
(2021) 02 TEL CK 0005
In the Telangana High Court
Case No : Writ Petition No. 16272 Of 2019

P. Anitha & Another

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 23-02-2021

Acts Referred:

Registration Act, 1908 — Section 17, 72
Stamp Act, 1899 — Section 42, 70
Transfer Of Property Act, 1882 — Section 53A
Constitution Of India, 1950 — Article 14, 21

Citation : (2021) 02 TEL CK 0005

Hon'ble Judges : T. Amarnath Goud, J

Bench : Single Bench

Advocate : Parsa Ananth Nageswar Rao

Final Decision : Allowed

Judgement

T. Amarnath Goud, J

1. This writ petition is filed seeking to declare the impugned Refusal Order No.92/2019, dated 24.06.2019 issued by respondent No.3 in refusing to

register document No.P/929/2019, as illegal, arbitrary, violative of Articles 14 and 21 of the Constitution of India.

2. It is the case of the petitioners that petitioner No.1 is the absolute owner and possessor of open land bearing plot No.231, admeasuring 300

Sq.yards, equivalent to 250.8 Sq.mtrs in Sy.Nos.218/11, 218/12 and 218/13, within the approved layout of Kanti Vanam, situated at Kondapur

village, Serilingampally Mandal and Municipality, Ranga Reddy District, having purchased the same under a sale deed dated 15.11.1997 from its

original owners Smt.Lali Bhai and others. The said sale deed was validated vide endorsement U/s.42 of Act II of 1898 vide No.E/121/7263 of

1999, dated 23.12.1999 by paying deficit stamp duty.

It is further case of the petitioner that petitioner No.1 intended to gift the said plot in favour of petitioner No.2, who is her son. Accordingly, a gift

settlement deed was prepared and presented before the 2nd respondent. However, the said document was not received and processed by him for

the reasons best known to him. The 2nd respondent being the statutory authority under the Registration Act, is bound to receive and process the

document presented before him and if the document is in accordance with law, has to register the same, otherwise, he shall communicate the

reasons for refusal of registration. However, the 2nd respondent did not receive the document itself for registration. Upon which, the petitioners

filed W.P.No.9000 of 2019 before this Court and the said writ petition was disposed of by order dated 04.06.2019, permitting the petitioners to

present their documents for registration before the Sub-Registrar concerned and further directed that in the event of the documents are other wise

found to be in order and in compliance with the requirements of the Act of 1908 and the Indian Stamp Act, 1899, the Sub-Registrar concerned

shall complete the registration formalities and release the documents. Pursuant to the orders of this Court, the petitioners have presented the

document before the 3rd respondent and the 3rd respondent assigned document No.P929/2019.. However, the 3rd respondent on erroneous view

of law and facts refused the document for registration on the ground that the document is based on the validated document as a link document and

validated document cannot be taken as a link document vide Ends.No.CIG Mail/Ar/2008, dated 02.01.2008.

It is further case of the petitioners that the reasons mentioned for refusal is contrary to law. The 3rd respondent has not refused the document for

want of jurisdiction or on denial of execution. The reasons mentioned in the impugned order is unknown to law and are passed without jurisdiction.

Though the 3rd respondent relied upon the circular instruction, but such instruction cannot go beyond the provisions of the Act. Further it is not the

bounden duty of the 3rd respondent to look for the link or title of the property mentioned in the document put for registration. The document was

refused not on the ground that there is deficit stamp duty, or not in accordance with Registration Act or the property is listed in prohibitory list. The

document was validated by collecting the deficit stamp duty by the registering authorities, which is admissible in evidence. The 3rd respondent

exceeded his jurisdiction in refusing the document for registration. Though an appeal is provided to District Registrar, but on the face of the

impugned proceedings the reasons recorded by the 3rd respondent are illegal and out of jurisdiction and as such, the present writ petition is filed.

3. The petitioners filed I.A.No.1 of 2019 along with the writ petition to suspend the impugned Refusal Order No.92/2019, dated 24.06.2019, issued

by the 3rd respondent and this Court while admitting the writ petition passed interim orders dated 06.08.2019 as follows:-

â??There shall be interim suspension as prayed forâ??.

4. The respondents filed a counter affidavit, denying the allegations in the writ petition and stated that respondent No.3 has passed refusal order

No.92 of 2019 dated 24.06.2019 vide pending document No.P/929/2019 as the petitioners herein have not satisfied the requirements of Stamp Act

and Registration Act and Rules made thereunder. The petitioners if aggrieved by the orders of 3rd respondent is having right to file an appeal

under Section 72 of the Registration Act. The petitioners have submitted the document without enclosing any authenticated documents viz.,

approved layout or the conversion permission. The first petitioners claimed to have purchased the property through a simple sale deed,

subsequently validated the same under Section 42 of the Indian Stamp Act, 1899 and submitted the document for registration. The petitioners

while claiming the land in SyNos.218/11, 218/12 and 218/13, forming part of three sub-division survey numbers, have not enclosed any of the link

documents to satisfy the registering authority that the link document relied by the petitioners was executed by the person duly authorized by law to

transfer the property and since validated document does not confer transferable right and basing on the validated documents, claiming title over

the property, the 3rd respondent refused the document for registration vide refusal order No.92 of 2019. The petitioners instead of filing the

approved layout of sub-division of Sy.Nos218/11, 218/12 and 218/13 and link registered documents of their vendors, submitted the document for

registration and the 3rd respondent having not satisfied that the executants appearing are the persons entitle to transfer the property, has passed

refusal orders. The petitioners, instead of availing a statutory appeal under Section 72 of the Act have straight away filed the present writ petition

and inviting this Court to decide the disputed questions relating to nature of the document, authenticity of the validated document dated 28.12.1999

and as such, the writ petition is not maintainable and therefore, the writ petition is liable to be dismissed.

5. Heard both sides.

6. For better appreciation of the facts, the relevant provisions of Stamps and Registration Act, 1899 are extracted hereunder:-

Section 42 of The Indian Stamp Act, 1899:-

42. Endorsement of instruments in which duty has been paid under sections 35, 40 or 41.â?

(1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person

admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the

case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the

person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had

been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the

officer impounding it, or as such person may direct:

Provided thatâ?

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the

expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not

cancelled such certificate;

(b) nothing in this section shall affect the Code of Civil Procedure, 1882 (14 of 1882), section 144 clause 3.

Section 70 of The Indian Stamp Act, 1899 70. Institution and conduct of prosecutions.â?

(1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed, shall be instituted without the sanction of the

Collector or such other officer generally, or the Collector specially, authorizes in that behalf.

(2) The Chief Controlling Revenue-Authority, or any officer generally or specially authorized by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48.

Section 17 of The Registration Act, 1908:

17. Documents of which registration is compulsory.â?"(I) The following documents shall be registered, if the property to which they relate is

situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act,

1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:â?"

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in 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;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration,

assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award

purports or operates to create, declare, assign, limit or extinguish, whether in 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:]

Provided that the State Government may, by order published in the 26 Official Gazette, exempt from the operation of this sub-section any lease

executed in any district, or part of a district, the terms granted by which do not

exceed five years and the annual rents reserved by which do not exceed fifty rupees.

[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by Government; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans

Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act;

or

[(xa) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or

divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for

payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

Section 72 of The Registration Act, 1908:

72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.â?

(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit

a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is

subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after

the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure

prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly

presented for registration.

7. The 3rd respondent, Joint Sub-Registrar filed her counter affidavit and in the said counter, except denying the contentions for the sake of

formality, she has not categorically made out any case and has not put any strength in her counter with regard to the approved lay out of Kanti

Vanam and has not substantiated her defence to support the impugned refusal order dated 24.06.2019. The third respondent has not relied upon

the endorsement dated 2.1.2008, which is stated in the intimation of refusal. The respondents cannot blow hot and cold in one hand. They

collected layout charges and the document of the vendor has been validated and the said fact is not denied. Once a document is validated, it

attains the legal force of law and it cannot have any secondary grade recognition.

8. The action of the respondents on one hand collecting fee and validating the document and on the other hand passing impugned refusal order

dated 24.06.2019 is highly arbitrary. The Sub Registrar has earlier validated the document by collecting fee and thus, the validated document dated

28.12.1999 is nothing but the act of 3rd respondent making the transactions of the past as valid. Once the document is made valid, it is not open

for the respondents to declare the validated document as a document without having force of law and rejection to register the document by

referring to the validated document is ex facie illegal. In view of the same, the impugned refusal order dated 24.06.2019 is liable to be set aside

and is accordingly set aside.

9. Accordingly, the writ petition is allowed, directing the respondents to register and release the sale deed bearing document No.P929/2019

forthwith, provided the same is in accordance with the provisions under Registration Act. No order as to costs. As a sequel, the miscellaneous

petitions pending, if any, shall stand closed.