

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

REVIEW APPLICATION NO.246 OF 2022

IN

WRIT PETITION NO.2111 OF 2022

1. The State of Maharashtra
Through its Secretary
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The Inspector General of Registration and
Controller of Stamps, State of Maharashtra
Opposite Vidhan Bhavan,
New Administrative Building, Pune.
3. The Inspector of Stamp Duty, Aurangabad
Behind Office of District Collector,
Aurangabad.
4. The Joint District Sub Registrar-I,
Aurangabad, Behind Office of District
Collector, Aurangabad.
5. The Joint District Sub Registrar-II,
Aurangabad, Behind Office of District Collector,
Aurangabad.
6. The Joint District Sub Registrar-III,
Aurangabad, Behind Office of District Collector,
Aurangabad.
7. The Joint District Sub Registrar-IV,
Aurangabad, Behind Office of District Collector,
Aurangabad.
8. The Joint District Sub Registrar-V,
Aurangabad, Behind Office of District Collector,
Aurangabad. **... Applicants**

Versus

1. Govind Ramling Solapure,
Age 44 years, Occu. Agri./Business,

R/o Plot No.540, CIDCO, Mahanagar,
Aurangabad.

2. Prakash Pralhad Gadgul,
Age 38 years, Occu. Agri./Business,
R/o Karodi, Tq. & District Aurangabad.
3. Krushna Raosheb Pawar,
Age 44 years, Occu. Agri./Business,
R/o Plot No.540, CIDCO, Mahanagar,
Aurangabad.

... Respondents

...
Advocate for Applicants : Shri. R. N. Dhorde (Senior Special
Counsel) a/w Shri. D. R. Kale-GP, Shri. S. G. Karlekar-AGP
Advocate for Respondents : Shri. R. F. Totla.

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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

**RESERVED ON : 21.12.2022
PRONOUNCED ON : 13.04.2023**

JUDGMENT : (Per S. G. Mehare, J.) :-

01. We have heard the Learned Senior Advocate Shri. Dhorde for the State and the learned Advocate Shri. Totla for the respondents, extensively.

02. The State of Maharashtra and others have preferred this application to review the judgment and order in Writ Petition No.2111 of 2022, dated 05.05.2022.

03. The respondents had preferred the Writ Petition for the declaration that Rule 44(1)(i) of the Maharashtra Registration Rules, 1961 (“Rules 1961” for short) is contrary to the Registration Act, 1908 (“Act 1908” for short) and it be struck down. The petitioners had also prayed for quashing and setting aside the impugned circular dated 12.07.2021 issued by exercising power under Rule 44(1)(i) of the Rules, 1961. The Division Bench of this Court (Coram: R. D. Dhanuka and S. G. Mehare JJ.), allowed the writ petition and passed the following order:

“(II) Rule 44(1)(i) of the Maharashtra Registration Rules, 1961 is read down and is declared that the same would not be applicable. The registering Authority is not required to insist compliance of the conditions imposed under Rule 44(1)(i) while registering the document under Section 34 r/w Section 35 of the Registration Act, 1908. The registering Authority shall not reject any document on the ground of noncompliance of the conditions set out in the impugned circular dated 12.07.2021 or for noncompliance of Rule 44(1)(i).”

04. Before touching the grounds for review, we feel it appropriate to go through the scope of review. It is well settled that the powers of the Court under review are restricted. The Hon’ble Supreme Court recently, in the case of ***S. Madhusudhan Reddy Vs. V. Narayana Reddy and others, Civil Appeals No.5503-04/2022 arising out of petitions for Special***

Leave to Appeal (Civil) No.9602-03 of 2022 has held in paragraph No.18 that under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power, which enables the Superior Court to correct the errors committed by the subordinate Court. This point has been elucidated in ***Jain Studios Ltd. Vs. Shin Satellite Public Co. Ltd. (2006) 5 SCC 501***, where it was held thus :

“11. So far as the grievance of the applicant on merits is concerned, the learned Counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. The repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review cannot be exercised with extreme care, caution and circumspection and only in exception cases.”

“12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of “second innings” which is impermissible and unwarranted and cannot be granted.”

05. The Hon'ble Supreme Court reiterated, in the recent judgment in the case of ***Pancham Lal Pandey Vs. Neeraj Kumar Mishra 2023 Live Law (SC) 111*** in paragraph 15 reads thus;

“15. The provision of review is not to scrutinize the correctness of the decision rendered rather to correct the error, if any, which is visible on the face of the order/record without going into as to whether there is a possibility of another opinion different from the one expressed.”

06. As discussed above, the issue before the Court in the writ petition was limited to the powers to frame rules conferred upon respondent No.2. Discussing the power, this Court held that Rule 44(1)(i) of the Maharashtra Registration Rules, 1961 is beyond the rule-making power conferred upon by the statute. Therefore, it became ultra vires. Though it has been vehemently argued that the provisions of the other law relating to the control and development of the land were not brought to the notice of the Court, this appears not a ground to review the earlier orders as those were not under challenge before the Court.

07. The learned senior Counsel for the petitioners has raised the following points :-

- A] The plain reading of Rule 44 of the Rules 1961, shows that any statute, either of the State or the Central Government, that contains any provision restraining the transfer of immovable property covered therein is automatically prohibited from the registration.
- B] While considering the challenge, this Court failed to consider Sections 21 and 22 of the Act 1908.
- C] There are various provisions under the Maharashtra Land Revenue Code 1961 (Section 45) (“MLR Code” for short), the Maharashtra Regional and Town Planning Act, Maharashtra Apartment Ownership Housing and Area Development Laws, the Real Estate (Regulation and Development) Act, 2016, Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 controlling the illegal transfer of immovable property and has an impact on the registration of documents.
- D] Under Section 17 of the Act 1908, the Sub Registrar has the power to refuse to register the document by recording the reasons for such refusal.

- E) Referring to Rule 44(1) of the Rules 1961, he has vehemently argued that it has been framed for compliance with provisions of the Registration Act, i.e. before accepting the document for registration. Sections 21 and 22 of the Registration Act, which relate to Rule 44(1) (i) were not considered.
- F] Sections 3, 4, 11(1), and Section 13, read with Rule 5 of the Act 1908, and the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, Transfer) Act, 1963, were to be read together to ascertain the powers of the registering Authority to verify the genuineness and legality of the documents.
- G] This Court has erroneously held that the Government has no power under the Act 1908 to make a Rule, but under Section 21(1) and under Section 69 of the Act 1908, the Authorities have framed the rules, and those are the Rules 1961. Once there are powers vested with the applicants to frame the rules, then it cannot be said that those are improper and illegal.
- H] Where the registration is refused, it is appealable under Section 72 of the Act 1908. The efficacious remedy to prefer the appeal against the order refusing the registration was available

to the original petitioners, but they directly approached this Court under writ jurisdiction. On this count also, the writ preferred before this Court was untenable.

- I] Section 17(1)(a) of the Act 1908 provides for the compulsory registration of non-testamentary documents. Section 49 of the Act 1908 speaks of the admissibility of the document not registered.
- J] The sale documents of the petitioners oppose the public policy, and the Court must declare and oppose the public policy in view of Section 23 of the Contract Act.
- K] Sections 21 and 22 of the Act 1908 and Rule 44 of Rule 1961 were not shown to the Court. Hence the ratio in the case of *M/s Sundarsons and others Vs. State of Maharashtra, Union of India and others Vs. S. Srinivasan (2012) 7 Supreme Court Cases 683, Maha Seedmen Association and others Vs. Union of India (2018) DGLS (Bom.) 222* were applied erroneously.
- L] The impugned circular did not go beyond the rule-making power conferred by the parent statute or supplant any provision for which powers were not conferred. Therefore, the

circular impugned before the Court does not become ultra vires.

08. He, on the basis of the ratio laid in the case of ***Rajasthan and others Vs. Basant Nahata (2005) 12, Supreme Court Cases 77***, has argued that any transaction opposed to public policy is invalid. While interpreting the concept of public policy, the Court should consider Section 23 of the Contract Act with other parts thereof. A transaction between two persons capable of entering into a contract which does not contravene any statute would be valid in law. Any contract violating any statutes would be invalid. Therefore, the registering Authority has every power to refuse the registration. A law dealing with the rights of the citizen is required to be clear and unambiguous. The Executive, while making subordinate legislation, cannot be permitted to open new heads of public policy at its whims. The provisions of the Act, therefore, do not lay down any guidelines to render it constitutional. The Court's duty is to expound the law and not to expand new heads of the illegality of contract being opposed to public policy have been found out, and in any event, there exists such a possibility. Referring to the above ratio, he further argued that the contract between the purchaser and seller of the immovable

property was against public policy for the reason that it was executed in violation of many other laws that hold the field.

09. In the above case, the registering Authority had refused to register a power of attorney granted in favour of the person to cultivate and manage the land for the reasons that the contract was against public policy. The Hon'ble Apex Court considering the term "opposed to public policy" held that the amendment by way of inserting Section 22-A of the Registration Act by the Rajasthan Amendment Act, 1976 (being Act No.16 of 1976) was unconstitutional. It has also been held that Section 22 of the said Act, through subordinate legislation, cannot control the transactions which fall out of the scope thereof.

10. He further relied on the case of ***Laxmi Ishwar More Vs. State of Maharashtra and others (2018) 3 ALL M.R. 95, 2016 (4) Mh.L.J. 535*** and argued that the provisions of Section 34 of the Act 1908 prescribe what inquiry can be made by the registering Officer before he registers a document. Paragraph No.4, reads thus;

"4. The inquiry by Registrar under Section 34(3) of the said Act is limited to the factum of execution of the document, identity of persons appearing before the registering Authority and if a

person appears through a representative or agent, then as regards the right of such person to appear. Section 35 of the Act 1908 prescribes the procedure for admission/denial of execution of a document.”

11. Section 34 of the Act 1908 has no relevance to the circular impugned. The impugned circular had no concern with the identification of the person executing a document and the description of the document. It is altogether different.

12. Learned Senior Counsel Shri. Dhorde also relied on the case of ***Sanjay Ramdas Patil Vs. Sanjay and others (2021) 10 Supreme Court Cases 306***. Referring to the basic rules of interpretation of the statute, the Hon’ble Supreme Court, in paragraph 30, has observed thus;

“30. It could be thus be seen that it is more than well settled that it is the duty of the Court to construe the statute as a whole and that one provision of the Act has to be construed with reference to other provisions so as to make a consistent enactment of the whole statute. It is the duty of the Court to avoid a head-on clash between two sections and construe the provisions which appear to be in conflict with each other in such a manner as to harmonize them. It is further equally settled that while interpreting a particular statutory provision, it should not result into making the other provision a “useless lumber” or a “dead letter”. While construing the provisions, the Court will have to ascertain the intention of the law-making Authority in the backdrop of the dominant purpose and underlying intendment of the statute.”

13. Learned Senior Counsel Shri. Dhorde relied on the case of *Dharni Sugars and Chemicals Ltd. Vs. Union of India and others (2019) 5 Supreme Court Cases 480*. He referred to paragraphs Nos.34 and 39 of the said judgment, which relates to the fundamental rule of construction of the law. He further relied on the case of *Hira Singh and another Vs. Union of India and another (2020) 20 Supreme Court Cases 272* and vehemently argued that the circular impugned before the Court was clarificatory in nature issued with abundant caution. Therefore, it is not contrary to the scheme of the Act 1908. The circular impugned before the Court ought to have been interpreted in the larger interest considering the basic rule that it is a duty of the Court to harmoniously interpret the statutes looking to the legislative intent. He also relied on the case of *High Court of Judicature at Madras represented by its Registrar General Vs. M. C. Subramaniam and others (2021) 3 Supreme Court Cases 560*, in which, again, the golden rule of interpretation has been discussed.

14. In a nutshell, learned senior counsel Shri. Dhorde has brought a case that the circular was issued well within the subordinate delegated power of the Authority. It was in the

interest of the public to prevent the illegalities in implementing the laws for the use and development of the lands. It is not in contravention of the statutory provisions. However, the incorrect case laws were placed before this Court. Therefore, an erroneous judgment has been passed. His arguments also revolve around the provisions of the Act of 1908 and other relevant laws mentioned above. He tried to convince the Court that the public interest needs to be protected; therefore, all the relevant laws referred by him are to be read together to arrive at the correct conclusion. Such an exercise was not done when the Writ Petition was heard.

15. Per contra, learned counsel Shri. Totla for respondents has advanced the oral arguments as well as submitted the notes of written submissions. He argued on the following points;

A] Unless the Act of 1908 is amended, the petitioners cannot take the aid of the subsequent Acts, like, MRTP, RERA, and MLR Code.

B] Referring Sections 34 and 35 of the Act 1908, he would argue that these sections deal with the

appearance of the persons executing documents and the satisfaction of the registering Authority of the person executing the document.

- C] Under the guise of exercising the powers of review, the Court can correct the errors but not substitute the view taken earlier merely because there is no possibility of taking two views in the matter.
- D] Petitioners nowhere pointed out the errors. On the contrary, they argued as if they were arguing on merits.
- E] The review applicants have raised fresh grounds by taking recourse under Sections 21 and 22 of the Registration Act, 1908. Those provisions of the law were well within the knowledge of the applicants, but they did not raise before the Court when the petition was heard on merit.
- F] Having Authority of law and subordinate legislation in the form of the Rules 1961 cannot enhance or amend the scope and powers

conferred on registering authorities by way of the Act 1908.

- G] In the case at hand, there was no order of conversion of land and the approved maps and plans under the Regional Development Act and MLR Code, and in the absence of any such legally approved maps and plans, the registering Authority had the power to refuse the registration under Section 21 of the Registration Act, but that was not the issue before the Court.
- H] The learned Government Pleader had argued the grounds raised under the review petitions during the hearing of the writ petition. The relevant provisions of the law were referred to the Court along with the case laws. Therefore, it cannot be said that any relevant provisions of the law were hidden from the Court. The Advocate General for Maharashtra is not a necessary party.
- I] Rule 44 of the Rules 1961 does not empower the registering Authority to have a concern with

the title of the party. Ground 'C' in the review petition is a new ground.

16. He relied on the case of *S. Madhusudhan Reddy Vs. V. Narayana Reddy and others (Civil Appeals No.5503-04 of 2022)* decided on 18.08.2022 by the Hon'ble Supreme Court and argued that under the garb of filing a review application, a party could not be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power, which enables the Superior Court to correct errors committed by a Subordinate Court. An erroneous decision of a Court can be corrected by exercising review jurisdiction but can only be corrected by a superior Court. An error that has to be detected by the process of reasoning cannot be described as an error apparent on the face of the record for the Court to exercise its power of review. In view of the ratio laid down in the above case, the applicants have to justify the maintainability of the present review application, which they did not have discharge. Under the pretext of filing the review application, the applicants herein have taken the law into their hands, refused to comply with the directions and judgment passed by this Court, and acted willfully in

disobedience of the impugned judgment and order. In fact, the grounds raised in the review application are reopening of the old and overruled arguments which were dealt with in the impugned judgment under review.

17. He also relied on the case of *[Additional District Magistrate (Rev.) Delhi Administration Vs. Siri Ram, (2000) 5 SCC 451]*. It has been observed in the said case that the conferment of the rules-making power by an Act does not enable the rule-making Authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

18. Learned Counsel for the contesting respondents, Shri. Totla has relied on the case of *Union of India and others Vs. S. Srinivasan (2012) 7 SCC 683*, in which it has been held “where the rule is directly inconsistent with a mandatory provision of the statute, then of course, a task of the Court is simple and easy”. Therefore, the Court, while delivering the judgment under review, has read down Rule 44(1)(i) of the Rules, 1961 and struck down the impugned circular dated 12.07.2021 issued thereunder. He further read paragraphs Nos.28, 29 and 32 of the judgment under review and supported the said

judgment. He has also referred to the case of *M/s Sundarsons and others Vs. State of Maharashtra and others (Writ Petition No.1955 of 2007) with connected matters decided on 26.06.2008*, which was based on analogous facts, wherein Section 34 and 35 of the Registration Act, 1908 were interpreted, and it was held that “executive instructions given by the State by exercising its power under Article 162 of the Constitution of India cannot circumvent a statutory provision”. He has vehemently argued that the precedents relied upon by this Court in the judgment under review were correctly considered. Therefore, the argument advanced, pointing out that those judgments were irrelevant and no correct law was placed before the Court. The applicants have not shown a single error apparent on the face of the record of proceedings in Writ Petition No.2111 of 2022 nor produced any new material, evidence on record or sufficient reasons justifying the present review. It must be remembered that an error which is not self-evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of the record justifying the powers of review, and it is not permissible for an erroneous decision to be reheard and corrected in review as review application is for a limited purpose and cannot be allowed to be an appeal in guise.

19. The learned Counsel for the respondents, Shri. Totla, also relied on the judgment ***Gurjeet Singh Madaan Vs. The Sub-Registrar-IX (District South-West) and another*** C.S. (O.S.)340/2013, decided by the High Court of Delhi on 26.09.2013 and argued that Section 21 of the Act 1908 had been discussed. In the said case, the ratio laid down in the case of ***Hari Singh and another Vs. Sub Registrar and others (1998) 120 Punjab Law Reporter 787*** has been referred to, and it has been observed that Act 1908 itself is a complete code. The reasons have been specifically enumerated under Sections 21, 23, 28, 32 and 35 of the Act for which a Sub Registrar or the Registrar may refuse to register the sale deed and other documents required to be registered under the Act 1908. He also relied on the case of ***Kerala State Electricity Board and others Vs. Thomas Joseph @ Thomas M. J. and others***, the judgment of the Hon'ble Supreme Court, dated 16.12.2022 in Civil Appeal Nos.9252-9253 of 2022 (Arising out of SLP (C) Nos.7860-7861 of 2018). In paragraph No.78 of the said judgment, it has been observed that the Court, considering the validity of subordinate legislation, will have to consider the nature, object and scheme of the enabling Act and also the area over which power has been delegated under the Act and

then decide whether the subordinate legislation conforms to the present statute. He has tried to argue on the basis of the ratio laid down by the Hon'ble Apex Court in the case (supra) that while exercising the delegated power to legislate, it must be examined whether the subordinate legislation conforms to the parent statute. If it is not so, the delegated powers to legislate cannot be exercised. He also referred to paragraph No.81(18), wherein it has been observed that the statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the Legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute. In view of the erroneous exercise of the delegated powers by the Authority, issuing the impugned circular has exceeded his jurisdiction. Therefore, the Court, in Writ Petition, has correctly declared the impugned circular illegal. The provisions under the various laws regulating the management, control and development of the land have their own effect on the object of those Acts.

20. In reply to the objection raised by the learned senior Counsel, Shri. Dhorde, that the efficacious remedy was available to the applicants. Hence, the writ petition ought not to have been considered, learned Counsel Shri. Totla has correctly pointed out that preferring the appeal against the refusal of the registration of the document under the impugned circular and challenging the virus of the Rules under which the impugned circular was issued were distinct issues. Instead of challenging the order refusing the registration of the document, the original petitioners have preferred the writ petition challenging the vires of the circular has no concern with the appeal proposed against the rejection of the registration. The law is well settled that an alternative remedy is not an absolute bar to the admissibility of the writ petition. In *Whirlpool Corporation Vs. Registrar of Trade Marks of Mumbai and others (1988) 8 Supreme Court Cases 1*, the Hon'ble Supreme Court has held that under Article 226 of the Constitution of India, the High Court, having regard to the facts of the case, has the discretion to entertain or not to entertain the writ petition. But the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court

would not normally exercise its jurisdiction. But, the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged.

21. In the facts and circumstances of the case, the Court is of the view that an appeal against the rejection of the registration referring to the impugned circular is a distinct remedy. That appeal is not the effective and efficacious remedy to challenge the vires of the Rules, the validity and legality of the impugned circular issued under said Rules and the powers of the Authority exercising delegated legislation. In light of the law and facts, we are of the view that the Writ Petition of the respondents was not bad in law.

22. Learned Senior Counsel Shri. Dhorde heavily emphasized that Sections 21 and 22 of the Registration Act were not brought to the notice of the Court, which confers the powers upon the registering Authority to issue the circular in

question. To have a glance, said Sections have been reproduced thus;

“21. Description of property and maps or plans.- (1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on to which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.”

“22. Description of houses and land by reference to Government maps or surveys.-(1) Where it is, in the opinion of the [State Government], practicable to describe houses, not belong houses. in towns, and lands by reference to a Government map or survey, the 27[State Government] may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or subsection (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.”

23. The learned Senior Counsel, Shri. Dhorde, for the petitioners, referred to and commented on almost all the provisions of the Act of 1908. Hence the relevant Sections concerned with the issue raised in the application have to be considered.

24. Section 17 of the 1908 Act is about the documents for which registration is compulsory. A document affecting the transfer of immovable property under the Transfer of Property Act for Rs. one hundred and more, if not registered, shall not be received as evidence of any transaction affecting such property or conferring such rights under section 49 of the Act 1908.

25. Section 21 of the 1908 Act provides that no non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same. In other words, if

the document does not contain the description of the property proposed to be transferred, the registering Authority may refuse registration.

26. Section 23 of the said Act says that no document other than a Will shall be accepted for registration unless presented to the proper Officer within four months from its execution, subject to the provisions of Sections 24, 25 and 26. That again confers the powers upon registering Authority to refuse the registration.

27. Section 28 of the said Act says about the territorial jurisdiction of the office of the Sub-Registrar. If the property proposed to be transferred is not within the jurisdiction of the Sub-District of the Sub-Registrar, he has the power to refuse the registration.

28. Section 32 speaks about the presence of the persons to present the documents for registration, except in the cases under Sections 31, 88 and 89.

29. Section 35 further confers the powers on the Registering Authority to refuse the registration of the document presented if any person by whom the document purports to be executed

denies its execution or if any such person appears to the registering Officer to be a minor, an idiot or lunatic, or if any person by whom the document purports to be executed is dead and his representative or assign, denies its execution.

30. The above sections relate to the powers of registering Authority to deny the registration.

31. In view of the arguments of learned senior counsel Shri. Dhorde, it has to be examined whether the Authority has the delegated powers to frame the rules denying the registration of the documents under Section 21 of the 1908 Act.

32. For framing the rules by the Authority under delegated Legislature needs the source of powers. Such powers may be expressed, implied or inherent. The expressed powers are directly given under the enactment, and implied powers are those powers that are reasonably inferred by expressed power. The need for these powers is spelt out in the 'necessary and proper' clause of the Act. In view of such principles of the delegated Legislature, the arguments of learned senior Counsel are to be tested.

33. Section 21 of the 1908 Act, as discussed above, provides that the non-testamentary document relating to the property shall not be accepted for registration unless it contains a description of such property sufficient to identify the same. Sub-Section (4), which is relevant, provides that the registration of the document shall be refused where the document is not accompanied by a true copy of the map or plan. In short, for registration of the document affecting the transfer of immovable property, copies of the map and plan are essential to be accompanied by the document. The word 'map or plan' used in Sub Section (4) of Section 21 shall mean the legally approved map or plan. The term map and plan' has to be read with the provisions of the Maharashtra Regional Town Planning Act and section 44 of M.L.R. Code, which provides for the approval of the maps and conversion of the land from agricultural to nonagricultural use. However, by Bombay Act No.17 of 1930, in the application of Section 21 to the State of Maharashtra, part XI-A was inserted after Part XI of the main Act. Sub-Section, 3 of Section 70-B (3), has been inserted in the main Act by the Bombay Act 17 of 1930, and Sub-Section (4) of Section 21 has been omitted. Since the application of Sub Section 4 of Section 21 as to the State of Maharashtra has been omitted, the provisions of part XI-A would apply. Chapter

XI-A speaks of copying the documents by means of Photographs. Barely the mode of preparing the copies of the document has been modified, and instead of manual copies, the photocopies of the documents were directed to be received with the document. By the omission of Sub Section (4) of Section 21 and inserting Chapter XI-A, the requirement to produce copies of the map or plan appears to have not been taken away.

34. In the impugned circular, it was directed to the registering Authority to ascertain;

(i) Whether the transaction which is intended by the document is prohibited by any existing Act of Central or State Government,

(ii) Whether a true copy of requisite permission or no objection certificate from the competent Authority under the said Act has been attached along with the document,

(iii) Whether the document is not written in contradiction with any vital term or condition mentioned in that permission or no objection certificate.

35. In the said circular, Section 8-B of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (Fragmentation Act for short) has been referred. The said Section reads thus :

“8B. Nothing in sections 7, 8 and 8AA shall apply to the land situated within the limits of a Municipal Corporation or a Municipal Council, or to the land situated within the jurisdiction of a Special Planning Authority or a New Town Development Authority appointed or constituted under the provisions of the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force, and also to any land allocated to residential, commercial, industrial or any other nonagricultural use in the draft or final Regional plan prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force :

Provided that, no person shall transfer any parcel of land situated in the areas specified above, which has area less than the standard area notified before the date of coming into force of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 2015, unless such parcel is created as a result of sub- division or layout approved by the Planning Authority or the Collector, as the case may be, under the provisions of the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force.].”

36. Section 8B, reproduced above, pertains to restrictions on dividing the land into pieces below the standard area. It has been provided that no person shall transfer any parcel of land

situated in the areas specified in the said Section which has an area less than the standard area notified before the date of coming into force of the Fragmentation Act unless such parcel is created as a result of sub-division or layout approved planning Authority or the Collector, as the case may be, under the provisions of the Maharashtra Regional Town Planning Act, 1966 or any other law for the time being in force.

37. Section 9 of the Fragmentation Act provides that the transfer or partition of any land, contrary to the provisions of the said Act, shall be void. The Collector has the power to summarily evict any person unauthorizedly occupying or wrongfully in possession of any land, the transfer or partition of which, either by the Act of parties or by the operation of law, is void under the provisions of said Act. The Collector may, on an application, regularize the transfer or partition of land contrary to the provisions of the said Act made on or after the 15th day of November 1965 and before the date of commencement of Maharashtra Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 2017. The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act imposes a duty on the Collector to prevent the

fragmentation of the land. The 1809 act does not fetter the Collector's power to prevent the fragmentation of the land.

38. It is clarified that declaring the circular impugned ultra vires does not mean that this court has taken away the powers of the Collector or any competent Authority conferred with jurisdiction under the Fragmentation Act to prevent the illegality committed by a person.

39. The property description in the document placed for registration by the respondents was of the land in the Village Panchayat limit. The document placed regarding the conversion of land to non-agriculture use accompanied with was not the order passed by the Collector granting permission to convert the use of land from agriculture to non-agriculture. It was an order imposing a penalty for an illegal change of use of the land. It has been specifically observed in the said order that it shall not be construed as permission to convert the use of land. The land owner or the row house builder did not comply with Section 31 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, the Town Planning Authority or the Collector approved the layout. So it is assumed that the approved maps and plans did not

accompany such documents, and the document may not be in compliance with Section 21 of the Act 1908.

40. The general rule of exercising delegated power is that it must be exercised in conformity with the enabling Act. The ratio laid down in the case of *Union of India Vs. S. Srinivasan (2012) 7 SCC 683* has been considered in which it was held that “if a rule goes beyond the rule-making power conferred by the statute or supplants any provisions for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is reliable to the rule. Similarly, the rule must be in accordance with the provisions of the parent Act as it cannot travel beyond it.”

41. It has been observed in the case of *Kerala state Electricity Board (supra)* that the Court considering the validity of subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power as has been delegated under the Act then decide whether sub-ordinate legislation conforms to the parent statute.

42. Rule 44(1)(i) Rules, 1961 was amended, exercising the powers conferred upon respondent No.3 under Section 69 of

the Act, 1908, in its application to the State of Maharashtra. Those are the expressed powers and a positive delegation. Section 69 of the Registration Act is the source of the power of the Inspector General to make rules in conformity with the Act 1908. The powers conferred have been restricted to the subjects mentioned in Sub Section 1(a) to (j). None of the subjects in the said Section covers the rules impugned before us.

43. Section 3(51) of the General Clauses Act, 1897 appears relevant for the issues before the Court that contains the definition of 'rule' in the following words :

“ ‘Rule’ shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment.”

44. The above definition again clarified the limits of the subordinate legislation that the rules shall be framed in the exercise of the powers conferred by the enabling Act. The Rules cannot overwrite the Act either by exceeding the Authority or by making provisions inconsistent with the Act, but when the enabling Act itself permits its modification by rules, the rules will have a binding effect in tune with the Act.

45. Reading the various sections referred to by the learned senior Counsel for the present petitioners under the Act 1908, we do not agree that Section 21 of the said Act confers the powers upon respondent no.3 to frame the rules. However, it is clear that Act 1908 is a complete code, and specific Sections have been inserted conferring the power upon the registering Authority to refuse the registration. The Registering Authority may exercise the power of refusing the registration of the document if it is not complete in terms and requirements of the Sections discussed above. In the impugned judgment under review, the Court has not disturbed the powers of the Registering Authority.

46. Reading the relevant provisions of various Acts relating to the transfer, conversion of use and development of land, as referred to by the learned senior Counsel Shri. Dhorde, we are of the opinion that those provisions have no control over the provisions of the 1908 Act. Those Acts provide for independent legal actions for its violation.

47. On discussing the various provisions of different laws and considering the arguments of respective counsels, we are of the opinion that the law laid in the cases of *Jain Studio Ltd.*

and *Pancham Lal (supra)* squarely applies as regards the powers of review and there was no error apparent on the face of the record. The present petitioners failed to satisfy us that there were grounds to review the impugned judgment and order.

48. For the above reasons, the review application stands dismissed.

49. The pending Civil Applications do not survive and stand disposed of.

13th April, 2023

50. After the judgment in the Review Application was pronounced in the open court, the learned Government Pleader prays for continuation of the order dated 20.10.2022 for a further period of four weeks as the State Government desires to approach the Hon'ble Supreme Court.

51. Shri. Totla, the learned counsel has vehemently opposed the said request contending that the persons, who desire to get their documents registered, are facing severe hardships.

We are reproducing the relevant portion of the order dated 20.10.2022, viz. paragraph No.3, as under :

“3. Since we are going to hear this matter finally on 16.11.2022, we expect that there should not be any insistence from anybody on the authorities concerned to register the documents pursuant to the order under review and more so in view of the fact that no such registration has been carried out ever since the pronouncement of the order dated 05.05.2022.”

52. Since the above arrangement was in operation for the last five months, we are of the view that as the State Government desires to approach the Hon’ble Supreme Court, the same arrangement be continued for a period of four weeks only. We therefore, order accordingly.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-