

***HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

+WRIT PETITION No.3606 OF 2024

% Dated: 13.02.2024

Between:

Shaik Rafeeq Uddin

...Petitioner

and

\$ The State of Telangana,
Represented by its
Principal Secretary,
Revenue (Stamps & Registrations) Department
Dr.B.R.Ambedkar Secretariat, Hyderabad and others.

....Respondents

! Counsel for the petitioners : Sri K.Mahendar Reddy

^ Counsel for the respondents : Asst.Govt.Pleader for Stamps and
Registration

< GIST : ---

>HEAD NOTE : ---

? Cases referred: :

1. 1999 SCC Online AP 435: (1999) 3 APLJ 204: (1999) 6 ALD 144:
(1999 6 ALT 599

THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR**WRIT PETITION No.3606 of 2024****ORDER:**

This writ petition is filed seeking the following prayer:

“to declare the action of the 3rd respondent in refusing to register the document for registration of House No.6-100/12/A on Plot No.617 admeasuring 277.78 Sq Yards or equivalent to 232.22 Sq Meters with a built up area of 100 Square feet covered by ACC Roof in Sy No.409 and 413/5 situated at Narkhoda village and Grampanchayath, Shamshabad Mandal, Ranga Reddy District is illegal arbitrary and further direct the 3rd respondent to register the document presented by the petitioner for the aforesaid subject property.”

2. Learned counsel for the petitioner submits that petitioner is the absolute owner and peaceful possessor of the subject property and due to domestic needs and dire necessary of money, the petitioner intends to sell the subject property, in this regard petitioner presented sale deed document before respondent No.3 for registration in favour of third party, however respondent No.3 refused to entertain the documents for registration without assigning any reason. Learned counsel further submits that it is duty bound on the part of the respondent No.3 to receive, register and release the subject documents and if respondent No.3 is not registering the subject documents, the respondent No.3 shall assign reasons for refusal.

3. Per contra, learned Assistant Government Pleader for Stamps and Registration submits that petitioner has never approached before the office of the Registering Authority for registration of the subject document and placed instructions submitted by the respondent No.3, dated 09.02.2024, which reads as:

"It is submitted that his office is not refusing orally to admit the documents when presented for registration by the public. They are informed that the document will be admitted for registration, kept pending and registered if it is in accordance with the provisions of the Registration Act, 1908 otherwise the same will be refused.

It is further submitted that this office cannot intimate the reason for refusal until the presentation of the document by the parties before the Registering office. Therefore, the parties may please be informed to present the document for registration so as to enable this office to take appropriate action as per Act."

4. Learned Assistant Government Pleader for Stamps and Registration fairly stated that if the petitioner approaches Respondent Authority for registration of the subject property, the Respondent Authority will receive and process the subject documents, subject to the petitioner complying with the provisions of the Indian Registration Act, 1908, and Indian Stamps Act, 1899 or otherwise the Registering Authority will pass refusal order by following section 71 of the Indian Registration Act, 1908.

5. At this stage, learned counsel for the petitioner submits that liberty may be granted to the petitioner to approach the Registering Authority

once again for registering the subject document and direct the respondent Authority to receive, register and release the subject documents or give reasons for refusal by following section 71 of the Indian Registration Act, 1908.

6. Heard both sides.

7. In similar circumstances this Court *in Deverneni Linga Rao Vs. Sub-Registrar, Peddapallu*¹, passed a detailed order, wherein para Nos.5 to 9 are extracted hereunder:

5. In my considered view, the aforesaid submission of the learned Assistant Government Pleader is well founded. The petitioners did not produce any documentary proof in support of their averment that they have presented the sale deeds to the respondent for registration, but he has refused to register the same. They could not even mention the date on which they had approached the respondent. Therefore, it is difficult to accept their statement, more so when that statement is specifically denied by the respondent in his counter. At this juncture it is appropriate to note that under Section 71 of the Registration Act, 1908 (for short "the Act") the Sub-Registrar is bound to record reasons for his refusal. The said section is as under:

"Sec. 71, Reasons for refusal to register to be recorded:-- (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No.2 and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under

¹ 1999 SCC Online AP 435:(1999) 3AP LJ 204:(1999) 6 ALD144:(1999)6 ALT 599

the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No Registrating Officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered."

6. *A perusal of the above provision clearly shows that the Sub-Registrar, whenever registration is refused except on the ground that the property to which it relates is not situate within his sub-district, has to pass an order and record reasons for such order in Book No.2. If the person presenting the document applies, he should also furnish a copy of the reasons so recorded by him without payment and unnecessary delay.*

7. *Admittedly, the petitioners herein did not make any application asking for a copy of the reasons for refusal. In these circumstances, it is difficult to infer that the respondent has refused to register the sale deeds. But the learned Counsel for the petitioners-Sri I.Aga Reddy - forcefully urged, relying upon the decision of a learned single Judge of this Court in S.Nagi Reddy v. Joint Sub-Registrar, Registration and Stamps, Tirupati, 1999(4)ALD81:1999(4)ALT556, that the fact that the petitioners had approached this Court is sufficient to infer refusal by the respondent. In his submission, the petitioners would not have approached this Court straightaway without first approaching the respondent. I am not able to accept this contention in the absence of any documentary proof that the petitioners had approached the respondent and presented the documents for registration. Mere fact that the petitioners have approached this Court is not sufficient to infer refusal by the respondent. Further, their conduct in not making even an application, as contemplated under Section 71 of the Act, excludes any such inference. The decision in S.Nagi Reddy's case (supra) will not lend any support to the petitioners. No principle is laid down by the learned single Judge in that decision. Considering the facts and circumstances of that case,*

*the learned Judge inferred refusal and issued certain directions. The facts of this case are different. The petitioners herein could not even state the date on which they have approached the respondent. Further, Section 71 of the Act was not brought to the notice of the learned single Judge. The well established Rule, subject to certain exceptions, is that the applicant for mandamus must show by evidence, that he made a demand calling upon the concerned authority to perform his public duty and that was met with refusal either by words or by conduct. Applying this salutary rule, the Apex Court in *Saraswati Industrial Syndicate Ltd Etc., v.- Union of India* (1974)2 SCC 630 : AIR 1975 SC 460, held (at Para 24 of the report) thus :*

"..... The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice.

Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in Halsbury's Laws of England (3rd edition, Vol.13, P.106):

'As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal'.

8. From the aforementioned facts and circumstances it is clear that the petitioners could not and did not show that they made a demand to the respondent and that was met with refusal. Therefore, it is not

possible to issue the declaration sought for or the consequential direction commanding the respondent herein to register the sale deeds proposed to be executed by the petitioners in favour of their purchasers. This view of mine gains full support from the decision of a Division Bench of this Court in D. Ratnasundari Devi v. Commissioner of Urban Land Ceiling, 1993(2)ALT 428.

9. For the aforementioned reasons, the writ petitions fail and are accordingly dismissed, but without costs. However, this order will not preclude the petitioners from presenting the sale deeds for registration before the respondent. In such an event, I am sure, the respondent will immediately discharge his statutory duties mentioned in Part XI of the Act and consider registerability of the sale deeds. I am also sure that in case the registration is refused, he will certainly record the reasons as enjoined by Section 71 of the Act and furnish a copy thereof, if the petitioners apply for the same.

8. In view of above facts and circumstances of the case and relying on the judicial pronouncement passed by this Court (Cited supra) and the submission made by learned Assistant Government for Stamps and Registration, this Court deems it fit to grant liberty to the petitioner to present the subject documents for registration before the Registering Authority. In such an event, the Registering Authority are directed to immediately discharge his statutory duties mentioned in Part XI of the Act and consider registerability of the subject documents, subject to the petitioner complying with the provisions of the Indian Registration Act, 1908, and Indian Stamps Act, 1899. However, if the said subject document cannot be registered for any reasons, the Registering Authority shall

record the reasons by following Section 71 of the Indian Registration Act, 1908 and communicate the same to the petitioner.

9. Accordingly, with the above direction, this writ petition is disposed of. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

JUSTICE N.V.SHRAVAN KUMAR

Date: 13.02.2024.

Note: L.R. copy be marked.

SHA/LSK