

**(2011) 09 AP CK 0037**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No's. 20050, 20051, 20052, 20053, 20054 and 20055 of 2011

Dr. Dinakar Mogili

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

**Date of Decision :** 08-09-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226, 300A  
Registration Act, 1908 — Section 21(4), 22A, 22A(1), 73

**Citation :** (2011) 6 ALD 502

**Hon'ble Judges :** Ramesh Ranganathan, J

**Bench :** Single Bench

**Advocate :** S. Rajan, for the Appellant;

**Final Decision :** Dismissed

## Judgement

Ramesh Ranganathan, J.—In this batch of six Writ Petitions, the Petitioners are all members of the Animal Husbandry Department Employees Co-operative House Building Society Ltd., Visakhapatnam (hereinafter called the "Society"). Land admeasuring Ac.18.78 cts was sold by the Government to the "Society" for Rs. 11,38,06,800/- (Rupees eleven crores thirty eight lakhs six thousand and eight hundred only) and, on receipt of the consideration, the District Collector executed a registered sale deed in favour of the "Society" before the 3rd Respondent vide document No. 5148/2006 dated 30.10.2006. The Society claims to have developed the land thereafter, and to have laid several plots therein. The Petitioners herein were allotted and sold different plots in the land purchased by the "Society" from the Government. The "Society" executed a sale deed in their favour which was presented before the 3rd Respondent for registration.

2. By his order dated 29.07.2010, the 3rd Respondent refused to register the sale deed on the ground that, in the year 2007, the District Collector had informed the Revenue Divisional Officer to take back the land conveyed earlier to the "Society", and hand over the same to VUDA; VUDA would allot alternate land

to the "Society" from out of other lands handed over to it by the revenue department; the Deputy Registrar of co-operative societies had issued orders in ARC No. 1 of 2010-11 that the title and possession of the land was in dispute; and, therefore, the document was not fit for registration.

3. Aggrieved thereby, the Petitioner preferred an appeal u/s 73 of the Registration Act, vide appeal No. 16/10, before the 2nd Respondent who, by order dated 29.09.2010, dismissed the appeal confirming the order of the 3rd Respondent. The 2nd Respondent held that, since the Government was keen on taking back the land that was alienated to the society earlier, the Government had implicit interest in the land and, consequently, it was the bounden duty of the registering authority to safeguard the interests of the Government; it was a mandatory stipulation for registration that the layout should be approved by VUDA; and, since the society has not complied with the same, the sale could not be registered.

4. Sri S. Rajan, Learned Counsel for the Petitioner, would submit that, once the Government had sold the land for valuable consideration by way of a registered sale deed in favour of the "Society", it ceased to be the owner of the land; the title, thereafter, vested with the "Society" which had purchased the land; the "Society" was competent to alienate the land in favour of its members including the Petitioners herein; as the land no longer belonged to the Government, Section 22A of the Act was not attracted; and, in the absence of a prohibition u/s 22A, the registering authority was bound to register the sale deed more so as mere registration did not, by itself, confer title.

5. In the counter affidavit filed by the District Registrar, the fact that the land was purchased from the Government by the Animal Husbandry Department Employees Co-operative House Building Society Ltd, Visakhapatnam is admitted. It is, however, stated that possession of land of Ac.18.78 cts, situated in Sy. No. 133 of Chinagadili village, was taken back by the Government through the District Collector, Visakhapatnam; possession was handed over to VUDA by the Revenue department on 24.01.2007, in compliance with the orders of the District Collector dated 20.01.2007; VUDA, in turn, would allot suitable lands to the "Society" from other lands handed over to it by the Revenue Department; transfer of immovable property, by way of sale deeds, executed by unauthorised persons cannot be registered in view of the prohibition u/s 22A of the Act; the 3rd Respondent had rightly refused registration of the document; the Government is particular of taking back the land from the society which reveals its implicit interest; it is the bounden duty of the registering authority to safeguard the interests of the Government; the Deputy Registrar of co-operative societies had issued notice dated 22.07.2010, to the President of the society, for considering the motion of no confidence; at this stage the President, who had executed the sale deed on 26.07.2010 after initiation of no confidence motion, could not register the said document; and the Writ Petition was liable to be dismissed.

6. As noted hereinabove, the land in question was alienated by the Government to the "Society" by way of a registered sale deed dated 30.10.2006 for valuable consideration of Rs. 11,38,06,800/- (Rupees eleven crores thirty eight lakhs six thousand and eight hundred only). Once the Government, through the District Collector, had alienated these lands, and had registered the sale deed in favour of the "Society", it ceased to be the owner of the property, and to have implicit interest in such lands, after its alienation. It defies reason that lands which, thereafter, belonged to the Society could be unilaterally resumed by the Government. Land belonging to the Government, assigned in favour of others, can be resumed in terms of the assignment, and not where land is sold/alienated for valuable consideration by way of a registered sale deed, unless the terms and conditions stipulated therein permits such resumption. No such provision has been referred to in the impugned orders or in the counter-affidavit filed before this Court. Unilateral resumption of private lands, except in accordance with the provisions of the Land Acquisition Act, would violate Article 300A of the Constitution of India. Even otherwise, it is only if the registered sale deed dated 30.10.2006 is cancelled first, can the Government take steps for resumption of the lands thereafter. In "Thota Ganga Laxmi v. Govt. of Andhra Pradesh judgment of the Supreme Court in C.A. No. 317 of 2007 dated 13.07.2010", the Supreme Court observed:

...In our opinion, there was no need for the applicants to approach the civil court as the said cancellation deed dated 04.08.2005 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...

It is only when a sale deed is cancelled by a competent Court that the cancellation deed can be registered and that too after notice to the concerned parties. In this case, neither is there any declaration by a competent court nor was there any notice to the parties. Hence, this Rule also makes it clear that both the cancellation deed as well as registration thereof were wholly void and non est and meaningless transactions.

(Emphasis supplied)

7. It is only if the sale deed is cancelled in appropriate proceedings before a competent Civil Court can the Government, thereafter, resume the land. Unilateral resumption of lands which the Government had alienated earlier in favour of a Society by way of a registered sale deed for valuable consideration, and when the sale deed continues to remain valid as it has not been cancelled, is

unheard of in law.

8. The contention that approval from VUDA is a pre-requisite for registration does not also merit acceptance. u/s 21(4) of the Registration Act all that is required is for a non-testamentary document to contain a map or a plan of the property comprised therein for the purposes of registration. Approval of the VUDA is required only for the purposes of obtaining sanction of a layout, and for construction thereupon, and not for registration of the sale deed in question. A Division bench of this Court in *G. Narasaiah v. State of Andhra Pradesh* 2011 (3) ALD 635 (DB) held that it was legally impermissible for the Registrar to refuse registration on the dictates of a person, who was a stranger to the scheme of the Act/Rules and who has no control over the Sub-Registrar.

9. With regards the contention, of the Learned Government Pleader, of an alternative remedy being available to the Petitioners under the Act, it is well settled that mere existence of an alternative remedy is no bar for exercising jurisdiction under Article 226 of the Constitution of India. ( *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, As held by the Supreme Court in *L. Chandra Kumar Vs. Union of India and others*, the power of judicial review under Article 226 of the Constitution of India is part of its basic structure. The said power cannot be curtailed or negated even by a Constitutional amendment, let alone by legislation-plenary or subordinate.

10. The only provision which prohibits the Registering authority, from registering the document presented for registration, is u/s 22A of the Registration Act. u/s 22A(1)(b) documents relating to the sale of property, in respect of immovable property owned by the State or Central Government if executed by persons other than those statutorily empowered, cannot be registered. On being asked whether it is the case of the Respondents that registration of the sale deed by the District Collector on 30.10.2006, falls within the ambit of Clause (b) of Section 22A (1), Learned Government Pleader for Revenue would fairly state that it is not. He would submit that it is only the sale deed sought to be registered by the President of the society on 22.07.2010, in favour of the Petitioners herein, which falls within the ambit of the said provision. Section 22A(1)(b) applies only to immovable property owned by the State Government and, since the Government had itself alienated the said land by way of a sale deed in the year 2006, it ceased to be the owner of the said land and, consequently Section 22A(1)(b) of the Act has no application thereafter.

11. It is necessary to note that Section 22A(1)(e) prohibits registration of documents pertaining to the properties in which, among others, the State Government has an avowed or accrued interest and which the State Government has, by notification, prohibited registration of. If, as contended by the Respondents, the State Government has implicit interest in the said property, the only manner in which registration of documents can be prohibited is by issuing a notification u/s 22A(1)(e) of the Act. No reference is made in the counter affidavit to any notification having been issued by the State Government u/s

22A(1)(e) of the Act. In the absence of a notification being issued by the State Government, in exercise of its powers u/s 22A(1)(e) of the Registration Act, the question whether the State Government has an avowed or accrued interest does not necessitate examination.

12. In any event, mere registration of a conveyance deed neither creates title in the transferee, nor would it come in the way of Government in asserting its right of availing the appropriate remedy to assert its title to the land, and claim the property back, in accordance with law. ( Madiga Papanna Jammanna Vs. State of Andhra Pradesh and Others, Registration of the sale deed dated 22.07.2010 would not prevent the Government, if it so chooses, from initiating appropriate proceedings before a competent Civil Court for cancellation of the sale deed, executed by it earlier in favour of the "Society", in accordance with law. That, however, does not justify the action of the 3rd Respondent in refusing to register the document in question. As the provisions of Section 22A of the Act are not attracted, the order of the 2nd Respondent confirming the order of the 3rd Respondent is patently illegal and without jurisdiction.

13. The impugned order of the 2nd Respondent, confirming the order of the 3rd Respondent, is set aside. The 3rd Respondent shall, in accordance with the observations made hereinabove and if the document otherwise satisfies all legal requirements, consider registration of the document strictly in accordance with the provisions of the Indian Stamp Act, the Registration Act and the Rules made thereunder. The entire exercise in this regard shall be completed within a period of two months from today. All these Writ Petitions stand disposed of accordingly. However, in the circumstances, without costs.