

(1999) 02 AHC CK 0120

In the Allahabad High Court

Case No : C.M.W.P. No. 12869 and 12871 of 1990

Yogesh Kumar Singh and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 09-02-1999

Acts Referred:

Advocates Act, 1961 — Section 30
Constitution of India, 1950 — Article 19(1), 19(2), 19(6)
Registration Act, 1908 — Section 31, 32, 33, 33
Registration Rules, 1908 — Rule 2(10), 300
Uttar Pradesh Document Writers Licensing Rules, 1977 — Rule 6, 6(1), 6(2)

Citation : (1999) 2 AWC 1004

Hon'ble Judges : Yatindra Singh, J;B.K. Roy, J

Bench : Division Bench

Advocate : T.P. Singh, for the Appellant;

Final Decision : Disposed Of

Judgement

B.K. Roy and Yatindra Singh, JJ.—Since common questions of law and facts are involved in these two writ petitions, which have been placed together as tied up matters. they are being disposed of by this common judgment.

2. Civil Misc. Writ Petition No. 12869 of 1990 has been filed by Yogesh Kumar Singh, Advocate of Bisauli as well as his client Dariyay Singh. Their prayer is to quash G.O./Circular dated 20.4.1990 as contained in Annexure-3 and/or to command the respondents not to give effect to the said G.O./Circular which states that only the deed writers have right to present to a document for registration and that the Advocates are entitled to only draft it on behalf of their client under Rule 6 (2) of the Rules. The prayer of the petitioner Tehsil Bar Association, Nawabganj, in Civil Misc. Writ Petition No. 12871 of 1990 is same.

2.1. Mr. T. P. Singh learned senior counsel for the petitioners comes up with an oral prayer in the First Writ Petition to command respondent No. 2 to register the sale deed in question which was illegally returned, when presented by the

Petitioner No. 1 for its registration by respondent No. 2.

3. The cause of auction is founded on return of the sale deed by the respondent No. 2 (The Sub-Registrar, Budaun/A.D.M. (F&R), District Budaun) without it being registered, which was drafted and presented by the learned counsel Sri Yogesh Kumar Singh on the authority of his client petitioner No. 2. Respondent No. 2 took up a stand that the sale deed has not been presented by an authorised person as per the G.O.

4. Sri T. P. Singh, the learned senior counsel appearing on behalf of the petitioner in these two writ petitions, contended as follows :

(i) The action of respondent No. 2 was wholly Illegal and misconceived Inasmuch as the Act and the Rules never gave a handle to respondent No. 2 to return back the deed, which was drafted by a counsel on instructions of his client and presented validly by him for registration.

(ii) If the impugned G.O. prohibits Advocates from discharging their professional duties which include presentation of the deed before the Registrar under the provisions of the Indian Registration Act, in that event it be held to be contrary to Section 32 of the Indian Registration Act and struck down as ultra vires, besides, being violative of their Fundamental Rights guaranteed under Articles 19(1)(a) and (g) of Chapter III of the Constitution of India.

(iii) The G.O. has been issued mala fide in collusion with the deed writers.

In support of his contentions, Sri Singh placed reliance on an earlier Division Bench decision of this Court in Yogesh Kumar Singh v. State of U. P. and others. Writ Petition No. 9199 of 1984. disposed of by N. D. Ojha and A. P. Mishra, JJ. (copy appended as Annexure 4 to Civil Misc. Writ Petition No. 12869 of 1990) and a recent Division Bench decision in Girish Pal Singh Vs. State of U.P. and others, , to which one of us (Binod Kumar Roy, J.) Is a party.

5. Sri Sudhir Kumar Jaiswal, learned standing counsel appearing on behalf of the respondents; on the other hand, supported the impugned G.O. taking up a stand that the rights of Advocate to draft deeds have not been taken away rather it has been clarified that the deeds are required to be presented not by drafting Advocates but only by deed writers. He further contended that as the petitioners have not taken steps to serve respondent No. 4 nor the Deed Writer Association has been Impleaded the writ petition be dismissed.

6. We are of the view that In the present facts and circumstances the petitioners are entitled to the reliefs claimed for.

7. Respondent No. 4 is at best a proper party and not a necessary party who had merely written a letter to the I.G. Registration and was not the Government itself.

8. Section 30 of the Advocates Act, 1961 deals with the right of the Advocates to practise in this country. It reads thus :

"30. Right of Advocates to practise.--Subject to the provisions of this Act, every Advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends :

(i) in all Courts including the Supreme Court.

(ii) Before any tribunal or persons legally authorised to take evidence ; and

(iii) Before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise,"

The word "practise" cannot be given a narrow interpretation. It not only includes the right of an advocate to draft a pleading or a document but also envisages in it his right to present the pleadings and/or document prepared by him before the Courts, Tribunal or any authority.

The ratio laid down in *Girish Pal Singh* (supra), which is a Division Bench decision, which squarely answered the question in favour of the petitioners, is binding on us. In our view, the Registration Act permits a counsel, if authorised by his client to draft a sale deed and/or present it for registration. This is crystal clear from perusal of Section 32(b) of the Act. The word "Representative" will obviously include an advocate.

9. Despite opportunity being granted to the respondent No. 1 to 3. no counter has been filed to these writ petitions wherein, inter alia, following facts and legal position have been stated and explained by the petitioners :

"8. That at this very stage, it will be appropriate to reproduce Sections 32 and 33 of the Indian Registration Act which defines the right of a person to present document for registration :

"32. Except in the cases mentioned in Sections 31, 38 and 89 every document to be registered under this Act. whether such registration be compulsory or optional, shall be presented at the proper registration office-

(a) by some persons executing or claiming under the same or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign or such person, or

(c) by the agent or such person, representative or assign duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned."

9. That in order to beat out any ambiguity further clarification was made u/s 33 defining the word "power-of-attorney" which reads as follows :

"33. (1) For the purposes of Section 32, the following powers-of-attorney shall alone be recognised, namely :

(a) if the principal at the time of executing the power-of-attorney resides in any part of (India) in which the Act is for the time being In force, a power-of-attorney

executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides ;

(b) if the principal at the time aforesaid (resides in any part of India in which this Act is not in force), a power-of-attorney executed before and authenticated by any Magistrate ;

(c) if the principal at the time aforesaid does not reside in (India) a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge. Magistrate (Indian) consul or Vice-Consul, or representative of the (Central Government) :

Provided

10. That a bare perusal of the abovementioned provisions makes it clear that a legal practitioner engaged by the parties do not require a license under the provisions of the U. P. Document Writers Licensing Rules, 1977 and are fully authorised to draw a document for the purposes of registration.

11. That Section 32 makes it imperative that every document to be registered shall be presented at the proper registration office by some person executing or claiming under the same or by the representative or assign of such person, agent, representative or assign duly authorised by power-of-attorney executed and authenticated in the manner provided by Section 33.

12. That the word "some person executing" denotes to a person actually and in fact executing the document and it does not refer to the principal who may be considered to be executing the documents by means of an agent. The basic principle underlying these provisions of the Registration Act is to get before the Sub-Registrar the actual executant who in fact executes the document in question.

13. That it has been held that in case a document is presented for registration by a person other than a party to it or his legal representative or assign or by a person who is not an agent authorised in the manner prescribed u/s 33 such presentation is wholly imperative and presentation of such a document is void.

14. That the object of Sections 32 to 35 Is to avoid commission of frauds by means of registration under the Act by a person not duly authorised and it is the duty of the Court In India not to allow the imperative provisions of the Act to be defeated when it is proved that an agent who presented a document for registration had not been duly authorised in the manner prescribed by the Act to be presented. A Registrar has no jurisdiction to register a document unless he is moved to do so by a person who has executed it, or claims under it. or by the representative of such a person.

15. That the object of the Legislature in enacting Section 32 is to prevent a mere outsider from presenting for registration a document with which he has no concern, and in which he has no interest. To allow all and sundry to present

documents for registration would be to open a door to fraud and forgery and the Legislature, therefore. Intended to provide that the registration should be initiated by the document being presented for registration by a person "having a direct relation to the deed".

16. That it will further be relevant to mention here that word "Presentation" has a technical meaning in the section. It does not mean merely physically handing over the document to the Registrar. No doubt, it is necessary for the physical act of presentation to be performed by the presenter, but It is necessary to show more than a mere attendance for the purpose of admitting execution. If it was necessary, that the physical act of handing over the document should be performed by the executant in person many pardanashin ladies will be precluded for ever from presenting a document for registration at all. All that has to be shown is that the obligor was present at the time of presentation and not that he joined it, or that it was done at his request and on his behalf, it cannot be said that the presentation was made by him.

17. That the legal practitioners have been writing documents, preparing drafts thereof for the purposes of presentation before the Registering Officer by the parties concerned or by their agents duly appointed by registered power-of-attorney as per provisions of Sections 32 and 33 of the Registration Act.

18. That in order to avoid legal complications and maintain the confidence of the executants of the documents the legal practitioners have been as per practice presenting the documents also on their behalf in their presence which was being duly accepted.

19. That Rule 300 of the Indian Registration Rules and Rule 2 (10) have further taken care of the abovementioned Intentions of the Legislature and has confined the presentation of the documents for the purposes of registration to be exclusion of the persons other than one mentioned therein.

* * * * 24. That the sale deed which has been returned without being registered was drawn/drafted by petitioner No. 1 who has been held to be an unauthorised person which is apparently against the statutory provisions of the Act.

* * * * 6. That a bare perusal of the said order shows that the interpretation of the provisions of Rule 6 (1) and (2) of the U. P. Documents Writer Licensing Rules, 1977 has been wrongly Interpreted. The said provisions is being reproduced below for the purposes of convenience of this Hon'ble Court :

"Rule 6. Ban against practising as documents writer without licence.--(1) No person shall practice as a document writer except under a valid licence granted in accordance with these rules.

(2) Nothing in sub-clause Rule (1) shall apply where the writer of such document is one of the parties thereto or is a legal practitioner engaged by the parties for drawing of the documents."

7. That the word "document" as well as "document writer" has further been defined under Rule 2 (b) and (c) of the above mentioned Rules which reads as follows :

"2. (b) "Document" means a document written for presentation to a Registering Officer and includes an application for copy. inspection, search, extension of period and issue of summons and warrants and an application u/s 73 of the memorandum of appeal u/s 72 of the Registration Act, 1908 or a draft of the said document.

(c) Document writer "means a person practising as a writer of documents for remuneration or otherwise."

* * * *

26. That in these circumstances the Government Order/Circular dated 20.4.1990 Impugned to this writ petition as Annexure-3 restricting the right of presentation of documents of licence holder deed writers to the exclusion of the persons, mentioned under Rule 6 (2) or Section 32 of the Act is wholly illegal, arbitrary and deserves to be struck down."

10. The relevant part of Article 19 of the Constitution of India reads thus :

"19. Protection of certain rights regarding freedom of speech, etc.--(1) All citizens shall have the right-

(a) to freedom of speech and expression ;

* * * * (g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of. the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.

* * * * (6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing. In the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to. or prevent the State from making any law relating to :

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or"

Article 19(1)(a) and (g) guarantees Fundamental Rights to the Advocates to practise their legal profession including their freedom of speech and expression

though subject to any law imposing reasonable restriction thereon on the grounds mentioned in sub-Articles (2) and (6) of Article 19. The freedom of expression will apparently include their right to present the document prepared by them before any Court, Tribunal or authority. This fundamental right guaranteed by the Constitution cannot be nullified by the impugned Government Order though made in consultation with Law Department.

11. The statutory provisions as contained in Section 32(b) of the Act cannot be nullified by any Government Order or even by the Rules though in fact Rule 6 (2) clearly exempts the operation of Rule 6 (1) to the Legal Practitioners. Therefore, Rule (2) could not be interpreted differently.

12. Since the Deed Writers Association against whom mala fide has been alleged has not been impleaded as party, we refrain ourselves from saying anything in that regard.

13. Accordingly, we allow this writ petition with these directions to the respondent Nos. 1 to 3 :

(i) If a sale deed is drawn up and presented for its registration, after having specific authority of the vendor or vendee in favour of an advocate, in that event its Registration cannot be refused relying upon the G.O. aforesaid.

(ii) The sale deed in question. If presented once again shall be received by respondent No. 2 and registered in accordance with law.

14. In the peculiar facts and circumstances of the case, however, we make no order as to costs.

15. The office is directed to hand over a copy of this order within two weeks to Sri Sudhir Kumar Jaiswal, the learned standing counsel for its communication to and follow up action by the respondents.