

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**WRIT PETITION NOS.16310 OF 2019, 40406, 40412, 40637
AND 44181 OF 2022**

1. WRIT PETITION NO.16310 OF 2019:

Between:

1. Sri P Balabhaskar Reddy S/o P Mar Reddy, Aged about 50 years, Occ: Business, Flat No. 2404, and Srila Towers, Hydernagar, Kukatpally, Medchal-Malkajgiri District and other.

...Petitioner(s)

AND

1. The State of Telangana, Rep. by its Principal Secretary, Revenue Department Secretariat And 2 others

...Respondents

2. WRIT PETITION NO.40406 OF 2022:

Between:

1. Dandu Vijaya Lakshmi Devi, W/o Late Dandu Subba Raju, aged about 67 years, Occ: House Wife, resident of LIG 866 1st Phase, Near Bank of Maharashtra, KPHB Colony, Kukatpally, Hyderabad, Telangana - 500 072.

..Petitioner(s)

AND

1. The State of Telangana, Rep. by its Principal Secretary, Department of Revenue, Stamps and Registration, Secretariat Buildings, Hyderabad And 4 others

...Respondents

3. WRIT PETITION NO.40412 OF 2022:

Between:

1. Dandu Vijaya Lakshmi Devi, W/o Late Dandu Subba Raju, aged about 67 years, Occ: House Wife, resident of LIG 866 1st Phase, Near Bank of Maharashtra, KPHB Colony, Kukatpally, Hyderabad, Telangana - 500 072.

...Petitioner(s)

AND

1. The State of Telangana, Rep. by its Principal Secretary, Department of Revenue, Stamps and Registration, Secretariat Buildings, Hyderabad And 4 others

...Respondents

4. WRIT PETITION NO.40637 OF 2022:

Between:

1. B Narayana Murthy S/o Late B Sreeramulu, Aged about 65 years, Occ: Business, R/o H.No.8-7-177/48/10/1/D, Swarnadharna Nagar, Old Bowenpally, Hyderabad, Telangana State.

...Petitioner(s)

AND

1. The State of Telangana, Rep. by its Principal Secretary, Revenue Department, Secretariat, Hyderabad And 3 others

...Respondents

5. WRIT PETITION NO.44181 OF 2022:

Between:

1. Eerraballi Srujana W/o Eerraballi Satish Reddy, Aged about 40 years, Occ: Housewife, Resident of Plot No.80, H. No.3-9-576/1, Balaji Nagar Road No.2, Mansurabad, Saroornagar Mandal, R R District and other.

...Petitioner(s)

AND

1. State of Telangana, Rep. by its Principal Secretary, Revenue Department of Stamps and Registrations, Secretariat, Hyderabad AND 2 others.

...Respondents

JUDGMENT PRONOUNCED ON: 11.01.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

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

MUMMINENI SUDHEER KUMAR, J

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR
WRIT PETITION NOS.16310 OF 2019, 40406, 40412, 40637
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%Dated 11.01.2023

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! Counsel for Petitioner(s):

1. Sri D.Y.L.N Charyulu, Counsel for the petitioners.

^ Counsel for Respondents:

1. Sri P.Raja Sripathi Rao, learned Government Pleader for Stamps and Registration.

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! Counsel for Petitioner(s):

1. Sri A.Narasimha Rao, Counsel for the petitioners.

^ Counsel for Respondents:

1. Sri P.Raja Sripathi Rao, learned Government Pleader for Stamps and Registration.

3. WRIT PETITION NO.40412 OF 2022:

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#1. Dandu Vijaya Lakshmi Devi, W/o Late Dandu Subba Raju, aged about 67 years, Occ: House Wife, resident of LIG 866 1st Phase, Near Bank of Maharashtra, KPHB Colony, Kukatpally, Hyderabad, Telangana - 500 072.

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! Counsel for Petitioner(s):

1. Sri A.Narasimha Rao, Counsel for the petitioners.

^ Counsel for Respondents:

1. Sri P.Raja Sripathi Rao, learned Government Pleader for Stamps and Registration.

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! Counsel for Petitioner(s):

1. Sri M.A.K Mukheed, Counsel for the petitioner.

^ Counsel for Respondents:

1. Sri P.Raja Sripathi Rao, learned Government Pleader for Stamps and Registration.

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...Respondents

! Counsel for Petitioner(s):

1. Sri L.Ravinder, Counsel for the petitioners.

^ Counsel for Respondents:

1. Sri P.Raja Sripathi Rao, learned Government Pleader for Stamps and Registration.

< GIST :

> HEAD NOTE :

? Cases referred:

1. 2009 (1) ALD 337

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR
WRIT PETITION NOS.16310 OF 2019, 40406, 40412, 40637
AND 44181 OF 2022

COMMON ORDER:

In all these batch of Writ Petitions the common question that arise for consideration is whether the registering authorities under the Registration Act, 1908, are entitled to refuse to receive and register the document presented for registration before such authority on the ground that the link document through which the executants of the said document are claiming right and title that is sought to be transferred under such document presented for the registration is an unregistered validated document under Section 42 of the Indian Stamp Act, 1899 or not ? Hence, all the Writ Petitions are heard together and are disposed of by this common order.

2. Heard Sri. A.Narasimha Rao, Sri D.Y.L.N Charyulu, Sri M.A.K Mukheed, and Sri L.Ravinder, learned counsel for the petitioners and Sri P.Raja Sripathi Rao, learned Government Pleader for Stamps and Registration, for respondents in all the Writ Petitions.

3. Before dealing with the question that is sought to be answered in this batch of Writ Petitions, it is necessary to note

that the Writ Petition No.16310 of 2019, was earlier allowed by a learned Single Judge of this Court, by an order, dated 23.02.2021, wherein it was held that once the document is validated by collecting the Stamp Duty, it is not open for the respondents to declare the validated document as a document without having force of law and rejection to register the document by referring to the validated document is *ex facie* illegal.

4. Aggrieved thereby, the State filed Writ Appeal No.446 of 2021 and judgment of the learned Single Judge was set aside by a Division Bench of this Court, by an order, dated 27.09.2021, reversing the finding of the learned Single Judge, that the validated document will have all the force of law and declared that mere validation of a document will not cure the defect of non-registration of such document, under Section 17 of the Registration Act, 1908, and in the absence of registration of a document which is compulsorily registerable, mere validation will not affect the immovable properties comprised therein. The relevant paragraphs from the judgment of learned Division Bench are extracted hereunder for clarity:-

“In view of this settled legal position, the view of the learned Single Judge that once a document is validated, it attains the

legal force of law and it cannot have any secondary grade recognition cannot be accepted as correct statement of law.

Without registration, a sale deed or any document required under Section 17 of the Act or under the Transfer of Property Act, 1882, even if it is properly stamped, cannot affect the immovable property comprised therein.

An insufficiently stamped sale deed or other document required by Section 17 of the Act to be registered or by Transfer of Property Act, 1882 to be registered, if properly stamped by getting it validated can only be used as evidence of any collateral transaction not required to be affected by registered instrument or received as evidence for a contract in a suit for specific performance under the Specific Relief Act, and for no other purposes.”

5. Having held as above, the learned Division Bench remanded the matter back for considering the other contentions raised by the Writ Petitioners about the validity of the impugned refusal order therein, refusing registration of the document presented for registration. That is how Writ Petition No.16310 of 2019, is listed for disposal before this Court. As the other Writ Petitions in this batch involve the similar issue, the same are tagged along with Writ Petition No.16310 of 2019, for disposal.

6. As could be seen from the impugned refusal order, passed by the respondent-Sub Registrar, the reason for refusing to register the documents which are the subject matter of the respective Writ Petitions is that the link document referred to in the respective documents as source of title of the executants of the respective documents is a document validated under the provisions of the Indian Stamp Act, 1899 and not a document

registered under the provisions of the Registration Act, 1908, though the same are compulsorily registerable documents in terms of Section 17 of the Registration Act, 1908. Thus, the respondent-Sub Registrar refused to register the respective documents by placing reliance on an Endorsement No.CIG.MAIL/AR/2008, dated 02.01.2008, issued by the Commissioner and Inspector General of Stamps and Registration, wherein it was stated as under:-

“There is a general confusion prevailing that payment of stamp duty under Indian Stamp Act, 1899, following provision of Section 41 amounts to registration of document. Let all stand clarified that “validation of document” and “Registration of Document” are two distinct things. “Validation of document” is covered under Indian Stamp Act which is a fiscal law and “Registration of Document” is covered under Registration Act, 1908, which governs the procedure of Registration. If a document is not duly registered, in relation to an immovable property it shall not be taken into cognizance by Civil Courts except treating them as evidence for a contract under Specific Relief Act or Evidence of any collateral transactions not required to be effected by registered document. Therefore, a validated document cannot be accepted as a validly registered document which should be equivalent to a link document and be the basis for subsequent registration. Instruction is therefore given to all registering officers, not to treat a validated document as a link document for any further registration.”

7. Insofar as the clarification given in the above, endorsement about the difference between the validation of a document and registration of a document is concerned, there is no dispute and the legal position is correctly clarified in the said endorsement. However, the further statement that the validated document cannot be accepted as validly registered document,

which should be equivalent to a link document and be the basis for subsequent registration and further instruction to the registering officers not to treat a validated document as a link document for any further registration is concerned, the power and authority of the Commissioner and Inspector General of Stamps and Registration to issue such an instruction or direction to the registering officers is doubtful and the same requires examination. There is no dispute that a validated document can never be treated as validly registered document if registration of such document is compulsory under Section 17 of the Registration Act, 1908.

8. The power of registering authority to entertain registrations or to refuse registration of documents presented for registration and the grounds, on which the registering officers can refuse registration etc., are all governed by various provisions of the Registration Act, 1908 and the rules made thereunder.

9. A learned Single Judge of the erstwhile High Court of the Andhra Pradesh (Hon'ble Justice Sri N.V.Ramana, as he then was) considered this aspect of the matter in detail in the case of **Dr. Yadla Ramesh Naidu v. The Sub-Registrar, Sabbavaram,**

Visakhapatnam District & Others¹. The relevant paragraphs

from the said judgment reads as under:-

“Section 17 of the Registration Act deals with documents of which registration is compulsory, and inter alia states that the sale of immovable property of the value of one hundred rupees and upwards, has to be registered compulsorily. Therefore, every immovable property, whose value is one hundred and upwards, requires compulsory registration under the Registration Act. Whether mere registration of transfer of such immovable property by execution of a document by the transferor in favour of the transferee, confers title on the transferee. The validity or otherwise of transfers of immovable property, are subject to the provisions of the Transfer of Property Act, 1882. Nemo dat quod non habet, is the salutary principle enunciated in the Transfer of Property Act, 1882, which means that no person can pass or transfer a better title in a property than that he possesses therein. Such being the case, and having regard to the fact that the registration of a document by the registration authority under the provisions of the Registration Act, merely records the transaction having taken place between the transferor and the transferee in the jurisdiction of the said registering authority, I am of the considered opinion that such registration by itself will not confer any title or right in the property so transferred on the transferee unless the transferor is the rightful and lawful owner of the property and was competent to transfer the property and has put the transferee in possession of the property, upon executing and registering the document. In that view of the matter, it has to be held that mere registration of a document by the registering authority under the provisions of the Registration Act, does not confer any title.

To consider this question, it is appropriate to make a reference to some of the provisions of the Registration Act, 1908 and the A.P. Rules made thereunder. The circumstances under which the Registering Authority can refuse registration of a document are spread over in various provisions of the Registration Act and the A.P. Rules made thereunder. It would be appropriate, if a reference is made to the said provisions. The Registering Authority can refuse registration of a document under the various provisions of the Registration Act - Under Section 19 of the Registration Act, if a document is presented for registration in a language not commonly used in the district, then the Registrar can refuse the registration unless such document is accompanied by true translation of the same into a language commonly used in the district; under Section 20 of the Registration Act, the Registrar can refuse to register the document in exercise of his discretion if the document presented for registration contains alterations, erasures etc., without any attestation; under Section

¹ 2009 (1) ALD 337

21 of the Registration Act, unless the document contains description of the immovable property to identify the same; under Section 22-A of the Registration Act, registration of document is opposed to public policy, document presented by a person who has no right to present; under Section 34 of the Registration Act, the Registering Officer is not satisfied with regard to identity of person who sought to execute the document and; under Section 35, if the person purported to have executed is dead, the person who seeks to execute the document is incapacitated and is not competent to execute the document, the prescribed fee is not paid.

Chapter XII of the Registration Act deals with the circumstances under which the registration can be denied. Rule 58 of A.P. Rules under the Registration Act, 1908 reads as under:

It forms no part of a Registering Officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:

- (a) that the parties appearing or about to appear before him are not the persons they profess to be;
- (b) that the document is forged;
- (c) that the persons appearing as a representative, assign or agent, has no right to appear in that capacity;
- (d) that the executing party is not really dead as alleged by the party applying for registration;"

10. From the above judgment, it is clear that the registering authorities are not entitled to go into the issue of title of the executants of the respective documents over the property comprised therein while processing the document for registration. The link document that is shown as source of title in the respective documents is only to show the title of the executant of such document. In terms of the Judgment referred to above the registering authority is not entitled to look into the aspect of title of the executants, can the said authority refuse

registration of a document on the ground that the link document shown is a validated document?

11. Sri P.Raja Sripathi Rao, learned Government Pleader for Stamps and Registration, though initially contended that by virtue of Section 49 of the Registration Act, 1908, the registering authority is entitled to refuse registration of a document presented for registration, if such documents are based upon the validated link document which are compulsorily registerable under Section 17 and also placed reliance on Lotus Mail, dated 02.01.2008, after an elaborate deliberation during the course of arguments and after getting instructions from the registering authorities fairly conceded that the above referred Endorsement, dated 02.01.2008, are not traceable to any of the provisions of the Registration Act, 1908 and submitted that all such endorsements were issued in the interest of general public and to avoid fraudulent transactions and unwanted litigations that are being initiated basing upon such validated documents, without there being any registration under the provisions of the Registration Act, 1908, though all such documents are compulsorily registerable. Hence the answer to the said query is a definite 'No', in the light of the Judgment referred to supra.

12. Any action on the part of the registering authority to verify the validity or otherwise of the link document referred to in the document presented for registration is nothing but looking into the title of the executant of such document.

13. The power of the registering authority to refuse registration is only, if any of the grounds or objections that are enumerated under the provisions of the Registration Act, 1908, and the Rules made thereunder in particular Sections 19, 20, 21, 22-A, 34, 35 and rule 58 of the Telangana Rules under the Registration Act, 1908, are existing in respect of any such document presented for the registration. Except, the grounds or objections that are enumerated under the provisions of the Registration Act, 1908, the registering authorities have no authority to refuse registration of a document on any other ground. As already noted above, the ground on which the impugned refusal orders in all these batch of Writ Petitions are passed is that the link document shown in the respective documents is a validated and an unregistered document. By looking into a validity of the link document, the registering authority is indirectly verifying whether the executants of the respective documents are having valid title or not to execute the documents in question. As held in the above referred judgment

in the case of Dr. Yadla Ramesh Naidu (1 supra), the registering authority is not entitled to go into the title of the parties to the document. It is a settled law that the vendee under a document will not get a better title than his vendor and in case if vendor is not having a valid title over the property which is the subject matter of a particular document, the vendee under the said document does not get any title over such property and mere registration of such document will not have an effect on the property which is the subject matter of the said document.

14. As rightly conceded by the learned Government Pleader for Stamps and Registration, the registering authorities are not entitled to refuse registration of a document on mere ground that the title of the executants of the respective document is based upon the validated document, though the same is compulsorily registerable document cannot be accepted and such a ground is not available to the registering authorities to refuse registration of a document on that ground.

15. This Court is conscious of the fact that the general public are getting confused between the validated document under the provisions of the Indian Stamp Act, 1899 and a document registered under the provisions of the Registration Act, 1908. In common parlance a validated document is being construed as

equivalent to a registered document by the general public and basing upon such validated document, several transactions are taking place resulting in creating litigation and multiplying thereof. The above referred endorsements appear to have been issued in good faith and in the interest of the general public. But in the absence of any source of power for the Commissioner and Inspector General of Stamps and Registration to issue such endorsements giving instructions to the registering authorities, such endorsements cannot take the place of law and operate contrary to the provisions of the Registration Act, 1908. Various provisions of the Registration Act, 1908, which are already noted above, only empowers the registering authorities to refuse registration of a document on the grounds specified therein. The endorsements issued by the Commissioner and Inspector General of Stamps and Registration expanding the scope and power of the registering authorities to refuse registration of documents which have no backing of law are bound to be declared as ultra virus and without authority.

16. No doubt, the registration of documents by the registering authorities without looking into the title of the executants of the said document by simply collecting the stamp duty and registration may generate good amount of Revenue for the State.

But in practice such a ministerial and mechanical act required to be done by the registering authorities is resulting in initiation and multiplication of the litigation and innocent purchasers are subjected to trauma and harassment of undergoing prolonged litigation before various Courts and Forums besides spending huge money. Though, the State is conscious of such litigations and has taken steps to introduce a provision under Section 22-A of the Registration Act, 1908, prohibiting registration in respect of the various properties enumerated under sub section (1) of Section 22-A of the Registration Act, 1908, belonging to State, its instrumentalities etc., no endeavor is made for safeguarding the interest of the common citizen and to prevent fraudulent registration and unnecessary litigation resulting from registering a document in a mechanical and in a ministerial manner.

17. Further the collection of deficit stamp duty under the provisions of the Indian Stamp Act, 1899, be it under Section 33, 40 or 41 of the Act, 1899, in respect of a document is being termed as validation of the said document. In the matter of collection of deficit stamp duty, the District Registrar is no way verifying the truth or otherwise of the said document nor certifying the execution of such document by the person who is

shown to have executed such document unlike registration of a document under the provision of the Registration Act, 1908 nor he is entitled to undertake any such exercise. In the absence of the same, calling the collection of deficit stamp duty as validating the said document is totally uncalled for and unwarranted. Hence the Commissioner and Inspector General of Stamps and Registration, Government of Telangana is directed to take necessary steps and issue appropriate guidelines to all the District Registrars in this regard i.e, not use the term 'validation' within a period of six weeks from the date of receipt of a copy of this order, so that the evil affects of using the word 'validation' can be avoided to some extent.

18. Under the above circumstances, this Court constrained to express its concern and anxiety to sensitize the State about the mental agony that the citizens are under going for want of proper mechanism, checks and scrutiny while undertaking registration of a document, besides the loss of life time earnings of the individuals/citizens and spending huge amount for prosecuting the litigation resulting in from such mechanical registration of documents. It is for the legislature to have a concern to these aspects of the matter and enact appropriate laws/amend the Registration Act, 1908, appropriately to avoid

such mental agony for the citizens and to avoid unnecessary frivolous litigation, resulting from such registrations.

19. In the light of the above, this Court is unhesitant to hold that the respondent registering authorities are not entitled to refuse registration of a document on the ground that the link document referred to in the respective document is a validated document or to refuse registration of such document by placing reliance on endorsement, dated 02.01.2008, issued by the Commissioner and Inspector General of Stamps and Registration. Accordingly, the impugned orders in the respective Writ Petitions are set aside and Writ Petitions are allowed with a further direction to the respondent registering authorities to receive the returned documents and to process the same subject to the condition of the said documents complying with the provisions of the Registration Act, 1908 and the Indian Stamp Act, 1899.

20. Insofar as the objection on the ground of failure to submit Form-32A, as required under G.O.Ms.No.246, Revenue (Registration.I) Department, dated 27.02.2008 is concerned, it is for the petitioner in W.P.Nos.40412 and 40406 of 2022 to comply with such requirement. However, it is made clear that such a requirement of complying with Form-32A cannot be

insisted for the documents that were executed prior to the date of issuance of G.O.Ms.No.246, i.e., dated 27.02.2008.

21. Accordingly, all the Writ Petitions are allowed as indicated hereinabove.

There shall be no order as to costs. As a sequel, miscellaneous petitions, pending if any in all the Writ Petitions, shall stand closed.

MUMMINENI SUDHEER KUMAR, J

Date: 11.01.2023

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THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION NOS.16310 OF 2019, 40406, 40412, 40637
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