

(7) All the aforesaid reasons are fully applicable to the facts of the present case. Therefore, we are of the view that the order passed by learned Single Judge directing the respondents to de-notify the land does not suffer from any legal infirmity, which may warrant interference of this Court. On equity also we are of the view that the land which was purchased on 19.3.1974 and of which possession had not been taken till the year 1985 could not now be permitted to be utilized by the State Government for the so called public purpose. Accordingly the appeal fails and the same is dismissed.

J.S. Mehndiratha

Before K. Kannan, J.

**VAID FAMILY CHARITABLE TRUST
AND ANOTHER,—*Petitioners***

versus

STATE OF HARYANA & OTHERS,—*Respondents*

CWP No. 4638 of 2010

11th July, 2011

Constitution of India - Art.226/227 - Registration Act - Ss.34 & 35 - Deputy commissioner-cum-Collector-cum-Registrar cancelled sale deed executed by representatives of religious & charitable trust - Whether Registrar had power under Indian Registration Act to cancel the sale deed - Held, Registering authority has no power to adjudicate - To legally record existence of contract is administrative act - Petition allowed for quashing of order.

Held, That it must be remembered that the Court was considering the provisions of Sections 34 and 35, which definitely contains the power to the Sub-Registrar to refuse to register a document. If there was denial of execution or if it was at the instance of a person who was incapable of executing a document such as a minor or a lunatic, refusal to register could be sustained. Inherent lack of capacity to execute document is quite different from the legal competence of some persons who could validly transfer title under the instrument. If the contention of the respondents were to be

accepted, it would mean giving a power to Registering authority to adjudicate on whether a vendor has title to transfer property or not. Such adjudication is indeed alien to the scheme of the Registration Act. A registration is never an instrument that contains a warranty of title. A warranty does not issue from the State or its functionary while registering a document. On the other hand, it is an administrative act to legally record the existence of a contract between the parties, namely, the vendor and the vendee or the executant and the person who takes the benefit under the instrument. The registration that has been affected shall not be understood as approving the transaction of sale or upholding the entitlement of the petitioners to give title through the instrument. They will be independently dealt with in an appropriate situation by persons which have the competency to challenge or who are affected by the transaction.

(Para 5)

Anil Khetarpal, Advocate, *for the petitioners.*

Kriti Singh, DAG, Haryana, for respondents No.1 to 4.

Arun Jain, Senior Advocate with Amit Jain, Advocate, for respondent No.5.

None for respondent No.6.

Akshay Bhan, Advocate, for respondent No.7.

K. KANNAN, J. (ORAL)

(1) The petitioners who claim to be representatives of a Religious and Charitable Trust, are aggrieved by the orders passed by Deputy Commission-cum-Collector-cum-Registrar cancelling a sale deed executed by the petitioners in favour of the third party. The cancellation is purported to be done on the instructions from Collector that it should be cancelled as per rules. The Joint Registrar did no more than carrying out directions of the Collector to a 'T' and stating that the document is annulled.

(2) The contention of the petitioners is that the annulment of registration is alien to the scheme of the Registration Act. The Act only contains provision empowering the Registering Officer to be satisfied about the execution of the document and if there are not issues relating to jurisdiction,

he is bound to register the same. The powers of the Registrar regarding supervision must only ensure that there exists no violation of the Act and the Rules and such a power cannot extend to annulment of the registration that has already been made.

(3) The petitioners also refer to the judgment in “**Hussain Ali Shah versus Sardar Ali Shah and others** (1), which held that a Registrar has no power to cancel the registration of a document and it was unauthorized. The High Court specifically held that “section does not confer upon him the power of canceling the registration of a document, the execution of which is not denied and which has been already registered by a Sub- Registrar”. The same issue has also been dealt with in two another decisions of Madhya Pradesh High Court and Patna High Court in “**Nyadarsingh versus Chensing**” (2) and “**The Managing Committee and others versus State of Bihar and others**” (3), respectively. In the latter case, the decision of the Lahore High Court was cited and approved.

(4) Learned counsel also referred to a decision of this Court in “**Jodh Singh and others versus The Registrar, (Deputy Commissioner) and others**” (4), that contained a challenge under Article 226 to the cancellation of a deed purported to have been executed by a person who was a lunatic. The Court was considering the submission on behalf of the respondents who supported the order of the Registrar canceling the document that the Sub-Registrar had with connivance of the petitioner, registered the document and the Registrar rectified the wrong done by the Sub-Registrar. The Court posed the question in para 13 as to whether the Registrar had any power under the Indian Registration Act to cancel the sale-deed. After referring the provisions of Sections 34 and 35, it held that the powers of Sub- Registrar in registering a document presented to him for registration are absolute and if only a person denies the execution or if such a person appears to be a minor or a lunatic, he shall refuse registration. The decisions of the Lahore High Court and the Madhya Pradesh High Court, the Court affirmed and observed that the order of the Registrar cancelling the sale

(1) AIR 1933 Lahore 786

(2) 1955 AIR (MB) 205

(3) 2003(2) BLJR 878

(4) 1999 (121) PLR 29

deed could not be sustained. This, in my view, would constitute the principle of law enunciated or the ratio decidendi to this judgment. The Court, however, refused to exercise the jurisdiction in favour of the petitioners holding that every error of law would not induce the Court to exercise the extra-ordinary jurisdiction and observed that the Registrar had done nothing to cause any injustice to the petitioners.

(5) It must be remembered that the Court was considering the provisions of Sections 34 and 35, which definitely contains the power to the Sub-Registrar to refuse to register a document. If there was denial of execution or if it was at the instance of a person who was incapable of executing a document such as a minor or a lunatic, refusal to register could be sustained. Inherent lack of capacity to execute document is quite different from the legal competence of some persons who could validly transfer title under the instrument. If the contention of the respondents were to be accepted, it would mean giving a power to Registering authority to adjudicate on whether a vendor has title to transfer property or not. Such an adjudication is indeed alien to the scheme of the Registration Act. We are not merely deciding a case of whether a transaction could have been admitted before a Registrar, the way a minor or a lunatic could not. On the other hand, we are considering the validity of the cancellation effected on the basis of objection coming from some person that a property which belonged to a Trust could not have been sold. A registration is never an instrument that contains a warranty of title. A warranty does not issue from the State or its functionary while registering a document. On the other hand, it is an administrative act to legally record the existence of a contract between the parties, namely, the vendor and the vendee or the executant and the person who takes the benefit under the instrument. The registration that has been effected, shall not be understood as approving the transaction of sale or upholding the entitlement of the petitioners to give title through the instrument. They will be independently dealt with in an appropriate situation by persons which have the competency to challenge or who are affected by the transaction.

(6) I will confine the writ petition as only requiring an adjudication of the competence of the authority to cancel the registration of a document. So long as there was no issue regarding whether there was an admission of execution in the manner required by law and the person that executed

the document had actually admitted the same, the Registering authority had no power to deny registration.

(7) The writ petition also contains a challenge to some action initiated on the basis of a criminal complaint given against the petitioners. The validity of the imputation made in the complaint cannot be a matter of adjudication before this Court and the petitioners will have an effective and alternative remedy under the provisions of Criminal Procedure Code themselves to correct the same. I make no decision with regard to the challenge contained in the writ petition for the registration of the criminal complaint.

(8) The writ petition is allowed only for the prayer for quashing of the orders of cancellation of the registered instrument.

(9) The writ petition is disposed of in terms of the above.

A. Agg.

Before Alok Singh, J.

SURJAN,—Petitioner

versus

**FINANCIAL COMMISSIONER, REVENUE, HARYANA
AND OTHERS,—Respondents**

CWP No. 13296 of 2011

27th July, 2011

Constitution of India - Art.226/227 - Punjab Security of Land Tenures Act, 1953 - Ss. 2(2), 2(9) & 9 - Small land owner sought eviction of tenant - Financial Commissioner ordered eviction, reversing orders of authorities below - Plea of tenant that small land owner must prove that he needs land for self cultivation - Section 9(1)(i) of the Act no where contemplates self cultivation - Moreover, as per S.2(9) self cultivation, inter alia, means cultivation under supervision - Writ Petition dismissed.