABLE DOCUMENTS

"17. Documents of which registration is compulsory -

1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, (20 of 1866) or the Indian Registration Act, 1871, (7 of 1871) or the Indian Registration Act, 1877, (3 of 1877) or this Act came or comes into force, namely:

a) instruments of gift of immovable property

(b) other nontestamentary instruments which purport or operate, to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether



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vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

(c) nontestamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration assignments, limitation or extinction of any such right, title or interest?

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent and (e) nontestamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

Provided that the State Government may, by order published in the Official Gazette exempt from the operation of this subsection any leases executed in any district, or part of a district, the granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) subsection (1) applies to

i) any composition deed? or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property? or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders or such debentures? or

(iv) any endorsement upon or transfer of any debenture issued by any such company? or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards, to or in immovable



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property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest? or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding? or

(vii) any grant of immovable property by the Government, or

(viii) any Instrument of partition made by a Revenue office? or

* * * * *

24. Section 18 of the Act speaks about the documents, of which registration is optional and the same reads as under :-

"18. Documents of which registration is optional - Any of the following documents may be registered under this Act, namely:

a) instruments (other than instruments of gift and will) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property?

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest?

(c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17?

(cc) instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purport or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees to or in immovable property?

(d) instruments (other than wills) which purport or operate to create, declare, assign limit or extinguish any right, title or interest to or in a movable property?

(e) wills? and



(f) all other documents not required by section 17 to be registered."

25. Section 32 of the Act, speaks about the Presentment of Documents for the purpose of registration and the same reads as under :-

"PART VI

OF PRESENTING DOCUMENTS FOR REGISTRATION

32. Persons to present documents for registration.- Except in the cases mentioned in 24 (Sections 31, 88 and 89), every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office-

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned."

26. Section 32-A and 32-AA of the Act provides for registering of a document by electronic means and the compulsory affixing of photograph. The relevant provision is quoted hereunder :-

"32-A. Registration by electronic means.- In cases, where the document is presented for registration by electronic means, the procedure for its presentation, appearance for admission, endorsements, manner of fixing signature and seal, mode of payment of registration fees and other fees and such other process, shall be such as may be prescribed by rules made in this behalf.

32-AA. Compulsory affixing of photograph, etc.- Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph and fingerprints to the document: Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer



and seller of such property mentioned in the document shall also be affixed to the document.”.

27. Section 34 of the Act speaks about the enquiry before registration by registering officer and the same reads 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 person executing such document, or their representatives, assigns or agents authorised 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.

(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 person 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, assignee or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the 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.”

28. Section 35 of the Act provides for procedure of admission or denial of execution and the same reads as under :-

“35. Procedure on admission and denial of execution respectively



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(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons 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, assignee or agent, such representative, assignee or agent admits the execution, or

(c) If the person executing the document is dead, and his representative or assignee 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.

(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 assignee 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.]"

29. A perusal of the above provisions of law reveal that Section 17 of the Act mandates the documents that are compulsorily registerable, while Section 18 of the Act pertains to the documents, of which registration is optional. Cancellation Deed is one such document referred to in Section 17

(1) (b), which requires compulsory registration. Section 32 of



the Act pertains to presenting of the documents for registration, be it compulsory or optional and the procedure to be followed while Section 35 pertains to the procedure on admission and denial of execution.

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30. In the above backdrop of the above provisions of law, the decisions relied on by the learned counsel for the parties assumes significance. While the petitioners rely on the Full Bench decision of this Court in *Latif's case* (supra) to submit that the presentation of a cancellation deed by the settlor alone before the Registering Authority is impermissible and the registration of the said document is unsustainable, the learned Special Government Pleader appearing for the respondents relies on the decision of the Hon'ble Apex Court in *Satya Pal's case* (supra) to submit that it is the duty of the registering authority, on the basis of the provisions of law to compulsorily register any document presented before him by any party and merely because the settlee has any grievance about the registration of the said document, would not curtail the power of the registering authority to register the document and on the registering authority registering the document as per the provisions of the Act, the proper course open to the settlee is to approach the competent civil court, as the matter pertains to disputed questions, which cannot be gone into by this Court under Article 226 of the Constitution and, therefore, a writ petition is not maintainable at the instance of the settlee.

31. In *Latif's case* (supra), the Full Bench of this Court, on reference, had gone into the question of a cancellation deed submitted unilaterally by the vendor, in the absence of the vendee/purchaser for cancelling the sale deed entered into between the seller and the purchaser. In the aforesaid context the Full Bench held as under :-

"41. In the case of *E.R.Kalaivan Vs. Inspector General of Registration, Chennai*, (2009) 6 MLJ 1009 the question came up for consideration before the Division Bench of this Court is as to whether the Registrar, who is empowered to register the document under the Indian Registration Act, could register a document unilaterally executed by the vendor cancelling the earlier sale made. The Division Bench after elaborately discussing the provisions of Section 34-A and the G.O.Ms.No.150, Commercial Taxes Department dated 22.09.2000, subsequent G.O.Ms.No.139, Commercial Taxes and Registration (J1) Department dated 25.07.2007 and the ratio decided by the Supreme Court in the case of *State*



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of Rajasthan Vs. Basant Nahata, (2005) 12 SCC 77 observed as under:-

"9. From the above judgements, all that we could read and understand is that in the absence of any guidelines defining what is "public policy" or documents which are "as opposed to public policy", the Courts had to declare Section 22-A is null and void. In our opinion, a reading of those judgments does not indicate that by the judgments it is also directed that a registration of a cancellation deed is permissible even in the absence of both the parties before the Registrar. The question as to whether such documents can be entertained should be considered in the light of the other provisions of the Act as well.

12. In this content, we may also refer to Section 32-A of the Indian Registration Act providing that all such deeds shall be signed by the vendor as well as the purchaser and the same shall also bear the finger prints and photographs. Section 34 of the Act also needs a reference, whereby the Registering Authority is mandated to hold an enquiry in respect of the validity of the document present for registration. Having regard to the above provisions, in our opinion, a registered sale deed, if sought to be cancelled, registration of such deed must be at the instance of both the parties viz., bilaterally and not unilaterally. Section 34-A of the Act, whereby the Registering Authority is to enquire whether or not such document was executed by the persons by whom it purports to have been executed. A sale is essentially an executed contract between two parties on mutually agreed conditions. Question is as to whether such contract can be unilaterally rescinded, particularly, in a case of sale deed. In this context, we may refer to Section 62 of the Indian Contract Act, 1872 which provides that contract which need not be performed. By that provision, any novation, rescission and alteration of a contract can be made only bilaterally. A deed of cancellation will amount to rescission of contract and if



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must be applied for cancellation of such document as well.

10. In this context, we may also refer to Section 32-A of the Indian Registration Act providing that all such deeds shall be signed by the vendor as well as the purchaser and the same shall also bear the finger prints and photographs. Section 34 of the Act also needs a reference, whereby the Registering Authority is mandated to hold an enquiry in respect of the validity of the document presented for registration. Having regard to the above provisions, in our opinion, a registered sale deed, if sought to be cancelled, registration of such deed must be at the instance of both the parties viz., bilaterally and not unilaterally. Section 34-A of the Act, whereby the Registering Authority is to enquire whether or not such document was executed by the persons by whom it purports to have been executed. A sale is essentially an executed contract between two parties on mutually agreed conditions. Question is as to whether such contract can be unilaterally rescinded, particularly, in a case of sale deed. In this context, we may refer to Section 62 of the Indian Contract Act, 1872 which provides that contract which need not be performed. By that provision, any novation, rescission and alteration of a contract can be made only bilaterally. A deed of cancellation will amount to rescission of contract and if the issue in question is viewed from the application of Section 62 of the Indian Contract Act, any rescission must be only bilaterally. See *City Bank N.A. Vs. Standard Chartered Bank and Others*, (2004) 2 CTC 374 (SC) : 2004 (1) SCC 12.

44. The Bench further disagreed with the view taken by the Full Bench of the Andhra Pradesh High Court in *Yanala Malleshwari and others Vs. Ananthula Sayamma and others*, (2007) 1 CTC 97 and held as under:-

"21. With respect, I am unable to subscribe myself to the said view taken by the majority for the reasons which follow. Though in para 54 of the judgment, a



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reference has been made to Section 32-A of the Indian Registration Act, which was recently introduced, the learned Judge had not dealt with the same elaborately. Nobody can have any quarrel over the legal position that a deed of cancellation of a sale of immovable property of value Rs.100/- and upwards, is a document which needs compulsory registration. But the learned Judge has taken the view that to revoke a sale or to cancel the same, the consent or knowledge of the purchaser is not at all required. In my considered opinion, as I have already stated, a sale being a bilateral contract, more particularly in view of Section 32-A of the Indian Registration Act, if to be cancelled, it should be done bilaterally by both the parties to the sale. The learned Judge has expressed the apprehension that if the law is so interpreted so as to hold that the Registering Officer has power to refuse to register a cancellation deed, then, it would render Section 126 of the Transfer of Property Act, which enables the donor of a gift to cancel it or revoke the same, ineffective. With respect, I am of the view, that such apprehension has no basis. Section 126 of the Transfer of Property Act is a special provision dealing with the power of the donor to revoke a gift deed in certain circumstances. Such kind of revocation does not require the consent of the beneficiary of the gift. Basically, such a gift is not a contract in terms of the definition of contract as found in the Indian Contract Act, since gift is a transfer made voluntarily without consideration, whereas, a sale of an immovable property is a contract entered into between two parties where consideration is a sine-qua-non. Therefore, revocation of a gift deed cannot be equated to cancellation of a sale deed. Both operate on different spheres. A reference has also been made in the judgment to Section 23-A of the Registration Act. In my considered opinion, Section 23-A which speaks of re-registration of certain



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documents, has nothing to do with cancellation of a validly executed document. It is not to say that invariably in all cases, the Registering Officer should refuse to register a cancellation deed. We cannot generalize all deeds of cancellation as illegal or void so as to say that such documents cannot be registered at all. All I would say is that such cancellation deeds which are executed bilaterally by both the parties to the earlier document can be registered by the Registering Officer, provided, the other requirements of the Indian Registration Act are satisfied. But those cancellation deeds executed unilaterally by one party to the earlier transaction, without the consent of the other party and without complying with the requirements of Section 32-A of the Indian Registration Act, alone are to be rejected by the Registering Officer.

50. In a recent decision in the case of Kaliaperumal Vs. Rajagopal, (2009) 4 SCC 193 the Supreme Court while considering the provision of Section 54 of the T.P. Act held as under:-

"17. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of the Transfer of Property Act, 1882 defines "sale" as "a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised". If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4) (b) of the Act."

51. However, there are circumstances to show that title was intended to pass only after the



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payment of full price. In such a situation, it will depend upon the intention of the parties as to whether they intended that transfer of ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place only after receipt of the entire sale consideration. Considering such a situation the Supreme Court in Kaliaperumal Case (Supra) observed as under:-

"18. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.

19. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of the Evidence Act."

(Emphasis Supplied)

32. In the said decision, the Full Bench, in matters relating to sale deed, where consideration is passed on and the documents are executed bilaterally by both the vendor and vendee appearing before the registering authority, held that the cancellation deed submitted by the vendor alone to cancel the sale deed already executed between the parties, is wholly impermissible, as the contract entered into and concluded cannot be negated by a solitary party to the said contract. In fact, in respect of cancellation of a sale deed, the Full Bench opined that even with the consent of either party, cancellation deed is



impermissible and it is only through the execution of a fresh document, could the immovable property be reverted back to the vendor.

33. Though such a proposition has been laid down by the Full Bench of this Court, however, in Satya Pal's case (supra), a three Judge Bench of the Hon'ble Supreme Court, in view of the difference of opinion expressed by two learned Judges relating to registration of a unilateral extinguishment deed to cancel a registered sale deed, framed the following questions for adjudication :-

"(a) Whether in the fact situation of the present case, the High Court was justified in dismissing the Writ Petition?

(b) Whether the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is duty bound to declare the registered Deeds (between the private parties) as void ab initio and to cancel the same, especially when the aggrieved party (appellant) has already resorted to an alternative efficacious remedy under Section 64 of the Act of 1960 before the competent Forum whilst questioning the action of the Society in cancelling the allotment of the subject plot in favour of the original allottee and unilateral execution of an Extinguishment Deed for that purpose?

(c) Even if the High Court is endowed with a wide power including to examine the validity of the registered Extinguishment Deed and the subsequent registered deeds, should it foreclose the issues which involve disputed questions of fact and germane for adjudication by the competent Forum under the Act of 1960?

(d) Whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an Extinguishment Deed after it is registered? Similarly, whether the Inspector General (Registration) can cancel the registration of Extinguishment Deed in exercise of powers under Section 69 of the Act of 1908?

(e) Whether the Sub-Registrar (Registration) had no authority to register the Extinguishment Deed dated 9th August 2001, unilaterally presented by the Respondent Society for registration?



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(f) Whether the dictum in the case of Thota Ganga Laxmi (supra) is with reference to the express statutory Rule framed by the State of Andhra Pradesh or is a general proposition of law applicable even to the State of Madhya Pradesh, in absence of an express provision in that regard?"

34. The Hon'ble Supreme Court proceeding to answer issues (a) to (c), held that it is well established position that the remedy of Writ under Article 226 of the Constitution of India is extra-ordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. In the aforesaid case, extinguishment deed is attacked by the party, who had resorted to multiplicity of actions. The Hon'ble Apex Court further held, in the facts of the said case, that the only relief that can be granted and which has already been clarified by the High Court in the impugned judgment, is to keep all questions open to enable the appellant to pursue the statutory remedy already invoked by him. In the said case, a suit has already been laid by the appellant therein. Saying so, the Hon'ble Supreme Court, in the facts of the said case, refrained from examining any further the contention with regard to the issues relating to (a) to (c).

35. However, the Hon'ble Supreme Court, advertng to the exposition of the Constitution Bench in Pratap Singh - Vs - State of Punjab (AIR 1964 SC 72), held that a subtle distinction has been expressed in the said decision between an ultra vires act of a statutory authority and a case of simple infraction of procedural Rule.

36. Further, the Hon'ble Apex Court, while advertng to issues (d) and (f) had dealt with the scope and ambit of Section 17 of the Registration Act and referring to the decision in Govt. of U.P. - Vs - Raja Mohammed Amir Ahmad Khan (AIR 1961 SC 787) has recapitulated the words as under :-

"22. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan (supra). Section 17 of the Act of 1908 deals with documents which require compulsory registration. Extinguishment Deed is one such document referred to in Section 17 (1) (b). Section 18 of the same Act deals with documents,



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registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations.

Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to Government maps and surveys. There is no express provision in the Act of 1908 which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of registration offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered."

(Emphasis Supplied)

37. Further, carefully scrutinizing various decisions on the issue, which were placed before it, the Hon'ble Apex Court went on to hold as under :-

"In our considered view, the decision in the case of Thota Ganga Laxmi (supra) was dealing with an express provision, as applicable to the State of Andhra Pradesh and in particular with regard to the registration of an Extinguishment Deed. In absence of such an express provision, in other State legislations, the Registering Officer would be governed by the provisions in the Act of 1908. Going by the said provisions, there is nothing to indicate that the Registering Officer is required to undertake a quasi judicial enquiry regarding the veracity of the factual position stated in the document presented for registration or its legality, if the tenor of the document suggests that it requires to be registered. The validity of such registered document can, indeed, be put in issue before a Court of competent jurisdiction."

(Emphasis Supplied)



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38. Keeping the above dictum laid down by the Hon'ble Supreme Court as well as the Full Bench decision of this Court in mind, this Court would proceed to extract and enumerate the power and duty of the registering authority in case of presentment of documents, which are compulsorily to be registered u/s 17 of the Act.

39. It is not in dispute that the cancellation deed, which forms the subject matter in issue in the present matters, is a document, which falls u/s 17 of the Act and which is compulsorily registerable. Once a document is compulsorily registerable, presentment of the said document is associated with certain necessities, which are covered u/s 32 and 32-A and 32-AA of the Act. To cull out the necessities, once a document is to be registered under the Act, it should be presented in the proper registration office by some person executing or claiming under the same or by the representative or assignee of such a person or by the agent of such a person, representative or assign duly authorized by the power of attorney executed and authenticated. Further, the documents, which can be registered by electronic means and compulsory affixing of photograph in case of sale of the property is also provided u/s 32-A and 32-AA of the Act.

40. Needless to state here that Section 32-AA of the Act would not stand attracted to the case on hand, as it explicitly speaks about transfer of ownership of property in case of sale, where the passport size photograph and fingerprints of each buyer and seller of such property should be affixed.

41. Once the document is presented in consonance with Section 32, the duty of the registering authority is enumerated u/s 34 of the Act. The said provision provides that no document shall be registered under this Act unless the person executing such document or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation u/s 23, 24, 25 and 26. Further, as provided under sub-section (3) to Section 34, the registering officer has to enquire whether or not such document was executed by the person and satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document.

42. From the above provision, what transpires is the fact that the person, who executes the document should be either be present in person or through a representative, duly authorized along with the document which is sought to be registered.



Section 35 of the Act provides for the procedure relating to admission and denial of execution.

43. In the case on hand, there is no dispute about the fact that the ingredients of Sections 32 and 34 have been complied with. In that the document, which is compulsorily registerable has been presented by the person in consonance with the said provisions and in compliance thereof, the document has been registered.

44. A conjoint reading of Sections 17, 18, 32, 34 and 35 enjoins this Court to the clear inference that upon a document, which is compulsorily registerable as provided u/s 17, the registering authority, upon satisfying himself that the document is presented by the proper person and being satisfied with the same as per the provision provided u/s 34 is bound to admit the document for registration, unless contrary to the aforesaid provisions unfolds, which alone could cause the registering authority to deny execution of the document.

45. In this regard, useful reference can be had to the decision of the Hon'ble Apex Court in Satya Pal's case (supra), and the relevant portions of the said order are quoted hereunder :-

24. 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 deceitly 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 Act of 1908 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 Act of 1908 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



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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.

25. Admittedly, the documents in question do not fall within Sections 31, 88 and 89. Further, Section 32 does not require presence of both parties to the document when it is presented for registration. In that sense, presentation of Extinguishment Deed by the authorized person of the Society for registration cannot be faulted with reference to Section 34 of the Act of 1908. That provision stipulates the enquiry to be done by the Registering Officer before registration of the document.

* * * * *

Even this provision does not require presence of both parties to the document when presented for registration before the Registering Officer.

* * * * *

46. In the case on hand, it is not the case of the petitioners that fraud has been perpetrated in the registration of the cancellation deeds. The only ground put on the forefront by the petitioners is that the settlor having settled the immovable property in favour of the settlee, no right enures to the settlor to unilaterally cancel the said settlement deed, as the ownership stands transferred to the settlee and, therefore, the said deed cannot be accepted for registration by the registering authority.

47. In the above backdrop, at the risk of repetition it is to be reiterated that the decisions, which have been relied on by the parties, pertain to registration of a cancellation deed, submitted unilaterally, by the vendor against a registered sale deed. However, in the cases on hand, the deed, which are alleged to have been registered unilaterally by the settlor, are for the purpose of cancelling the settlement deed. In the above backdrop, this Court poses to itself a question - Could this Court, merely supplant "sale deed" as found in the aforesaid judgments with "settlement deed" to render a finding one way or the other on the basis of the ratio laid down in the aforesaid decisions. Could the term "settlement deed" be equated to "sale deed" and whether the tenor of both the documents could mean the same. It is to be pointed out, that sale deed and settlement deed operate in different fields and the execution of the said document serves different purposes, though transfer of



ownership of the alleged immovable property is one of the purpose.

48. A sale deed is a contract entered into between the vendor and vendee for a single reason, which could only involve monetary consideration against transfer of ownership, but a settlement deed is executed by the settlor in favour of the settlee for any number of reasons and it cannot be said to be for monetary consideration. Further, the settlement deed is not a contract entered into between the settlor and the settlee, which could be termed to be bilateral. Rather, the settlement deed executed by the settlor could even be a unilateral settlement deed, without even the involvement and consent of the settlee. Therefore, bringing the settlement deed within the ambit of the Contract Act would be wholly unacceptable. A settlement deed could, in no sense of prudence, be held to be equatable to a sale deed.

49. In such a scenario, could the Registering Authority invoke quasi-judicial powers to evaluate the title to the property and does any of the provision of the Registration Act provide for such a power is the relevant question to be considered. In this regard, the Hon'ble Supreme Court in Satya Pal's case (supra) has held that Section 35 of the Act does not confer quasi-judicial power on the Registering Authority and the said authority is not vested with any power to evaluate the title to the property or irregularity in the document. The relevant portion is extracted hereunder :-

"28. 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 Act of 1908. In the case of Park View Enterprises (supra) 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."

(Emphasis Supplied)

50. From the above ratio laid down, it is manifestly clear that the registering authority cannot embark upon a roving



enquiry to find out the legality and veracity of the document placed before him for registration nor could he evaluate the title to the property. The evaluation of the registering authority can only be to the extent of reassuring himself that all the documents, which are prescribed under the Act have been placed before him for the purpose of registration of the document. The Registering Authority having not been vested with quasi-judicial power, but only with administrative power, the registering authority cannot decide as to whether a document presented for registration is executed by a person having valid title.

51. Learned counsel for the petitioners brought to the notice of this Court the circular issued by the Inspector General of Registration in and by which the registering authorities were directed not to entertain cancellation deeds unilaterally by one party alone. The circular, dated 29.11.2018, on which reliance has been placed upon by the petitioners, the relevant portion of the same reads as under :-

"a) Any settlement deed wherein no condition whatsoever has been imposed on the Settlee, and if an unilateral revocation/cancellation of such settlement deed executed by the Settlor is presented for registration, the registering officers shall not accept such unilateral revocation/cancellation deeds for registration and check slip shall be issued in this regard.

b) Such revocation deeds can be accepted for registration only if Settlee has joined in execution and registration of the revocation deed.

c) Any settlement deed wherein certain condition has been imposed on the Settlee, and if an unilateral revocation/cancellation of such settlement deed is executed by the Settlor clearly stating that Settlee has not fulfilled certain conditions imposed in the settlement deed, the same can be registered after ensuring that said conditions were specifically mentioned in the said Settlement deed."

52. The aforesaid circular is not disputed by the learned Special Government Pleader appearing for the respondents. But what is sought to be canvassed by the respondents is the fact that the circular would only take prospective effect and would not have retrospective effect. The cancellation deeds, which have been alleged to have been executed unilaterally, being prior to the issuance of the said circular, the same cannot



prevent the registering authorities to entertain the cancellation deeds for registration.

53. It is to be pointed out that the circular, on which reliance has been placed has been issued on 29.11.2018 and only on and from the said date, the circular would gain relevance and could be put into action. The circular cannot by any stretch have retrospective effect. On the date when the said cancellation deeds were presented, there was no express provision in the Act or the Rules which empowered the Sub-Registrar to deny registration of a document.

54. Further, it is to be pointed out that there is no provision of law, either in the Act or the Rules, to the effect that the cancellation deed should bear the signatures of both the settlor and the settlee and that both must be present before the Registering Officer when the document is presented for registration. The Act, in clear and unequivocal terms, speaks about the persons, who should be present at the time a document is submitted for registration. On the dates the cancellation deeds were submitted for registration, the circular having been issued at a later point of time, the Act having not mandated the presence of both the parties to the document, the Registering Authority not entertaining any doubt, no occasion arose for the registering authority to decline acceptance of the cancellation deed for registration. The registering authorities have acted within the four corners of the Act and have entertained the document for registration and have registered the same. In such a scenario, in the absence of any such provision in the Act or the Rules, either insistence of the presence of both the settlor and the settlee before the Registering Officer or insisting for the consent of the settlee by subscribing his signature in the cancellation deed for the registering authority to register the instrument, which is otherwise in order, would be against the intent and purport of the Act.

55. It is further to be pointed out that the petitioners do not claim that any fraud has been played on the registering authority by the execution of the cancellation deed by the settlor. It is the contention of the petitioners that once the property is settled in their favour, the right of the settlor stood extinguished and ownership of the property stood transferred to the settlee and, therefore, the settlor cannot unilaterally execute a cancellation deed, cancelling the settlement deed.

56. In this regard, useful reference can be had to the relevant portion of the order of the Hon'ble Apex Court in Satya



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Pal's case (supra), where the Hon'ble Supreme Court has clearly held that in the absence of an express provision, the Registration Officer would be governed by the provisions of the Act. For better clarity, the relevant portion is quoted hereunder :-

"33. In our considered view, the decision in the case of Thota Ganga Laxmi (supra) was dealing with an express provision, as applicable to the State of Andhra Pradesh and in particular with regard to the registration of an Extinguishment Deed. In absence of such an express provision, in other State legislations, the Registering Officer would be governed by the provisions in the Act of 1908. Going by the said provisions, there is nothing to indicate that the Registering Officer is required to undertake a quasi judicial enquiry regarding the veracity of the factual position stated in the document presented for registration or its legality, if the tenor of the document suggests that it requires to be registered. The validity of such registered document can, indeed, be put in issue before a Court of competent jurisdiction."

(Emphasis Supplied)

57. That being the position in law, as postulated by the Hon'ble Apex Court, with which proposition, this Court is in respectful agreement with, it is to be pointed out that neither the Act nor the Rules having provided any authority or power on the Registrar to recall such a registered document and even if the document was not properly presented for registration the same cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter and in the absence of any provision in that behalf in the Act or in the Rules, it is not open to assume that the Sub Registrar would be competent to cancel the registration of the documents in question.

58. The other issue that falls for determination of this Court is the maintainability of a writ petition challenging the registration and execution of a cancellation deed, unilaterally, unsettling the settlement deed and a consequential direction on the registering authority to cancel the cancellation deed.

59. True it is that on the registration of the settlement deed, generally the title to the property stood transferred to the settlee, subject to just exceptions as are provided in the



settlement deed. But it is to be pointed out that this Court cannot appreciate each and every settlement deed singularly, as it cannot be lost sight of that disputes are the cause for the execution of the cancellation deeds and such disputes could be resolved only by the civil court and not by this Court under Article 226 of the Constitution. If this Court allows adjudication of disputes under its extra-ordinary jurisdiction, it would only lead to negation of powers of the civil court and divest the civil court of its power, which is conferred on it.

60. Though it is contended on behalf of the petitioners that the Full Bench in *Latif's case* (supra) has held that a writ petition under Article 226 of the Constitution is maintainable against the cancellation deed, which has been duly registered, however, inspite of the best efforts of this Court, scanning the entire document threadbare, this Court is unable to find any discussion on the said aspect as to how a writ petition under Article 226 of the Constitution is held to be maintainable. In fact, the operative portion of the decision of the Full Bench does not speak about the maintainability of a writ petition against the registration of a unilateral cancellation deed.

61. In this regard, useful reference can be had to the decision of the Division Bench of this Court in *Rukumani's case* (supra), where the Division Bench, after analysing the legal position and the decisions in *Latif's case* and *Satya Pal's case* (supra) has held as under :-

"9. Considering the submissions made at the bar, we are of the clear opinion that in a case relating to execution of a conveyance deed or a sale deed or cancellation thereof, if there is any dispute about the rights of the parties involved therein, the only appropriate remedy for the parties is to approach the Civil Court by way of civil suit. The act of registration of a document is a consequential act which will be subject to the decree of Civil Court in case such a dispute arises.

10. We are of the clear opinion that such a relief could not have been sought or granted in Writ Jurisdiction under Article 226 of the Constitution of India. The civil rights of the parties based on relevant evidence can only be determined by a Civil Court by a competent Civil Court and not by the writ court under Article 226 of the Constitution of India. Such private rights of the parties cannot be made a subject



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matter of writ jurisdiction. The writ petitions under Article 226 of the Constitution of India lie only against the State or instrumentality of the State as defined under Article 12 of the Constitution of India. Therefore, such determination of private civil rights of the parties cannot be made subject matter of writ petition.

11. The act of the Sub Registrar in such cases will naturally depend upon the determination of the rights of the respective parties once adjudicated by the competent civil Court and therefore prematurely also such writ jurisdiction cannot be invoked, against Sub Registrar.

12. The Judgment of the Full Bench in *Latif Estate Line India Ltd.*, (supra) relied by the learned counsel for the respondents 1 to 3 Mr. M.Sriram, vide paragraph No. 59 quoted above, has not laid down that in such cases Writ Jurisdiction can be invoked or is an appropriate remedy to be invoked. On the contrary, Clause (iv) of Paragraph 59 quoted above clearly stipulates that the complete and absolute sale can be cancelled at the instance of the transferor only by taking course by way of civil Court by obtaining decree of cancellation of sale deed on the ground of fraud or other valid reasons. This Judgment of the Full Bench, with great respects, strengthens the view which we have taken above.

13. On the contrary, the Judgment relied by the learned counsel for the appellants in the case of *Satya Pal Anand Vs. State of Madhya Pradesh and Others* (supra) in paragraph No. 40 again clearly stipulates the view that aggrieved party in such cases can approach only the civil Court. Therefore, we are of the clear and fortified view that the Writ Petition in this case by the respondents/writ petitioners was a misconceived remedy and prematurely invoked by them seeking the cancellation of the Cancellation Deed dated 20th September 2007 and the learned Single Judge has erred, with great respects, in granting that relief."



62. Though the view expressed by the Division Bench in Rukumani's case (supra) relates to the unilateral cancellation of a sale deed, yet the ratio laid down therein would stand squarely attracted to the issue on hand, as the deliberations made by the Division Bench deals is with regard to the relevant legal position and not on the type of deed, which is sought to be cancelled.

63. Further, in the decision in Satya Pal's case (supra) it has been succinctly held that as the subject document, which is assailed by the petitioners, falls within the periphery of disputed facts between two private individuals, which cannot be agitated before this Court under Article 226, the parties should be relegated to the civil court to agitate their rights. In this regard, the relevant portion of the said order is quoted hereunder :-

"34. In the present case, the document in question no doubt is termed as an Extinguishment Deed. However, in effect, it is manifestation of the decision of the Society to cancel the allotment of the subject plot given to its member due to non-fulfillment of the obligation by the member concerned. The subject document is linked to the decision of the Society to cancel the membership of the allottee of the plot given to him/her by the Housing Society. In other words, it is the decision of the Society, which the Society is entitled to exercise within the frame work of the governing cooperative laws and the Bye-laws which are binding on the members of the Society. The case of Thota Ganga Laxmi (supra), besides the fact that it was dealing with an express provision contained in the Statutory Rule, namely Rule 26 (k) (i) of the Andhra Pradesh Registration Rules 1960, was also not a case of a deed for cancellation of allotment of plot by the Housing Society. But, of a cancellation of the registered sale deed executed between private parties, which was sought to be cancelled unilaterally. Even for the latter reason the exposition in the case of Thota Ganga Laxmi (supra) will have no application to the fact situation of the present case."

64. Upon careful perusal of the decisions of the Hon'ble Apex Court and the Full Bench, which have been relied upon by the learned counsel in support of their respective submissions,



this Court is of the considered view that though both the decision in Satya Pal's case and Latif's case (supra) relate to unilateral cancellation of a sale deed, however, the issue covered in the present batch of petitions relate to unilateral cancellation of settlement deed. Further, the decision in Satya Pal's case (supra) spells out the correct ratio in which the relevant provisions of the Act has to be interpreted and, in fact, to a limited extent the decision of the Full Bench also tags with the decision in Satya Pal's case (supra) and upon such interpretation on the basis of the ratio laid down in Satya Pal's case (supra), this Court answers the questions formulated in the following manner :-

Question Nos.1 & 2 :

i) Whether the Registering Authority can desist from registering a cancellation deed submitted before him by the settlor alone for cancelling the registered Settlement Deed in the absence or consent of the settlee?

ii) Whether the Registering Authority has the power to cancel a document vide the cancellation deed, and insist the settlor and settlee to appear at the time of registration of the document, in the absence of any provision of law?

iii)

Answer :

The registering authority has no power to desist from registering a document, once it is submitted to him along with the necessary documents, which are mandated under the Act and once the document is properly registered, the registering authority, in the absence of any express provision under the Act or the Rules, is not competent to cancel the registered document.

Question Nos.3 & 4 :

iii) Whether a writ petition is maintainable questioning such registration?

iv) What is the remedy available to the parties in the event of registration of a cancellation deed unilaterally by the settlor?

Answer :

The writ petitions, at the instance of the petitioners are wholly misconceived and the writ jurisdiction cannot be invoked seeking cancellation of the respective cancellation deeds and this Court, sitting under Article 226 of the



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Constitution, cannot issue a writ directing the registering authority to cancel the registered document, when it involves disputed questions of fact between the parties. Further, the remedy open to the petitioners/aggrieved party is only to file a civil suit before the appropriate jurisdictional court and a writ petition is not maintainable.

65. For the reasons aforesaid, the writ petitions filed by the petitioners praying for a direction to the registering authority/respondent herein to cancel the unilaterally executed cancellation deeds in and by which the respective settlement deeds have been cancelled, cannot be entertained and, accordingly, the writ petitions are dismissed. It is further made clear that this Court has not entered into the realm of adjudicating the legality or validity of the cancellation deed, but has only decided the power of the registering authority to entertain the document for registration and its subsequent cancellation and, therefore, it is open to the petitioners to file appropriate suit before the jurisdictional civil court or to avail any other remedy available to them under law, where all the points raised herein could be canvassed by the petitioners and if such legal recourse is taken by the petitioners, the concerned court/authority shall take up the same on its own merits and adjudicate the dispute without in any way being influenced by any observation made by this Court in the decision supra. It is also made clear that the benefit of this order shall not operate with regard to matters, which have already been decided by this Court one way or the other and the doctrine of res judicata would stand attracted. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN

To

1 THE SUB REGISTRAR
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4 THE SUB REGISTRAR
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5 The Sub Registrar
Sub Registrar Office Triplicane Chennai.

6 The Sub-Registrar
Pallavaram Chennai.

7 The Sub Registrar
Padapai Sriperumbudur Taluk Kancheepuram
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8 The Inspector General
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9 The District Registrar
Cuddalore-2 Cuddalore District.

10 The Sub Registrar
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11 The Sub-Registrar
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12 The Sub Registrar
Sub Registrar Office Rishivanthiyam
Sankarapuram Taluk Villupuram District.

13 The District Registrar
O/o.District Registrar Namakkal Post
Namakkal.

14 The Sub Registrar
o/o.Paramathi Sub Registrar Paramathi
Vellore Taluk Namakkal District.

15 The District Registrar
O/o. District Registrar Salem District



16 The Sub-Registrar
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17 The Sub Registrar
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18 The Sub Registrar
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19 The District Registrar
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