

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.3362 of 2015

S.Sajedha

...Petitioner

Vs.

1. The Sub Registrar,
Royapuram Registration Office,
26, Rajaji Salai, Near G.P.O.
Chennai - 11.

2. Shajaathibe

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of declaration, declaring the cancellation of Settlement Deed registered by the 1st respondent in Document No.2131/2011 dated 17.06.2011 as illegal, void and against the provisions of the Registration Act.

For Petitioner : Mr.S.Krishnamoorthy
for M/s.V.Karnan

For Respondents: Mr.S.Arumugam
Government Advocate for R1

No Appearance for R2

O R D E R

The subject matter of challenge in this writ petition pertains to the Cancellation Deed executed by the 2nd respondent on 17.06.2011, canceling the Settlement Deed executed in favour of the petitioner on 04.10.2006.

2.Heard Mr.S.Krishnamoorthy, learned counsel appearing on behalf of the petitioner, Mr.S.Arumugam, learned Government Advocate appearing on behalf of the 1st respondent and Mr.S.Azhagesan, learned counsel appearing on behalf of the 2nd respondent.

3.The issue involved in the present writ petition is covered by the Judgment of this Court in D.Sachidhanandam vs. The

Registrar/Inspector General of Registration, Santhome High Road, Mylapore, Chennai 600 004 & Others reported in 2022 (1) Writ L.R. 501. The relevant portions in the Judgment are extracted hereunder:

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 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 advertng 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.

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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.

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

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

the issue in question is viewed from the application of Section 62 of Indian Contract Act, any rescission must be only bilaterally. See City Bank N.A. Vs. Standard Chartered Bank and Others, AIR 2003 SC 4630 : (2004) 1 SCC 12....."

42. A Division Bench of this Court again considered this issue in the case of A.S.Elangode Vs. A.Palanisamy and others, (2009) 4 CTC 627 in that case also a sale deed was executed and registered in 2002 and after 5 years a deed of cancellation of the earlier sale deed was presented by the first respondent/vendor for registration. The question arose in that case was as to whether the deed of conveyance registered in accordance with the provisions of Section 17 of the Registration Act could be unilaterally cancelled without the knowledge, consent or the signature of the purchaser. While deciding the issue the Division Bench followed its earlier decision in E.R.Kalaivan's case reported in (2009) 6 MLJ 1009 and held as under:-

"7. From the above judgments, 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 as 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.

9. Section 17 of the Act deals with documents where registration is compulsory and Section 18 deals with the documents where registration is optional. A reading of Section 17(b) shows that a deed of cancellation of sale falls within the purview of that Section, since such documents declares no right and title of immovable property. As the said document is compulsorily registrable, some restrictions

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 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 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 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."

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?

(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, 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."

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."

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. Nonpresence 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 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.

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

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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 quasijudicial 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 quasijudicial. 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."

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 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."

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 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?

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 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.

4. In the light of the above judgment, it has to be held that the writ jurisdiction cannot be invoked for setting aside the Cancellation Deed and the remedy will lie only before the Civil Court.

5. In the result, this writ petition is dismissed and liberty is granted to the petitioner to approach the appropriate Civil Court and redress her grievance. No Costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ssr

To

The Sub Registrar,
Royapuram Registration Office,
26, Rajaji Salai, Near G.P.O.
Chennai - 11.

+1cc to M/s.K.Thenrajan, Advocate, S.R.No.39807

+1cc to the Government Pleader, S.R.No.38995

W.P.No.3362 of 2015

VG-II (CO)
RGA(27/07/2022)