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11.10.2023
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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 9013 of 2023

Naila Rauf
Vs.
The State of West Bengal & Ors.

Mr. Manas Dasgupta,
Mr. Gourav Das
.... for the petitioner

Mr. Amal Kumar Sen,
Ms. Ashima Das (Sil) for the State

Mr. Shayak Chakraborty
...for the private respondent

1. Learned counsel appearing for the petitioner contends that the petitioner presented for registration a deed of revocation of a power of attorney entered into with the private respondent. It is contended that the registering authorities are refusing to register the same, raising questions as to the legality of such document.

2. It is argued that the registering authority does not have the jurisdiction to do so and has to adhere to the provisions of the Indian Stamp Act and the Indian Registration Act for the

purpose of ascertaining the yardsticks as stipulated therein.

3. Learned counsel appearing for the respondent-authorities submits that the petitioner has not yet presented the deed-in-question for registration. Secondly, it is argued that the deed itself is barred within the contemplation of Section 202 of the Contract Act.

4. Learned counsel appearing for the private respondent submits that the petitioner has instituted a suit on the self-same cause of action and has also sought for a cancellation, inter alia, of the very same power of attorney which is being sought to be revoked by the deed-in-question.

5. By placing reliance on Annexure P-4 to the writ petition which is a copy of the civil court's order, it is submitted that, in fact, the civil court is not only in seisin of the matter, but has also passed an order of injunction restraining the defendant/present private respondent from making any construction over the suit property on the strength of the development agreement dated November 01, 2018 and development

power of attorney dated November 01, 2018 till a particular date.

6. It is argued that since the matter is already sub judice before the civil court, a similar relief could not be obtained by the petitioner before the registering authority or this court.

7. The merits of the suit are not to be adjudicated under Article 226 of the Constitution of India, that too, within the limited scope of the present writ petition. The question arising here is, what is the extent of the powers of the registering authority?

8. It is well-settled that the registering authority, within the contemplation of the Registration Act, is duty-bound only to ascertain whether the tests stipulated in the said Act and the Stamp Act have been duly complied with by a person presenting the deed for registration. If such criteria are satisfied, the registering authority has no option but to register the document-in-question. The issue as to whether a document is hit by Section 202 of the Contract Act is for a competent civil court to decide. It is beyond the domain of the registering authority

even to enter into such civil dispute between the parties.

9. Insofar as the arguments of the private respondent are concerned, the same are also not tenable in the eye of law. It cannot be accepted that the premise of challenge before the civil court and the registering authority are the same. Whereas the petitioner has approached the civil court for a regular cancellation decree *inter alia* with regard to the power of attorney in question, the cause of action of the present writ petition is refusal by the registering authority to register a revocation deed.

10. Although, incidentally, the effect of the revocation deed and a decree of cancellation of the power of attorney might operate in the same sphere, it does not mean that the registering authority has co-equal power with the civil court to decide similar issues. In fact, whatever might be the civil consequence of the deed which is sought to be registered, the same will be decided by the competent civil court, either in the pending suit or otherwise.

11. The registering authority, however, cannot look into the effect of the said deed but has only

to see whether the stipulations in the Registration Act and the Stamp Act are satisfied.

12. In such view of the matter, W.P.A. No. 9013 of 2023 is disposed of by directing the respondent no. 6, that is, the Registrar of Assurances, Kolkata to duly registrar the document of the petitioner, being the revocation deed-in-question, subject to the said document being duly presented before the said authority by the petitioner, as expeditiously as possible, positively within four working weeks from the date of presentation the said document before the said respondent or from this date, whichever is later, subject to compliance of due formalities as contemplated in law.

13. There will be no order as to costs.

14. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)