

(2021) 09 TEL CK 0062
In the Telangana High Court
Case No : Writ Appeal No. 446 Of 2021

State Of Telangana

APPELLANT

Vs

P. Balabhaskar Reddy

RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 21
Registration Act, 1908 — Section 17, 17(1)(b), 23, 49

Citation : (2021) 09 TEL CK 0062

Hon'ble Judges : M.S. Ramachandra Rao, J;T. Vinod Kumar, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This Writ Appeal is filed by the State of Telangana challenging the order dt. 23.02.2021 in W.P.No.16310 of 2019.
2. In that Writ Petition, which was filed by the respondents herein, they have sought a Writ of Mandamus to declare the refusal order No.98/2019 dt. 17.07.2019 issued by the 3rd appellant refusing to register document No.P/1053/2019 as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and also to set aside the same by directing the 3rd appellant to forthwith register and release the said document.
3. In the said refusal order passed by the 3rd appellant on 17.07.2019, it is stated that the document presented by the respondents is based on the validated document as a link document, and such validated document cannot be taken as a link document as per endorsement No.CIG.Mail/AR/2008, dt. 2.01.2008.
4. The link document to the document No.P/1053/2019 presented by the respondents is a document dt. 15.11.1997, which was validated by payment of deficit stamp duty and penalty on 28.12.1999. The learned Single Judge has taken the view that once a document is validated by payment of deficit stamp duty, it attains the legal force of law and it cannot have any secondary grade

recognition; by validating the document dt. 15.11.1997 on 28.12.1999, the transaction which are subject to that document of the past was rendered valid; such a validated document cannot be said to be without having force of law; and on the said basis the 3rd appellant cannot refuse to register the document submitted by the petitioners/respondents herein.

5. Learned Special Government Pleader appearing for the appellant contends that validation of a non-registered document such as sale deed like the document dt. 28.12.1999 merely makes the said document admissible in evidence for a collateral purpose as per the proviso to Section 49 of the Registration Act, 1908 (for short, 'the Act'); for a transfer of title to be effected, registration is mandatory under Section 17(1)(b) of the Act; as per Section 23 of the Act, the maximum time granted for the purpose of registration is only four months from the date of its execution; and beyond the said period, it is not possible to register the document so as to effect a transfer of title.

6. Sri B. Narasimha Sarma, learned counsel appearing for Sri Parsa Ananth Nageshwar Rao, counsel fro the respondents, contends that the reason assigned on 17.07.2019 in the refusal order No.98/2019 of the 3rd appellant is not correct, that it is not one of the reasons which could have been assigned for not registering of document, and so the order dt. 17.07.2019 of the 3rd appellant was rightly interfered by the learned Single Judge.

7. In the instant case, the document which is validated on 28.12.1999 was executed on 15.11.1997 and it was validated by paying the deficit stamp duty and penalty on 28.12.1999 by which time the four months period prescribed in Section 23 of the Act to get the said document registered has already expired.

8. Section 49 of the Registration Act states as under:

'S.49. Effect of non-registration of documents required to be registered:-No document required by Section 17 or by any provisions of the Transfer of Property Act, 1882 to be registered shall, -

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt; or

(c) be received as evidence of any transaction affecting such property or conferring such power.

unless it has been registered;

Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument."

9. Thus, as per the main part of Section 49, it a document such as a sale deed is

required by Section 17 or by any provisions of the Transfer of Property Act, 1882 to be registered, and if there is no registration, it will not affect any immovable property comprised therein.

10. But, proviso thereto stated that such an unregistered document may be received as an evidence of a contract in a suit for specific performance under the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument.

11. Since the document dt. 15.11.1997, which is the link document, which had been validated on 28.12.1999 is being relied upon to seek registration of document No.P/1053/2019, validation by payment of deficit stamp duty and penalty though cures the defect of the document of being insufficiently stamped, it will not cure the defect of it being "unregistered". Unless the document is registered, it will not affect any immovable property comprised therein and, therefore, the document dt. 15.11.1997 cannot have any affect on the immovable property comprised therein, since it is still unregistered, even though the deficit stamp duty and penalty has been paid.

12. In view of this settled legal position, the view of the learned Single Judge that once a document is validated, it attains the legal force of law and it cannot have any secondary grade recognition cannot be accepted as correct statement of law.

13. Without registration, a sale deed or any document required under Section 17 of the Act or under the Transfer of Property Act, 1882, even if it is properly stamped, cannot affect the immovable property comprised therein.

14. An insufficiently stamped sale deed or other document required by Section 17 of the Act to be registered or by Transfer of Property Act, 1882 to be registered, if properly stamped by getting it validated can only be used as evidence of any collateral transaction not required to be affected by registered instrument or received as evidence for a contract in a suit for specific performance under the Specific Relief Act, and for no other purposes.

15. Therefore, this Writ Appeal is allowed. The impugned order dt. 23.02.2021 in W.P.No.16310 of 2019 of the learned Single Judge insofar as the learned Single Judge has held that once a document is validated by paying deficit stamp duty and penalty, it attains the legal force of law and it cannot have any secondary grade recognition, is set aside.

16. The Writ Petition is remanded back to the learned Single Judge to consider the other contentions raised by the respondents therein about the validity of the impugned refusal order No.98/2019 dt. 17.07.2019 passed by the 3rd appellant.

17. List the Writ Petition before the learned Single Judge on 15.11.2021.

18. Pending miscellaneous petitions, if any, in this Writ Appeal shall stand closed. No costs.