

(2020) 01 JH CK 0058

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 4804 of 2015

Nunmani Mandal

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Registration Act, 1908 — Section 17, 17(1)(b), 18, 19, 20, 21, 22, 31, 32, 33, 34, 35, 36, 58, 59, 60, 68, 69, 71, 72, 82, 87
Government of India Act, 1935 — Section 8, 49(2)
Specific Relief Act, 1963 — Section 31
Andhra Pradesh Registration Rules, 1960 — Rule 26(k)(i)
Delhi Administration Registration Authority Manual Vol-II 1976 — Rule 53
Constitution Of India, 1950 — Article 73, 162, 226, 300A

Citation : (2020) 01 JH CK 0058

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Amrita Sinha, Atanu Banerjee, Ashwini Bhushan, Sudhir Kumar Sharma, Ramchander Sahu

Final Decision : Allowed

Judgement

1. Heard Ms. Amrita Sinha, learned counsel appearing for the petitioner and Mr. Atanu Banerjee, learned Sr. S.C.-III appearing on behalf of the respondent-State and Mr. Sudhir Kumar Sharma, learned counsel appearing for respondent nos. 3 and 4.

2. The petitioner has preferred this writ petition for declaration that the Sub-Registrar, Sub-Registry Office, Jamua, District- Giridih has no authority under law and jurisdiction to register a unilaterally executed deed of cancellation of a sale deed without the knowledge and consent of other parties to the sale deed and further prayer is made for quashing the unilaterally executed deed of cancellation bearing no. 4775 dated 28.07.1994, executed by Punia Devi and Aitwari Mandal and registered by the Sub-Registrar, Sub Registry Office, Jamua, District- Giridih, whereby, the registered sale deed bearing no.10070 dated 27.07.1977 has been

unilaterally cancelled without the knowledge and consent of Dhalia Devi in whose favour the sale deed was executed.

3. Ms. Amrita Sinha, learned counsel appearing for the petitioner submitted that the facts of this case are that Punia Devi along with one Sri Aitwari Mandal executed a registered sale deed no.10070 in favour of Dhalia Devi (daughter of Punia Devi) on 27.07.1977 in connection with the property of Khata no. 38 of 2007, Plot no. 807/1 having area of 2.70 and ½ acres under Mouza Patardih pargana Kharagdiha, Thana Jamua under Sub-Registry Jamua, District- Giridih and of Khata no. 51 area 46 and ½ decimals under Mouza Kathwara, pargana Kharagdiha, Thana Jamua under sub-registry Jamua, District- Giridih and Khata no. 33 Khewat no. 1 having area 60 decimals Mouza Kathwara, pargana Kharagdiha, Thana Jamua under sub-registry Jamua, District- Giridih and Khata No. 64 Plot no. 312 area 4.23 and ½ acre Mouza Patardih pargana Kharagdiha, Thana Jamua under sub-registry Jamua, District- Giridih on consideration amount. Dhalia Devi in turn sold the aforesaid property by way of two registered sale deed (50% each) one in favour of Bhola Mandal, who is the father of Nunamani Mandal (petitioner) vide registered sale deed no. 332 dated 11.01.1982 and another in the name of Puran Mandal and Sita Ram Mandal, both sons of Dhalia Devi vide registered sale deed no. 333 dated 11.01.1982. Pursuant to the above sale deed in favour of Bhola Mandal, who is the father of the petitioner, he came in possession of the property and still continues to be in possession of the property. She further submitted that mutation of the property was done in favour of Bhola Mandal (father of the petitioner) and rent receipt was also issued in his favour. The name was also entered in Register-II as maintained by the circle office. Punia Devi died on 30.08.1996 and Aitwari Mandal died in the year 2010. She further submitted that the petitioner and his family members were in peaceful possession of the said property vide registered sale deed no. 332 dated 11.01.1982, but all of a sudden the petitioner came to know that one Probate Case No. 5 of 2010 in connection with will dated 23.08.1994 has been filed before the learned District Judge, IV, Giridih in connection with the property covered by the sale deed no. 332 and accordingly the petitioner filed intervention petition in the said Probate Case No. 5 of 2010, but the said intervention petition was dismissed vide order dated 20.09.2014. She further submitted that in the said probate case, aforesaid sale deeds were filed along with intervention petition, but the court below without considering the certified copy of the registered sale deed, wrongly rejected the intervention petition to the effect that no document was filed. She further submitted that rejection order of intervention petition in probate case dated 20.09.2014 has been challenged before this Court in W.P.(C) No. 6563 of 2014, which is still pending. She further submitted that the petitioner for the first time came to know that although the application of probate case was admitted and mentioned therein that Punia Devi executed the sale deed in favour of Dhalia Devi on 27.07.1977, but subsequently she and Aitwari Mandal cancelled the aforesaid sale deed by registered cancelnama bearing no.4775 dated 28.07.1994 on

account of alleged non-payment of consideration amount. It was further alleged that Dhalia Devi never came in possession of the said property. She further submitted that the petitioner came to know through the probate case that will dated 23.08.1994 was executed by Punia Devi immediately after execution of registered cancelnama bearing no. 4775 dated 28.07.1994. She further submitted that registered cancelnama bearing no. 4775 dated 28.07.1994 as well as will dated 23.08.1994 are collusive deeds with a view to nullify the registered sale deed no. 332 dated 11.01.1982. She further submitted that cancelnama was executed after expiry of 17 years of sale deed. She further submitted that the Registrar has no jurisdiction to cancel the registered sale deed. She referred to Sections 17 (1) (b), 32, 34, 35, 36, 69, 72 and 87 of the Registration Act, 1908 and submitted that once document is registered that cannot be cancelled by Registering Authority, even if any irregularity in procedure occurs that too unilaterally presented before Registering Authority by one party in absence of other party. To buttress her argument, she relied upon the judgment rendered by the Hon'ble Supreme Court in the case of Satya Pal Anand v. State of M.P., reported in (2016) 10 SCC 767

Paragraphs 7, 8, 9, 23, 34, 36, 40 and 43 of the said judgment are quoted herein below:

"7. The appellant also moved an application before the Sub-Registrar (Registration) calling upon him to cancel the registration of extinguishment deed dated 9-8-2001 and the subsequent two deeds dated 21-4-2004 and 11-7-2006 respectively. This application was filed on 4-2-2008 by the appellant. The Sub-Registrar (Registration) by a speaking order rejected the said application on 28-6-2008 mainly on two counts. Firstly, a dispute was pending between the parties with regard to the same subject-matter. Secondly, he had no jurisdiction to cancel the registration of a registered document in question. For, his jurisdiction was limited to registration of the document when presented by the executant before him for that purpose. The appellant then approached the Inspector General (Registration) by way of an application under Section 69 of the Registration Act, 1908 (hereinafter referred to as "the 1908 Act"). The Inspector General (Registration) vide order dated 19-9-2008 rejected the said application on the ground that powers conferred on him were limited to the general superintendence of the Registration Offices and making rules.

8. The appellant thereafter approached the High Court of Madhya Pradesh, Judicature at Jabalpur, by way of Writ Petition No. 13505 of 2008 under Article 226 of the Constitution of India to challenge the order passed by the Inspector General (Registration) dated 15-9-2008 as also the order passed by the Sub-Registrar (Registration) dated 28-6-2008. The appellant further prayed for a declaration that the extinguishment deed dated 9-8-2001 as well as the subsequent two deeds dated 21-4-2004 and 11-7-2006 are void ab initio with a further direction to the Inspector General (Registration) and the Sub-Registrar (Registration) to record the cancellation of those documents. This writ petition

was dismissed by the Division Bench of the High Court primarily on the ground that the appellant had already resorted to a remedy (a dispute) before the appropriate forum under the 1960 Act, which was pending; and the declaration, as sought, can be considered in those proceedings after recording of the evidence and production of other material to be relied on by the parties therein. Accordingly, the High Court held that since an alternative remedy before a competent forum was available and was pending between the parties, it was not feasible to invoke the writ jurisdiction under Article 226 of the Constitution of India. Indeed, the High Court adverted to the reported cases relied on by the parties to buttress their stand.

9. The High Court took note of the decision of the Full Bench of the Andhra Pradesh High Court in Yanala Malleshwari v. Ananthula Sayamma and the decision of the Madras High Court in E.R. Kalaivan v. Inspector General of Registration. The High Court held that the arguments of the appellant deserve to be negated in the light of the majority view of the Full Bench of Andhra Pradesh High Court and that the dictum in the case before the Madras High Court was distinguishable. The High Court also referred to the decision of the Karnataka High Court in M. Ramakrishna Reddy v. Sub-Registrar. In paras 15 and 16, the High Court observed thus:

"15. In view of aforesaid discussion we are of the view that after registration of the extinguished deed or other documents by the Sub-Registrar, if any application is moved by any of the affected parties of such document stating that the same was not registered by practising the fraud with his right then Sub-Registrar in the lack of any specific provision in this regard could neither entertain nor adjudicate such application under the provisions of Sections 17, 18 or 69 or some other provisions of the Act. Section 69 of the Act only confers the superintending power of registration offices and to make rules to the Inspector General, Respondent 2. It does not give any rights to cancel the earlier registered documents or modifying any entries in the index or in other record at the instance of any of the parties. So, Section 17(1)(b) read with Section 69 of the Act is also not helping the petitioner in this writ petition. Consequently, it is held that Sub-Registrar as well as Inspector General have not committed any fault in dismissing the application of the petitioner with direction to approach the competent forum for adjudication of his dispute.

16. Apart from the above, the alleged dispute and allegations of the alleged fraud could not be adjudicated by this Court under the writ jurisdiction. The same could be adjudicated by the civil court under the common law after recording the evidence of the parties and on appreciation of the same in a duly constituted suit."

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23. Having considered the rival submissions, including keeping in mind the view taken by the two learned Judges of this Court on the matters in issue, in our

opinion, the questions to be answered by us in the fact situation of the present case, can be formulated as under:

23.1 "(a) Whether in the fact situation of the present case, the High Court was justified in dismissing the writ petition?

23.2 (b) Whether the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is duty-bound to declare the registered deeds (between the private parties) as void ab initio and to cancel the same, especially when the aggrieved party (appellant) has already resorted to an alternative efficacious remedy under Section 64 of the 1960 Act before the competent forum whilst questioning the action of the Society in cancelling the allotment of the subject plot in favour of the original allottee and unilateral execution of an extinguishment deed for that purpose?

23.3 (c) Even if the High Court is endowed with a wide power including to examine the validity of the registered extinguishment deed and the subsequent registered deeds, should it foreclose the issues which involve disputed questions of fact and germane for adjudication by the competent forum under the 1960 Act?

23.4 (d) Whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an extinguishment deed after it is registered? Similarly, whether the Inspector General (Registration) can cancel the registration of extinguishment deed in exercise of powers under Section 69 of the 1908 Act?

23.5 (e) Whether the Sub-Registrar (Registration) had no authority to register the extinguishment deed dated 9-8-2001, unilaterally presented by the respondent Society for registration?

23.6 (f) Whether the dictum in Thota Ganga Laxmi is with reference to the express statutory Rule framed by the State of Andhra Pradesh or is a general proposition of law applicable even to the State of Madhya Pradesh, in absence of an express provision in that regard?"

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34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan). Section 17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one such document referred to in Section 17(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to government maps and surveys. There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be

reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.

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36. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the extinguishment deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other party to the deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the 1908 Act enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the 1908 Act can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the civil court.

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40. The Andhra Pradesh High Court, in Yanala Malleshwari was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Sections 17 and 18 of the 1908 Act are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in sections such as Sections 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the civil court. The majority view of the Full Bench was that if a person is aggrieved by the extinguishment deed or its registration, his remedy is to seek appropriate relief in the civil court and a writ petition is not the proper remedy.

43. No provision in the State of Madhya Pradesh enactment or the Rules framed under Section 69 of the 1908 Act has been brought to our notice which is similar to the provision in Rule 26(k)(i) of the Andhra Pradesh Registration Rules framed in exercise of power under Section 69 of the 1908 Act. That being a procedural matter must be expressly provided in the Act or the Rules applicable to the State concerned. In absence of such an express provision, the registration of extinguishment deed in question cannot be labelled as fraudulent or nullity in law. As aforesaid, there is nothing in Section 34 of the 1908 Act which obligates appearance of the other party at the time of presentation of extinguishment deed for registration, so as to declare that such registration of document to be null and void. The error of the Registering Officer, if any, must be regarded as error of procedure. Section 87 of the 1908 Act postulates that nothing done in good faith by the Registering Officer pursuant to the Act, shall be deemed invalid merely by reason of any defect in the procedure. In the present case, the subject extinguishment deed was presented by the person duly authorised by the Society and was registered by the Registering Officer. Once the document is registered, it is not open to any Authority, under the 1908 Act to cancel the registration. The remedy of appeal provided under the 1908 Act, in Part XII, in particular Section 72, is limited to the inaction or refusal by the Registering Officer to register a document. The power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of documents already registered."

Learned counsel for the petitioner further relied upon the judgment rendered by the Delhi High Court in the case of Areness Foundation v. Government of NCT of Delhi, in W.P. (C) No. 9123 of 2018, decided on 22.10.2018.

Paragraphs 3, 12, and 13 of the said judgment are quoted herein below:

"3. It is the case of the petitioner and contended by the learned counsel for the petitioner that the impugned circular, which is based on the judgment of the Andhra Pradesh High Court in the case of Yanala Malleshwari v. Ananthalu Sayamma, 2007 (6) ALT (523), is on a misreading of the said judgment. In any case the issue is no more res integra in view of Para 40 of the judgment of the Supreme Court in the case of Satya Pal Anand v. State of Madhya Pradesh, (2016) 10 SCC 767. She stated, Rule 53 of the Delhi Administration Registration Authority Manual Vol-II 1976 already provided for cancellation of a registered deed by Court under Section 31 of the Specific Relief Act, hence, the respondents accept the sole legal remedy for cancellation of a deed and still by the impugned circular, the respondents intend to take away the right of the parties to approach the Civil Court. Moreover, in its earlier circular dated November 12, 2014, vide para 8(ii), the Sub Registrars were directed not to refrain from registering a deed unless there is a Court order. However, in the present circular, the Registrars are even given powers to cancel a registered deed. According to her, Registrar becomes functus officio on the registration of a Deed. She stated that the Apex Court in Satyapal Anand (supra) has held that Registrar becomes functus officio

the moment a deed has been registered by a Registrar, i.e. his authority comes to an end. She stated, the impugned circular is ultra vires the Registration Act, 1908 ('Registration Act' in short). She referred to the judgment in the case of Satyapal Anand (supra) to contend that, there is no express provision provided by the legislation which empowers the registrar to recall registrations. Thus, the delegated legislation cannot supersede the legislation which is in play."

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12. From the reading of the above paras of the judgment of the Supreme Court in Satya Pal Anand (supra), the following emerges:-

(i) The role of Sub Registrar (Registration) stands discharged, once the document is registered.

(ii) There is no express provision in the Registration Act which impowers Registrar to recall registration.

(iii) The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration.

(iv) The power of the Inspector General is limited to do superintendence of registration offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document, which has already been registered.

13. We note that the impugned circular has been issued by the respondent No. 1 by referring to the judgment of the Andhra Pradesh High Court in the case of Yanala Malleshwari (supra). In fact, much reliance was placed by Mr. Singh also on the same. In this regard, we may note that the Supreme Court in Satya Pal Anand (supra) has referred to and dealt with the judgment of Yanala Malleshwari (supra) wherein, in para 40 of the judgment, it said as under:-

"40. The Andhra Pradesh High Court, in the case of Yanala Malleshwari (supra) was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Sections 17 and 18 of the Act of 1908 are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in Sections such as 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the Civil Court. The majority view of the Full Bench was that if a person is aggrieved by the Extinguishment Deed or its registration, his remedy is to seek appropriate relief in the Civil Court and a Writ Petition is not the proper remedy.

(emphasis supplied)"

She further relied upon the judgment rendered by the Allahabad High Court in the case of Kusum Lata v. State of U.P., reported in AIR 2018 ALL 2010.

Paragraphs 5, 6 and 8 of the said judgment are quoted herein below:

"5. Precisely, the issue before us that whether a sale deed registered under the Act, 1908 can be cancelled or set aside by registering authority or by any other authority invoking administrative powers, if the registration is questioned on the count of impersonation/fraud?

6. The question noticed above has been considered and dealt with threadbare by a Division Bench of this Court in Krishna Kumar Saxena and another Versus State of U.P. and 9 others, 2018 (127) ALR 466. In this case, the Assistant Inspector General (Registration/Stamp), Rampur by an order dated 18.10.2016 withdrew registration of a sale deed and annulled that on the count that the same was executed by fraud and misrepresentation. The Division Bench after examining all relevant provisions of the Act, 1908 and the law applicable held that in no case registration of sale deed could have been withdrawn and the sale deed could have been annulled by administrative fiat. The Division Bench also quashed the order dated 13.08.2013 conferring powers upon registering authority to withdraw registration of a registered deed and to annul that. The discussion made by the Division Bench and the findings arrived in the case of Krishna Kumar Saxena and another (supra) deserves to be quoted and that is as follows:

"In the light of the rival stand made by the parties and upon consideration of the various provisions of law, we find that the Registration Act is a complete Code by itself for registration of a certain documents. The procedure for registration of a document is spelt out in Part-VI of the Registration Act. Section 32 provides for persons to be present for registration of the document. If the document is required to be compulsorily registered, in which case it becomes optional for the persons to be present under section 33 of the Act. Section 34 stipulates that enquiry is required to be done by Registering Officer before registering a document. Section 35 provides the procedure for admission or denial of execution of the document. Section 35 of the Act does not confer any quasi-judicial power on the Registering Authority.

The Registering Officer is expected to reassure himself that the document to be registered is accompanied by supporting documents. The Registering Officer is not required to evaluate the title or irregularity in the documents. The examination to be conducted by the Registering Officer is only to ascertain that there is no violation of the provisions of the Registration Act. Section 58 provides particulars to be endorsed on document admitted to registration. Section 59 provides for an endorsement to be made and signed by Registering Officer and Section 60 provides for the registration of the document. Where the registering officer finds that a particular document cannot be registered in which case he is required to give reasons under section 71. Any persons who intentionally makes any false

statement during the course of enquiry, a penalty could be imposed under section 82 with imprisonment or with fine. Section 69 provides power to the Inspector General to frame Rules which is consistent with the Act. Such Rules so framed are required to be published in the Official Gazette.

In so far as the case of *Thota Ganga Laxmi v. State of A.P* (2010) 15 SCC 207 is concerned, the said decision was based on a provision of Rule 26(k)(i) of the Andhra Pradesh Registration Rules 1960 which were framed in exercise of the power conferred under section 69 of the Act. It is in the light of the provision of the Rule 26(k)(i) that the Full Bench of the Andhra Pradesh High Court held that Registering Authority had the power to annul a document where fraud had been played by the parties. The said decision of Andhra Pradesh in *Yanala Malleshwari* (Supra) was explained by the Supreme Court in *Satya Pal Anand versus State of M.P. and others* 2016(10) SCC 761 holding that the Andhra Pradesh High Court was only called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer was bound to refuse registration when a cancellation deed was presented. The Supreme Court held that in view of the provisions of Rule 26(k)(i) of the Andhra Pradesh Registration Rules, which was expressly provided in the Rules applicable to that State, the registration of a document be annulled and labelled as fraudulent or nullity in law.

No such Rules have been framed under Section 69 of the Registration Act in so far as the State of U.P. is concerned. In the absence of any express provision, the registration of a document cannot be withdrawn nor a sale deed could be annulled by an executive fiat on the basis of a Government Order dated 13.8.2013.

Unless and until there is an express provision in the Act or in the Rules, no Government Order could be issued giving power to a Registering Authority to annul a document on the administrative side. Such powers given would be wholly arbitrary and against and against the provisions of the Act.

The State Government cannot, while taking recourse to the executive power of the State under Art. 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Art. 300A. The word 'law' in the context of Art. 300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order; having the force of law, that is positive or State made law. This principle was pronounced by the Supreme Court in *Bishambhar Dayal Chandra Mohan and others versus State of Uttar Pradesh and others*(1982) 1 SCC 39.

Article 73 of the Constitution relates to the executive powers of the Union, while the corresponding provision in regard to the executive powers of a State is contained in Article 162. The provisions of these articles are analogous to those

of Section 8 and 49(2) respectively of the Government of India Act, 1935 and lays down the Rule of distribution of executive powers between the Union and the States, following the same analogy as is provided in regard to the distribution of legislative powers between them. Article 162, provides:

"Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

Thus under this Article the executive authority of the State is exclusive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed by the Parliament. Similarly, Article 73 provides that the executive powers of the Union shall extend to matters with respect to which the Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on Clause(1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to be State it would be open to the Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also.

Neither of these articles contains any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other.

The language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. Where a particular subject is regulated by a legislative enactment, the field is said to be covered by such statute. In such matters and on such subjects the executive powers is circumscribed. The executive exercising powers under Article 162 cannot issue orders which contravene provisions of a statute or are inconsistent with the same.

The State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or

instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill.

Thus, once an Act has been framed, the State in furtherance can make rules under section 69 of the Act. So long as the Rules are not framed, a document cannot be annulled on the basis of the Government Order issued under Article 162 of the Constitution. The said Government Order is against the provisions of the Constitution and is illegal.

In *Park View Enterprises versus State of T.N* AIR 1990 Madras 251, the Madras High Court held that the functions of the Sub Registrar for the purposes of registration was purely administrative and not quasi-judicial. The Supreme Court in *Satya Pal Anand (Supra)* approved the said decision and further held that the authority could not decide whether a document which was executed by a person who had title as was recited in the given instrument. The Supreme Court held that the Sub Registrar was not expected to decide the title or rights of the parties to the agreement nor was expected to examine the document to ascertain whether the same was legal and permissible in law or undertake an analysis thereof.

The Supreme Court further held that if the document registered by the Sub Registrar was illegal or if there was any irregularity, then the same must be challenged by invoking an appropriate proceeding before a court of competent jurisdiction. The Supreme Court further held that Section 35 of the Registration Act did not confer quasi-judicial power on the Registering Authority. The Registering Officer was expected to reassure that the document to be registered was accompanied by supporting documents. The Supreme Court further held that it was only when a sale deed was cancelled by a competent court that a cancellation deed could be registered and that too after notice to the parties concerned.

The aforesaid principle is also in consonance with Section 31 of the Specific Relief Act which states that it was only the Court which has the power to cancel an instrument where it is alleged that the written instrument is void or violable.

In *Shri Anil versus State of U.P and others* in Writ No.24128 of 2016 decided on 11.5.2017, a Division Bench of this Court held that the Government Order dated 3.8.2013 could not be considered in reference to procedure provided under section 34 & 35 of the Act and that the said Government Order cannot confer a power upon the Registering Authority to cancel a deed which has already been registered. We are of the opinion that Sections 34 & 35 only contemplates an enquiry before registration of a document. The Act does not contemplate any enquiry after a document is registered. The Government Order dated 13.8.2013 cannot be invoked for withdrawal of a registration and for annulling a document which had already been registered under the Registration Act.

The Government Order dated 13.8.2013 confers unfettered and arbitrary powers upon the Registering Authority in violation of the express provisions of the

Registration Act and such Government Order cannot be invoked to annul a document. The Government Order dated 13.8.2013 is not only arbitrary but is wholly without jurisdiction and cannot be sustained."

8. In light of whatever stated above, we are having no doubt in arriving at the conclusion that once a sale deed has been registered, the registering authority is having no power or authority under the Act, 1908 to cancel the registration, even if an allegation of impersonation/fraud is alleged."

By way of relying upon the above judgments, learned counsel for the petitioner submitted that law is well settled that the Registrar has got no power and jurisdiction to cancel the registered sale deed. She made much emphasis upon the judgment reported in the case of Satya Pal Anand (supra).

4. Per contra, Mr. Sudhir Kumar Sharma, learned counsel appearing for respondent nos. 3 and 4 submitted that in view of the Full Bench judgment delivered by the Madras High Court in the case of M/s Latif Estate Line India Ltd. v. Mrs. Hadeeja Ammal, which has been annexed with this writ petition, reported in 2011 (2) JCR 1 (Madras) FB, writ petition is maintainable under Article 226 of the Constitution of India, but in view of the said judgment, the Registrar has got power to cancel the registered sale deed. He further submitted that the Madras High Court has come to conclusion that there is no provision in the Transfer of Property Act or in the Registration Act, which deals with the cancellation of deed of sale. A provision relating to cancellation of document is provided under Section 31 of the Specific Relief Act, 1963. He further submitted that cancellation deed is not unilateral rather the other party has also signed it and, therefore, there is no illegality in cancellation of the sale deed by the Registrar as the Registrar is having jurisdiction to pass such order.

5. On the other hand, Mr. Atanu Banerjee, learned Sr. S.C.-III appearing on behalf of the respondent-State submitted that it appears that in this writ petition subsequent 3rd party right has already been created and in that view of the matter, it was required to be decided by the competent civil court in a regular suit.

6. Having heard learned counsel for the parties, from the reading of the judgment in Satya Pal Anand (supra), following facts have been held by the Hon'ble Supreme Court:

(i) The role of the Sub-Registrar (Registration) stands discharged, once the document is registered.

(ii) There is no express provision in the Registration Act, 1908 which empowers the Registrar to recall such registration.

(iii) The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration.

(iv) The power of the Inspector General is limited to do superintendence of

Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.

As per paragraph 54 of the judgment rendered by the Full Bench of Madras High Court in *M/s Latif Estate Line India Ltd. v. Mrs. Hadeeja Ammal* (supra), Madras High Court has also come to the conclusion that there is no provision in the Transfer of Property Act or in the Registration Act, which deals with the cancellation of deed of sale. It has also been held in paragraph 58 of the said judgment that it can also not be overlooked or ignored that a unilateral cancellation of a sale-deed by registered instrument at the instance of the vendor only encourages fraud and it is against public policy.

7. In view of the above discussions, it is suffice to say that in view of the law laid down by the Hon'ble Supreme Court in *Satya Pal Anand* (supra) it must be held that the Registrar has no power under the Registration Act to annul registration of a document and, accordingly, this writ petition succeeds. This Court finds that the Registrar has got no jurisdiction to cancel the registered sale deed. The executed deed of cancellation bearing no. 4775 dated 28.07.1994 (Annexure-5) is without jurisdiction and ultra vires the Registration Act and, accordingly, it is quashed.

8. Accordingly, this writ petition stands allowed and disposed of.