
(2014) 12 AP CK 0178

In the Andhra Pradesh High Court

Case No : Second Appeal No. 138 of 2006

Buddala Veeraswamy

APPELLANT

Vs

Urban Development Authority

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 3 — Civil Procedure Code, 1908 (CPC) - Order 41 Rule 22, 100 — Contract Act, 1872 - Section 23 — Government Grants Act, 1895 - Section 2, 3 — Registration Act, 1908 - Section 47 — Specific Relief Act, 1963 - Section 31 — Transfer of Property Act, 1882 - Section 10, 11, 12, 25, 31

Citation : (2015) 2 ALT 755

Hon'ble Judges : M. Seetharama Murthi, J.

Bench : Single Bench

Advocate : Y.V. Ravi Prasad, for the Appellant; P. Rajasekhar, for the Respondent

Final Decision : Dismissed

Judgement

M. Seetharama Murthi, J.—This Second Appeal under Section 100 of the Code of Civil Procedure (for short, "the Code") by the unsuccessful plaintiff is directed against the judgment and decree dated 28.01.2004 of the learned IX Additional District Judge (Judge, Fast Track Court), Visakhapatnam in A.S. No. 137 of 2000. The learned Additional District Judge while dismissing the said Appeal had confirmed the judgment and decree dated 05.06.2000 passed by the learned II Additional Junior Civil Judge, Visakhapatnam in O.S. No. 936 of 1996. At the time of admission of the Second Appeal, this Court having regard to the grounds (a) to (c) mentioned in the grounds of objection had formulated the following substantial questions of law:

"(1) Whether the respondent herein can cancel the Ex. A-6 allotment letter dated earlier than that of Ex. A-4 sale deed without seeking cancellation of Ex. A-4 sale deed in a civil court?

(2) Whether the judgment of the courts below is perverse in holding that Ex. A-4

sale deed can be cancelled by the respondent herein by an executive order without seeking cancellation of the same from a competent civil court?

(3) Whether imposition of condition in a sale deed is contrary to the provisions of the Transfer of Property Act and the Contract Act? [Reproduced verbatim]"

2. I have heard the submissions of the learned counsel for both the sides. I have perused the material record.

3. To adjudicate the lis and answer the substantial questions of law, it is necessary to first refer to, in brief, the respective cases pleaded by the parties.

4. (a) The case of the plaintiff may be stated, in brief, is as follows: "The plaintiff had applied on 25.03.1981 to the Visakhapatnam Urban Development Authority ("the VUDA", for brevity) for allotment of a house site. On accepting the request of the plaintiff, an allotment letter dated 16.10.1984 was issued allotting the site in an extent of 325 square yards in MIG 290 of Madhavadhara layout covered by Survey No. 14 within Visakhapatnam Municipal Corporation limits, which is more fully described in the schedule annexed to the plaint. Thereafter, the plaintiff had paid the entire consideration to the VUDA. On that, the VUDA had submitted on 20.11.1987, the duly executed sale deed before the Sub Registrar concerned for registration. However, the registration of the said document was kept pending for want of fixation of stamp duty charges payable on the transaction by the Government. The sale deed, the registration of which was kept pending, was finally registered on 27.04.1996 on receipt of the stamp duty payable on the said sale deed. After such registration, the sale deed was released to the plaintiff. The plaintiff had thus purchased the schedule site from the VUDA. The plaintiff, who was employed and was residing in Madhya Pradesh, has no site in Visakhapatnam or anywhere else and had intended to construct a house and settle down at Visakhapatnam and never had an intention to sell away the assigned plot to make profit. As the plaintiff had no financial sources, he did not construct a building either by borrowing a loan from his employer or other financial institutions. While so, the plaintiff had received a letter dated nil. 10.1994 cancelling the allotment and forfeiting the registration fee and 50% of the amount paid towards the land cost. No notice was given prior to the issuance of such letter of cancellation and no opportunity of hearing was also given to explain as to why the plaintiff could not construct a building in the allotted site. Therefore, the plaintiff had made a number of representations to withdraw the letter/order of cancellation and the same are of no avail. The plaintiff had also received a cheque for 1 14,439.50ps dated 15.03.1996 along with the covering letter dated 21.03.1996 informing that the plot sold to the plaintiff was allotted in a public auction to a third party and that the cheque was being sent towards the amount refundable to the plaintiff consequent upon the cancellation of the allotment of the plot. The said cancellation of the plot allotted to the plaintiff is illegal, arbitrary and beyond the powers of the defendant authority for the following reasons: "The VUDA has never made known the terms in conditions of the sale deed to the plaintiff either prior to the submission of the application or

at the time of the allotment or at the time of execution of the sale deed; Since the sale deed was released to the plaintiff on 27.04.1996, there was no opportunity to the plaintiff to know the terms and conditions of the sale deed; The sale in favour of the plaintiff is absolute in nature and cancellation of such a sale deed can only be made by following the due process of law but not by an executive order; the allotment made in favour of the plaintiff was confirmed by execution of a sale deed and hence, mere cancellation of the allotment without the cancellation of the sale deed is bad in law; the cancellation of a registered sale deed can only be done by following the legal process but not by his administrative order that too by the Vice Chairman of the VUDA, who is not empowered under law to cancel the sale deed executed by and on behalf of the VUDA; the possession and enjoyment of the plaintiff over the schedule plot are not disturbed; the plaintiff is continuing in possession and enjoyment of the property; as per the terms and conditions of the sale deed the VUDA is entitled to cancel the sale deed/sale in default of the compliance of the terms and conditions and is entitled to repay the sale price after adjusting the cancellation charges; however, the VUDA had illegally retained 50% of the sale price arbitrarily; the unilateral cancellation of the sale deed was done in violation of law and such cancellation of registered sale deed is neither recognised by the provisions of the Indian Registration Act nor any other law in force; a conditional sale deed with right to cancel is in violation of law and is hit by Section 23 of the Indian Contract Act; the Board of the VUDA by its resolution dated 10.07.1995 had clearly and categorically revoked the cancellation orders earlier made giving two years time for construction of the building; However, for reasons best known to the officers of the VUDA, the sale price with 50% deduction was refunded to the plaintiff by violating the orders of the Board of the VUDA, which is the supreme authority; the plaintiff is having title over the suit schedule site and the selling of the same to another person by VUDA without cancelling the registered sale deed would result in unnecessary litigation." Hence, the suit is filed for declaration that the cancellation of allotment by order dated nil. 10.1994 and consequent refund of the amount by cheque dated 15.03.1996 to the plaintiff as illegal, arbitrary and capricious and for a consequential mandatory injunction directing the VUDA to cancel the allotment of plot (schedule plot), if any, made to the third parties."

4. (b) In the defence, while admitting the allotment of plot and the execution of the sale deed and the presentation of the same before the Sub Registrar, Visakhapatnam for registration, and further stating that it is for the plaintiff to bear the stamp duty and registration charges and that the VUDA has nothing to do with the payment of the same and that at the instance of the plaintiff the sale deed was executed on 20.11.1987 in his favour in respect of the schedule site at his expenditure and that the VUDA has no role to play in the matter of delay in the actual registration and release of the document by the registering authority on account of the dispute regarding market value of the property and that it is for the plaintiff to sort out the dispute, if any, in that regard, the VUDA had

contended inter alia as follows:--"The plaintiff is not entitled to the suit claims. The suit is liable to be dismissed. The schedule plot was allotted to the plaintiff in the year 1984. The VUDA had taken up the task of Integrated Urban Development Programme; and as a part of the said programme the VUDA and its predecessor i.e., the Town Planning Trust of Visakhapatnam had acquired lands in and around Visakhapatnam for the public purpose of providing house sites and to see that the house construction activity is taken up on a large scale. The object of acquiring the lands, laying out the same and allotting sites to the members of the public is intended to encourage speedy development and the growth of the areas in which construction of large number of houses is vital and indispensable. Thus, the house sites were allotted to the public for immediate purpose of constructing houses; and the plots were allotted only to those who were eager to construct houses and it was thought fit to discourage persons who want to keep the house sites only either for speculative gain or in anticipation of remote necessity such as a future asset, for appreciation of value or for leaving it as a legacy for the offerings. That is precisely the reason for imposing a condition in regard to construction of houses within a period of two years of allotment and also a condition against transfer of the site allotted until expiry of five years after such construction. And, such conditions are invariably incorporated in the sale deeds so as to achieve the above mentioned object, which is intended for larger public interest. The conditions imposed are all valid, binding and enforceable. The plaintiff had also signed the sale deed in token of acceptance of conditions contained in the sale deed and the plaintiff is obliged to construct the house. In the sale deed the consequences of non compliance thereof were clearly indicated. After completely understanding the same the plaintiff had signed on the sale deed and the same was submitted for registration and therefore, the contentions to the contra that the plaintiff is not made known the conditions of the sale deed as stated in the plaint are all false. The plaintiff is also aware of the allotment conditions which were reiterated in the sale deed. Despite several reminders, the plaintiff did not commence the construction of a building in the schedule site and hence, show cause notices were issued to him requiring him to show cause as to why the allotment shall not be cancelled. But, the plaintiff had paid a deaf ear and therefore, the VUDA was constrained to take action and accordingly, the allotment was cancelled and the same was intimated to the plaintiff; and subsequently a cancellation deed dated 25.04.1996 was also executed by the defendant and was submitted for registration. Hence, under facts and in law the plaintiff cannot take exception. The schedule site along with some other sites, which were covered by similar cancellation orders for non-construction of buildings by the respective allottees, were advertised in a newspaper for auction through sealed quotation-cum-auction basis scheduled to be held on 30.10.1994 and 31.10.1994 and the schedule plot was allotted to one D.V.C. Reddy in such auction held on 30.10.1994 and the said allottee had paid the cost of the said plot to the VUDA and he is lawfully entitled to the said plot and the plaintiff had ceased to have any right or interest in the schedule plot. The said person is a necessary party to the suit. The cancellation of the allotment

and the execution of cancellation deed were all done in accordance with the law and there is nothing illegal; and the objections for the cancellation alleged in the plaint are misconceived. The plaintiff is guilty of default, delay and laches on his part and had failed to comply with the terms and conditions of the allotment and in the sale deed, despite an adequate opportunity that was afforded to him by the VUDA. The plaintiff is estopped by his conduct from claiming shelter under self-invited complication and the Vice Chairman, VUDA is amply empowered to cancel the allotment and execute a cancellation deed. The plaintiff is in enjoyment and possession of the schedule plot and that he was not dispossessed is denied. The possession was resumed by the VUDA and it is with the VUDA. The contention that the VUDA is liable to refund the entire sale consideration and that the retention of 50% of the sale price is illegal and that the same is retained arbitrarily, is false and denied. The VUDA is entitled to forfeit the entire deposit amount of ₹ 500/- and 50% of the cost of the site. Unilateral cancellation of the sale deed is perfectly valid under facts and in law. The cancellation is not hit by the provisions of law under the Indian Contract Act as alleged by the plaintiff. Initially a resolution dated 10.07.1995 was passed by the Board recommending grant of two years time to the original allottees by requesting the subsequent purchasers to accept the refund of money or choose an odd bit available with the VUDA, but the subsequent purchasers did not accept the said proposal. After obtaining legal opinion, the matter was again placed before the Board and by resolution dated 12.02.1996 the Board has taken an amendment to the resolution dated 10.07.1995 and had ordered for registration of the sites to the eight new allottees whose allotments were not covered by any Court cases or stay orders. The schedule site fell in that category and therefore, the new allottee, D.V.C. Reddy, alone is lawfully entitled to the schedule site. The rights of the third party cannot be disturbed. The plaintiff ought to have valued the suit on the basis of the market value as he was out of possession."

4. (c) Taking into consideration the above pleadings, the trial Court had framed the following issues.

"1. Whether the defendant is entitled to cancel the allotment of plot made in favour of the plaintiff?

2. Whether the suit is bad for non-joinder of necessary parties?

3. Whether this court is having no pecuniary jurisdiction?

4. Whether the plaintiff is entitled for the declaration as prayed for?

5. Whether the plaintiff is entitled for the mandatory injunction as prayed for?

6. To what relief?"

4. (d) During the course of the trial, the plaintiff was alone examined as PW1 and exhibits A1 to A6 were marked on his side. On behalf of the defendant, an Officer of the defendant was examined as DW1 and exhibits B1 to B5 were marked on its side. On merits, the trial Court had dismissed the suit with costs. The

plaintiffs first appeal was dismissed confirming the decree and judgment of the trial Court.

5. Now the substantial questions are taken up.

5. (a) As per the pleadings, the contentions and the submissions made before this Court, the crux of the contentions of the plaintiff in this second appeal are - "that after the allotment of the schedule plot to the plaintiff by the VUDA under exhibit A6, original letter of allotment dated 16.10.1984, and on payment of the additional site costs, a sale deed in favour of the plaintiff was prepared by the VUDA and the same was submitted for registration on 20.11.1987 and that the said sale deed was kept pending and was not registered due to a dispute in regard to the market value of the site and the stamp duty payable but a pending registration number P1663 of 1987 was assigned to the said document and that subsequently, the plaintiff had received exhibit A5 intimation order/notice from the registration authorities and that on that the plaintiff had paid the required amount of stamp duty and as a result, the sale deed was registered on 27.04.1996 and was released to the plaintiff; however, in the meanwhile the VUDA had issued exhibit A1 proceedings in October 1994 intimating that the allotment of plot No. 290 in favour of the plaintiff was cancelled and that the entire registration fee and 50% out of the amount paid towards land costs was forfeited in terms of allotment regulations and that the said order was issued by the Vice Chairman, VUDA; and that the imposition of conditions in allotment order and sale deed is not valid under law and that the cancellation of mere allotment proceedings vide exhibit A1 in October 1994 is not valid and bi(sic) plaintiff and that in any view of (sic) since a sale deed was already executed and was registered on 27.04.1996 and was released to the plaintiff, the cancellation of allotment under exhibit A1 is of no avail to the VUDA and that exhibit A4 sale deed cannot unilaterally and without following the due procedure under law be cancelled and that therefore, exhibit A4 sale deed which is valid and which confers title on the plaintiff cannot be ignored and that in the face of exhibit A4 sale deed the VUDA is not entitled to put the plaintiff schedule plot to auction once again and that therefore, the plaintiff is entitled to the reliefs claimed in the suit."

5. (b) On the other hand, reiterating the defence of the VUDA which is already extracted supra, the learned counsel for the defendant would contend that the courts below had recorded concurrent findings after due consideration of the pleadings, the evidence and the principles of law and that at any rate the questions raised are only mixed questions of fact and law and not even pure questions of law, much less substantial questions of law, and that from a reading of the substantial questions framed, it is plain that the said questions are only mixed questions of fact and law and therefore, there is no substance in the substantial questions of law and that the judgments of the courts below, which are well reasoned, do not call for any interference.

5. (c) Coming first to the validity and enforceability of the conditions imposed in the letter of allotment under exhibit A6 and the sale deed exhibit A4, it is

necessary to refer to some of such relevant conditions and also the object behind imposing such conditions.

5. (d) As already noted, as per the defence of the VUDA, the object and the reasons behind imposing certain conditions, which are undisputed, are as under:

"The VUDA had taken up the task of Integrated Urban Development Programme; and as a part of the said programme the VUDA and its predecessor i.e., the Town Planning Trust of Visakhapatnam had acquired lands in and around Visakhapatnam for the public purpose of providing house sites and to see that house construction activity is taken up on a large scale. The object of acquiring the lands, laying out the same and allotting sites to the members of the public is intended to encourage speedy development and growth of the areas in which construction of large number of houses is vital and indispensable. Thus, the house sites are allotted to the public for immediate purpose of constructing houses; and the plots are allotted only to those who were eager to construct houses and it was thought fit to discourage persons who want to keep the house sites only either for speculative gain or in anticipation of remote necessity such as a future asset, for appreciation of value or for leaving it as a legacy for the offsprings. That is precisely the reason for imposing a condition in regard to construction of houses within a period of two years of allotment and also a condition against transfer of the site allotted until expiry of five years after such construction."

Keeping in view the objective, it is necessary to examine the relevant conditions imposed at the time of allotment and which are incorporated in the letter of (sic). The same are as follows:--

"(1) The allottee should commence construction of the building on the plot allotted within a period of six months from the date of allotment and complete construction within a period of two years failing which the allotment is liable to be cancelled; (2) The plots allotted cannot be sold; in case it is found that the allottee had agreed to sell or sold any part or whole of the vacant site to anybody, the allotment of the site made in his favour shall be cancelled and the possession of the site will be taken duly forfeiting the part or whole of the amount paid. However, the allottee is at liberty to sell the house to be constructed on the allotted plot only after five years from the date of completion of construction of the house."

Coming to the contents of the sale deed it is specifically stated in the sale deed that the vendor has agreed to execute the sale deed subject to the terms and conditions set forth in the indenture/sale deed and that the purchaser has agreed to sign the deed of sale in acknowledgment of having to abide by the terms and conditions of the sale. The further relevant terms and conditions stipulated are to the following effect.

"The purchaser doth hereby declare and covenant with the vendor that the purchaser shall construct a building within a period of two years for which the

property was allotted and hereby sold under the housing scheme and obtain a certificate. In the event of the purchaser failing to construct a building within the period of two years or violating any of the terms and conditions of this sale deed, the same shall be cancelled automatically; and after adjusting the cancellation charges, the balance of sale price shall be paid back to the purchaser without interest."

Thus, there is no dispute about the existence of the said terms in the letter of allotment and also in the sale deed. The contention of the plaintiff that he is not aware of such terms of allotment cannot be countenanced, firstly, as the said terms are incorporated in the letter of allotment and secondly, for the reason that the plaintiff had also signed the sale deed on the date it was executed. Further, the plaintiff being an educated and employed person cannot be heard to say that he does not know the said terms and conditions till the sale deed was released to him after its registration on 27.04.1996. Therefore, the concurrent findings on this aspect do not call for interference.

5. (e) Coming to the legality and enforceability of the aforementioned terms, the contention of the plaintiff is that the said conditions are contrary to law. In the pleadings a reference was made to Section 23 of the Indian Contract Act and reliance was also placed on the Transfer of Property law. Section 23 of the Indian Contract Act reads as under:

"23. What considerations and objects are lawful, and what not:--

The consideration or object of an agreement is lawful, unless -

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

A plain reading of the provision of law shows that the same is not helpful to the plaintiff. Section 23 can be applied only in cases where the consideration or the object is unlawful. In the instant case, considering the avowed objective with which plots were allotted to the various allottees by the VUDA, it cannot be said that the said objective is unlawful. Under general law of contracts, a clause giving absolute power to one party to cancel the contract if the opposite party is in breach of any term agreed to between the parties is valid as the said clause which gives absolute power in case of breach of any term of the contract does not interfere with the integrity of the contract. The acceptance of the argument

that the terms imposed in the letter of allotment and the sale deed are invalid merely on the ground that they give absolute power to the VUDA to terminate the contract in case of violation of the terms imposed cannot be countenanced, more particularly, when the plaintiff had with full knowledge and had freely entered into the contract knowing the terms and conditions, which he was obliged to comply. Sections 54, 11, 25 and 31 of the Transfer of Property Act to which reference was made read as under:

"54. "sale" defined--"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

11. Restriction repugnant to interest created--Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

25. Conditional transfer:--An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involved or implies injury to the person or property of another, or the court regards it as immoral or opposed to public policy.

31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen:-Subject to the provisions of Section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen."

Section 54 of the T.P. Act defines sale. If the allotment letter is to be construed as a contract for sale of immovable property and that on the basis of the terms settled between the parties the sale of the property shall take place, it cannot be said that the terms in the allotment letter are against any legal provision.

Section 11 deals with restrictions repugnant to interest created. This section itself carves out an exception. As per the provision of the section, where any direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of breach thereof. The conditions restraining the mode of enjoyment may be

affirmative or negative; where the conditions imposed are affirmative, the transferee is bound to do certain things even though the conditions restrain his enjoyment of the property.

5. (f) On a plain reading of the provisions of the said sections it is apparent that the provisions are not helpful to the plaintiff. The condition imposed is neither forbidden by the law nor is an impossible condition. The terms and conditions also do not defeat any provisions of law being not immoral or opposed to public policy. Further, the condition that construction of a building shall be made within a period of two years and the additional condition that the allottee is at liberty to sell the house only after a period of five years from the date of construction of the house being reasonable and fair and not being conditions in perpetuity shall be deemed to be valid conditions. Further, the conditions imposed are as per regulations made in accordance with the provisions of AP Urban Areas Development Act, 1975. The regulations are issued vide GOMs. No. 113 and the same is exhibited as exhibit B4. Therefore, there is no merit in the contention that the conditions imposed are contrary to law and are unenforceable.

5. (g) Coming finally to the contention that the sale deed under exhibit A4 cannot be unilaterally cancelled, it is necessary to restate the relevant chronology of events. The allotment of the plot was made under exhibit A6 in October 1984. The sale deed was executed on 03.07.1987. It was admittedly signed by the purchaser and the vendor. It was submitted for registration immediately thereafter. It is averred in the plaint that the executed sale deed was submitted to the Sub-registrar on 20.11.1987. However, the registration of the document was kept pending on account of the laches on the part of the plaintiff to pay the required stamp duty as per the market value. Admittedly, the plaintiff did not make any construction in the allotted plot within the stipulated time. It is the case of the VUDA that despite show cause notices, the plaintiff paid a deaf ear. Therefore, the allotment was cancelled vide exhibit A1 in October 1994. Subsequently, the plaintiff had paid the deficit stamp duty and the sale deed was registered in April 1996 and was released to the plaintiff on 27.04.1996 as per the case of the plaintiff. Even before the registration of the sale deed, which was kept pending, the allotment was cancelled by a letter of the Vice Chairman, VUDA under exhibit A1 in October 1994 for the reason that despite lapse of the term fixed for construction, the plaintiff had failed to make any construction admittedly in the plaint schedule site. Subsequent to the cancellation of the allotment only, the plaintiff had paid the stamp duty and penalty by approaching the office of the sub registrar and on that the sale deed was registered. So by the date of the cancellation of allotment under exhibit A1 proceedings in October 1994, there was no registered sale deed in favour of the plaintiff as by that time exhibit A4 sale deed was kept pending for registration with the Sub-registrar. Therefore, on mere payment of deficit stamp duty by the plaintiff, without the executant/vendor admitting the execution at the time of registration, the sale deed ought not to have been registered by the sub-registrar. In that view of the matter, the courts below had held that cancellation

of the allotment of the plot made under exhibit A6 by proceedings under exhibit A1 is sufficient and that the subsequent registration of the sale deed in the absence of the executant/vendor before the Sub-registrar on the day of registration is of no avail to the plaintiff. The sale deed was registered two years after the cancellation of the allotment. Coming to the competence of the Vice Chairman to cancel the allotment, it is to be noted that under Section 3 of the Andhra Pradesh Urban Areas Development Act, 1975, the Vice Chairman is the competent person to represent the VUDA. Further, he had issued the letter of allotment under exhibit A6 and therefore, the cancellation of the said allotment by him under exhibit A1 is valid, he being the competent person.

5. (h) No doubt, as per the provision of Section 47 of the Indian Registration Act, 1908 it is well settled that a document though registered subsequently will take effect from the time when it was executed and not from the time of its registration. Therefore, in the case on hand, the contention of the learned counsel for the plaintiff is that though the document was registered in April 1996, it takes effect from its execution in July 1987 in view of the provision of law under the Indian Registration Act. However, in the case on hand, there is a term in the allotment letter that the allotment it be cancelled if construction as specified in the term is not made within the stipulated period. Further, there is also a term in the sale deed whereby the purchaser/the plaintiff had declared and covenanted with the vendor/the VUDA that the plaintiff shall construct a building within a period of two years for which the property was allotted and would obtain a certificate. It is also stated in the sale deed that in the event of the purchaser failing to construct a building within a period of two years or violating any other terms and conditions of the sale deed, the same shall stand cancelled automatically. Admittedly, the plaintiff did not make constructions in the schedule plot even as on today. Therefore, as per the term in the sale deed, the sale deed stood cancelled automatically and there is no need for any cancellation deed either unilateral or bilateral.

5. (i) Further, it is also appropriate to refer to Sections 2 and 3 of the Government Grants Act, 1895. The said Act is an Act to explain the Transfer of Property Act so far as it relates to grants from the Government and remove certain doubts as to the powers of the Government in relation to such Grants. In fact, since doubts has arisen as to the extent and operation of the Transfer of Property Act, 1882, and as to the power of the Government to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, and as it is felt expedient to remove such doubts, the provisions of the Act are enacted. Sections 2 and 3 of the said Act read as under:

"2. Transfer of Property Act, 1882, not to apply to Government Grants:--

Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of any person whomsoever but every such grant and

transfer shall be construed and take effect as if the said Act had not been passed.

3. Government Grants to take effect according to their tenor:--

All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

Therefore, the Government are competent to impose restrictions and conditions and subject any transfer to any limitations and all such restrictions, conditions and limitations contained over in any transfer shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding. Therefore, the conditions imposed both in the letter of allotment and the sale deed shall be valid and are enforceable in letter and spirit and their tenor and hence, the plaintiff cannot contend that the said terms and conditions are contrary to any law in force and that the same are unenforceable.

6. One more aspect to be adverted to is in regard to non-joinder of one D.V.C. Reddy. The VUDA specifically contended that after cancellation of the allotment of the suit plot in favour of the plaintiff, the VUDA had auctioned the subject plot along with other plots and that in an auction held on 30.10.1994 the subject plot was allotted to the said D.V.C. Reddy being the purchaser and that the said fact is well within the knowledge of the plaintiff. The plaintiff had admitted in his cross-examination that by the time of the filing of the suit, he had knowledge about the subsequent sale and allotment of the subject plot in the name of D.V.C. Reddy. However, having had knowledge, the plaintiff had suppressed the said fact and had filed the suit without impleading the said D.V.C. Reddy and had sought a relief that the allotment in favour of any third party, if any, be cancelled. Thus, the plaintiff is seeking cancellation of allotment of the subject plot in favour of D.V.C. Reddy without impleading him as a party defendant to the suit. Therefore, when the relief sought adversely affects the interests of the said D.V.C. Reddy, the plaintiff ought to have impleaded the said D.V.C. Reddy as a party to the suit, as in his absence no relief affecting his rights can be granted to the plaintiff. Therefore, as rightly held by the courts below, the non-joinder of D.V.C. Reddy, who is a necessary party is fatal to the case of the plaintiff.

7. The learned counsel for the plaintiff had placed reliance on the following decisions, (i) K.V. Sudha Rani and Others Vs. The Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority (VGTM-UDA) and Others, ; (ii) Gurbax Singh Vs. Kartar Singh and Others, ; (iii) Puttanna Shetty (since deceased represented by his LRs. Smt. K. Vinoda Shetty and Others) Vs. Padma Shetty (since deceased represented by LRs. Smt Neelamma Shetty and Others) and Others, ; (iv) Hussain Begum and others Vs. Madu Ranga Rao and others, (v) A. Jitendernath Vs. Jubilee Hills Coop. House Bld. Soc. and Another, and (vi) Bhavani Amma Kanakadevi and Others Vs. C.S.I. Dekshina Kerala Maha

Idavaka, .

8. I have gone through the cited decisions. In K.V. Sudha Rani and Others Vs. The Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority (VGTM-UDA) and Others, case (supra), this Court had held that when once sale deeds are registered in favour of the vendees/petitioners, transfer of property passed to the petitioners forthwith and along with it all the interests, which the transferor was then capable of passing in the property and the legal incidents thereof had also passed to the petitioners. This Court, in the cited decision, had referred to majority view of a Full Bench of this Court in Yanala Malleshwari and Others Vs. Ananthula Sayamma and Others, to the effect that a true owner can seek cancellation of a registered sale deed by approaching the registering authority concerned in a case where the sale deed conveying his property was executed by another person by playing fraud and that though Section 31 of the Specific Relief Act provides for such a person a remedy to approach the competent civil court, the said remedy does not bar the true owner to seek cancellation of the registration. Coming to the case on hand, the facts are different as the allotment and the sale are subject to certain conditions which are found to be valid. It is also held in the case on hand that the plaintiff had violated the terms and conditions of allotment and/or the sale deed and is therefore, not entitled to the reliefs claimed. Further, in the case on hand, the material record and the evidence brought on record, particularly of DW1 would show that the defendant had executed a deed of cancellation on 25.04.1996 cancelling the subsequently registered sale deed of the plaintiff. Since the plaintiff is relying upon the registration of sale deed on 27.04.1996, it is to be first noted that the document was executed in 1987 and was presented for registration in November 1987 though it was registered on 27.04.1996. It is to be next noted that in view of the provision of Section 47 of the Indian Registration Act, the sale deed takes effect from the date of its execution in the year 1987. Though the said cancellation deed is not exhibited, the said fact is not in dispute. Therefore, the cancellation deed being subsequent to the year 1987 cannot be said to be invalid. Therefore, the ratio in the cited decision is not helpful to the plaintiff. In Gurbax Singh Vs. Kartar Singh and Others, case (supra), the well settled proposition laid down is that in view of the provision of Section 47 of the Registration Act, a document on subsequent registration will take effect from the time when it was executed and not from the time of its registration. In A. Jitendernath Vs. Jubilee Hills Coop. House Bld. Soc. and Another, case (supra) also the same proposition as regards to "the time from which the registered document operates was laid down. This settled legal position was already considered and it is held supra that in the facts peculiar to the case, the said legal position is not helpful to the plaintiff and that on the other hand, the said legal position goes against the contentions of the plaintiff. In Puttanna Shetty (since deceased represented by his LRs. Smt. K. Vinoda Shetty and Others) Vs. Padma Shetty (since deceased represented by LRs. Smt. Neelamma Shetty and Others) and Others, , the proposition laid down is that one stray sentence cannot be picked up for holding against the plaintiff in

property matters and that an admission particularly in a civil matter dealing with properties has to be clear and it has to be read in the light of the pleadings and the other evidence available on record. In the case on hand, the admission of PW1 in regard to subsequent allotment and sale of subject plot to D.V.C. Reddy is unequivocal. In the decision Hussain Begum and others Vs. Madu Ranga Rao and others, , this Court while adverting to the provision of Order 41 Rule 22 had referred to the proposition of law that the respondent in an appeal has a right not only to support the decree on any ground whether decided in his favour or against him without filing any appeal or cross objections to the decree. Therefore, a respondent supporting a decree can request to reverse a finding against him as long as he is supporting the decree and not seeking a reversal of the decree against him. However, when he seeks a reversal of a part of the decree against him, he has to necessarily file cross-objections or cross-appeal. This proposition is more helpful to the respondent. In Bhavani Amma Kanakadevi and Others Vs. C.S.I. Dekshina Kerala Maha Idavaka, case (supra), the facts of the case disclose that there is an absolute restraint on the right of the respondent to deal with the property including alienation and therefore, it was held that the same is void as per the provision of Section 10 of the Transfer of Property Act. In the case on hand, it is also held that the restrictions are not of such nature.

9. Thus looking at the matter from the point of view of facts and law, this court is of the considered view that the questions raised in this second appeal are more mixed questions of fact and law and are not substantial questions of law and that in any view of the matter, there is no substance in the questions involved. Viewed thus, this Court finds that there is no merit in the second appeal. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Second Appeal shall stand dismissed.