

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION NO.3277 OF 2014

Between:

1. Mr. Syed Yousuf Murtuza Ali, son of late Mr. Syed Mustafa Ali,
Occupation: Business, resident of H.No.9-2-29, Mustaidpura,
Nizamabad, Nizamabad District-503 001. ...Petitioner

AND

1. State of Andhra Pradesh represented by its Secretary, Revenue
Department, Secretariat Buildings, Hyderabad and 4 others.
...Respondents

JUDGMENT PRONOUNCED ON: 03.05.2024

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the Judgment ? : Yes/No
2. Whether the copies of judgment may be marked to Law Reports/Journals : Yes/No
3. Whether Their Lordship/Ladyship wish to see the fair copy of judgment : Yes/No

JUSTICE N.V.SHRAVAN KUMAR

THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION NO.3277 OF 2014

%Dated 03.05.2024

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Occupation: Business, resident of H.No.9-2-29, Mustaidpura,
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Department, Secretariat Buildings, Hyderabad and 4 others.
...Respondents

! Counsel for Petitioner(s):

1. Sri P. Venu Gopal, learned Senior Counsel.

^ Counsel for Respondents:

1. Learned Government Pleader for Revenue.

< GIST :

> HEAD NOTE :

? Cases referred:

1. 2015 (2) ALD 660

THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION No.3277 OF 2014

ORDER:

This Writ Petition is filed seeking the following prayer:

"to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the inaction of the Respondents in not complying with the order dated 14.11.2013 made in Appeal No.1 of 2013 by the District Registrar, Nizamabad, by releasing the document for which P.No.764 of 2012 has been given by Respondent No.4 in respect of land admeasuring Ac.1.4.16 guntas situated in Survey Nos.272/OO, 273/A, E, O, 274/A, AA, E, EE of Sarangapoor Village, Nizamabad Mandal and District and Ac.0.1.03 guntas situated in Survey No.275 of Arsapalli Village, Nizamabad Mandal, Nizamabad District, as being illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India by setting aside the same and pending disposal of the above Writ Petition, direct Respondent No.4 to forthwith register and release Pending Document bearing P.No.764 of 2012 in respect of land admeasuring Ac.1.4.16 guntas situated in Survey Nos.272/OO, 273/A, E, O and 274/A, AA, E, EE of Sarangapoor Village, Nizamabad Mandal and District and Ac.0.1.03 guntas situated in Survey No.275 of Arsapalli Village, Nizamabad Mandal, Nizamabad District and to pass..."

2. Sri P. Venugopal, learned Senior Counsel for the petitioner submits that the family of the petitioner owned and possessed agricultural land to an extent of Acs.8.25 guntas situated in the following survey numbers.

Sy.No.	Extent of land-Ac.G	Situated at	Covered by Doc.No.	In the name of
274/A	0.35	Sarangapur	7331/1999	Late Sri Syed Mustafa Ali
274/AA	0.33	Sarangapur	3167/1986	Syed Abid Ali
273/A	0.21	Sarangapur	3148/1986	Syed Asif Ali
272/A	0.10	Sarangapur	3166	Syed Asif Ali
273/AA	0.21	Sarangapur	1986	Syed Farooq Ali
272/AA	0.10	Sarangapur	3147/1986	Syed Farooq Ali
273/E	0.21	Sarangapur	3144/1986	Syed Liakhat Ali

273/O	0.10	Sarangapur	3264/1958	Syed Liakhat Ali
273/EE	0.29	Sarangapur	3263/1985	Syed Mahmood Ali
274//E	0.22	Sarangapur	7335/1999	Syed Yousuf Murtuza Ali
274/EE	0.10	Sarangapur	7335/1999	Syed Yousuf Murtuza Ali
272/E	1.02	Sarangapur	3168/1986	Syed Ashra Ali
272/000	1.01	Sarangapur	7332/1999	Syed Gazanfar Ali
275	0.20	Arsapalli	1942/1982	Syed Abid Ali

3. It is submitted that after the demise of the petitioner's father, there was a family meeting and in that family meeting, all the male and female members have decided to divide the property referred to above and take their respective shares out of the total extent by indicating the survey number and extent that they would be getting and as many as eight Gift Settlement Deeds have been engrossed on stamp paper. It is also submitted that since the date of purchase, the said lands are in the names of some of the brothers i.e., family members. It is further submitted that once for all, the family members wanted to settle and various Gift Deeds were executed by the brothers.

4. In so far as the Deed of the petitioner is concerned, the executants were his brothers, represented by their General Power of Attorney Holder, Sri Syed Ashraf Ali and Pattedar Sri Syed Abid Ali and in as much as the extent that fell to his share in the family arrangement, the original title deeds were in the name of his brothers. It is also submitted that the document reflects the names of petitioner's brothers and sisters,

represented by their G.P.A. Holder Sri Syed Ashraf Ali and pattedar, Sri Syed Abid Ali. The document, whereby and where under, petitioner's share was determined and transferred and which was engrossed on stamp paper, was presented, along with other 7 documents, for registration. It is further submitted that the Sub-Registrar, i.e., respondent No.4 herein, entertained all the 8 documents on the same day, i.e. on 22-11-2012 and has given pending registration numbers for all eight documents and thereafter 6 documents, out of 8 documents, were released. It is also submitted that in so far as the document in which the petitioner's share has been determined and transferred, the same was assigned as a Pending Document bearing P.No.764 of 2012 since the books that have been issued under the Andhra Pradesh Record of Rights and Pattedar Pass Books Act, 1971, were not produced before the Sub-Registrar. Thereafter, the documents were once again produced before the Sub-Registrar and eventually, the Sub-Registrar made an Endorsement of Rejection on 19-08-2013.

5. Assailing the correctness of the order of rejection/refusal, an appeal has been preferred under Section 76 of the Registration Act, 1908, before the appellate authority, namely the District Registrar, Nizamabad vide Appeal No.1 of 2013 and the appellate authority, by an order dated 14.11.2013, had set aside the order of Refusal made by the Sub-Registrar. Thereafter, in pursuance of the same, the Sub-Registrar has issued two notices, dated 26.11.2013 and 10.12.2013, calling upon one of the executants to produce the said document. It is further submitted that since

there are two executants, and if registration is refused, it would mean that the pending document should be in his custody and if it were to be returned, then there should be a rounding off of the pending registration number. It is further contended by the learned Senior Counsel for petitioner that the Sub-Registrar ought to have called upon the petitioner to submit a duplicate of the document, so that registration can be done.

6. Respondent No.4-District Registrar, Nizamabad, had filed counter affidavit. The relevant paragraphs are extracted hereunder:

"3. It is respectfully submitted that eleven Gift Settlements Deeds dated 21.11.2012 were presented on 22.11.2012 before the Joint Sub-Registrar-I, Nizamabad, executed and presented by Sri Syed Ashraf Ali, S/o. Late Syed Mustafa Ali, the General Power of Attorney of 13 Principles who are all legal heirs i.e., Sons and Daughter of late Syed Mustafa Ali for registration. The documents were admitted for execution and kept pending for want of Pattedar pass books and Title deeds since the documents are related to agriculture lands. Since the parties concerned have neither turned up nor produced Pattedar pass books and Title deeds for verification. Subsequently on production of Pattedar pass books and Title deeds, 9 documents were registered and released. The remaining two documents were refused for registrations on 19.08.2013 vide order Nos.1 and 2 of 2013 under Section 71 of the Registration Act, 1908. The reasons for refusal were recorded in Book-2 as Refusal Nos.1 and 2 of 2013 and endorsed the words "registration refused" on the original document and returned the original document to the presentant/executants on the same day i.e., on 19.08.2013 intimating that the party can appeal to the District Registrar who is the appellat authority, within 30 days from the date of receipt the document/order.

5. Further, it is submitted that on receiving the orders, the 5th respondent has served notices to the presentant (executant) on 26.11.2013 and 10.12.2013 to present the original document for registration but the parties have not turned up.

6. Further, it is respectfully submitted that I am having highest respect towards the orders of this Hon'ble Court. In the obedience to the orders passed by this Hon'ble Court in W.P.M.P.No.4027 of 2014 in W.P.No.3277 of 2014 dated 06.02.2014 wherein this Hon'ble Court directed this respondent to forthwith act upon the orders passed in appeal No.1 of 2013, dated 14.11.2013 with reference to pending document No.764 of 2012, notices have been served to the petitioner on 18.02.2014 intimating to submit the original document before the Joint Sub-Registrar-I of R.O., Nizamabad, for registration duly following the procedure prescribed under Sections 58, 59 and 60 of the Registration Act, 1908. Though notice was served on the petitioner, he has not presented the original document before the Joint Sub-Registrar-I of R.O., Nizamabad, for registration. I respectfully submit that if the petitioner presents the original

document before Joint Sub-Registrar-I, Nizamabad, the documents will be registered.”

SUBMISSIONS:

7. Learned Senior Counsel for the petitioner would submit that since deeds of conveyance/transfer of title are compulsorily registerable under Section 17 of the Registration Act, 1908, the Sub-Registrar is bound to act in accordance with law, in respect of documents presented before him for registration and since the appeal was allowed, the Sub-Registrar has no option, except to register and release the document.

8. Learned Senior Counsel would further submit that the primary authority did not handover the original document to the petitioner. However, in their counter stated that original documents were handed over to the GPA holders of the executants. Once the document is executed, then the Sub-Registrar is the custodian of that document and once he makes an endorsement, he cannot return the document. Since the Sub-Registrar was a party to the appeal, he should have waited till the result of the appeal, but he has released the document, which is contrary to law and pray this Court that the Sub-Registrar may be directed to give appropriate authentication to the documents even if they are secondary in nature to the writ petitioner, so that the same can be treated as originals.

9. Learned Senior Counsel would further draw the attention of the Court to a judgment of this Court in **Smt. Peddi Koteswari v. The**

District Registrar of Assurances and others¹, wherein it was held that the return of document by Sub-Registrar is illegal and without jurisdiction and the Sub-Registrar has to be held responsible for such acts. It was further held in the said judgment that the Sub-Registrar acted contrary to the term of contract and condition agreed at the time of execution and registration of document namely to return the document to petitioner. It is stated by the learned Senior Counsel that the entire action of the Sub-Registrar in the present case is *per se* illegal, contrary to law, violative of Article 14 of the Constitution of India and also violative of petitioner's property rights guaranteed under Article 300-A of the Constitution of India.

ANALYSIS AND CONCLUSION:

10. A perusal of the copy of the GPA shows that the said document has been executed by the petitioner in favour of one Mr. Syed Ashraf Ali s/o. Late Syed Mustafa Ali, who is none other than the brother of the petitioner and all other family members. In the said document, it is clearly stated that the said Mr. Syed Ashraf Ali, who is the petitioner's own brother, was nominated as their true and lawful attorney for them in their name and on their behalf to do and execute all or any of the acts and things thereafter mentioned.

11. In the conditions at paragraph No.7 it is stated that they authorize their Attorney to appear before any registering authority and to represent before him any instrument whether signed, executed by him or by their said

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Attorney to admit execution of the said deed or deeds, to admit the receipt of consideration and to do any act, deed or thing that may be necessary to complete the registration of the said deed or deeds and when it has been returned to him after being duly registered, to give proper receipts and discharges for the same.

12. The District Registrar has clearly stated in the counter affidavit that the reasons for refusal were recorded in Book-2 as Refusal Nos.1 and 2 of 2013 and endorsed the words "registration refused" on the original document and returned the original document to the presentee/executant on the same day i.e., on 19.08.2013 intimating that the party can appeal to the District Registrar, who is the appellate authority, within 30 days from the date of receipt of the document/order. Thereafter, the petitioner preferred the appeal vide Appeal No.1 of 2013 before the District Registrar, Nizamabad and vide order, dated 14.11.2013, the District Registrar has set aside the refusal orders of Joint Sub-Registrar-1, which was passed under Section 75 of the Registration Act, 1908.

13. Thereafter, this Court in W.P.M.P.No.4207 of 2014, vide order dated 06.02.2014, granted interim order directing the 4th respondent to forthwith act upon the orders passed by the District Registrar, Nizamabad in Appeal No.1 of 2013, dated 14.11.2013, with reference to pending document bearing P.No.764 of 2012. Thereafter, notice has been served to the petitioner as well as to the GPA holder on 18.02.2014 intimating that the refusal of original document has to be presented again by the presentee (executant)

before the Joint Sub-Registrar-I of RO, Nizamabd, for registration and then only the Joint Sub-Registrar-I will register the same duly following the procedure prescribed under Sections 58, 59 and 60 of the Registration Act, 1908. A copy of the said notice is filed along with the counter. Upon perusal of the notice issued by the District Registrar, Nizamabad, dated 18.02.2014, the notice was served to the petitioner as well as to the GPA holder (brother of the petitioner), which is hereby extracted as under:

“Attention of Sri Syed Yousuf Murtuza Ali s/o Late Syed Mustafa Ali (Petitioner) is invited to the subject and reference cited. It is to informed that the registration of pending document No.764/2012 of RO(OB) Nizamabad was refused by the Joint Sub Registrar-I of RO Nizamabad vide refusal No.1/2013 dated:19-08-2013 under section 71 of the Registration Act and returned the original document to the presentant on 19-08-2013. On the appeal of the petitioner herein under section 72 of Registration Act the under signed passed an order admitting the appeal while setting aside the refusal order of the Joint Sub Registrar-I of RO(OB) Nizamabad with a direction to him to register the refused document in question when presented for registration before him by the presentant (Executant) of the said document. It is further informed that the refusal original document has to be presented again by the presentant (Executant) before the Joint Sub-Registrar-I of RO Nizamabad for registration and then only the Joint Sub Registrar-I will register the same duly following the procedure prescribed under sections 58, 59 and 60 of the Registration Act, 1908.”

14. Upon perusal of the affidavit filed in support of the Writ Petition, it clearly shows that the petitioner is silent on the issuance of the notices dated 26.11.2013 and 10.12.2013 and there is no reference of the said notices though the petitioner has received a copy of the notices and there is no mention about the notice dated 18.02.2014, which has been marked both to the petitioner as well as to the GPA holder (the petitioner's brother). The petitioner, instead of replying to the notices, has filed this Writ Petition and in the affidavit filed in support of Writ Petition nowhere stated about the issuance of the notice dated 18.02.2014 and he is silent on the said issue. It

is pertinent to the note that the executant i.e., Mr. Syed Ashraf Ali S/o Late Syed Mustafa Ali, who is the GPA holder (brother of the petitioner) was not made party to this Writ Petition.

15. This Court, vide order dated 23.03.2015, passed the following order:

“The allegation of the petitioner is that the Pending document No.764 of 2012 was returned while raising objection about maintainability of the document for registration and the document ought not to have been returned.

As per the stand of the respondents, the executant has taken the document along with the refusal order and is not responding in spite of before giving notices to him. The executant is not a party to this case.

Learned Senior Counsel requests one week time to take steps to bring the executant as a respondent.

At his request, post on 30.03.2015.”

16. Thereafter, an implead application *vide* I.A.No.1 of 2015 (W.P.M.P. No.11596 of 2015) in W.P.No.3277 of 2014 was filed and when the matter is taken up for hearing, the petitioner did not press for the implead application and the same is dismissed “as not pressed” on 06.03.2024.

17. The judgment in the case of **Smt. Peddi Koteswari** (1 *supra*), which has been relied by the learned Senior Counsel, is not applicable to the facts of the present case for the reason that in the case therein the presentee/executant has been impleaded as a respondent to that case and at the time of registration of deed on 06.06.1997, the return of duly registered document was authorized in favour of the petitioner. In the said case, the Court opined that at any rate, the return could not be to 3rd respondent therein by the 2nd respondent and the same was illegal and without jurisdiction and further held that the 3rd respondent acted contrary

to the terms of contract and condition agreed at the time of execution and registration of sale deed dated 06.06.1997, namely to return the document to the petitioner therein, and for the said reasons the Writ Petition was allowed.

18. It is pertinent to note that though the petitioner filed implead petition for impleading the said Syed Ashraf Ali as party to the Writ Petition in terms of the order dated 23.03.2015, however, the said implead petition i.e., I.A.No.01 of 2015 was dismissed on 06.03.2024 'as not pressed'. Admittedly, the executant i.e. Syed Ashraf Ali S/o late Syed Mustafa Ali is not a party to this writ petition.

19. In the case on hand, upon perusal of the material available on record, it is clear that the GPA holder was presentant/executant and received the said document. Since the presentant/executant, who is GPA holder is none other than brother of the petitioner, was not made party to the present Writ Petition, as such no direction can be given to the presentant/executant at this point of time. Further, it appears that there is an *inter se* dispute between the petitioner and GPA holder and for the same reason the petitioner has not replied to the notice and instead of taking steps against the GPA holder in accordance with law, the petitioner has filed the present Writ Petition. The issue is as to whether the document is in the custody of respondent No.4 or the GPA holder (brother of the petitioner) is a disputed question of fact and same cannot be decided in a Writ Petition under Article 226 of the Constitution of India and the petitioner has a remedy of filing a

civil suit where such dispute can be effectively adjudicated after conducting trial.

20. In the case on hand, the registering authority, in their counter, has submitted that the original document has been returned to the executant on the same day i.e., on 19.08.2013 and the executant is not a party to the present Writ Petition, and more so the whereabouts of the document is not specific in the present case, as such no direction can be given to the executant at this point of time. That apart, the petitioner has not made any submissions as to how and under which provision of law it is permissible on the aspect of treating any document which could be secondary in nature, so that the same can be treated as original. As such no direction can be given at this point of time in this regard.

21. Be that as it may be, the 5th respondent is bound to register the document in terms of the order passed by the District Registrar, Nizamabad, in Appeal No.1 of 2013 dated 14.11.2013, as and when the said document is presented before the Sub-Registrar.

22. Having regard to the facts and circumstances of the case, it is left open to the petitioner and the presentant/executant/GPA holder to work out their remedies as available under law and accordingly, this Writ Petition is disposed of directing respondent No.5-Sub-Registrar to forthwith register and release the pending document No.764 of 2012 in terms of the orders passed by the District Registrar, Nizamabad, *vide* order dated 14.11.2013 in Appeal

No.1 of 2013, as and when such document is presented before him, in accordance with the provisions of the Registration Act, 1908.

Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

JUSTICE N.V.SHRAVAN KUMAR

Date: 03.05.2024
NDS