

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION No.18097 OF 2017

% 16.06.2023

Between:

Y. Ramalakshmi

Petitioner

Vs.

The State of Telangana,
Rep by its Principal Secretary,
Revenue Department,
Secretariat Buildings, Hyderabad & others.

Respondents

! Counsel for Writ Petitioner : Mr. Rapolu Bhaskar

^ Counsel for Respondent Nos.1, 2, 7 & 8 : G.P. for Revenue
Counsel for Respondent Nos. 3 to 6 : Mr.Y.Rama Rao

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? Cases referred

1. 2018 (1) ALD 532 (DB)
2. (2010) 15 Supreme Court Cases 207
3. Writ Appeal No.1484 of 2017 (disposed on 03.03.2022)
4. (2016) 10 Supreme Court Cases 767
5. 2017 (6) ALD 79
6. (2022) 8 SCC 210

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR**WRIT PETITION No.18097 OF 2017****ORDER:**

Heard Sri Rapolu Baskar, learned counsel for the petitioner and learned Assistant Government Pleader for Stamps and Registration and Sri Y. Krishna Mohan Rao, learned counsel appearing for the respondent Nos.3 to 6.

2. This Writ Petition is filed questioning the action of the respondent No.2 in entertaining the registration of cancellation deed dated 28.05.2014 vide document No.1728 of 2014, thereby cancelling the Development Agreement – cum – General Power of Attorney (for short 'DAGPA') dated 05.03.2009 vide document No.2040 of 2009 as illegal and arbitrary.

3. The admitted facts are that the respondent Nos.3 to 6 herein have executed a registered DAGPA dated 05.03.2009 vide document No.2040 of 2009 in favour of the petitioner herein in respect of land situated in various survey numbers of Motighanpur Village, Balanagar Mandal, Mahaboobnagar District with various terms and conditions, creating rights and obligations on either of the parties to the document. The said registered DAGPA was cancelled by the respondent Nos.3 to 6

herein by executing and registering the cancellation deed dated 28.05.2014 vide document No.1728 of 2014 on the ground that the petitioner herein failed to discharge her obligations under the said development agreement and that she has committed breach of the terms of the said DAGPA.

4. It is the contention of the learned counsel for the petitioner that the petitioner has paid an amount of Rs.5 crores to the respondent Nos.3 to 6 at the time of execution of DAGPA and that the respondent Nos.3 to 6 never cooperated with the petitioner in obtaining various permissions for the purpose of development of the subject land and inspite of the same the petitioner has taken several developmental activities incurring huge expenditure over the subject land and it is only because of the failure of the respondent Nos.3 to 6 in discharging their obligations under the DAGPA, the obligations of the petitioner could not be complied with. It is further contended that in case, if there are any disputes that arise between the parties to the DAGPA, the parties are at liberty to invoke the arbitration clause provided under the said agreement, but under no circumstances, the respondent Nos.3 to 6 are entitled to cancel the DAGPA by registering the cancellation deed thereby, cancelling the said DAGPA. Learned counsel for the petitioner

has also placed reliance on various judgments in **Gaddam Laxmaiah and others v. Commissioner and Inspector General, Registration and Stamps, Hyderabad and others¹, Thota Ganga Laxmi and another v. Government of Andhra Pradesh and others², N. Surendra Babu, Hyderabad v. The Sub Registrar, R.R. District³** and various other judgments of other High Courts.

5. On the other hand, Sri Y. Krishna Mohan Rao, learned counsel appearing for respondent Nos.3 to 6 has contended that the petitioner has committed breach of terms of DAGPA and failed to undertake any activity in the subject land even after lapse of five years, as such respondents got issued legal notice dated 29.03.2014 and inspite of receipt of the said legal notice, the petitioner failed to respond to the same and thereby, the respondent Nos.3 to 6 were forced to execute and register the cancellation deed cancelling the DAGPA. He further contended that the respondent Nos.3 to 6 are well within power to cancel DAGPA and raised objections about maintainability of Writ Petition under Article 226 of the Constitution, contending that if at all, the petitioner is aggrieved by the registration of the

¹ 2018 (1) ALD 532 (DB)

² (2010) 15 Supreme Court Cases 207

³ Writ Appeal No.1484 of 2017 (disposed on 03.03.2022)

impugned cancellation deed, it is for the petitioner to approach the competent Civil Court and seek cancellation or setting aside of the said cancellation deed. He also placed reliance on various judgments in **Satyapal Anand v. State of Madhya Pradesh and others⁴** and **P. Veda Kumari and another v. Sub – Registrar, Hyderabad and another⁵**.

6. This Court carefully considered the submissions made on either side and perused the material available on record.

7. The registration of cancellation deed cancelling the previously registered bilateral documents was in vogue prior to the year 2006. In the year 2006 an amendment was made to the then A.P.Rules under Registration Act, 1908 by introducing Rule 26 (i)(k)(i), which reads as under:

“26. (i) Every document shall, before acceptance for registration, be examined by the Registering Officer to ensure that all the requirements prescribed in the Act and in these rules have been complied with, for instance:

(a)

(b)

(c)

(d)

(e)

(f)

⁴ (2016) 10 Supreme Court Cases 767

⁵ 2017 (6) ALD 79

(g)

(h)

(i)

(j)

[(k)(i) The registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;]"

8. The said amended rule came into force with effect from 29.11.2006. From the said date, an embargo was created on the registering authorities in entertaining registration of cancellation deeds cancelling the previously registered bilateral deeds. By virtue of the said rule, the registering authorities are under an obligation to ensure that the registration of cancellation deeds cancelling previously registered documents shall be by all the parties, who are parties to the previously registered documents and they shall consent for cancellation of previously registered documents. In the instant case, admittedly the petitioner herein, who is one of the parties to the previously registered DAGPA, is not before the registering authority, while entertaining the registration of the impugned

cancellation deed nor consented for such cancellation. In the absence of petitioner herein being a signatory to the Cancellation Deed, any action of respondent No.2 in entertaining registration of cancellation deed cancelling the said DAGPA, is contrary to the above said rule. The said rule 26 (i)(k)(i) of A.P. Rules was very much applicable to the registration of cancellation deeds that have taken place even in the State of Telangana till 01.06.2014. The said rule was substituted by the State of Telangana by issuing G.O.Ms.No.121 (Revenue for registration – I Department) dated 01.06.2016 with effect from 02.06.2014, whereby the following Rule 26 (k) was substituted in the place of previous rule 26 (i)(k)(i) and it reads as follows:

“26. (i) Every document shall, before acceptance for registration examined by the Registering Officer to ensure that all the requirements prescribed in the Act and in these rules have been complied with, for instance:

- (a)*
- (b)*
- (c)*
- (d)*
- (e)*
- (f)*
- (g)*
- (h)*
- (i)*
- (j)*

(k) That the Cancellation Deed of the previously registered deed of conveyance on sale of immovable property is executed by both the executing and the claiming parties thereof unless such Cancellation Deed is executed under the orders of a competent Court or under Rule 243.”

9. Even after the above said amendment, the effect of the said rule continues to be the same. The affect of the said rule has come up for consideration before the Division Bench of this Court in **Gaddam Laxmaiah case (supra)**, wherein this Court after considering the entire case law on the subject, held as under:

*“29. Thus, having regard to the law laid down by the Supreme Court and provisions of the Act, in our opinion, **whenever registered documents such as Development Agreement-cum-GPA, is sought to be cancelled**, execution and registration of such a document/deed must be at the instance of both the parties i.e., bilaterally and not unilaterally. If a deed of cancellation is allowed to be registered without the knowledge and consent of other party to the deed/document, sought to be cancelled, such registration would cause violation to the principles of natural justice and lead to unnecessary litigation, emanating therefrom. In any case, as stated earlier, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation*

for registration without the signatures of both the parties to the document, the deed cannot be entertained. Moreover, if the Registrars are allowed to entertain a deed of cancellation for registration without signatures of both the parties to the document sought to be cancelled, such power would tantamount to conferring the power to decide disputed questions between the parties. No party to the document would ever approach for cancellation of registered document unilaterally unless there is a dispute with the other party in respect of the subject matter of the document.”

10. The Honourable Apex Court in **Thota Ganga Laxmi case (supra)** also took a similar view and held as under:

“5. In our opinion, there was no need for the appellants to approach the Civil Court as the said cancellation deed dated 4.8.2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration if ‘A’ transfers a piece of land to ‘B’ by a registered sale deed, then, if it is not disputed that ‘A’ had the title to the land, that title passes to ‘B’ on the registration of the sale deed (retrospectively from the date of the execution of the same) and ‘B’ then becomes the owner of the land. If ‘A’ wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request ‘B’ to sell the land back to ‘A’ but by no

stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.

6. In this connection, we may also refer to Rule 26(i)(k) relating to Andhra Pradesh under S.69 of the Registration Act, which states:

'The registering officer shall ensure at the time of preparation for registration of cancellation deeds of previously registered deed or conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing natural consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale:

Provided that the registering officer shall dispense with the execution of cancellation deed by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law."

11. In the said judgment, the Honourable Apex Court considered the very same rule, which is extracted herein above and came to the conclusion that registration of cancellation deed behind the back of one of the parties is wholly void and nonest and can be ignored altogether. It was further held that one need not approach Civil Court questioning such cancellation deed. In **N. Surendra Babu** case (supra), the Division Bench of this Court in W.A.No.1484 of 2017 also took a similar view.

12. Thus, the law on this aspect is well settled. In all cases of registration of cancellation deed, without all the parties consenting for the same, registration of such cancellation deed is impermissible under law and such registrations are contrary to Rule 26 (k) of Telangana Rules under Registration Act, 1908. The Honourable Apex Court in the recent judgment in **Asset Reconstruction Company (India) Limited v. S.P.Velayutham and others**⁶ held that in case of violation of any rule or provision of Registration Act or failure of registering authorities in following the law, this Court is well within its power to entertain Writ Petition under Article 226 of the Constitution of India for cancellation or setting aside of such documents

⁶ (2022) 8 SCC 210

registered by the parties. The relevant portion of the said judgment reads as under:

“58. Therefore, in the light of (i) the Tamilnadu Registration Rules discussed above; (ii) the statutory scheme of Sections 32 to 35 of the Act as well as other provisions as amended by the State of Tamilnadu; and (iii) the distinction between a challenge to the first 2 steps in the process of execution of a document and the third step concerning registration, we are of the considered view that the Division bench of the High Court was not right in setting aside the order of the learned single Judge. If the Registering Officer under the Act is construed as performing only a mechanical role without any independent mind of his own, then even Government properties may be sold and the documents registered by unscrupulous persons driving the parties to go to civil court. Such an interpretation may not advance the cause of justice.

59. Therefore, in fine, the appeals are allowed, the impugned order of the Division Bench is set aside and the order of the learned single Judge is restored. There will be no order as to costs.”

13. Coming to the citations relied upon by the learned counsel for the un-official respondent Nos.3 to 6 in **Satyapal Anand case (supra)** and **P. Veda Kumari case (supra)** are concerned, the said judgments have no application to the case on hand. The case of **Satyapal Anand (supra)** is a case of disputed question of fact and there is no rule like Rule 26 (i)(k)(i) of Telangana Rules came up for consideration in the said case.

In the instant case, there are no disputed questions of facts are involved. In so far as **P. Veda Kumari case (supra)** is concerned, the said judgment categorically held that unilateral cancellation of previously registered document was permissible only prior to the introduction of Rule 26 (i)(k) but not thereafter. In the instant case, admittedly the document in question was registered on 28.05.2014 and whereas the Rule 26 (i)(k)(i) was introduced with effect from 29.11.2006 and was further amended with effect from 02.06.2014. Therefore, the said judgment in Veda Kumar case is also of no help to advance the case of respondent Nos.3 to 6.

14. In the light of the above, the action of respondent No.2 in entertaining registration of the impugned cancellation deed unilaterally at the instance of respondent Nos. 3 to 6 is totally illegal, arbitrary and contrary to Rule 26 (i)(k) and accordingly the same is set aside and respondent Nos.2 and 7 are further directed to take all necessary steps for making necessary entries in the relevant registers including the encumbrance register within a period of four weeks from the date of receipt of the copy of this order.

15. It is made clear that this order will not come in the way of respondent Nos.3 to 6 in pursuing their remedies against the petitioner in the matter of alleged breach of terms of DAGPA in accordance with law including for cancellation of the said DAGPA, if they are so advised.

16. Accordingly, the Writ Petition is allowed.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

(MUMMINENI SUDHEER KUMAR, J)

Date: 16.06.2023

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B/o.
AS/MS