

Thummalachetty Builders and Developers (Pvt.) Limited Vs. Commissioner and Inspector General of Stamps and Registration and ors.

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Court : Andhra Pradesh

Decided On : Apr-29-2008

Reported in : 2008(6)ALD818; 2008(6)ALT227

Judge : N.V. Ramana, J.

Acts : [Registration Act, 1908](#) - Sections 22A, 69(1), 71, 72 and 77; Registration Rules - Rules 57 and 58; [Transfer of Property Act, 1882](#); [Indian Stamp Act, 1899](#)

Appeal No. : Writ Petition No. 27054 of 2007

Appellant : Thummalachetty Builders and Developers (Pvt.) Limited

Respondent : Commissioner and Inspector General of Stamps and Registration and ors.

Advocate for Def. : G.P. for Revenue for Respondent Nos. 1 to 3 and; S.M. Hussain, Adv. for Respondent No. 4

Advocate for Pet/Ap. : D. Geetha, Adv.

Disposition : Petition allowed

Judgement :

ORDER

N.V. Ramana, J.

1. Respondent No. 4, namely Megacity Co-operative Urban Bank Limited, purchased the land in an extent of Ac.3-16 guntas in Sy. No 100 B (Old 100) at Nizampet village, Qutbullapur Mandal, Ranga Reddy District, from its original owners and subsequent purchasers vide registered document Nos. 6115/01 and 6116/01, dated 17-8-2001, 6202/01, dated 20-8-2001 and 13706/01, dated 10-10-2001, and since then it has been in possession and enjoyment of the same.

2. While so, respondent No. 4 Bank went into liquidation, and it was superseded by the Registrar of Co-operative Societies vide orders dated 2-3-2002. And from 9-9-2002, the Assistant Registrar (Co-operation), who was appointed as Official Liquidator, became the lawful authority to deal with the properties of respondent No. 4-Bank. However, the ex-Vice Chairman and ex-Managing Director of respondent No. 4-Bank, had executed documents alienating the land in favour of third parties, who in turn alienated the same in favour of other parties by carving out plots. The said transactions resulted in the parties resorting to filing of civil cases against each other.

3. The Official Liquidator having become the lawful authority to deal with the property of respondent No. 4-Bank, conducted auction of the property in question, in which one Mr. M. Gopal gave his offer at Rs. 1.15 crores on 22-5-2006 and paid an amount of Rs. 15.00 lakhs on 25-5-2006 and another Rs. 1.00 lakh on 20-11-2006. Thereafter, the said Mr. M. Gopal entered into a MOU with the petitioner, who paid the balance sale consideration of Rs. 99.00 lakhs to respondent No. 4-Bank on 23-5-2007.

4. Thereafter, respondent No. 4-Bank represented by the Official Liquidator, executed document (sale deed) dated 27-9-2007 in favour of the petitioner, and when the Official Liquidator representing respondent No. 4-Bank presented the document for registration by remitting Rs. 46.00 lakhs towards stamp duty, respondent No. 3, namely the Sub-Registrar, Medchal, having received the document, passed orders dated 17-10-2007, refusing to register the document, and accordingly informed the Official Liquidator representing respondent No. 4-Bank. Assailing the said order, the petitioner filed the present writ petition.

5. The learned Counsel for the petitioner submitted that the registering authority has no power to refuse to register a document, and as such, the impugned order dated 17-10-2007 passed by respondent No. 3 refusing to register the document on the ground that there is status quo order dated 26-4-2005 granted by the I Additional Senior Civil Judge, Ranga Reddy District, in I.A. No. 1033 of 2005 in O. S. No. 455 of 2005, runs contrary to the provisions of Section 71 of the [Registration Act, 1908](#) and Rules 57 and 58 of the Rules framed there under. Standing Order No. 219 and the instructions issued by the Government in G. O. Ms. No. 620, dated 28-9-2002 and G. O. Ms. No. 497, dated 7-4-2003. She submitted that neither the petitioner nor respondent No. 4-Bank represented by the Official Liquidator are parties to the said suit, and as such, the orders passed by the Civil Court do not operate against them. In support of her arguments, she placed reliance on the judgments of this Court in P. Narasimha Reddy v. Sub Registrar, Shameerpet Mandal : 2005(2)ALD807 and K. Sulochana v. District Collector and District Magistrate, Kurnool : 2005(4)ALD539 .

6. Respondent No. 3 filed counter. The learned Assistant Government Pleader for Revenue, appearing on behalf of respondent Nos. 1 to 3 while reiterating the counter averments submitted that the petitioner had purchased the property in question from the company in liquidation, namely respondent No. 4-Bank in public auction conducted by the Official Liquidator. He submitted that the document presented by the petitioner and respondent No. 4-Bank represented by Official Liquidator on 27-9-2007 for registration was kept pending as P 1274/2007 for scrutiny and for clarification from higher authorities. Since there was an order of interim injunction dated 26-4-2005, granted, by the I Additional Senior Civil Judge, Ranga Reddy District, in I.A. No. 1033 of 2005 in O.S. No. 455 of 2005 in respect of the schedule property, having regard to provisions of S.O. 219 read with the instructions issued by the Government in G. O. Ms. No. 620, dated 28-9-2002 and G. O. Ms. No. 497, dated 7-4-2003, which provide that if an order of injunction is granted against any person by a competent civil court restraining the person not to alienate the property, and if a copy thereof is produced before the registering authority, he shall not entertain any document effecting the alienation of the schedule property in respect of which status quo order is granted. In view of the same, respondent No. 3, passed the impugned order under Section 71 of the

Registration Act, refusing to register the document presented by the petitioner and the Official Liquidator representing respondent No. 4-Bank, and no exception can be taken thereto.

7. Respondent No. 4 filed reply-affidavit, and the counsel representing them submitted that as on 27-9-2007 when they presented the document for registration, the status quo order granted by the I Additional senior Civil Judge, Ranga Reddy District, in I. A. No. 1033 of 2005 in O. S. No. 455 of 2005 in respect of the schedule property, was not in force, and it expired on 22-10-2007, and as such, the action of respondent No. 3 in passing the impugned order, refusing to register the document presented by the Official Liquidator representing respondent No. 4-Bank and the petitioner, for registration, is illegal and arbitrary, and more so when neither respondent No. 4-Bank nor the petitioner is concerned with the dispute.

8. Heard the learned Counsel for the petitioner, the learned Assistant Government Pleader for Revenue for respondent Nos. 1 to 3, and the learned Counsel for respondent No. 4.

9. The transactions relating to transfer of immovable property is governed by the provisions of the [Transfer of Property Act, 1882](#), [Indian Stamp Act, 1899](#) and the [Registration Act, 1908](#), while the title, capacity of the parties to transfer the property etc. are governed by different laws such as Law of Succession, Testamentary or otherwise, etc. The normal understanding of the general public is that once a document is registered under the provisions of the [Registration Act, 1908](#) they get title to the property. But that is not so. The execution of or registration of a document by itself will not create any new title, and the execution of or registration of such document covering an immovable property is governed by the principle Nemo Dat Quad Non Habet, which means 'no person can transfer/pass a better title than what he possess in the property so transferred'. Given the fact that transfer of an immovable property is governed by this principle, the registering authority when he receives a document and registers it, does not decide title of the persons executing the document. Therefore, mere registration of a document will not confer any new title, and in the case of any title disputes

arising out of such registrations, they are subject to and decided under the provisions of various other laws, governing the transfer of immovable property. The Orissa High Court in *Jogi Das v. Fakir Panda* : AIR1970 Ori22 , had occasion to consider the object and purpose of the Registration Act, and having considered the same, it held as follows: The object and purpose of the Registration Act, amongst other things, is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property, and to perpetuate documents, which may afterwards be of legal importance and also prevent fraud.

10. From the above, it is clear that registration of a document, merely records the transaction and gives information to people regarding legal rights and obligations arising or affecting a particular property, which in future would be of legal importance and prevent playing of fraud.

11. The apex Court in *State of Rajasthan v. Basant Nahata* : AIR 2005 SC3401 , held that the Registration Act only strikes at the documents and not at the transactions, that the whole aim of the Act is to govern documents and not the transactions embodied therein, and thereby only the notice of the public is drawn.

12. A learned Judge of this Court in *Raghu Praveen and Ors. v. R.D.O., Kakinada* 2003 (3) L.S. 90., held as follows:

Except in a case where a property is notified under Section 22A of the Registration Act, the registering authority has no power to refuse to register a document presented to him as regards the property within his jurisdiction, if the document is otherwise in the order, and if there is no dispute as to the identity of the executant. In *Mandadi Nirmala v. District Collector, Hyderabad* : 2000(2)ALD725 , a Division Bench of this Court was dealing with a case where the registering authority refused to register the document on the ground that the proceedings relating to the subject matter of the document were pending in the Land Grabbing Court. Speaking for the Bench, Sri Justice P. Venkatarama Reddi (as he then was), observed as under:

We therefore, direct the Sub-Registrar to consider the question of registration of the documents in the light of the Registration Act after referring to the objection raised by the Mandal Revenue Officer and to pass appropriate orders according to law. In case it is decided to register and release the documents appropriate endorsements shall be made on the documents referring to the factum of objection by the revenue department and the over ruling of objection. It is made clear that the alienations in question will be subject to the result of the land grabbing cases said to be pending , in the Special Court.

Therefore, the dispute as to title or pendency of proceedings does not confer any right on the registering authority to withhold the documents. The satisfaction for the purpose of registration has to be wholly in terms of the provisions of the relevant Acts and not beyond that.

13. Be that as it may, during the pendency of the writ petition before this Court, as directed by respondent No. 3 in the order passed by him under Section 71 of the Registration Act, refusing to register the document presented for registration, it is stated by the petitioner that he preferred an appeal available to him under Section 72 of the Registration Act, before respondent No. 2, namely the District Registrar, Ranga Reddy, and he having considered the said * appeal in the light of the grounds raised by him as well as the interim order passed by this Court, passed orders dated 26-2-2008 allowing his appeal, holding that the order passed by respondent No. 3 is contrary to the provisions of law, and holding so, he set aside the order dated 16-10-2007 of respondent No. 3 and directed him to release the document No. 1274/2007 presented by the petitioner for registration after registering it.

14. While the matters stood thus, the petitioner states that respondent No. 1. namely the Commissioner and Inspector General of Registration and Stamps Department, Hyderabad, without there being any reference made to him, in purported exercise of power under Section 69(1)(j) of the Registration Act, passed orders dated 5-3-2008, setting aside the order dated 26-2-2008, passed by respondent No. 2 allowing the appeal filed by him and directing respondent No. 3 to release the pending document. To suspend this order of respondent No. 1, the

petitioner filed W.P.M.P. No. 9406 of 2008.

15. I have perused the order dated 5-3-2008, passed by respondent No. 1, setting aside the order passed by respondent No. 2, allowing the appeal filed by the petitioner and directing respondent No. 3 to release the document. A bare reading of the same would disclose that respondent No. 1 had passed the same in purported exercise of the power conferred upon him under Section 69(1)(j) of the Registration Act. The learned Counsel for the petitioner submits that there is no such power conferred on respondent No. 1 under Section 69(1)(j) of the Registration Act to pass an order of the nature, which in fact, is a quasi judicial order. Therefore, to satisfy as to whether Section 69(1)(j) of the Registration Act, empowers respondent No. 1 to pass an order of the nature, setting aside the orders passed by his subordinates, it is appropriate to refer to the provisions of Section 69(1)(j) of the Registration Act, which reads:

69. Power of Inspector General to superintend registration offices and make rules:
(1) The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the State Government, and shall have power, from time to time, to make rules consistent with this Act:

(j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

16. From the above rule making power, it is clear that respondent No. 1 is entitled to make rules, regulating the proceedings of the Registrars and Sub-Registrars, in that, he can make rules as to the manner in which the proceedings should be conducted, but at any rate, he cannot interfere with the orders passed by his subordinates, in exercise of such rule making power.

17. Though the learned Assistant Government Pleader for Revenue representing respondent No. 3, sought to justify the order of respondent No. 3 and respondent No. 1, refusing to register the document, by placing reliance on S.O. No. 219, which prohibited the Registering Officer from entertaining documents for registration when there is an injunction order granted by the competent Civil court or the High Court, the fact remains, the said S.O. 219 can be pressed into service only when there is an order of injunction granted by the competent civil Court or

High Court against the Registering Officer from entertaining any document for registration in respect of the property covered by its orders. In the instant case, neither the petitioner nor the Registering Officer has been made party to the suit in O. S. No. 455 of 2005 on the file of 1 Additional Senior Civil Judge, Ranga Reddy District, and the injunction orders dated 26-4-2005 granted therein operated only against the parties to the said suit, and not to any other person, much less the Registering Officer. This apart, it is brought to the notice of the Court by the learned Counsel for the petitioner that the said suit was dismissed for default on 1-4-2008. In fact, under the provisions of the Registration Act, the Registering Officer, cannot refuse to register a document when presented for registration, except in the case, the property sought to be registered under the document, is covered by the properties mentioned in Section 22A of the Registration Act, and in the event, the Registering Officer, refuses to register a document, he has to pass an order under Section 71 of the Registration Act by recording his reasons for refusal to register, which is appealable under Section 72 of the Registration Act, and any person aggrieved by the order passed in the appeal by the appellate authority, has to approach the competent Civil Court under Section 77 of the Registration Act.

18. As the order passed by respondent No. 3, impugned in the writ petition, was already set aside by respondent No. 2 in the appeal filed by the petitioner, no orders for its setting aside need be passed in this writ petition. But having regard to the fact that respondent No. 1, has set aside the order of respondent No. 2 allowing the appeal filed by the petitioner and directing respondent No. 3 to release the document, and the same having been held to be without jurisdiction, the same cannot be sustained, and is liable to be set aside.

19. Accordingly, the writ petition is allowed. The order dated 5-3-2008 passed by respondent No. 1 setting aside the order of respondent No. 2, is set aside. As a consequence thereof, as directed by respondent No. 2, respondent No. 3 shall register the document in question and release it. No costs.