

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION NO.42907 OF 2022

Between:

M/s. Ashish Simran Exports Pvt. Ltd.,
Registered Office: H.No.6-3-596/72,
Naveen Nagar, Hyderabad, rep.by its Director
Ashish Kumar Ahuja.

...Petitioner

AND

1. The State of Telangana, Rep.by its Principal Secretary,
Registration Department, Secretariat, Hyderabad and two
others.

...Respondents

JUDGMENT PRONOUNCED ON: 30.12.2022

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 NO.42907 OF 2022**

%Dated 30.12.2022

M/s. Ashish Simran Exports Pvt. Ltd.,
Registered Office: H.No.6-3-596/72,
Naveen Nagar, Hyderabad, rep.by its Director
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...Respondents

! Counsel for Petitioner : Mr. T.Bala Mohan Reddy

^ Counsel for Respondent Nos.1 to 3 : Government
Pleader for
Stamps and Registration

< GIST :

> HEAD NOTE :

? Cases referred :

1. 2009 (1) ALD 337

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMARWRIT PETITION NO.42907 OF 2022**ORDER:**

This Writ Petition is filed seeking a Writ of Mandamus to declare the action of the third respondent in not registering and releasing pending document Nos.1354, 1355, 1356 and 1357 of 2021 dated 27.11.2021, as illegal and arbitrary.

2. The petitioner herein who is the vendee-cum-agent under the pending documents, which are the subject matter of the present Writ Petition, got presented the said documents, namely Agreement of Sale-cum-General Power of Attorney with possession for registration before the third respondent after complying with the requirements of the Indian Stamps Act, 1899 and the Registration Act, 1908. The third respondent herein, having received the said documents for registration, kept the documents pending by assigning pending document numbers without processing and registering the same. Aggrieved by such action of the third respondent, the petitioner herein approached this Court by filing the present Writ Petition.

3. The third respondent filed counter affidavit giving reasons for not processing the documents, which reads as under:-

“It is submitted that, the Properties involved in the documents relating to Survey No.13 of Kondapur Village and

previously purchased by Sri O. Kamal Prasad vide document No.2634 of 2015 dt.22.08.2015, 2636 of 2015 dt.22.08.2015, 2638 of 2015, dt.22.08.2015 and 2637 of 2015 dt.22.08.2015. Sri O.Kamal Prasad has availed loans by depositing the title deeds of the above properties vide Memorandum of Deposit of Title Deeds bearing No.5721 of 2019 with ICICI Bank and Document No.19359 of 2018 with Punjab National Bank.

In terms of C&IG. (R&S) instructions in Circular No.13450/2007 dated 21.07.2008 (Copy submitted) **the Sub-Registrar is required to verify link documents and Encumbrance certificate before registration to avoid fraudulent registrations. Accordingly, when the Encumbrances were searched it was found that the properties were already under Mortgage in favour of the above Banks.** The matter has been conveyed to the Vendor and he immediately submitted an undertaking o 27.11.2021 (Copy submitted) to get the Re-conveyance of Mortgage deeds executed by the concerned Banks and submit a copy to the R.O.”

From the above, it is seen that the third respondent kept the documents in question pending on the ground that the very subject properties, which are the subject matter of the pending documents were mortgaged in favour of ICICI Bank and Punjab National Bank under memorandum of deposit of title deeds vide document Nos.5721 of 2019 and 19359 of 2018 respectively and the same is noticed by the third respondent on verification of the Encumbrance Certificate and the link documents of the properties, which are the subject matter of pending documents. As the properties covered by the subject documents are mortgaged in favour of the banks referred to above, the Sub-Registrar tried to justify his action in keeping the documents pending without processing further. The third respondent placed reliance on a Circular bearing No.13450 of 2007 dated

21.07.2008 issued by the Commissioner and Inspector General (Registration & Stamps) wherein the Sub-Registrars are required to verify the link documents and Encumbrance Certificate before carrying out any registration to avoid fraudulent registrations. No doubt, the said circular was issued but whether such a circular issued by the Commissioner and Inspector General of Registration & Stamps is having any authority to issue or not is a matter that falls for consideration of this Court.

4. A learned Single Judge of the erstwhile High Court of Andhra Pradesh (Hon'ble Sri 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** and examined in detail the scope and ambit of the powers of the Sub-Registrars while processing a document for registration, wherein it was held as under:

“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:

¹ 2009 (1) ALD 337

- (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 person 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;"

5. No doubt the Circular, dated 21.07.2008 was issued after having taken note of fraudulent transactions that have taken place taking advantage of limited scope and power with which the registering authorities are conferred with under the Registration Act, 1908. But, in the light of the law declared by the erstwhile High Court of Andhra Pradesh, as noted above, the Circular bearing No.13450/2007 dated 21.07.2008 basing on which the third respondent refused to process the documents in question is bound to be declared as illegal or as the one issued without any power or authority besides being ultra vires the provisions of the Registration act, 1908. Further, there is no legal bar from executing a conveyance deed or any other document in respect of the properties, which are subjected to mortgage. The provisions of the Transfer of Property Act, 1882, permits such transfer subject to a condition that the beneficiary under such documents is also bound by such mortgage created by his vendor. If a purchaser or a beneficiary document is willing to acquire rights subject to mortgage, it is always open

for the parties to approach the concerned registering authority for executing documents in that regard. In the instant case, in all the four documents, which are now pending before the third respondent, there is a specific recital mentioned in respect of the documents about the subsistence of mortgages in question and the petitioner is very much aware of the same. It is not part of duty of the third respondent to look into such aspects. Therefore, the action of the third respondent herein in refusing to process the documents in question presented for registration on the ground that there is a mortgage in favour of the banks is totally unsustainable and without any authority of law.

6. In the circumstances, the Writ Petition is allowed and the third respondent is directed to process the pending document Nos.1354, 1355, 1356 and 1357 of 2021 dated 27.11.2021 without reference to the subsistence of mortgage under document Nos.5721/2019 and 19359/2018 in favour of ICICI Bank and Punjab National Bank respectively and complete the same within a period of ten (10) days from the date of receipt of a copy of this order subject to the said documents complying with other requirements of law including the provisions of the Registration Act, 1908 and Indian Stamps Act, 1899.

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

(MUMMINENI SUDHEER KUMAR, J)

30th December 2022

NOTE: LR Copy be marked
B/O
RRB