

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

203

CWP-23420-2017
Date of Decision: 14.03.2024

KANWAR SINGH

... Petitioner

VERSUS

STATE OF HARYANA AND ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ajay Singh Ghangas, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Respondents No.6 and 7 *ex parte*
Vide order dated 14.03.2023.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 28.06.2017 (Annexure P-1) passed under Section 68 of the Indian Registration Act, 1908 by respondent No.2- Deputy Commissioner-cum-Registrar, Sonapat, District Sonapat, whereby he has cancelled the sale deed bearing No.2718 dated 16.06.2016 registered in the office of Sub-Registrar, Sonapat pertaining to House No.1708, Housing Board Colony, Sector 15, Sonapat.

Learned counsel for the petitioner contends that vide the impugned order, the sale deed has been ordered to be cancelled by respondent No.2 without following the prescribed procedure and conducting an inquiry mandated under law before passing the impugned order. It is further submitted that the petitioner is owner in possession of House No.1708 situated at Housing Board Colony, Sector 15, Sonapat measuring 35.95 yards having purchased the

same from its previous owner Narender Singh, vide registered sale deed dated 01.05.2017. Narender Singh in turn had purchased the said house from its original allottee Virender Singh vide registered sale deed dated 16.06.2016. After the purchase of the house by Narender Singh, the same was transferred in his name by the Housing Board, Haryana vide letter dated 24.06.2016. However, the petitioner was shocked and astonished on coming to know that the sale deed dated 16.06.2016 executed in favour of Narender has been cancelled by the Registrar – respondent No.2 without serving any notice to him and without assigning any reason for the same.

It is further submitted that at the time of passing the impugned order, the Registrar, Sonapat has recorded a finding that one Virender Singh son of Ravinder had got executed a conveyance deed No.1414 dated 01.05.2013 w.r.t. House No.1708 measuring 35.95 Sq. Yards at Housing Board Colony, Sector 15, Sonapat. After execution of the above document, Virender son of Ravinder became the owner of the said house. The abovesaid Virender thereafter has sold the house in question to Smt. Usha Rani wife of Shri Devraj Batra son of Shri Kanhiya Lal vide sale deed No.4093 dated 25.07.2014 registered at Tehsil Office, Sonapat, hence she had become the owner of house in question. Virender son of Ravinder, however, by concealing the true facts and with malafide intention sold the same house again to Mr. Narender son of Mahavir Singh resident of House No.1028, Sector 15, Sonapat and got registered a second sale deed No.2718 dated 16.06.2016, which was unsustainable.

It is argued that the abovesaid order had been passed by the Registrar in exercise of the power under Section 68 of the Registration Act,

1908 whereas the abovesaid Section does not empower the Registrar to direct cancellation of a registered sale deed and any such cancellation could have been sought only from the Civil Court.

Written statement on behalf of respondents No.1 to 5 has been filed by Mr. Hitender Kumar, Tehsildar, Sonipat, wherein it has been mentioned that Virender son of Ravinder had already sold the house in question to Smt. Usha Rani wife of Devraj Batra son of Kanhiya Lal through sale deed No.4093 dated 25.07.2014 against a sale consideration of Rs.7,30,500/- and that despite having no valid title, he executed a subsequent sale deed bearing No.2718 dated 16.06.2016 in favour of Narender and that the said Narender has executed sale deed bearing No.1065 dated 01.05.2017 in favour of the present petitioner. As on the date of execution of the sale deed in favour of the vendor of the petitioner herein, there was no subsisting title with Virender son of Ravinder in the said property, the same having already been sold in favour of Smt. Usha Rani. It is thus contended that the order of cancellation of the sale deed has been rightly passed by the Registrar after noticing that the execution of the said document before the Sub-Registrar was a fraudulent act by concealment of facts.

Learned counsel for the petitioner submits that the scope of Section 68 of the Registration Act, 1908 and the authority of the Registrar to direct the cancellation of a registered document has been dealt with by this Court in the matter of **Amina and another Versus State of Haryana and others**, reported as **(2016) 3 R.C.R. (Civil) 41**, wherein it has been held that if a sale is already registered, the Registrar has no power to cancel the same. The relevant extract of the said judgment reads thus:

9. *The legal issue, which arises for consideration by this court in the present petition, is as to whether the Registrar could cancel the sale deed already registered. The issue was gone into by a Division Bench of Lahore High Court in Hussain Ali Shahs case (supra), wherein it was held that Section 68 of the Act does not confer any power on the Registrar to cancel a registered document, the execution of which is not denied and it has already been registered. The same view was expressed by this Court in subsequent judgments in Vaid Famil Charitable Trusts case (supra); Ram Rattan and another v. The Deputy Commissioner and others, , 2014(1) RCR (Civil) 668; and Maya Kaur and another v. State of Haryana through Financial Commissioner-cum-Principal Secretary, Revenue Department, Haryana Civil Secretariat, Sector 17, Chandigarh and others, 2014(5) RCR (Civil) 872.*

10. *In the case in hand, execution of the document as such is not denied by the power of attorney holders, who represented the owner. What is sought to be disputed by respondent No. 4, who is claiming himself to be the owner of the property, is that the power of attorney, on the basis of which Shaukat Ali and Hamidulla got the sale deed registered was in fact a forged document. This is an aspect altogether different. Once the consistent opinion of this court is that if a sale deed is already registered, the Registrar has no power to cancel the same, the order of cancellation cannot be sustained. The fact as to whether the power of attorney produced by Shaukat Ali and Hamidulla on behalf of respondent No. 4 for registration of the sale deed is a forged document or not is to be established in appropriate proceedings. This court in writ jurisdiction will not be able to record a finding thereon, there being two different communications from the authority before whom the power of attorney was registered, taking a different view.*

11. *As far as plea of fraud raised by learned counsel for respondent No. 4 is concerned, there is no dispute regarding*

proposition of law, but the question is the appropriate proceedings. Before this court is a person in whose favour the sale deed was registered and the only legal issue sought to be raised by him is that the Registrar does not have any power to cancel the same after registration in exercise of powers conferred under Section 68 of the Act. The plea of fraud is sought to be raised pertaining to power of attorney produced by Shaukat Ali and Hamidulla for getting the sale deed registered on behalf of respondent No. 4, which may have to be established in appropriate proceedings. On that plea, the order passed by the authority having no jurisdiction cannot be sustained.

Further reference is also made to the judgment in the matter of **Kuldeep Kaur Chopra Vs. State of Haryana** reported as **(2017) 3 PLR 213** which reiterated the abovesaid position. The relevant extract of the said judgment is reproduced hereinafter below:

9. *Thus, from the” above, it is apparent that the consistent view of the Courts is that the power conferred under Section 68 of the Act upon the Registrar is to exercise superintendence and control over the Sub-Registrars administratively and does not confer upon the Registrar the power of cancellation of registration of a document, the execution of which is not denied and has already been registered by the Sub Registrar.*

10. *In the light of the aforesaid discussion, the present writ petition is hereby allowed and the impugned order, by which the Registrar has cancelled the sale deeds executed in favour of the petitioners, which are not denied by the vendors and have already been registered by the Sub Registrar, is set aside. No costs.*

Reliance was also placed on the judgment of **Ram Rattan and Another Versus Deputy Commissioner and others** reported as **(2014) 3 Civ. CC 103**. The relevant extract of the same is reproduced hereinafter below:

13. *Reasons are the integral part of an order. It is equally important that if an authority does not give any reason in support of its order, it would be difficult for the higher Courts in the hierarchy to appreciate as to what was the reasons, which weighed with the lower authority. Thus, the authority, like respondent No. 1 in the present case, was expected to speak in its order as to what were the reasons which weighed with him, at the time of the passing of the impugned order. This is the reason that orders should not be cryptic and nonspeaking. If the authorities, after due consideration of the matter, reflect their mind in the orders passed, supporting it with cogent reasons, it would always facilitate the higher authorities in the hierarchy and the Courts to understand and appreciate the matter in a much better way. Since the impugned order is a cryptic and nonspeaking order, it cannot be sustained.*

14. *The abovesaid view taken by this Court finds support from a Division Bench judgment of Lahore High Court in Hussain Ali Shah v. Sardar Ali Shah, AIR 1933 Lahore 786, A judgment of Hon'ble Supreme Court in Thota Ganga Laxmi v. Government of Andra Pradesh, 2011 (4) R.C.R. (Civil) 78, Full Bench judgment of Madras High Court in Latif Estate Line India Ltd. v. Mrs. Hadeeja Ammal, 2011 AIR (Madras) 66, a judgment of Andhra Pradesh High Court in Hazi Mohammad Ahmed v. State of Andra Pradesh rep. By District Registrar, Hyderabad, passed in Writ Petition No. 22160 of 2011 decided on 24.11.2011, a Division Bench judgment of Orissa High Court in Subeda Nayak v. Govt. of Orissa, 2008 (63) AIC 771, and a judgment of Karnataka High Court in Binny Mill Labour Welfare House Building Co-operative Society Ltd. v. D.R. Mruthyunjaya Aradhya, ILR 2008 KAR 2245.*

15. *The issue of interpretation of Section 68 of the Act fell for consideration before a Division Bench of Lahore High Court in Hussain Ali Shah's case (supra), as far back as in the year*

1933. It was held that Section 68 of the Act confers the power on the Registrar to exercise superintendence and control over the Sub- Registrar, which was his administrative power. Section 68(2) of the Act, does not confer upon the Registrar, the power of cancelling the registration of a document, execution of which was not denied and which has already been registered by the Sub-Registrar. The view taken by the Division Bench of Lahore High Court in Hussain Ali Shah's case (supra) still holds the field.

16. Learned counsel for the respondents failed to put into service any substantive argument in this regard, so as to persuade this Court to take a different view than the one is taken hereinabove. Rule of audi alteram partem is the basic rule of natural justice. Respondent No. 1, in the present case, failed to follow the abovesaid basic rule before passing the impugned order. In fact, the Rule of audi alteram partem is an integral part of the concept of rule of law enshrined in our Constitution.

Further reference has also been made to the judgment passed in the matter of **Arun Aggarwal Versus State of Haryana and others** reported as **(2014) 3 RCR (Civil) 335**. The relevant extract of the same is reproduced hereinafter below:

25. During the course of hearing, learned counsel for the petitioners could not point out any jurisdictional error or patent illegality apparent on the record of the case while passing the impugned order by the Collector. Further, no prejudice has been shown to have been caused to the petitioners by passing the impugned order by the Collector. In fact, the Collector had no other option except to pass the impugned order because he had got no jurisdiction to order the cancellation of sale-deed under the Act. Thus, the impugned order deserves to be upheld.

26. In view of the foregoing discussion, the answer to the first question posted at the outset, is and has to be against the petitioners holding that the Registering Officer has not been

conferred any jurisdiction under the Act to cancel a sale deed. Even the Registrar, while exercising his powers under Section 68 of the Act, has got no jurisdiction to issue any order or direction to the Sub-Registrar directing him to cancel the sale-deed.

Learned State Counsel, on the other hand, is not in a position to controvert the position of law as laid down through numerous judgments of this Court and relied upon by the counsel for the petitioner.

Since the power vested in the Registrar, by virtue of Section 68 of the Registration Act, 1908, has been interpreted to be only to the extent of carrying out general superintendence and control and not to rule on the validity and legality of any document which is already registered, hence, the order dated 28.06.2017 (Annexure P-1) would clearly be hit by the ratio laid down under numerous precedent judgments extracted and referred to above. It is also a settled position in law that registration of a document is *ipso facto* not a proof of a clear title having been conferred and that Smt. Usha Rani, who is a purchaser of the property in question can always defend her title on the basis of document already executed in her favour.

For the forgoing reasons, the present writ petition is allowed.

The order dated 28.06.2017 (Annexure P-1) passed by respondent No.2- Deputy Commissioner-cum-Registrar, Sonapat is hereby set aside. Parties are at liberty to pursue their remedies for any grievance(s), in accordance with law.

MARCH 14, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No