

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2758 OF 2024

Dinkar Shankar Deshmukh ... Applicant
Versus
The State of Maharashtra & Anr. ... Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 2759 OF 2024

Archana Shailendra Pakale ... Applicant
Versus
The State of Maharashtra & Ors. ... Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 2760 OF 2024

Manohar Genba Chivhe ... Applicant
Versus
The State of Maharashtra & Anr. ... Respondents

Mr. Mihir Desai, Senior Counsel, a/w Dr. Rajendra Anbhule for the Applicants.

Mr. Tanveer Khan, APP for Respondent-State in ABA/2758/2024.

Mr. Babu V. Holambe-Patil, APP for Respondent-State in ABA/2759/2024.

Mr. Balraj B. Kulkarni, APP for Respondent-State in ABA/2760/2024.

Mr. R. K. Shinde, I.O., Junnar Police Station, Dist. Pune.

**CORAM: MANISH PITALE, J.
DATE : 11th OCTOBER 2024**

ORDER :

. Heard Mr. Mihir Desai, learned Senior Counsel for the applicants and Mr. Tanveer Khan, Mr. Babu Holambe-Patil and Mr. Balraj Kulkarni, learned APPs for the respondent-State.

2. The applicants in these applications are persons who were working as sub-Registrars, at the relevant time, in the office of the Registrar at Junnar, Dist. Pune. They have been arraigned as accused in connection with FIR No. 0298 of 2024 dated 13th September 2024 registered at Junnar Police Station, Dist. Pune, for offences under Sections 409, 420, 465, 467, 468, 471 and 120-B read with 34 of the Indian Penal Code, 1860 (IPC). They are apprehending arrest in connection with the said FIR and hence, they have approached this Court by way of these applications.

3. The FIR has been registered on the statement of the Range Forest Officer of Junnar, Dist. Pune. The allegation in the said statement against the accused persons, in brief, is that forest land, which could not have been dealt with and made subject matter of sale deeds, was sold by some of the accused persons to purchasers, who are also made accused persons and that such transactions were registered, during the time when the applicants were sub-Registrars in the said office. In other words, the allegation appears to be that transactions were registered that were expressly prohibited by law and in facilitating registration of such documents/transactions, the applicants also committed the offences registered in the present case.

4. The learned Senior Counsel appearing for the applicants submitted that the scope of enquiry by a Registering Officer under Section 34 of the Registration Act, 1908 (hereinafter referred to as "Registration Act" for short) is specified and limited. The said

enquiry does not contemplate an enquiry on the part of the Registering Officer, on the question as to whether the subject transactions can be said to be prohibited by any specific law or that such transactions require specific no objection certificates or documents of similar nature to be presented prior to registration. He places reliance upon order of the learned Single Judge of this Court in the case of *Ashwini Ashok Kshirsagar v/s. State of Maharashtra, 2010 SCC OnLine Bom 331*. It is submitted that the law laid down in the aforesaid order, clearly applies to the facts of the present case, thereby indicating that no criminality can be alleged against the applicants, who were merely performing their official duties as per the statutory provisions under the Registration Act. Reliance was also placed on judgment and order of Division Bench of this Court in the case of *Govind Ramling Solpure & Ors. v/s. State of Maharashtra & Ors., 2022 SCC OnLine Bom 978*, wherein it was held that a specific rule framed under the provisions of the Registration Act, for the State of Maharashtra, expanding the scope of enquiry by the Registering Officer was bad in law, as it travelled beyond the relevant provisions i.e. Sections 34 and 35 of the Registration Act.

5. It was submitted that the aforesaid being the position of law recognized by this Court, the Investigating Authority could not have relied upon a communication dated 21st September 2007, issued by the then Range Forest Officer at Junnar, Dist. Pune, directing the office of the sub-Registrar to ensure that sale

transactions, involving forest lands, were not registered and if there was such registration, the sub-Registrars could be held personally liable and appropriate action would be taken against them. It is submitted that the aforesaid communication, at best, could be said to be an executive instruction. But, the same being in the teeth of Sections 34 and 35 of the Registration Act, reliance could not have been placed upon the same to foist criminal liability upon the applicants. It is submitted that the applicants are ready to cooperate with the investigation and therefore, this Court may allow the applications.

6. On the other hand, the learned APPs relied upon the aforesaid communication issued in the year 2007 by the Range Forest Officer of Junnar. It is submitted that the relevant provisions of other statutes, including the Indian Forest Act, 1927 (hereinafter referred to as “Indian Forest Act” for short) prohibited execution and registration of such transactions, thereby indicating that by causing registration of such documents/transactions, the applicants as the then sub-Registrars can be said to be criminally liable.

7. This Court has appreciated the rival submissions, in the light of the material brought to the notice of this Court.

8. At the heart of the matter is the duty cast upon the Registering Officer under the statute i.e. the Registration Act, while registering documents. Section 34 of the Registration Act,

reads as follows :

“Section 34 Enquiry before registration by registering officer.-

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon--

- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;*
- (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and*
- (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.*

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or

orders.”

9. The learned Single Judge of this Court in the case of ***Ashwini Ashok Kshirsagar*** (supra), considering the scope of above quoted provision, in the context of similar allegations levelled against the sub-Registrar, after referring to the above quoted provision, held as follows :

“4. Section 34 of The Registration Act, 1908 (for short “the Act”) requires the registering officer to make an enquiry as provided therein before registration of a document. Sub-section (1) of section 34 says that no document shall be registered under the Act unless the persons executing the document, or their representatives, assigns or agents authorised (under section 33) appear before the registering office within the time allowed for presentation under sections 23, 24, 25 and 26 of the Act. Sub-section 3 of section 34 of the Act provides that registering officer shall (a) enquire whether or not the document was executed by the persons by whom it purports to have been executed (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document and (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear. A bare perusal of section 34 would indicate that the registering officer is not required to verify the title of the transferor i.e to say he is not required to ascertain whether the transferor is the owner of the property sought to be transferred under the deed presented to him for registration. The normal rule of “Caveat emptor” applies in every transaction of sale and requires the buyer to beware. The buyer has to enquire about the title of the property and satisfy himself about the vendor’s title.

5. *****

6. *Part XII of the Registration Act is titled as “of refusal to register” and contains section 71 to 77. None of the sections 71 to 77 of the Act confer any power on the Sub-Registrar to*

refuse registration of a sale deed or any other instrument of transfer on the ground that he is not satisfied about the title or ownership of the transferor. Learned APP was unable to point out any provision in the Act or any Rules framed thereunder empowering the Sub-Registrar to refuse registration of a sale deed or any other deed of transfer on the ground that the Sub-Registrar is not satisfied about the title of the owner. He was also unable to point out any provision which authorises the Sub-Registrar even to enquire about the title of the transferor. Learned APP was also unable to point out any illegality committed by the Sub-Registrar by effecting registration of the sale deeds without verifying the title of the transferor.”

10. On the basis of the aforesaid observations in the said order, anticipatory bail was granted to the sub-Registrar.

11. The Division Bench of this Court in the case of ***Govind Ramling Solpure & Ors.*** (supra), considered the question, as to whether the scope of enquiry to be conducted by a Registering Officer, could be expanded as provided in Rule 44(1)(i) of the Maharashtra Registration Rules, 1961, framed under the provisions of the Registration Act. The said rule, *inter alia*, required the Registering Officer to ascertain whether the sub-Registrar was prohibited by any existing Act of Central or State Government. While considering the question, as to whether the scope of enquiry could be expanded in such a manner, the Division Bench in the aforesaid judgment held as follows :

“28) In our view, Rule 44(1)(i) of the Rules, directing the registering authority to ascertain as to (i) whether the transaction which is indented by the document, is prohibited by any existing Act of Central or State Government, (ii) whether 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, is contrary to section 34 of the Registration Act, 1908 and expressly beyond the powers conferred under section 69 of the Registration Act, 1908. The rules which can be framed cannot be beyond the rule making power conferred by the Parent statute or supplants any provision for which power is not conferred. In our view, Rule 44 (1)(i) is not in accord with the provisions of sections 34 and 35 of the Indian Registration Act and cannot travel beyond the said provisions.

*29) This Court in the case of **M/s. Sundarsons V. State of Maharashtra in Writ Petition No. 1955/2007 with connected matters decided on 26.6.2008** (supra) has interpreted sections 34 and 35 of the Indian Registration Act and has held that under the said provisions there is no power given to the Collector to give directions to the Sub-Registrar to refuse the registration of the document. The provisions regarding registration of the document are enumerated in the Registration Act, 1908. The executive instructions which are given by the State by exercising its powers under Article 162 of the Constitution of India cannot circumvent a statutory provision.*

30) This Court in the said judgment considered the circular issued by the Collector directing the registering authority to insist upon the No Objection Certificate from the Collector before registration of any document. Relying on the said circular issued by the Collector, the Sub Registrar refused to register the agreement lodged by the petitioner therein. The validity of the said circular was challenged in the said writ petition as beyond the powers under Article 162 of Constitution of India. This Court accordingly held that the executive instructions which are given by the State by exercising its powers under Article 162 of the Constitution of India cannot circumvent a statutory provision. This Court held that the impugned circular did not disclose the source of power under which it had issued.

31) In our view, neither sections 34 and 35 nor section 69

of the Indian Registration Act empowers the State Government to issue directions to the Sub-Registrar who is the statutory authority under the Registration Act to desist the registration of the document on account of breach of any terms and conditions under the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holding Act, 1947 or under any other law or without obtaining prior No Objection Certificate from the concerned authority as a pre-condition for the registration of any document.

*32) In our view, the scope of enquiry made by the registering authority under sections 34 and 35 of the Registration Act is limited by the Registration Act to the factum of execution and identity of the person executing the document other than the levy of stamp duty, collection of registration charges and the completion of procedural formalities such as attestation etc. In our view, the provisions of the Registration Act are self-contained and neither any rule can be framed by the State Government which would be inconsistent with the provisions of the Parent Act conferring powers to frame the rules nor any circular can be issued which was contrary to the provisions of the Parent Act. This Court in the above judgment has held that no subordinate legislation can control the transactions which fall out of the scope of the Parent Act. The principles laid down by this Court in the said judgment of **M/s. Sundarsons Vs. State of Maharashtra** applies to the facts of this case. We are respectfully bound by the principles laid down by this Court in the said judgment. We do not propose to take any different view in the present matter.”*

12. The above quoted portion of the judgment of the Division Bench, makes it amply clear that even a rule expanding the scope of enquiry by the Registering Officer could not be framed, in the teeth of the provisions of the statute i.e. the Registration Act, particularly Sections 34 and 35 thereof.

13. The aforesaid position of law makes it amply clear that the letter dated 21st September 2007 addressed by the Range Forest

Officer at Junnar, Dist. Pune to the office of the sub-Registrar at Junnar, which at best, could be said to be an executive instruction, cannot prevail over the scope of enquiry specifically provided under Section 34 of the Registration Act. Thus, reliance upon the said communication/letter on behalf of the respondent-State, is unsustainable in the face of Sections 34 and 35 of the Registration Act and the position of law clarified by this Court in the aforementioned judgments.

14. In the light of the aforesaid position of law, the applicants have made out a strong *prima facie* case in their favour that criminal liability cannot be foisted upon them for having performed their official duty as the Registering Officers, by conducting enquiry as provided under Section 34 of the Registration Act. There is no allegation in the present case against the applicants of having registered the said documents for any extraneous consideration and there is not even a hint that any money trail reached upto them, indicating any criminal liability that could be foisted upon them, in the facts and circumstances of the present case. Even otherwise, the applicants are ready to cooperate with investigation. Therefore, the applications deserve to be allowed.

15. In view of the above, the applications are allowed in the following terms :

(a) In the event the applicants i.e. Dinkar Shankar

Deshmukh, Archana Shailendra Pakale and Manohar Genba Chivhe, are arrested in connection with FIR No. 0298 of 2024 dated 13th September 2024 registered at Junnar Police Station, Dist. Pune, they shall be released on bail on furnishing PR Bond of Rs.15,000/- each and one or two sureties in the like amount to the satisfaction of the trial Court.

(b) The applicants shall cooperate with the investigation and they shall remain present before the Investigating Officer, as and when called.

(c) The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not influence the informant, witnesses or any other person concerned with the case.

16. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicants in the present applications.

17. The applications are disposed of.

MANISH PITALE, J.