

WPA 279 of 2020

Adarsh Kumar Ram
vs.
Union of India & Ors.

Mr. Sarwar Jahan
Mr. Ashraful Huq
Mr. Maidul Islam Kayal
Mr. Sayantan Hazra
Mr. Asif Mehedi
Ms. Tapati Sarkar

....for the petitioner

Mr. Puspendu Chakraborty

.....for the BPCL

The present petitioner is an applicant to an advertisement for LPG distributorship under respondent No. 2/ Bharat Petroleum Corporation Limited. The last date of submission of the application was 18th October, 2017. The petitioner submitted his application on 24th September, 2017. The petitioner has offered a land for construction of showroom under the leasehold right through a deed of lease executed in his favour on 21st September, 2017. On the basis of application a lucky draw was conducted wherein the petitioner was selected as a successful candidate. On 11th November, 2019, the field verification was conducted by the respondent No. 2. On 28th November, 2019 the petitioner was served with a notice intimating that the land offered for construction of showroom cannot be accepted as it was not registered before the last date of submission of the application. The petitioner has produced the registered lease deed and made a query to the Additional Sub-Registrar, Malda for clarification. In response to the said clarification the Additional Sub-

Registrar, Malda has replied that the date of execution and the date of presentation for registration both are same, i.e. on 21st September, 2017.

The present petitioner has challenged the memorandum dated 24th December, 2019 issued by the respondent No. 2 wherein the land offered by the present petitioner for construction of showroom was not accepted by the respondent.

Learned advocate for the petitioner submits that the only question was involved in this instant writ as to whether the act of the respondent authority to deny the registered deed which was actually registered on 21st September, 2017 is arbitrary or not. It is the submission of the learned advocate for the petitioner that the deed was executed and presented for registration on 21st September, 2017. After compliance of all formalities of submission of stamp duty, registration fee and endorsement thereof by the executors, the registering officer has put his seal and signature over the front and back side of each page of the deed. The seal contained the date to be 21st September, 2017. He submits that the registration of the deed has been completed on 21st September, 2017 entirely; due to delay of scanning the deed by the concerned registering office, the deed was handed over later to the petitioner and after receiving the deed it appears at the last page of the deed the registrar

has put signature to be “registered” on 15th November, 2017.

Learned counsel for the petitioner submits that after introduction of computerization of registering of deed the situation has been changed. Initially before the computerization, the registrar issued the certification after completion of registration under Section 60 of the Registration Act, 1908 but after introduction of computerization of the deed the authentication of registering officer is complete under Rule 128 of the West Bengal Registration Rules, 1962. The certificate as appeared in the last page of the deed is after scanning of the deed into the server. The manual procedure for issuing certificate under Section 60 has no effect. He submitted that the concerned authority has failed to appreciated the relevant system of computerization of the deed and has erroneously not accepted the land offered by the present petitioner for construction of showroom on some flimsy grounds.

Learned counsel appearing on behalf of the respondent No. 2 submits that there is no difference between Rules and the Act. He submits that the procedure for registering of a deed is enumerated under Sections 52, 58, 59 and 60 of Registration Act, 1908. It has been specifically followed in the relevant rules of West Bengal Registration Rules, 1962 after introduction of the computerization system. He

specifically pointed out that the rule 128 of the West Bengal Registration Rules, 1962 only authorized the registering officer for authentication of the deed by putting his seal and signature thereon at the time of presentation of the deed. The provision of endorsement as enumerated under Sections 58 and 59 of the Act 1908 has been followed in Rules 126, 127 and 128 of the Rules 1962. Certification of Section 60 of the Act 1908 was followed in rule 129 of the said Rule 1962. He submits that without compliance of rule 129 it cannot be said that the deed has been registered.

Learned counsel for the respondent No. 2 has specifically submitted that the brochure is very much clear that the land has to be 'registered' before the last date of submission of the application. In the case of the land offered for showroom was not actually registered before the last date of submission of the application. Accordingly, the case of the present petitioner cannot be considered.

Learned counsel for the respondent also cited a decision of this Court passed in ***Paramita Bag vs. IOCL & Ors.*** wherein the same issue was cropped up before the Hon'ble Single Bench. The Hon'ble Single Bench after hearing the parties is of the view that the lease hold rights clearly vested to the petitioner from the date of execution. The Hon'ble Single Bench is also of the view that IGR has been issued and the

copy of the IGR was received by the Bank for the purpose of mortgage. In all respect the Hon'ble Single bench is of the view though the certificate of registration was not issued prior to the last date of submission of appointment but as the endorsement of registration are there in the deed, thus the oil company was directed to accept the deed. Aggrieved by the said order, the oil company has preferred an appeal before the Hon'ble Division Bench of this Court. The Hon'ble Division Bench after hearing both the parties is of the opinion that registration of the deed cannot be completed by the endorsement of the registrar, so the view of the Single Bench was denied.

On the same principle learned counsel for the respondent No. 2 has also cited a decision of Hon'ble Apex Court in ***Har Narain (Dead) by Lrs. Vs. Mam Chand (Dead) by LRs. And Others***, reported in ***(2010) 13 Supreme Court Cases 128***, wherein Supreme Court has held that:-

“23. In view of the above, we reach the inescapable conclusion that the sale executed by Respondent 1 in favour of Respondents 2 to 6 on 2.8.1971 could not be termed as a complete sale until the documents got registered on 3.9.1971. In view of the provisions of Section 47 of the 1908 Act the effect of registration would be that registration would relate back to the date of execution but it does not mean that sale would be complete in

favour of Respondents 2 to 6 prior to 3.9.1971 i.e. the date of registration of the sale deed. In view of the above, as sale stood completed during the pendency of the suit, the doctrine of lis pendens is applicable in the facts and circumstances of the case. The courts below failed to appreciate that the fiction created by Section 47 of the 1908 Act itself is a consequence of registration of the sale deed. More so, as the appellant had been in possession of the suit land being a mortgagee since 1970 and this fact had also been mentioned by Respondent 1 in the sale deed dated 2.8.1971 in favour of Respondents 2 to 6, the question of Respondents 2 to 6 being bone fide purchasers for value and paid money in good faith without notice does not arise, simply for the reason that the said respondents were fully aware that the suit land was in possession of the appellant. Thus, Respondents 2 to 6 cannot take the benefit of the provisions of Section 19(b) of the 1963 Act.”

He also cited another decision of this Court in ***Arun Bhusan Guha & Ors. vs. Amal Roy & Anr.*** reported in ***AIR 2009 Calcutta 182*** as follows:

“27. As such, this Court is of the view, that so long as the registration is not completed, the purchaser cannot project himself as the owner of the property in question, though it is true

that all trappings of ownership are traceable from the date of execution of the deed after its registration is completed.”

Heard the learned advocates.

Perused the annexures.

It appears to this case that the deed of lease was executed on 21st September, 2017 in favour of the present petitioner. The only issue raised here whether the impugned deed in question was completely registered on 21st September, 2017 or not, or it was registered on November 15, 2017. It is the guideline of the brochure that the oil company can only accept the registered deed. If it appears that the registration was complete on 21st September, 2017, the oil company is bound to accept the deed as offered by the present petitioner. On the other hand if it appears that the deed is registered on 15th November, 2017, the oil company cannot be directed to accept the offer.

Prior to computerization, the deeds are being registered as per the provision of Sections 52, 58, 59 and 60 of the Registration Act, 1908. Section 52 enumerated the duties of registering officer when a document is produced before the registrar.

Section 58 provided the particulars to be endorsed on documents admitted to registration. Section 58 provided the signature of identifier, all executants should be affixed and any payment of money or delivering of goods made in presence of

registering officer has been completed before the admission of the deed for registration.

Section 59 directed the registering officer to affix his endorsement along with the date and signature in the same document presented for registration.

Section 60 of the said Act provided that after provision of Section 34, 35, 58 and 59 has been complied with, the registering officer shall endorse thereon a certificate containing the word 'registered' together with the number and page of the book in which the document has been copied.

Section 60(2) of the said Act provided that such certificate shall be signed, sealed and dated by the registering officer and shall then be admissible for the purpose of providing the document has been duly registered in manner provided by this Act.

Thus a document is said to be registered according to the provision of Section 60(2) of the said Act 1908, when such certificate was made by the registering officer. It is no doubt that without the certificate being sealed or signed by the registering officer, a document cannot be said to be registered for all purpose.

Let me see whether the position has been changed after the computerization of the entire system of registration. After computerization one software namely, Computerization of Registration of Documents (CORD) software was introduced. For the

purpose of that software, the market value of a deed and chargeable with ad velorem duty was generated through the said software. Rule 128 of West Bengal Registration Rules, 1962 provides the registering officer shall follow the provisions of Act and other related Acts and rules made there under in all matters other than those covered by this Chapter (XIX); and in case of conflict between any of the provisions of this Chapter (XIX) and any other rules or these rules, the provisions of this Chapter (XIX) shall be prevail in relation to registration of the document under the system of computerization of registration of document specified in this Chapter (XIX).

Rule 124 of the said Chapter (XIX) provides the presentation of document. It follows the provisions under Section 52 of the Act regarding the presentation of the deed.

Rule 126 provides the issue of receipt and registration of document. It enumerated the deficit stamp duty and the registration fee of the market value of the property determine through the system of the CORD software shall be collected and a receipt printed by the computer in form 1504(IGR) shall be issued to the party. The rule 126 is followed section 58 of the Act. The rule also provided that on payment of deficit Court fees, if any, the registration fee and standard user charges the document shall be admitted to registration in terms of Section 58 of the

Act. Rule 126 also provided that the deed number and the book number has to be assigned in complying rule 126.

The difference between the rule 126 and Section 58 is that during the endorsement as per section 58 of Act 1908, there is no provision for providing deed number and the book number of the registered deed; but in rule 126, as the entire system was prepared through computerization so the deed number and book number can be provided.

Rule 127 provided the authentication of signature of executants in the signature sheet and authenticated the endorsement sheet according to sub-rule 4 of rule 126.

Rule 128 comes after the completion of rule 126 and 127. For better appreciation of the entire issue, rule 128 is required to be set out:

***“128. Authentication by Registering Officer- (1) The Registering Officer shall, after satisfying himself as to the compliance of the provisions of the Act, rules made thereunder and the standing order applicable thereon, verify the original document that the registration has been made in accordance with the procedures laid down in the rules 122 to 127 and that the document has duly been stamped and the proper registration fees have been paid.*”**

(2) After such verifications as stated in sub-rule (1), the Registering Officer shall put his seal and signature on the back of each page of the document and shall authenticate the endorsement sheet and signature sheet as mentioned in sub-rule (4) of rule 126.”

Rule 128 has enumerated that after the registering officer has satisfied himself after verifying the original documents and compliance of rule 122 to 127 that the registration has been made in accordance with the procedure and the document has been duly stamped, the registering officer thereafter shall put his seal and signature on the back of each page of the document and shall authenticate the endorsement sheet and signature sheet as mentioned in sub-rule 4 of Rule 126. So it appears that the authentication and the endorsement of the registering officer under rule 128 is a certificate which the registering officer is duty bound to give as per rule 128 to ascertain that the formalities for registration of the deed has been completed.

Rule 129 has provided the scanning of the document after completion of the procedure laid down in rule 122 to 128. It has provided that that document has been scanned both the sides of sheets and stamp papers. Rule 129 sub-rule 2 provides that after scanning of the document, an endorsement sheet

under Section 60 of the Act shall be printed from the computer and such endorsement sheet shall be affixed on the document. Rule 129 (3) provides that the registering officer shall put his signature on the endorsement sheet generated in the computer and the same shall be annexed with the deed. The digital seal and signature of the registering officer shall be provided in the computer.

So it appears that the rule 129 has been complied the provision of Section 60 of the Act.

Registering of a document means and includes the same be entered or printed in a government book meant for that purpose.

Before computerization the certificate under Section 60 of the Act was signed by registering officer after the same is written or copied in a specific registration book maintained for this purpose in the registrars office. After the computerization, the said document can be entered through the server as per provision of rule 129. So it appears to me explicit and clear that after compliance of Rule-129, the certificate can only be generated by the system after scanning the document.

In the present case it is true that the deed was presented for registration on 21st September, 2017. The registering officer of the concerned registrar office has given the certificate that the date of execution and date presented for execution were same, i.e.

21.09.2017. The concerned registering officer never certified that the deed was registered on 21.09.2017. It appears from the deed itself that the certificate was generated after scanning the deed in the system the certificate was signed by the registered on 15.11.2017. So it can be said specifically that the deed was registered only on giving certificate by the registering officer which was generated after compliance of the provision of rule 129.

At this juncture after considering the entire submission of the parties it appears to me that the deed in question which was presented for registration on 21st September, 2017 was registered on 15th November, 2017. The seal and endorsement of the registering officer in the first page and the back page of the deed specifically mentioned that the date on which the document is admitted to registration. Under the above observation the submission of the learned advocate for the petitioner appears to me not justified.

The learned advocate for the petitioner submits that after compliance of rule 128 the registrar has endorsed at the backside of each page of the deed, so it can be said that the registration has been completed on 21st September, 2017. The contention of the learned advocate for the petitioner is not in consonance with Rule-129.

Thus, I find no merit in the instant writ petition as the same appears to be not meritorious.

With the aforesaid observations, **WPA 279 of 2020** stands **disposed of**.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after compliance of all necessary formalities.

(Subhendu Samanta, J.)