
(2016) 01 BOM CK 0178
In the Bombay High Court
Case No : Writ Petition No. 6644 of 2015

Laxmi Ishwar More

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Registration Act, 1908 — Section 34, Section 34(3), Section 35, Section 71, Section 72, Section 73, Section 74, Section 75, Section 76, Section 77

Citation : (2016) 168 AIC 330 : (2016) 3 AIRBomR 42 : (2016) 3 BCR 690 : (2016) 4 MhLJ 535

Hon'ble Judges : V.A. Naik and A.S. Chandurkar, JJ.

Bench : Division Bench

Advocate : A.R. Ingole, for the Appellant; Nikhil Joshi, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.—1. In view of notice for final disposal, the learned counsel for the parties have been heard at length by issuing Rule and making the same returnable forthwith.

The petitioner has challenged the communication dated 03/02/2015 issued by the respondent No. 2 to the respondent Nos. 3 and 4 directing the said Authorities to first verify as to whether the transactions that are sought to be registered are preceded by appropriate orders passed for conversion of the subject property sought to be transferred and whether the same is located in a sanctioned lay out. It is the case of the petitioner that on 03/06/2015 when she had been to the office of the respondent No. 2 for having a sale deed registered, it was informed to her that in view of the communication dated 03/02/2015, the registration of her sale deed could not be undertaken on the ground that the property in question was not within a sanctioned layout.

2. Shri A.R. Ingole, the learned counsel for the petitioner submitted that the action on the part of the respondent No. 4 in refusing to register the sale deed

was contrary to law in as much as registration of the document could not be refused on the ground that the property was located in a layout which was not sanctioned. He submitted that in view of provisions of Sections 34 and 35 of the Indian Registration Act, 1908 (for short, the said Act), the Registering Authority had no jurisdiction to go into the said aspect. He submitted that the legal position in this regard stands settled in view of the judgments of the Division Bench in *Gopal s/o Dwarkaprasad Pandey vs. District Collector, Bhandara and anr.*, 2003(3) Mh.L.J. 883; *Damodar Laxman Navare and ors. vs. State of Maharashtra and ors.*, 2010(5) Mh.L.J. 92 and judgment of learned Single Judge in *Chairman/Secretary, Deep Apartment CHS Ltd. vs. State of Maharashtra and ors.*, 2012(6) Mh.L.J. 844. It was therefore submitted that appropriate directions ought to be issued to the respondent Nos. 3 and 4 to register the document in question.

3. Shri Nikhil Joshi, the learned Assistant Government Pleader for the respondents submitted that the communication dated 03/06/2015 came to be issued in view of the directions issued by the respondent No. 2 dated 03/02/2015 in which it was stated that before registering any transactions, it ought to be verified whether the layout is sanctioned or not. In view of directions issued by the respondent No. 2, the document in question could not be registered.

4. The provisions of Section 34 of the said Act prescribe what enquiry can be made by the registering officer before he registers a document. The enquiry under Section 34(3) of the said Act is limited to the factum of execution of the document, identity of persons appearing before the registering authority and if a person appears through a representative or agent, then as regards right of such person to appear. Section 35 of the said Act prescribes the procedure on admission/denial of execution of a document.

The question as regards the authority of the Registering Authority to go beyond the provisions of Sections 34 and 35 of the said Act while registering a document stands settled by various decisions. In *Gopal Pandey (supra)* it was held by the Division Bench that the refusal to register a document by the Registering Authority either on the ground of absence of title to such property or on account of any defect in the title would be an illegal act on the part of the Registering Authority.

In *Damodar Laxman Navare (supra)* it has been held that by issuing executive directions, the statutory provisions of the said Act cannot be circumvented and that it would not be open for the Collector to issue directions to withhold registration of any document on grounds which do not fall within the purview of the provisions of Section 34 of the said Act. This position is further clear from the judgment of learned Single Judge in *Chairman/Secretary (supra)* wherein it has been held that the limited jurisdiction of the Registering Authority is to see that the executors of the document sought to be registered are personally present and whether they admit the execution of the document. Beyond that, it is not open for the Registering Authority to require compliance of matters not

contemplated by Section 34 of the said Act.

In *Ashwin Ashok Kshirsagar Vs. State of Maharashtra* 2010(2) MhLJ (Cri) 196, learned Single Judge after considering the provisions of Sections 71 to 77 of the said Act held that said provisions did not confer any power on the Sub-Registrar to refuse registration of an instrument of transfer on the ground that he is not satisfied about the title or ownership of the transferor.

5. In the aforesaid background if the contents of the impugned communication dated 03/02/2015 are perused, it can be seen that the same are in the nature of executive instructions to the Registering Authority not to register documents without ascertaining whether the layout in question where the subject property is located has been duly sanctioned or not. An enquiry of such nature is not contemplated either by Section 34 of the said Act nor is the same a valid ground to refuse registration of an instrument under Chapter XII of the said Act. Considering the aforesaid settled legal position, it will have to be held that the instructions issued under the impugned communication travel beyond the scope of Section 34 of the said Act.

6. In view of aforesaid discussion, the communication dated 03/02/2015 issued by the respondent No. 2 as well as the consequential letter dated 03/06/2015 are set aside. The respondent No. 4 shall consider the aspect of registration of the sale deed sought to be executed by the petitioner in accordance with provisions of the said Act.

Rule is made absolute in aforesaid terms with no order as to costs.