

*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

+ W.A.Nos.96 AND 148 OF 2013

% Date: 25-07-2022

Government of A.P., and others

... Petitioners

v.

\$ M/s. Global Shelters Private Ltd and others

... Respondents

! Counsel for the Petitioners : Mr. Parsa Ananth Nageswara Rao,
Learned Government Pleader for Revenue
(Assignment)

^ Counsel for respondents : Mr. Deepak Battacharjee,
Learned Standing Counsel for
Mr. Dishit Battacharjee, learned counsel

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. 2004 (6) ALD 849
2. 2014 (1) ALD 83 (SC)
3. (1972) 1 SCC 726
4. AIR 1991 SC 401
5. 1996 SCALE (4) 278
- 6.(2015) 16 SCC 787 : 2015 SCC OnLine SC 925

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT APPEAL Nos.96 AND 148 OF 2013

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

This order will dispose of both writ appeal Nos.96 and 148 of 2013.

2. Writ appeal No.96 of 2013 arises out of W.P.No.33182 of 2010 whereas writ appeal No.148 of 2013 arises out of W.P.No.28639 of 2010. Both the writ petitions were filed by the respondents herein. Appellants are the State and its officials who were respondents in the writ petitions.

3. We have heard Mr. Parsa Ananth Nageswara Rao, learned Government Pleader for Revenue (Assignment) for the appellants and Mr. Deepak Bhattacharjee, learned Senior Counsel for the respondents.

4. Both the appeals have been preferred by the appellants assailing the legality and validity of the order dated 05.03.2012 passed by the learned Single Judge

allowing the related two writ petitions filed by the respondents.

5. Relevant facts may be briefly noted. First respondent is a construction company incorporated under the Companies Act, 1956. It entered into a Development Agreement cum General Power of Attorney on 30.07.2007 with the second respondent, a partnership firm and two other firms i.e., respondent Nos.3 and 4. The Development Agreement cum General Power of Attorney (referred to hereinafter as 'the development agreement') was for development of property admeasuring 28,396 square yards in survey No.194/10, Ward No.1, Block No.8 at Begumpet, Balanagar Mandal, Ranga Reddy District (referred to hereinafter as 'the subject property'). The development agreement was registered as document No.1789 of 2007.

6. District Registrar, Hyderabad i.e., appellant No.2 initiated proceedings under Section 41A of the Indian Stamp Act, 1899 (for short, 'the Act' hereinafter) alleging that the development agreement had the effect of

conveying title in favour of some of the parties and therefore, the stamp duty which is payable on a transaction of sale ought to have been paid. In this connection, a show cause notice was issued by appellant No.2 on 13.08.2010. A joint representation was submitted by the respondents to the said show cause notice on 31.08.2010. However, appellant No.2 passed an order dated 18.09.2010 holding that the development agreement conveys title and therefore it is basically a sale cum development agreement. He worked out that total stamp duty required to be paid was Rs.4,87,26,390.00 but only Rs.3,00,000.00 was paid as stamp duty. The duty required to make up the deficit was determined at Rs.4,84,26,390.00. Respondents were therefore called upon to pay the aforesaid deficit stamp duty.

7. Aggrieved by the aforesaid order dated 18.09.2010, first respondent preferred an appeal before the third appellant under Section 56 of the Act. By the order dated 09.11.2010, the appellate authority noticed that by virtue of the development agreement, there is conveyance of

property between parties of the first part and parties of the second part. Therefore, the development agreement had to be treated as a document showing sale cum development agreement cum general power of attorney. Accordingly, the order of the second appellant was confirmed and the appeal was dismissed.

8. At this stage first respondent filed W.P.No.28639 of 2010 assailing the legality and validity of the order dated 18.09.2010 as affirmed by the order dated 09.11.2010.

9. Respondents wanted to withdraw from the development agreement on account of certain reasons. Therefore, the parties thereto executed a document titled 'surrender of development rights agreement' on 20.09.2010. When the document was presented for registration before the Sub Registrar, Secunderabad on 28.09.2010, the Sub Registrar informed the respondents that since an order under Section 41A of the Act was passed for collection of stamp duty and registration charges, a charge had been created against the subject property. Consequently, the document could not be

registered. This order dated 28.09.2010 came to be challenged in W.P.No.33182 of 2010.

10. Learned Single Judge after hearing the matter held that there was nothing in the development agreement to come to any conclusion that one party to the document had conveyed title in respect of the subject property to the other party. Even if there were some doubts earlier, once the explanations were given by the respondents, second appellant ought to have dropped the proceedings. It was not for the second appellant to brand the development agreement as a sale deed, muchless to expand the scope of it. Accordingly, the order dated 18.09.2010 was interfered with. Since the Sub Registrar, Secunderabad had refused to register the surrender of development rights agreement vide order dated 28.09.2010, learned Single Judge held that once the order under Section 41A of the Act is set aside, the very basis for order dated 28.09.2010 ceases to exist. Accordingly both the writ petitions were allowed by setting aside the impugned orders.

11. Hence the writ appeals.

12. Mr. Rao, learned Assistant Government Pleader for Revenue (Assignment) submits that if the development agreement is carefully gone into, it is apparent that by the said agreement, there is conveyance of title by one party to the other party. Therefore, the Sub Registrar had issued notice to the respondents. Though the respondents contended that there was no transfer of title having regard to the recital of the development agreement, second appellant had rightly passed the order dated 18.09.2010 construing the development agreement as an agreement for sale, whereafter the chargeable stamp duty was computed. Learned Single Judge was not justified in interfering with the aforesaid order.

12.1. In support of his submissions, learned Government Pleader has placed reliance on the following decisions.

- (1) **Natraj Steels (Private) Limited v. Chief Controlling Revenue Authority**¹, and
- (2) **Omprakash v. Laxminarayan**².

¹ 2004 (6) ALD 849

13. *Per contra*, Mr. Deepak Bhattacharjee, learned Senior Counsel for the respondents asserts that by way of the development agreement, the owners and the vendors had only conferred development rights on the developer i.e., first respondent. Such an agreement could not have been construed to be the document conveying title. Therefore, learned Single Judge rightly interfered with the order of the second appellant. Supporting the order of the learned Single Judge, learned Senior Counsel has placed reliance on the following decisions:

(1) **Himalaya House Company Limited, Bombay v. Chief Controlling Revenue Authority**³,

(2) **Municipal Corporation of Delhi v. Pramod Kumar Gupta**⁴,

(3) **Namburi Basava Subrahmanyam v. Alapati Hymavathi**⁵, and

(4) **Yellapu Uma Maheswari v. Buddha Jagadheeswara Rao**⁶.

² 2014 (1) ALD 83 (SC)

³ (1972) 1 SCC 726

⁴ AIR 1991 SC 401

⁵ 1996 SCALE (4) 278

⁶ (2015) 16 SCC 787 : 2015 SCC OnLine SC 925

14. Submissions made by learned counsel for the parties have received the due consideration of the Court.

15. We have already noted the substance of the dispute between the parties. Question before the learned Single Judge was whether the registering authority under the Act was justified in construing the development agreement as a document conveying title and thereafter levying higher stamp duty? This was answered by the learned Single Judge in the following manner:-

A development agreement was executed in respect of the property mentioned above in favour of the petitioner. In the course of narration, the transactions that took place between the various parties, in the context of acquiring rights over the property were mentioned. There is nothing to disclose that one party to the document has conveyed title in respect of the property to the other. Even if there exists any doubt in this regard, the replies given by the petitioner and other recipients of notices clearly show that they did not intend to bring about any transaction of transfer of property through the document. Therefore, whatever may have been the justification for the Registrar to initiate proceedings under Section 41-A of the Act, he ought to have dropped them once the persons concerned stated that they never intended to convey title in respect of the property. Added to that, the document was registered as "Development Agreement-cum-General Power of Attorney". It is not open to the Registrar to brand the

document as a sale deed, much less to expand the scope of it.

The only reason, on account of which the Sub-Registrar refused to register the “Surrender of Development Rights Agreement” is that an order was passed under Section 41-A of the Act in relation to the development agreement and that charge has been created against the property, for payment of the deficit stamp duty. Once this Court has set aside the order passed under Section 41-A of the Act, the very basis for this ceases to exist.

Therefore, the writ petitions are allowed and the impugned orders are set aside.

16. To appreciate the above, it would be apt to briefly refer to certain relevant provisions of the development agreement. The development agreement has got three parties. Respondent Nos.2, 3 and 4 herein are parties of the first part, who have been referred to as the owners. There were altogether thirty-five parties of the second part who were the vendors. The third party is respondent No.1 who is the developer.

17. From a perusal of the recitals of the development agreement, it is seen that the development agreement traces the history of how the vendors had conveyed and delivered title of the subject property in favour of the

owners including by way of agreements of sale executed earlier. By way of the development agreement, the vendors i.e. parties of the second part jointly and severally declared that the subject property was free from any charge, encumbrance etc and that a clear marketable title was conferred in favour of the owners i.e., respondent Nos.2, 3 and 4 herein. Respondents Nos.2, 3 and 4 being the absolute owners of the subject property entered into construction agreement with the third party i.e., the developer, who is none other than the first respondent herein. The agreement further says that the owners and vendors jointly and severally have decided to devolve the entire subject property in favour of the developer.

18. As per clause 1.1(d) of the development agreement, development shall mean and include development of the schedule property. Owners' allocation has been defined in clause 1.1(t) to mean and include 2,11,750 square feet or 27.5% of the built up area in the building complex with proportionate parking area thereon which the developer

agreed to compensate the owners along with all rights appurtenant to such area, such as, undivided land share, undivided share in common areas and facilities, undivided share in roof right etc. Clause 2 of the development agreement deals with development, commercial exploitation and transfer. As per the said clause, subject matter of the development agreement is development, commercial exploitation and transfer of property of a minimum area of 7,70,000 square feet with adequate car parking and other amenities of 4,50,000 square feet in the same property as per the development plan. As per clause 4.1, the land owners have agreed to permit the developer to develop the subject property by constructing a complex in accordance with the permission sanctioned by the municipal authorities. Clause 6.1 deals with owners' allocation. It says that in consideration of the land, vendors allowing the developer to construct the building complex on the subject property, the developer agreed to compensate the land owners by giving 2,11,750 square feet or 27.5% (approx) of built up area in the building complex with adequate

car parking proportionately along with all rights appurtenant to such area, such as, undivided land share, undivided share in common areas and facilities etc.

19. Thus, from the above, it is evident that transfer of rights in the subject land had earlier taken place between the vendors and the owners i.e., between the parties of the second part and the first part, by virtue of which parties of the first part i.e., respondent Nos.2, 3 and 4 had become the absolute owners with marketable title. Such conveyance had not taken place through the medium of the development agreement but had taken place earlier. The development agreement only takes note of the earlier developments and records the same. By way of the development agreement, only development rights have been conferred on the developer i.e., party of the third part, respondent No.1 herein, by the owners for development of the subject land in terms of the development agreement. Therefore, such a development agreement cannot be construed to be a document for sale or a document conveying title.

20. In **Municipal Corporation of Delhi** (supra), the question before the Supreme Court was whether duty was payable under Section 147 of the Delhi Municipal Corporation Act, 1957, on a sale certificate issued by the Civil Court under Order XXI Rule 94 of the Code of Civil Procedure, 1908 (CPC). Supreme Court observed that the expression 'instrument' appearing in Section 147 of the Delhi Municipal Corporation Act, 1957 has the same connotation as the word has under the Act. In the facts of that case, Supreme Court held that the expression 'instrument of sale of immovable property' means a document effecting transfer. The title to the property in question has to be conveyed under the document. In other words, the document has to be a vehicle for transfer of the right, title and interest. A document merely stating a fact that transfer had already taken place cannot be included within this expression. A paper which is recording a fact or is attempting to furnish evidence of an already concluded transaction under

which title has already passed on cannot be treated to be such an instrument.

21. Supreme Court in **Namburi Basava Subrahmanyam** (supra) explained that nomenclature of the document is not conclusive. Recitals in the document as a whole and the intention of the executant besides acknowledgement thereof by the parties are conclusive.

22. This has been reiterated in **Yellapu Uma Maheshwari** (supra) wherein Supreme Court held that it is well settled that the nomenclature given to the document is not the decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the document.

23. In **Omprakash** (supra), Supreme Court held that an agreement to sell is a conveyance within the meaning of the Act and if such a document is not duly stamped it is inadmissible in evidence.

24. We fail to understand as to how this decision can be of any assistance to the appellants.

25. Similar is also the case in **Natraj Steels (Private) Limited** (supra), whereby a learned Single Judge of this Court had examined Section 41A of the Act and the procedure laid down therein.

26. On due consideration, we are of the view that learned Single Judge was justified in setting aside the order of the second appellant dated 18.09.2010 as well as the consequential order dated 28.09.2010. The said order does not suffer from any error or infirmity to warrant interference. We do not find any merit in the writ appeals. Accordingly the writ appeals are dismissed. Consequently, the interim orders stand vacated.

Miscellaneous applications, pending if any, shall stand closed.

UJJAL BHUYAN, CJ

SUREPALLI NANDA, J

25.07.2022
Pln