
(2008) 06 BOM CK 0070

In the Bombay High Court

Case No : Writ Petition No's. 1955, 1523, 2120, 2121, 1569 and 2562 of 2007

Sundarsons and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 226, 246
Maharashtra Land Revenue Code, 1966 — Section 29(3)
Maharashtra Regional and Town Planning Act, 1966 — Section 154
Registration (Amendment) Act, 1968 — Section 69
Registration Act, 1908 — Section 17, 17(1), 22, 22A, 23
Stamp Act, 1899 — Article 28
Transfer of Property Act, 1882 — Section 49, 54

Citation : (2008) 4 ALLMR 841 : (2008) 5 BomCR 85 : (2008) 6 MhLj 332

Hon'ble Judges : Kumar Swatanter, C.J; Kanade V.M., J

Bench : Division Bench

Advocate : T.N. Subramanian and Paritosh Jaiswal, instructed by Purnanand and Co, for the Appellant; Sanjay Kotak, Snehal Shah, Manish Parekh and Brijesh Upadhyay, instructed by Purnand and Co. in W.P. Nos. 1503, 2121, 1559 and 2120/2007, for the Respondent

Final Decision : Allowed

Judgement

Kanade V.M., J.

All these petitions can be disposed off by a common judgment, since, the petitioners are challenging the circular dated 19th May, 2007 issued by the Collector, Mumbai respondent No. 2.

By this petition, which is filed under Article 226 of the Constitution of India, the petitioners are seeking an appropriate writ, order and direction for quashing the impugned circular dated 19th May, 2007 issued by respondent No. 2 and consequential order passed pursuant to the said circular by respondent No. 3, Mumbai Sub-District and for a further direction, directing the respondent No. 3 to register their agreement brought for registration by them, by complying with the

provisions of the Registration Act, 1996.

Brief facts in nutshell are as under:

1. For the sake of convenience the facts in respect of Writ Petition No. 1569 of 2007 are mentioned herein. The petitioner No. 1 is a partnership firm and the petitioner Nos. 2 to 5 are the partners of the petitioner No. 1 petitioner No. 6 is a Co-operative Society, registered under the Co-operative Societies Act. Petitioner No. 6 is the owner of Plot Nos. 165, 166 and 167 along with the three buildings standing thereon, on property Bearing CTS No. 1043, 1043/1, 1043/11 SS III, 4th Cross Road, Opposite Gandhi Maidan, Chembur, Mumbai - 400 071.

2. The petitioner No. 1 entered into a development agreement dated 19th August, 2005 with petitioner No. 6, whereby the development rights were granted in favour of the petitioner No. 1. Pursuant to the development agreement, a General Power of Attorney was issued by the petitioner No. 6 Society in favour of petitioner No. 5 and petitioner No. 3.

3. Thereafter, the State Government issued a directive dated 31st October, 2001, directing the Municipal Corporation not to issue development permission without production of an NOC from the Collector/Government.

4. The respondent No. 2 the Collector issued a circular/letter dated 19th May, 2007 by which he has directed the Registering Authority to insist upon an NOC from the Collector before registration of any document. Relying on the said circular dated 19th May, 2007, the Sub-Registrar, Kurla respondent No. 3 herein has refused to register the agreement dated 4th July, 2007.

5. Thereafter for the purpose of development of plot, the petitioner's Architect approached the Assistant Engineer (Building Proposal) (Eastern Suburbs) of the Municipal Corporation. The Assistant Engineer directed the petitioner's Architect by order dated 13th September, 2005 to obtain an NOC from the Collector without which the development permission would not be considered.

6. Being aggrieved by the impugned order, the petitioners filed a petition in this Court vide Writ Petition No. 2611 of 2005. The Hon'ble Division Bench by its order dated 24th October, 2005 had passed the following order:

Pending the hearing and final disposal of the petition:

i) The petitioners are directed to deposit a sum of Rs. 50,000/- with respondent No. 2 viz. The Collector (M.S.D.), Mumbai towards the Provisional occupancy without prejudice to the rights and contentions of the petitioners raised in the writ petition. Said payment of Rs. 50,000/- towards the provisional occupancy is directed to be deposited within two weeks from today;

(ii) The petitioners are directed to file an undertaking before this Court within two weeks from today that in the event the petitioners further apply to raise the construction on the said building so constructed on the said land in question, such construction shall be raised in accordance with plan that may be sanctioned

by respondent No. 3 viz. the Municipal Corporation of Greater Bombay and rent under which the petitioners occupy the land in question;

iii) Upon production of the receipt of deposit on Rs. 50,000/- with respondent No. 2 viz. the Collector (M.S.D.), Mumbai and a copy of a undertaking filed by the petitioners before this Court, before respondent No. 3 viz. the Municipal Corporation of Greater Bombay, respondent No. 3 shall be free to consider the application of the petitioners for completion/occupation certificate or for sanction of the plan on the property in question. Respondent No. 3 while considering the application of the petitioners for sanction of the plan and upto the stage of Occupation Certificate shall upto ignore the Government Circular dated October 31, 2001 and shall consider the application so made by the petitioners in accordance with various provisions of law and the terms and conditions of the grant;

iv) In the undertaking the petitioners shall also state that they shall abide by the final decision to be take by the Government concerning the payment towards the occupancy rights and any other decision relating to alleged dues subject to the petitioners' right to challenge the decision of the Government and in that event to abide by the decision of the Court in that regard.

7. Pursuant to the said order, the petitioners were granted development agreement.

8. Thereafter, the said writ petition was finally disposed off by the judgment and order dated 5th October, 2006 by holding that the order passed by the Government dated 31st October, 2001 directing the Municipal Corporation not to issue development permission without production of an NOC from the Government Collector or without authority of law and the order dated 13th September, 2005, which was passed on the basis of the said Government directives dated 31st October, 2001 was set aside. In the said order in paragraph 6, the following directions were given by the Division Bench:

(i) the letter/Circular dated 31st October, 2001 to the extent that it directs the occupants of land taken from the Government to produce a NOC from the Collector is without the authority of law.

(ii) However, considering the object behind issuing the Letter/Circular of 31st October, 2001 we direct the respondent No. 2 on an application being received in respect of the lands which are received from the Government under the provisions of the Land Revenue Code or other enactments to intimate the details of the same to respondent No. 1 within four weeks of receipts of such Application. On receipt of such application it will be open to respondent No. 1 to take such steps in law which they are entitled to.

(iii) The order dated 15th March, 1999 issued u/s 154 of MRTP Act is illegal, null and void.

(iv) The respondent No. 1 before taking any steps shall issue notice to the

occupants and/or a transferee from the occupants and after giving an opportunity, to pass appropriate orders which they are entitled to under the law in force and by following due procedure.

(v) Considering the controversy we need not decide the issue as to the type of the land and other issues raised and all these issues are left open for consideration by the Appropriate Authority of the respondent No. 1 who is vested with such power.

(vi) The amount of Rs. 50,000/- which has been deposited to continue to remain deposited till such time as the Collector/respondent No. 1 take action according to law. If after hearing the petitioners/occupants the Authority comes to the conclusion that the amount is not due and payable the same shall be refunded to the petitioner/occupant.

(vii) The respondent No. 1 in the case of these petitions, which have been disposed off by this Court, to commence the process within six weeks from today and complete the process not later than nine months from today.

(viii) Insofar as the consequential orders passed by the respondent No. 2 based on the Letter/Circular dated 31st October, 2001 the same would be of no effect and are consequently quashed and set aside. We, however, make it clear that it will still be open to respondent No. 2 Planning Authority to exercise whatever powers it has under the provisions of the Maharashtra Regional Town Planning Act, 1966 and D.C. Regulations and this order will not stand in their way.

(ix) Insofar as the undertakings are concerned, the petitioners are released from the undertakings. However, it is made clear that the petitioners will be bound to make good the amount as set out in the undertaking on the Government fixing a policy, if the petitioners are held to be liable, but subject to the rights of the petitioners to challenge the validity of the order passed on that policy.

(x) In the even the petitioners do not have the original of the title document, on an application being made by the petitioners/occupants to respondent No. 1, the said document be made available so as to enable the petitioners/occupants to make good their case before the respondent No. 1 or if any authority before whom the proceedings will commence.

9. Against the order passed by the Division Bench, the petitioners preferred a SLP being SLP No. 3597 of 2007 and in this SLP, notice was issued and the directions contained in the High Courts order were stayed except in respect of directions 1, 2, 3 and 8 by its order dated 20th April, 2007. It is an admitted position that the Apex Court did not stay the direction of the High Court declaring the circular dated 31st October, 2005, which specifies that NOC should be obtained from the Collector as illegal, null and void.

10. On 4th July, 2007, the petitioners entered into an agreement with Mr. Hariharan Shankaran and Abhishekh Hariharan for the sale of Flat No. 1401 and another flat in Soumya Towers which was constructed pursuant to the said

Development Agreement dated 19th August, 2005. Thereafter, the said flat purchasers paid the stamp duty amounting to Rs. 4,84,100/- in respect of the said agreement and on the same day, the said flat purchasers attended the office of the Sub-Registrar of Assurances, respondent No. 2 herein for the purpose of registering the said agreement.

11. The respondent No. 2 Sub-Registrar of Assurances by his letter dated 4th July, 2007, refused to register the said sale deed on the ground that prior approval/NOC of the Collector was necessary in view of the circular dated 19th May, 2007. The petitioners thereafter sent a Advocate's notice to the respondent No. 2 stating that the circular dated 19th May, 2007 was illegal and without authority of law. Despite the notice sent by the petitioners to the respondent Nos. 2 and 3, the document was not registered and, therefore, the petitioners were constrained to file the petition under Article 226 of the Constitution of India.

12. The facts in respect of the other petitions are also similar and all the petitioners are challenging the circular dated 19th May, 2007 and action of the respondent No. 3 of not registering the agreement.

13. The Deputy Collector filed his Affidavit in reply dated October, 2007 in which he contended that the petitioner was not the owner of the land on which the building was constructed. It was further contended that the owner of the property was shown to be having tenure of B-1. It was contended that therefore the land belongs to the State Government having B-1 status. It was further contended that the petitioners were not the original allottees of the said land and that they had entered into the development agreement on 19.8.2005 with the petitioner No. 6. It was further contended that pursuant to the Government directive dated 31st October, 2001, the BMC was directed not to issue IOD/CC unless NOC from the Collector was obtained by the concerned parties. It was contended that the object behind issuing the direction was that the Government had given land to the various institutions and individuals on concessional terms of lease or on ownership basis as Bhogavatdar Class 2 tenure and this was done on certain terms and conditions. It was contended that these institutions and individuals had committed breach of terms of the agreement and without taking prior permission of the Government had sold these lands to other institutions and/or individuals.

14. It was further contended that in order to avoid fraud and malpractices, the letter/ circular dated 19.5.2007 was issued by respondent No. 2.

15. It was further specifically contended that the respondent No. 2 has power u/s 66 of the Indian Registration Act and in exercise of powers conferred under the said Act in supersession of Government Notification, Revenue Department No. 3665 dated 30th January, 1922, the Government of Maharashtra had appointed the Collector of Bombay to be the Registrar of Registration, District of Bombay and in that capacity he had issued the circular dated 19.5.2007.

16. It was further contended that the Inspector General of Registration and the

Control of Stamps, Maharashtra State, Pune had issued Notification dated 27.6.2006 under the powers conferred upon him by Section 69 of the Registration Act, 1908 and whereby he had incorporated the amendment to Rule 24 of the Maharashtra Registration Rules, 1961 and after the Clause (h), Clause (i) is inserted which reads as under:

(i) that, if the transaction which is intended by the document is prohibited by any existing act of Central or State Government, then the true copy of the requisite permission or NOC from the Competent Authority under the said Act has been attached along with the document and that the document is not written in contravention with any vital term or condition mentioned in that permission or NOC.

17. It was further contended that the petitioner was not absolute owner of the said land and the said land was granted under the preconditions attached to the terms and conditions as set out in Form HH which was applicable to Class 2 occupants defined in Section 29(3)(a) of the Maharashtra Land Revenue Code. It was submitted that therefore the tenure B-1 was granted by the Government under the Rules 42 and 43 of the Bombay Land Revenue Rules, 1921. It was, therefore, contended that it was necessary to obtain NOC from the Collector.

18. The petitioner filed his Affidavit-in-Rejoinder on 7th December, 2007. In the Affidavit in Rejoinder, it was contended that the Affidavit in Reply proceeded on the footing that under the amended Rule 44 of the Maharashtra Land Revenue Rules, the registration of document would be done only after the NOC was obtained from the Competent Authority. It was stated that Section 22-A of the Act was inserted by the Legislature of Rajasthan by which the state could issue a Notification declaring that the registration of a document which was opposed to the public policy, in such case Sub-Registrar could refuse the registration of the said document. It was stated that the said case came up for consideration before the Apex Court, which held that the Registration Act could not set aside the transaction, but it could give its objection to the document and the Hon''ble Supreme Court declared 22-A of the Act as ultra vires of Articles 14 and 246 of the Constitution of India. It was submitted therefore, that the Amendment of Rule 44 was contrary to the Articles 14 and 246 of the Constitution of India. It was further submitted that the Section 66 of the Indian Registration Act, 1908 in its application to the State of Maharashtra does not empower the State Government to appoint the Collector of Bombay to be the Registrar of Registration and therefore, the Collector had no power to issue the impugned circular.

19. In respect of the contentions raised in the Affidavit-in-Reply by the Government that the petitioner was not the absolute owner of the land was disputed and the petitioners relied on number of letters and documents in support of his case that they are absolute owners of the land.

20. Thereafter, the Government again filed a further Affidavit dated 1st February,

2008, disputing the contentions that the petitioners are the owners of the land. It was further submitted that the judgment of the Apex Court in the said case holding Section 22-A inserted by the Rajasthan Government as ultra vires was not applicable to the facts of the present case. The respondent No. 2 in its Affidavit relied on various provisions of the Code of the Bombay Land Revenue Code and Maharashtra Land Revenue Code in support of his submissions.

21. We have heard the Learned Government Pleader appearing on behalf of the State and Learned Counsel appearing for the petitioners. The short question which arises for consideration before this Court is:

(i) Whether the Collector could have been issued the letter/circular dated 19th May, 2007 under the provisions of the Registration Act? or;

(ii) Whether the Collector could have issued the impugned circular dated 19th May, 2007 asking the petitioners to obtain NOC from the Collector before the documents could be registered? or;

(iii) Whether the Collector was competent to issue a direction to the respondent No. 3 Sub-Registrar not to register any document, unless an NOC is obtained from the Collector?

22. In order to decide the rival contentions, it is necessary to consider the provisions of the Registration Act, 1908, in order to examine the contention of the Government that it has power to issue such direction to the Sub-Registrar respondent No. 3 herein.

23. Part VI of the Registration Act deals with the provisions of documents dealing with the proceeding relating to the presentation of documents for documentation. Section 32 lays down the persons who can present the documents for registration, Section 32-A states that a photograph of both the executing parties has to be affixed. Section 33 lays down that the Power of Attorney can be given by any person, who intends to present the document for registration and the relevant provision for the purpose of deciding the issue in question are Sections 34 and 35. Section 34 empower the Registering Authority to make an enquiry with the registration and Section 35 lays down in the circumstances under which registration can be denied. Sections 34 and 35 reads as under:

34. Enquiry before registration by Registering Officer - (1) Subject to the provisions contained in this Part and in Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any,

payable u/s 25, the document may be registered.

(2) Appearance under Sub-section (1) may be simultaneous or at different times.

(3) The Registering Officer shall thereupon:

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to Sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

35. Procedure on admission and denial of execution respectively - (1)(a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in Sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3)(a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if the person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the Registering Officer shall refuse to register the document as to the person so denying, appearing or dead:

Provided that, where such Officer is a Registrar, he shall follow the procedure prescribed in Part XII: 43 (Provided further that the 44 (State Government) may,

by notification in the 45 [Official Gazette), declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.)

From the perusal of Section 34 and Section 35 it is apparent that no power has been given to the Collector to give directions to the Sub-Registrar to refuse registration of the document. The provisions regarding registration of the document are enumerated in the Registration Act, 1908. It is a settled position in law that executive instructions which are given by the State by exercising its powers under Article 162 of the Constitution of India cannot circumvent a statutory provision. It has, therefore, now to be seen under which provisions the said letter/circular dated 19th May, 2007 has been issued by the Collector. The said letter/circular has been issued by the Collector and is in a cyclostyled form. It enumerates the various classes of lands belonging to the Government. It further states that these lands have been granted to different institutions and individuals on various terms and conditions. It further states that these lands cannot be transferred without Government permission. It further mentions that these lands are being transferred without obtaining the Government permission and as a result of such unauthorised transfer, Government is losing revenue amount in crores of rupees and thereafter the following direction has been given:

Therefore, in future such transfers could not take place without permission, nor any entry made into Government records.

Perusal of the said circular clearly discloses that the letter does not disclose the source of the power under which it has been issued. It also does not state either the power which is vested in the Collector to issue the said letter to the Sub-Registrar either under the provisions of the Maharashtra Land Revenue Code or under the Registration Act, 1908, or the rules framed thereunder. The learned Government Pleader had strenuously urged before us that these lands are Government lands under the provisions of the Maharashtra Land Revenue Code that the Government had power to take action against the allottees for breach of terms and conditions of the allotment order, he invited our attention to various provisions of the Land Revenue Code. However, it is an admitted position that none of these provisions empowered the Collector to issue directions to the Sub-Registrar who is the Statutory Authority under the Registration Act, 1908 to desist from registration of a document on account of breach of any terms and conditions in allotment of land by the Government to the allottees. The said submission made by Shri Belose, the learned Government Pleader appearing on behalf of the State, therefore, cannot be accepted.

24. The learned Government Pleader, thereafter, relied on the amendment made in the Maharashtra Registration Rules, 1961 by the Inspector General of Registration u/s 69 of the Registration Act, 1968, whereby the Rule 44 of the said Rules was amended and after Clause (h) the Clause (i) was inserted, which reads as under:

(i) that, if the transaction which is intended by the document, is prohibited by any existing act of Central or State Government, then the true copy of requisite permission or No Objection Certificate from the Competent Authority under the said act, has been attached along with the document, and that, the document is not written in contradiction with any vital term or condition mentioned in that permission or No Objection Certificate.

25. The submission made by the learned Counsel appearing on behalf of the Government cannot be accepted. Firstly it is not pointed out how the document in question is prohibited by any existing Act of Central and State Government. The said amendment, therefore, even otherwise is not applicable in the facts of the present case.

26. The Counsel appearing on behalf of the petitioners has relied on the judgment of the Madras High Court in the case of Pandurangan Vs. The Sub Registrar, The District Registrar and The District Collector, . The learned Single Judge of the Madras High Court has in paragraph Nos. 17 and 18 of its judgment has observed that:

17. A conjoint reading of Sections 34 and 35 of the Act shows that the scope of the enquiry to be made by the Registering Officer is limited by the Act, to the factum of execution and the identity of the person executing the document, other than the levy of stamp duty, collection of registration charges and the completion of procedural formalities such as attestation etc.

18. When the power of the Registering Officer himself is so circumscribed by the provisions of the Act. It is not open to the third respondent to issue an instruction to respondents 1 and 2 to withhold the registration of any transaction, as he has no Appellate, Supervisory or Revisional powers over the Registering Officer, under the Act.

We are in respectful agreement with the observations made by the Learned Single Judge of the Madras High Court. In the present case also, it was not open for the Collector to issue instructions to the respondent No. 3 to withhold registration of the documents as he has no Appellate, Supervisory or Revisional powers over the Registering Officer under the Act.

27. The Learned Counsel on behalf of the petitioners has relied on the judgment of the Apex Court in the case of State of Rajasthan and Others Vs. Basant Nahata, . In this case also registration of Power of Attorney was refused on the ground that the registration of such document was prohibited as being opposed to the public policy. The said notifications were issued by the State of Rajasthan in exercise of its power conferred upon it u/s 22-A of the Act. The Apex Court held that Section 22-A of the said Act and the notifications were invalid and unconstitutional. The Apex Court in paragraphs 54, 55, 56, 57, 58, 59 and 60 of its Judgment has observed that:

We have noticed hereinbefore that the State of Rajasthan inserted Section 17(1)

(f) and (g) in the Act making the registration of agreement to sale and irrevocable Power of Attorney relating to transfer of immovable property in any way a compulsorily registerable document. The State went further to amend Article 28 of the Second Schedule of the Stamp Act, 1899 making an agreement to sale of immovable property and irrevocable Power of Attorney or any other instrument executed in the Court of conveyance etc. with possession to be deemed to be a conveyance and stamp duty is chargeable thereon accordingly. According to the State, despite such enactments sales were being made by seller on the basis of a Power of Attorney with a right to sell the property and such powers of attorney were being executed for an unspecified period. A transaction between two persons capable of entering into a contract which does not contravene any statute would be valid in law. The State of Rajasthan does not make such transactions illegal. The Indian Contract Act or the Power of Attorney Act have not been amended. Execution of a Power of Attorney per se, therefore, is not illegal. Registration of Power of Attorney except in cases falling u/s 17(1)(g) or 17(1)(h) is not compulsorily registrable. Sections 32 and 33 of the Indian Registration Act also do not bar any such registration.

55. The Act only strikes at the documents and not at the transactions. The whole aim of the Act is to govern documents and not the transactions embodied therein. Thereby only the notice of the public is drawn.

56. In AIR 1936 230 (Privy Council) , while commenting on Section 17 and Section 49 of the Act, it was stated:

The aforesaid amended provision clearly discloses that the Registration Act only strikes at the documents and not at the transaction, while entire purpose of the Act is to govern the documents and not the transactions embodied therein.

It is to be observed upon a comparison of these different sections that while the Registration Act only requires certain documents to be registered on pain of the consequences entailed by Section 49. T.P. Act by Section 54 enacts that (with a limited exception) the sale of immovable property can be made only by registered instrument. The provisions of the Registration Act by themselves would not operate to render invalid a mere oral sale. On the other hand he somewhat wide phrase "any interest...to or in immovable property" which occurs in Clause (b). Section 17(1), Registration Act, does not occur in Section 54 of the other statute.

57. See also K. Panchapagesa Ayyar and Another Vs. K. Kalyanasundaram Ayyar and Others, .

58. Similar view has been taken in Syed Abdullah Sahib Vs. Syed Rahmatulla Sahib alias Baji Sahib and Others, stating:

14. The Transfer of Property Act requires that certain transactions should be effectuated only by registered instruments. Apart from the provisions contained in that enactment, the obligation to register arises only under the Registration

Act. Under the latter Act registration is made obligatory in respect of certain specified class of documents, but there is nothing to require a transaction to be effected by a registered instrument. Section 17 of the Registration Act enumerates the documents which require registration.

The necessity for registration under that Act would depend upon what a document is or what it purports to be. A bargain or an arrangement between the parties may comprise several transactions. The question whether there should be a writing or registration would depend on each of the transactions and not on their cumulative result.

59. Hence, Section 22-A of the Act through a subordinate legislation cannot control the transactions which fall out of the scope thereof.

60. We have noticed hereinbefore the effect of a Power of Attorney under the Indian Contract Act or the Power of Attorney Act. A subordinate legislation which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, in our opinion, thus, would not be valid.

In our view, the ratio of the said judgment is squarely applicable to the facts of the present case and it is apparent, therefore, that the Collector could not have issued the impugned circular dated 19.5.2007.

28. For the aforesaid reasons, in our view the letter issued by the Collector dated 19th May, 2007 is clearly illegal and without authority of law.

It is however, made clear and it is specifically clarified that it would be open for the State Government to take such steps, if any breach has been committed by the petitioner or by its Predecessor-in-title in respect of the land allotted to the petitioners or its Predecessor-in-title by following due procedure of law.

29. Further it is expressly made clear that we have not decided the question as to whether the petitioners are the owners of the land as claimed by them or the contentions of the Government that the petitioners and its Predecessor-in-title were having B-1 tenure. These questions are kept open and the petitioners are at liberty to take out appropriate proceeding for seeking a declaration that the petitioners are the owners of the land.

The writ petitions accordingly are allowed and respondent No. 3 is directed to register the documents which are presented to him as per the provisions of the Registration Act in accordance with law. Under these circumstances there shall be no order as to costs.