

(2008) 03 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13032 of 2006

K.V. Sudha Rani and Others

APPELLANT

Vs

The Vijayawada-Guntur-Tenali-Mangalagiri Urban
Development Authority (VGTM-UDA) and Others

RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 3
Evidence Act, 1872 — Section 91
Registration Act, 1908 — Section 17
Registration Rules, 1908 — Rule 26
Specific Relief Act, 1963 — Section 31, 31(1), 31(2)
Transfer of Property Act, 1882 — Section 5, 54, 55, 6, 7

Citation : (2008) 4 ALD 545 : (2008) 3 ALT 760

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : S.R. Ashok, V.V. Anil Kumar, V.R. Subrahmanayam, S.V. Bhatt, Ch. Ramesh Babu, C.C.S. Sastry, A.P. Venugopal, V.S.R. Anjaneyulu and V.R. Avula, for the Appellant; K. Aruna for Respondent Nos. 1 and 3 and G.P. for Revenue for Respondent No. 2., for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—In this batch of Writ Petitions, a common question arises for consideration, viz., whether the separate, but identical, proceedings issued by the Vice-Chairman of Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority (for short "the respondent-authority") - whereunder he purported to have cancelled the registered sale deeds standing in favour of the petitioners - are legal and valid?

2. Since the facts in all these cases are similar, for convenience facts in Writ Petition No. 13032 of 2006 are narrated hereinbelow:

The respondent-authority was constituted under the provisions of Section 3 of the A.P. Urban Areas (Development) Act, 1975. An extent of Ac.390.38 cents of land was acquired by the Government of Andhra Pradesh and transferred to the

respondent-authority comprised in various Survey Numbers, i.e., R.S. Nos. 274 to 287, 299 to 302, 305 to 313 of Mangalagiri Municipality and R.S. Nos. 56 to 65, 72 to 75, 77 to 83, 85, 87 to 93, 95, 348 to 357 of Nowluru Gram Panchayat, Guntur District, was divided into plots under the nomenclature "Amaravathi Township". Notifications were issued by the respondent-authority in the years 1997, 1998 and 2000 calling for applications from the general public for allotment of the said house plots. The respondent-authority allotted plots in favour of 1327 applicants under different categories such as auction and first come first served basis in the year 2000. It registered plots in favour of the allottees, who paid the total costs within the stipulated period, and allotments were cancelled in respect of those who failed to pay the costs. The plots, which were registered in favour of the petitioners, were allotted to the original applicants and on account of default committed by them, the allotments were cancelled. While the petitioners claimed that on the applications made by them, they were allotted the respective plots, which were subsequently registered by Sri B.V. Prasanna Kumar, the Administrative Officer of the respondent-authority; it is the case of the respondent-authority that no allotments were made, no decision was taken in favour of the petitioners and no such authorization was given to Sri B.V. Prasanna Kumar.

3. The Vice-Chairman of the respondent-authority issued separate show-cause notices to the petitioners and after considering their explanations, passed separate, but identical, orders, whereby he declared registration of the plots in favour of the petitioners as null and void and cancelled the said sale deeds. The petitioners questioned these proceedings in this batch of Writ Petitions.

4. In their affidavits, the petitioners raised pleas which are similar to each other. The substance of their averments is that Sri B.V. Prasanna Kumar, the then Administrative Officer, was the authorized agent of the respondent-authority to execute the sale deeds. All the petitioners were allotted the lands by resolutions passed by the respondent-authority. The respondent-authority received valuable considerations from the petitioners and its authorized agent thereafter executed all the sale deeds. There is neither fraud nor misrepresentation as alleged by the Vice-Chairman. Neither he, nor the respondent-authority has any power or jurisdiction to unilaterally cancel the sale deeds validly registered under the provisions of the Registration Act, 1908 (for short "the Act"). If the respondent-authority is satisfied that fraud is played in the registration of the sale deeds in favour of the petitioners, the only course available to it is to file a civil suit in a court of competent jurisdiction. Even assuming that the respondent-authority can seek cancellation of the registration, it can do so by taking recourse to Rule 26(k) (i) of the Andhra Pradesh Rules made under the Act (for short "the Rules") by following the procedure prescribed therein for getting the sale deeds cancelled. The orders passed by the Vice-Chairman of the respondent-authority are not supported by valid reasons and, hence, the same are liable to be set aside.

5. The stand taken by the Vice-Chairman of the respondent-authority, as

reflected in the separate counter-affidavits filed by him, is summarized as under:

The plots, which were registered in favour of the petitioners, were earlier allotted to the original applicants. As they failed to pay the costs, the allotments were cancelled. After the allotments were made in the year 2003 no further allotments were made by the respondent-authority and the petitioners were never allotted the plots, which were registered in their favour. No newspaper notification/advertisement was issued for allotment of those plots. The petitioners on their volition paid the amounts towards the purported cost of the plots in the year 2004, without making separate applications and payment of EMD. Such payment, without any authorization or allotment was irregular. Sri B.V. Prasanna Kumar, the then Administrative Officer of the respondent-authority was not its authorized representative and registration of plots in favour of the petitioners by him is against its interest. The registration of documents in favour of the petitioners by Sri B.V. Prasanna Kumar was in his individual capacity, irregular, and without the knowledge of the respondent-authority. The entries in the demand register (DCB) are found tampered in respect of the plots in question duly altering the existing entries in favour of the petitioners. Sri B.V. Prasanna Kumar, who dealt with the concerned Estate Section, encouraged and misguided the petitioners to make unauthorized payments for the plots against the norms; the petitioners remitted the purported cost of the plots by way challans during the period of May, 2004 to August, 2004; and neither the petitioners nor the said Sri B.V. Prasanna Kumar brought the payment of the said amounts to the notice of the respondent-authority. The documents executed by Sri B.V. Prasanna Kumar are not valid in law and the respondent-authority is not responsible for the said unlawful acts; the said B.V. Prasanna Kumar played mischief and registered 70 plots in the year 2004 in the Payakapuram layout of Vijayawada; the Vigilance authorities investigated the said case and fixed responsibility on him; and the Government suspended him from service in the year 2004 itself. While Sri B.V. Prasanna Kumar was not given any authorization, such an authorization was given to Sri P.Simeon, Deputy Estate Management Officer to register plots in Payakapuram, Amaravati Township, Mangalagiri, Chenchupet and Tenali on 10-1-2002 and letter dated 9-1-2004 authorizing Sri B.V. Prasanna Kumar was issued without the knowledge or the orders of the respondent-authority, which is not binding on it.

6. On behalf of the petitioners, Sri S.R. Ashok, learned Senior Counsel, Sri S.V. Bhatt, Sri Ch. Ramesh Babu, Sri C.C.S. Sastry, Sri A.P. Venugopal, Sri V.S.R. Anjaneyulu and Sri V.R. Avula, learned Counsel, advanced their arguments. Smt. K. Aruna, learned Standing Counsel, made her submissions for the respondent-authority.

7. Sri S.V. Bhatt, learned Counsel, contended that on the dates of execution of sale deeds, the respondent-authority was represented by Sri B.V. Prasanna Kumar, who was its authorized officer to perform the act of registration and, therefore, the very premise on which the sale deeds were purported to have been cancelled was wholly erroneous. He further contended that the respondent-

authority cannot approbate and reprobate by receiving sale consideration on the one hand and cancelling the sale deeds on the other, and that by its executive order it cannot undo what has been done through registrations. He also contended that even if the respondent-authority is satisfied that sale deeds were executed on account of fraud or misrepresentation on the part of the petitioners, the only remedy for the respondent-authority lies in approaching the competent court of law for cancellation of sale deeds. He alternatively contended that even if the respondent-authority is entitled to seek cancellation of the sale deeds, they can only do so by invoking the provisions of Rule 26(k)(i) of the Rules and the Vice-Chairman has no authority whatsoever to pass the impugned orders.

8. Sri S.R. Ashok, learned Senior Counsel, while supplementing the arguments of Sri S.V. Bhatt, submitted that though in the impugned orders fraud is shown as the reason for the purported cancellation, no details of fraud have been mentioned therein, nor the said allegation of fraud is proved. As no buyers came forward to purchase the plots for two years after cancellation of the allotments made in favour of the original applicants, the respondent-authority received the applications of the petitioners and passed resolutions in their favour for sale of plots and, accordingly, sale deeds were executed by its Administrative Officer, who was authorized to do so. He further contended that admittedly the respondent-authority received the sale consideration and even assuming that fraud had taken place, only two avenues are open to the respondent-authority viz., either to seek cancellation of the sale deeds by following the provisions of Rule 26(k)(i) of the Rules or to file civil suits in the court of competent jurisdiction for necessary reliefs and, at any rate, the Vice-Chairman of the respondent-authority has no jurisdiction to pass the impugned orders.

9. Shi Ch. Ramesh Babu, learned Counsel, invited the Court's attention to the recitals contained in the sale deeds, which were executed in the name of the respondent-authority and in particular the recital that the plots were allotted by the resolution of the respondent-authority. He also submitted that the counter-affidavits filed by the respondents show that the prevailing market value was Rs. 175/- per Square yard and the sale consideration paid by the petitioners, therefore, tallies with the market value; and, as such, the petitioners were bonafide purchasers for valuable consideration. He further submitted that once the document is registered, it is only the competent civil Court, which can invalidate the same. In support of his contention he relied upon the judgment of this Court in Mabeeba Begum and Others Vs. Gulam Rasool and Others, .

10. Sri. C.C.S. Sastri, Sri A.P. Venugopal, Sri V.S.R. Anjaneyulu and Sri V.R. Avula, learned Counsel, adopted the arguments of the above mentioned learned Counsel.

11. Smt. K. Aruna, learned Standing Counsel for respondent-authority, reiterated the stand taken by its Vice-Chairman in his counter-affidavits. She submitted that Sri B.V. Prasanna Kumar had no proper authority to execute the sale deeds and that in the absence of allotments made by the respondent-authority, the

very execution of the sale deeds itself is null and void. She also submitted that as the sale deeds were executed as a result of fraud, misrepresentation and collusion by the petitioners with Sri B.V. Prasanna Kumar, the Vice-Chairman of the respondent-authority has jurisdiction to nullify the same.

12. I have carefully considered the submissions of the learned Counsel for the parties and perused the record. The impugned orders, which are in pari materia with each other, contain the following grounds for purported cancellation of the sale deeds:

- (1) The respondent-authority has not issued any allotment order or notification calling for applications for allotment of plots;
- (2) The petitioners failed to produce any allotment letter in their favour;
- (3) There is no note file found in the entire case file; and
- (4) Sri B.V. Prasanna Kumar, Administrative Officer, was not competent to execute and register the sale deeds and he fraudulently registered the sale deeds.

13. Let me now consider whether the above-mentioned grounds can be sustained.

14. It is not in dispute that all the sale deeds executed in favour of the petitioners contain almost similar recitals. Since I am referring to the documents in Writ Petition No. 13032 of 2006, let me refer to the sale deed executed in favour of the petitioner therein. This sale deed dated 21-6-2004 was executed in the name of the respondent-authority, represented by its Administrative Officer Sri Bollapalli Victor Prasanna Kumar, s/o. Vijendra Rao, as the Vendor. It is recited in the said sale deed as under:

Whereas the vendor put up these plots for sale and the vendee put in an application for the allotment of such one plot and whereas the vendor by Proceedings No. A3/272/2000 dated 21-8-2000 allotted the scheduled mentioned plot to vendee and whereas the total sale price has been finally determined at Rs. 80,000/- and whereas the vendee has paid the sale consideration of Rs. 80,000/- in manner here-in-after recited and whereas the vendee requested the vendor to convey the property to him/her in consideration of the payment of sale price. The vendor hereby conveys, transfers and assigns unto the vendee all the right, title and interest in the scheduled mentioned property and to hold the same absolutely u and free of all encumbrances.

14. The first ground mentioned hereinabove, viz., the respondent-authority has not issued any allotment order, contained in the impugned orders, is in direct conflict with the above reproduced recital in the sale deed. In the impugned orders, the Vice-Chairman has not referred to the said recital in the sale deed and given any finding that the same was false. In the absence of any such finding, the said ground cannot be given credence to as the same is opposed to the recital contained in the sale deed.

In this context, it is useful to refer to Section 91 of the Indian Evidence Act, 1872, which provides that no evidence in proof of the terms of the contract or of a grant or any other disposition of property reduced to the form of a document is admissible. It is only a competent civil Court, which, on the basis of the recitals of the sale deed in question and evidence adduced by both parties, can adjudicate whether the recital relating to the proceedings of allotment referred to in the sale deeds constitute a term of the sale deed or not and if it does not constitute a term whether the said recital was correct or not with reference to the extrinsic evidence that may be adduced by the parties. Therefore, the unilateral conclusion of the Vice-Chairman, without reference to the recitals contained in the sale deeds, that no allotments were made in favour of the petitioners and that they failed to produce the allotment orders, cannot be sustained.

15. As regards Ground No. 3, the absence of note file does not, ipso facto, prove any fraud. There is no finding that no note-file was ever prepared. The expression "no note file found" is so vague as it does not suggest whether the note file was prepared and missing or no note file was at all prepared. At any rate, the petitioners, being the purchasers, cannot be held responsible for the absence of note file as it was the internal affair of the respondent-authority.

16. With regard to Ground No. 4 that Sri B.V. Prasanna Kumar was not competent to execute and register the sale deeds, the petitioners filed letter dated 9-1-2004 issued by Sri V.N. Vishnu, the then Vice-Chairman of the respondent authority, vide Rc. No. A3/1714/2001 dated 9-1-2004 addressed to the Sub-Registrar, Vijayawada/Tenali/Mangalagiri, which reads as under:

I am authorizing Sri B.V. Prasanna Kumar, Administrative Officer, to perform Registration of plots relating to Payakapuram, Vijayawada, Chenchupet, Tenali and Amaravathi Township, Mangalagiri till further orders as the previous Dy. Estates Management Officer has been transferred from this post and Sri B.V. Prasanna Kumar is kept FAC of the post.

The Vice-Chairman in his counter-affidavits has not alleged that the said authorization, issued by his predecessor in favour of Sri B.V. Prasanna Kumar, was forged or fabricated. In the counter-affidavits the Vice-Chairman has taken the stand that the said letter authorizing Sri B.V. Prasanna Kumar was issued without the knowledge of the respondent-authority and, hence, the same is not binding on it. The Vice-Chairman did not dispute the fact that the amounts towards sale consideration were remitted by all the petitioners by way of challans to the credit of the respondent-authority and the same was utilized by the respondent-authority. If giving of authorization by its Vice-Chairman in favour of Sri B.V. Prasanna Kumar was not to the knowledge of the respondent-authority, it is incomprehensible as to how the respondent-authority received and utilized the sale consideration paid by the petitioners. This ground raises many disputed questions, which are required to be adjudicated only by a competent Civil Court on the analysis of the evidence, both oral and documentary, made available by

both the parties.

17. I shall now consider whether the respondent-authority or its Vice-Chairman has the power and jurisdiction to declare the sale deeds null and void and to cancel the same.

18. Section 5 of the Transfer of Property Act, 1882 defined "transfer of property" as conveyance of property by one living person to one or more living persons or to him in present or in future. u/s 6 of the said Act, property of any kind may be transferred except the transfer of property, which is prohibited by the said Act. Clauses (a) to (h) of the said provision referred to the nature of the prohibited transfers. u/s 7 of the said Act, every person is entitled to transfer property or authorized to dispose of transferred property, if it is not his own, can transfer the property provided he is competent to do so. Section 8 of the said Act, inter alia, provided that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee with all the interests which the transferor is then capable of passing in the property and in the legal incidents thereof. Section 54 of the said Act defines "sale" as transfer of ownership in exchange for a price paid or promised or part-paid or part-promised, and if the value of the property is one hundred rupees and upwards, sale shall have to be effected only by a registered instrument. Section 55 of the said Act contains the rights and liabilities of buyer and seller, which govern the sale as well as contract of a sale, in the absence of a contract to the contrary between the seller and buyer.

19. Section 17 of the Indian Registration Act, 1908 specifies the documents of which registration is compulsory and it includes non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in the present or in future; any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

20. u/s 31(1) of the Specific Relief Act, 1963 any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. Sub-section (2) thereof provides that if the instrument has been registered under the Indian Registration Act, 1908, the Court shall also send a copy of its decree to the officer in whose office the instrument has been registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

21. From the above mentioned provisions of the various enactments, it is quite evident that when once the sale deeds were registered in favour of the petitioners, transfer of property passed to the petitioners forthwith and along with it all the interest which the transferor was then capable of passing in the property and the legal incidents thereof had also passed to the petitioners.

22. A Full Bench of this Court in Yanala Malleshwari and Others Vs. Ananthula Sayamma and Others, by a majority view held that a true owner can seek cancellation of the 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. The Full Bench held 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. In these cases the respondents have not taken recourse to the said procedure for seeking cancellation of the registered sale deeds before the registering authority.

23. In the aftermath of the said judgment, the State of Andhra Pradesh amended Rule 26(1) of the Rules by inserting Clause (k)(i) with effect from 29.11.2006, which reads as under:

26(k)(i): The registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not y registerable by any provision of law.

24. The judgment in Mabeeba Begum 1999 (4) ALT 496 cited by Sri Ch.Ramesh Babu has no relevance to the cases on hand, because, in that case this Court held that a suit filed for declaration of title simpliciter, without seeking cancellation of registered sale deed u/s 31 of the Specific Relief Act is not maintainable.

25. The above analysis of the legal provisions makes it clear that a person, who seeks cancellation of a registered document, has two remedies available under law. They are: (1) to seek invalidation of the registered sale deed by approaching the competent court of law u/s 31 of the Specific Relief Act, 1963; or (2) to seek cancellation of registered document by following the procedure prescribed under Rule 26(k)(i) of the Rules framed by the State of Andhra Pradesh under the Act. Except these two remedies, no person or authority has the right to unilaterally invalidate a registered sale deed on any ground. Undisputedly, the Vice-Chairman was rest content by passing the impugned orders and he has not availed either

of the above-mentioned two remedies either before or after the amendment of the Rules. It is, therefore, beyond the powers and jurisdiction of the respondent-authority or its Vice-Chairman to treat the sale deeds executed in favour of the petitioners as null and void and purport to cancel the same. Until and unless the competent authority, viz., the Registering Authority, under Rule 26(k)(i) of the Rules or the Civil Court of competent jurisdiction exercises its powers/jurisdiction and cancels the sale deeds, the sales made in favour of the petitioners remain unaffected.

26. For all the above-mentioned reasons, all the Writ Petitions are disposed of and the impugned orders, whereby the sale deeds executed in favour of the petitioners were cancelled, are quashed. Liberty is, however, given to the respondent-authority to avail the remedies indicated above.