



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.04.2023
Pronounced on	28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021
and
W.M.P.Nos.8683, 7610, 8685 of 2023
& 11763 of 2021

In W.P.No.6956 of 2023:

Padmini Bai

... Petitioner

Vs.

1.The Inspector General of Registration,
O/o.The Inspector General of Registration,
Santhome, Chennai-600 004.

2.The Sub Registrar,
O/o.The Sub Registrar,
Anna Nagar, Chennai-600 040.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the first and second respondent to cancel the unilateral cancellation of settlement deeds in



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

Document Nos.5657 and 5658 of 1992 dated 01.07.1992 on the file of the second respondent as illegal by removing the related entries in the Register maintained by the second respondent herein.

For Petitioner : Mr.G.Sasee Dhevi

For Respondent-1 & 2 : Mr.Yogesh Kannadasan, SGP

In W.P.No.7509 of 2023:

M.Sekar

... Petitioner

Vs.

1.The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam, Chennai-600 004.

2.The Sub Registrar,
Vadakkandal Sub-Registrar's Office,
Vadakkandal,
Kallakuruchi District.

3.The District Registrar,
Kallakuruchi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned cancellation of Settlement Deed Registered as Document No.248/2014 dated 25.04.2014 registered by the second respondent to quash the same as null and void consequently direct the respondents 1 to 3 to remove the entries of cancellation of



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

settlement deed vide Document No.248/2014 dated 25.02.2014 in the
register.

For Petitioner : M/s.Kanimozhi mathi

For Respondent-1 to 3 : Mr.Yogesh Kannadasan, SGP

In W.P.No.8491 of 2023:

Ponnammal

... Petitioner

Vs.

State rep. by
The Sub Registrar,
O/o.The Sub Registrar,
Mettupalayam,
Coimbatore District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the registration of the unilateral cancellation of settlement deed in Document No.6147/2004 dated 23.12.2004 on the file of the Sub Registrar, Mettupalayam Sub Registrar Office, Mettupalayam, Coimbatore District, executed by the petitioner's husband comprised in plot No.18 with an extent of 2420 sq. ft situated at Kaaramadai village, Coimbatore District in Survey No.698/2, which was duly registered with the respondent vide document No.1142/1993 dated 29.03.1993 and quash the same as per as the property is concerned bearing document No.1142/1993 dated 29.03.1993 alone



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

consequently directing the respondent to remove the said entry in the register and all the relevant records.

For Petitioner : Mr.R.Prabudoss

For Respondent : Mr.Yogesh Kannadasan, SGP

In W.P.No.11114 of 2021:

C.Bhuvaragavan

... Petitioner

Vs.

1.The District Registrar,
Vellore Registration District,
Vellore.

2.The Sub Registrar,
Jollarpettai Sub-Registration District,
Jollarpettai, Tirupattur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent culminating in the registration of the unilateral cancellation of settlement deed dated 10.07.2012 vide document No.2135 of 2012 and quash the same and consequently, direct the second respondent to make necessary entries in Book I on his file recording such quashing.

For Petitioner : Mr.B.Manokaran

For Respondent-1 & 2 : Mr.Yogesh Kannadasan, SGP



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

COMMON ORDER

Heard the learned counsel for the parties.

2. The common legal issues that arises for consideration in these present Writ Petitions is as to whether the Registering Authority has powers to unilaterally cancel the Settlement Deed?

3. The learned counsel for the petitioners submitted that such unilateral cancellation of the Settlement Deed is impermissible owing to the decisions of the Hon'ble Supreme Court in ***Thota Ganga Laxmi and Others Vs. Government of Andhra Pradesh & Others*** reported in ***2010 (15) SCC 207*** and ***Satya Pal Anand Vs. State of Madhya Pradesh and others*** reported in ***2016 (10) SCC 767***, as well as the decision of the Hon'ble Full Bench of this Court in ***Sasikala and Others Vs. The Revenue Division Officer-cum-Sub Collector, Devakottai, Sivagangai District and another*** reported in ***2022 (7) MLJ 1***, wherein it has been held that unilateral cancellation of Settlement Deed, is not permissible.



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

WEB COPY

4. The learned Special Government Pleader made an attempt to distinguish the facts involved in *Satya Pal Anand and Thota Ganga Laxmi's cases (supra)* and submitted that prior to 29.11.2018, there was no circular, prohibiting such unilateral cancellation of Settlement Deed and therefore, the registration of the cancellation of the Settlement Deed, cannot be found fault with.

5. The issue pertaining to unilateral cancellation of a registered document is no more *res integra*. In *Thota Ganga Laxmi, as well as Satya Pal Anand cases' (supra)*, this ratio has been well laid by holding that the Registering Authority has no power to accept the deed of cancellation to nullify the registered deed of conveyance which was already acted upon by the transferee and that, in the absence of any express provisions to the contrary in the Registration Act, 1908, the role of the Registering Authority stands discharged, once the document is registered.

6. The objections of the learned Special Government Pleader in attempting to distinguish the facts in *Satya Pal Anand and Thota Ganga Laxmi cases' (supra)*, may not require consideration, since both these



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

decisions have been extensively dealt with by the Hon'ble Full Bench of this Court in *Sasikala's case (supra)* and held that unilateral cancellation of a Deed of Conveyance, is void and *non-est* and cannot be accepted for registration. The relevant portion of the order reads as follows:-

"Facts of the case in Satya Pal Anand Case:

24.1. A residential plot in Bhopal was allotted to the appellant's mother Smt. Veeravali Anand by Punjabi Housing Co-operations Society Ltd., (hereinafter referred to as the -Society-) by a registered deed dated 22.03.1962.

24.2. Smt.Veeravali Anand died on 12.06.1988. The Society executed a deed of extinguishment on 09.08.2001, unilaterally, cancelling the said allotment on the ground of violation of the bye~laws of the Society in not raising any construction on the plot within time.

24.3.On the basis of extinguishment deed the Society executed and got registered another sale deed in favour of the fifth respondent in respect of the same plot. The appellant objected to the said transaction. However, a compromise deed was executed where under the appellant



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

received the consideration of Rs.6.50 lakhs. Despite the compromise deed, the appellant raised a dispute under Section 64 of Madhyapradesh Co-operative Societies Act, 1960, challenging the unilateral registration of extinguishment deed in 2001 and allotting the plot in favour of fifth respondent on 24.04.2004.

24.4. During the pendency of the dispute, the Society permitted transfer of the plot in favour of the respondents 6 and 7 by a sale deed dated 11.07.2006. Since the appellant was resorting to multiple proceedings in relation to the plot, the Society issued a notice on 12.07.2007 asking the appellant to return the consideration amount in furtherance of the compromise deed. The appellant did not return the money but continued with multiple proceedings including criminal proceedings.

24.5. The appellant thereafter filed an application before the Sub-registrar to cancel the registration of extinguishment deed dated 09.08.2001 and the subsequent sale deeds dated 21.04.2004 and 11.07.2007. The Sub-Registrar rejected the application on the ground that the dispute is pending adjudication and that the



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

Sub-Registrar has no jurisdiction to cancel the registration of a registered document. Thereafter, the appellant filed an application under Section 69 of Registration Act, 1908 before the Inspector General of Registration, who rejected the said application by order dated 19.09.2008. The order of Sub-Registrar and the order of Inspector General of Registration are challenged in a writ petition where he also sought for a declaration that the deed of extinguishment deed and subsequent sale deeds are void ab initio and a direction to record cancellation of documents. The writ petition was dismissed by a Division Bench of High Court of Madhyapradesh on the ground that the appellant had already resorted to a remedy (a dispute) before the appropriate forum under Madhyapradesh Co-operative Societies Act, 1960 and that the Sub-Registrar has no power to cancel the registered documents.

24.6. On appeal before the Hon'ble Supreme Court, the matter was heard by a two member Bench of Hon'ble Supreme Court. Consequent to the difference of opinion between the two Hon'ble Judges of Division Bench, the appeal was placed before a three member Bench in terms of order of reference dated 25.08.2015.



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

The larger Bench then proceeded to frame the questions to be answered by them on the facts of the case. It is relevant to extract para 23 to Para 23.6(f) of the said judgment, which are as follows:

"23.Having considered the rival submissions, including keeping in mind the view taken by the two learned Judges of this Court on the matters in issue, in our opinion, the questions to be answered by us in the fact situation of the present case, can be formulated as under:

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

23.2. (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?



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

23.1. (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?*

23.4. (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?*

23.5. (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?*

23.6. (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?"*



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

25. While considering the questions formulated by Hon'ble Supreme Court, the Hon'ble Supreme Court distinguished the judgment of Hon'ble Supreme Court in *Thota Ganga Laxmi* case reported in (2010) 15 SCC 207 on the ground that the dictum in the said decision is based on Rule 26(k)(i) of Rule approved by state of Andhrapradesh under Section 69 of the Registration Act, 1908 which mandates the Registration authority to ensure that cancellation deeds are executed by all the executant and claimant to the previously registered conveyance and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent civil or High Court or State or Central Government annulling the transaction. A reference was also made to a decision of our High Court in the case of *E.R.Kalaivan vs Inspector General of Registration*, reported in AIR 2010(Mad.) 18, which was followed by his Lordship V.Gopala Gowda.J while giving his dissenting view before reference. The absence of a specific provisions under Registration Act, or Rules framed by the State of Madhyapradesh requiring signatures of both the vendor and the purchasers or the presence of both before the



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

Sub-Registrar to present the deed of extinguishment was the main reason stated by the Hon'ble Supreme Court to distinguish a few judgments. The following paragraphs in the said judgment gives the reasonings of Hon'ble Supreme Court for its decision.

44.In the dissenting opinion, reference has been made to the decision of the Division Bench of the Madras High Court in the case of E.R. Kalaivan (supra). It was a case where the Registering Officer refused to register the deed of cancellation presented before him on the ground that the cancellation deed was sought to be registered without there being a consent from the purchaser. The aggrieved person approached the Inspector General of Registration who in turn issued a circular dated 5.10.2007 addressed to all the Registering Officers in the State, that the deed of cancellation should bear the signatures of both the vendor and the purchaser. The validity of this circular was challenged by way of Writ Petition before the High Court. In the present case, our attention has neither been invited to any express provision in the Act of 1908, Rules framed by the State of Madhya Pradesh nor any circular issued by the Competent Authority of the State of Madhya Pradesh to the effect that the



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

Extinguishment Deed should bear the signatures of both the vendor and the purchaser and both must be present before the Registering Officer when the document is presented for registration. Absent such an express provision, insistence of presence of both parties to the documents by the Registering Officer, may be a matter of prudence. It cannot undermine the procedure prescribed for registration postulated in the Act of 1908.

45. The moot question in this case is : whether the action of the Society to cancel the allotment of the plot followed by execution of an Extinguishment Deed was a just action? That will have to be considered keeping in mind the provisions of the Act of 1960 and the Bye~laws of the Society which are binding on the members of the Society. The interplay of the provisions of the Contract Act and the Specific Relief Act and of the Co-operative Laws and the Bye Laws of the Society permitting cancellation of allotment of plot or the membership of the concerned member will have to be considered in appropriate proceedings. Whether the decision of the Society to cancel the allotment of plot made in favour of its member is barred by the law of Limitation Act, is again a matter to be tested in the proceedings before the Cooperative Forum where a dispute



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

has been filed by the appellant, if the appellant pursues that contention.

46. 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.

47. 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



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

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.

48. Taking any view of the matter, therefore, we are of the considered opinion that, the High Court has justly dismissed the writ petition filed by the appellant with liberty to the appellant to pursue statutory remedy resorted to by him under the Act of 1960 or by resorting to any other remedy as may be advised and



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

permissible in law. All questions to be considered in those proceedings will have to be decided on its own merits.”

26.In the light of the precedents above referred to, this Court is inclined to refer some of the provisions of the Tamil Nadu Registration Act and the Rules. We noticed that at the time of hearing the issue by the Full Bench earlier. In Latif Estate Line India Ltd., case, Section 22(A) of the Tamil Nadu Registration Act, which was then in the Statute was struck down. However, Section 22(A) was again introduced by Tamil Nadu Act 28 of 2012 dated 21.06.2012. The amendment came into force with effect from 20.10.2016. After amendment, Section 22(A) of the Tamil Nadu Registration Act, 1908 reads as follows:

(1) Any instrument relating to, (i) conveyance of properties belonging to the Government or the local bodies such as the Chennai Metropolitan Development Authority, or Corporations, or Municipalities, or Town Panchayats, or Panchayat Unions, or Village Panchayats ; or

(ii) conveyance of properties belonging to any religious institutions including temples, mutts, or specific endowments managed by the Hereditary Trustees / Non-hereditary Trustees



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

appointed to any religious institution under a Scheme settled or deemed to have been settled under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) and mutts and temples including specific endowments attached to such of those temples managed by mutts; or

(iii) conveyance of properties assigned to, or held by

(a) the Tamil Nadu State Bhoodan Yagna Board established under section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958 (Tamil Nadu Act XV of 1958) ; or

(b) the Tamil Nadu Wakf Board, unless a sealed No Objection Certificate issued by the competent authority as provided under the relevant Act or the rules framed thereunder for this purpose and in the absence of any such provision in any relevant Act or in the rules framed thereunder, authority so authorised by the Government, to the effect that such registration is not in contravention of the provisions of the respective Act, is produced before the registering officer ;

(2) conveyance of lands, converted as house sites without the approved layouts unless a No Objection Certificate issued by the authority



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

concerned of such local bodies, namely, Corporations, or Municipalities, or Town Panchayats, Panchayat Unions, or Village Panchayats or Chennai Metropolitan Development Authority is produced before the registering officer ;

(3) cancellation of sale deeds without the express consent of the parties to the documents.

27. Similarly Section 34-A as introduced by the Registration (Tamil Nadu Amendment) Act 28 of 2000, which came into effect from 14.04.2001 reads as follows:

"34-A. Person claiming under document for sale of property also to sign document. Subject to the provisions of this Act, no document for sale of property shall be registered under this Act, unless the person claiming under the document has also signed such document."

...

33. The Registering Authority in certain factual situation may accept a document for registration contrary to the statutory provisions and the person who is aggrieved by the registration of such document which ought not have been accepted as in the case of unilateral cancellation of sale deed or settlement deed, can



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

always approach this Court invoking the extraordinary jurisdiction of High Court under Article 226 of the Constitution of India. Therefore, the Hon'ble Supreme Court on several occasion as referred to above has expressed the view that a writ petition is maintainable questioning the registration of document of cancellation of conveyance or accept fraudulent transactions without following the procedure. Even in a case where the power of attorney deed produced by the agent which does not authorize the power of attorney agent to sell the property, it is not necessary that the person aggrieved should be driven to the Civil Court for cancelling the sale under Section 31 of the Specific Relief Act, if a sale executed by the power of attorney is registered, as held by Hon'ble Supreme Court in Asset Reconstruction Company (P) Ltd., case.

34.It is useful to extract Section 5 of the Transfer of Property Act, hereunder:

"Transfer of property" defined.-In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, 1[or to himself] and one or more other living persons; and "to transfer



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

property” is to perform such act. 1[In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

35.The properties that can be transferred are enumerated under Section 6 of the Transfer of Property Act. Section 6 of the Transfer of Property Act reads as follows:

“6.What may be transferred.-Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,-

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby;

(c) An easement cannot be transferred apart from the dominant heritage;



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him; 1[(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred;]

*(e) A mere right to sue 2[***] cannot be transferred;*

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;

(g) Stipends allowed to military 3[naval], 4[air-force] and civil pensioners of the 5[Government] and political pensions cannot be transferred;

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) 6[for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872)], or (3) to a person legally disqualified to be transferee;

7[(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.]



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

36. Section 7 of the Transfer of Property Act, is extracted hereunder:

7. Persons competent to transfer. - Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

37. Section 8 of the Transfer of Property Act deals with the effect of the transfer by operation. Section 8 of the Transfer of Property reads as follows:

"8. Operation of transfer. - Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; and, where the property is machinery attached to the earth, the moveable



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith; and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer; and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."

38. Section 54 of the Transfer of Property Act, reads as follows:

54. "Sale" defined.- "Sale" is a transfer of ownership in exchange for a price paid or promised or part~paid and part~promised. Sale how made. -3Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.?A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

39.No transfer can be made in so far as it is opposed to the nature of interest affected thereby or for an unlawful object as per Section 6 of Transfer of Property Act. Only a person competent to contract and has a transferable right is competent to transfer such property. "Sale" is a transfer of ownership in exchange for a price paid or promised. In case of immovable property of the value of one hundred rupees and more, it can be made only by a registered instrument. Once a transfer is made by a registered instrument all the interest which the transferor is then capable of passing in the property is passed on forthwith to the transferee. After a deed of conveyance, the transferor has no transferable interest. The Transfer of Property Act does not permit the transferor to recall an instrument so as to divest the transferee's title. The Registration Act does not deal with unilateral



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

cancellation of a sale deed . The Registration Act does not confer any power to registrar to cancel a document which had been registered as per the Act. By registration a legal sanctity is given to the conveyance. When the object of Registration is to ensure public to rely with confidence upon the statements contained in the registers maintained in the Registrar's office as a full and complete account of all transaction affecting title, permitting registrars to accept unilateral cancellation of sale deed or any other deed of conveyance (except revocation of gift as may be permitted in accordance with Section 126 of Transfer of Property Act or a Will) will be opposed to the object and purpose of Registration Act itself and contrary to the provision of Transfer of property Act. A person, after conveying all his right by a deed of conveyance, has no right to deal with the property again affecting, limiting or extinguishing the right or title of transfer for no consideration. When such deed of cancellation is presented, the deed of conveyance which had been registered earlier is referred to. It is not as if the registrar needs to prove further to find out whether the person executing the document has title. When a deed of cancellation is presented, the incompetency to transfer is admitted by the



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

executant. The intention of the person presenting a document cancelling the registered document is fraudulent and the fraud is accomplished, when such document is registered. Registering Officer has power to refuse to register a document. A person may file an appeal before Registrar against an order refusing to register, except on the ground of denial of execution. Similarly, if the Sub-Registrar refuses to register on the ground of denial of execution, a person claiming under the document can apply to the Registrar to establish his right to have the document registered. After accepting the document for registration and registering the document, the Registrar has no power under the Registration Act to cancel the Registration. If a document cancelling the registered deed is accepted for registration by the registering authority, he intends to do something which he is not authorised under the Act and it is beyond his power under the Registration Act.

40.Hence, we have no hesitation to answer the issue by holding that the Sub-Registrar namely, the Registering Authority has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier.



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

41.Regarding gift or settlement: With regard to unilateral cancellation of gift deed, which is not revokable and does not come under the purview of Section 126 of the Transfer of Property Act, the Registrar has no power to accept the deed of cancellation to nullify the registered settlement deed. Section 126 of the Transfer of Property Act, reads as follows:

"126. When gift may be suspended or revoked.-The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

42.Section 126 of the Transfer of Property Act recognizes the power of revocation where the donor reserves a right to suspend or revoke the gift on happening of any specified event.



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

However, the illustrations clarifies that the revocation should be with the assent of the donee and it shall not be at the will of donor as a gift revocable at the mere Will of the donor is void. The Sub-registrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves a right to revoke the gift at his Will without the assent by donee, the gift itself is void. Since we are dealing with unilateral cancellation, the power of registration of cancellation or revocation of gift deed cannot be left to the discretion or wisdom of registering authority on facts which are not available or discernible from the deed of gift. When the power of revocation is reserved under the document, it is permissible to the registering officer to accept the document revoking the gift for registration only in cases where the following conditions are satisfied;

(a) There must be an agreement between the donor and donee that on the happening of a specified event which does not depend on the Will of the donor the gift shall be suspended or revoked by the donor.

(b) Such agreement shall be mutual and expressive and seen from the document of gift.

(c) Cases which do not fall under Section



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

126 of Transfer of Property Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.

43.The donor must specifically reserves such right to suspend or revoke the gift deed with the consent of donee to attract Section 126 of the Transfer of Property Act. Unless the agreement is mutual, expressed in the recitals, the Registering Authority cannot accept the document for registration. However, the factual allegations with regard to the acceptance of gift or the issue where the gift was acted upon or not do not come under the purview of the Registering Officer. Hence, the Registering Officer is not excepted to accept the document unilaterally cancelling the gift deed, merely on the basis of the statement of the donor or the recitals in the document for cancellation.

44.From the discussions and conclusions we have reached above with reference to various



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

provisions of Statutes and precedents, we reiterate the dictum of Hon'ble Supreme Court in Thota Ganga Laxmi and Ors. Vs Government of Andhra Pradesh & Ors., reported in (2010) 15 SCC 207 and the Full Bench of this Court in Latif Estate Line India Ltd., case, reported in AIR 2011(Mad) 66 and inclined to follow the judgment of three member Bench of Hon'ble Supreme Court in Veena Singh's case reported in (2022) 7 SCC 1 and the judgment of two member Bench of Hon'ble Supreme Court in Asset Reconstruction Company (India) Ltd., case, reported in 2022 SCC On-line SC 544 for the following propositions:

(a)A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

(b)Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property.

(c)Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

(d)The transferee or any one claiming



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration.

(e)However, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the Civil Court at the instance of transferor as contemplated under Section 31 of Specific Relief Act.

(f)As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment.

(g)The legal principles above stated by us cannot be applied to cancellation of Wills or power of Attorney deed which are revocable and not coupled with interest.”

7. The aforesaid extracts are self explanatory. When the Hon'ble Full Bench of this Court has dealt with the various decisions of the Hon'ble Supreme Court governing the issue with regard to unilateral cancellation of a Deed of Conveyance and has held that Registering Authority has no powers to register a deed of cancellation of settlement,



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

even prior to the issuance of circular by the Inspector General of Registration, the stand of the learned Special Government Pleader, cannot be sustained.

8. In view of the law laid down by the Hon'ble Full Bench of this Court in *Sasikala's case (supra)*, the registration of the cancellation of the settlement deed, which is the subject matter of the present Writ Petitions are hereby rendered as "*void and non-est in law*". Now that, Section 77-A has been inserted in the Registration Act, 1908 with effect from 16.08.2022, empowering the Registrar to cancel the registered document which is contravention of Section 22-A or Section 22-B, after issuing notice to the executants and all parties to the documents, as well as parties to subsequent documents, it would be appropriate to grant liberty to the petitioners herein to participate in the proceedings before the concerned Registrar.

9. Consequently, the matters are remitted back to the concerned Sub Registrar, who shall conduct the proceedings under Section 77-A for cancellation of the Settlement Deeds in Document Nos.5657 and 5658 of 1992 dated 01.07.1992 (W.P.No.6956 of 2023); Document No.248 of 2014 dated 25.04.2014 (W.P.No.7509 of 2023); Document



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

No.1142 of 1993 dated 29.03.1993 (W.P.No.8491 of 2023); and Document No.2135 of 2012 dated 10.07.2012 (W.P.No.11114 of 2012), after giving due notice to the executants and all parties to the document and parties to the subsequent documents, if any and conduct an appropriate enquiry and pass orders on its own merits and in accordance with law, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

10. The Writ Petitions stands ordered accordingly. Consequently, connected Miscellaneous Petition(s) is/are closed. There shall be no order as to costs.

28.04.2023

Index : Yes
Order : Speaking
Neutral Citation : Yes

DP

Note:Issue order copy on 28.04.2023



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

WEB COPY

To

- 1.The Inspector General of Registration,
O/o.The Inspector General of Registration,
Santhome, Chennai-600 004.
- 2.The Sub Registrar,
O/o.The Sub Registrar,
Anna Nagar, Chennai-600 040.
- 3.The Sub Registrar,
Vadakkandal Sub-Registrar's Office,
Vadakkandal,
Kallakuruchi District.
- 4.The District Registrar,
Kallakuruchi District.
- 5.The Sub Registrar,
O/o.The Sub Registrar,
Mettupalayam,
Coimbatore District.
- 6.The District Registrar,
Vellore Registration District,
Vellore.
- 7.The Sub Registrar,
Jollarpettai Sub-Registration District,
Jollarpettai, Tirupattur District.



WEB COPY



W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021

M.S.RAMESH,J.

DP

ORDER MADE IN

W.P.Nos.6956, 7509, 8491 of 2023
& W.P.No.11114 of 2021
and
W.M.P.Nos.8683, 7610, 8685 of 2023
& 11763 of 2021

28.04.2023