

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

WRIT PETITION Nos.41920, 41921 and 41922 of 2015;
W.P.Nos.367, 484 and 485 of 2017;

% Dated 19.04.2023

#W.P.Nos.41920, 41921 & 41922 of 2015

M/s. Sri Udaya Bhanu Associates,
Rep. By its Managing Partner
Sri Katari Rama Rao S/o Late Rama Swamy
Aged about 65 years, r/o H.No.48-1-31,
Visakhapatnam.

..... Petitioner

Vs.

\$
The State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue (Registration
And Stamps) Department, Secretariat,
Hyderabad and 3 others.
....Respondents

#W.P.Nos.367, 484 & 485 of 2017

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JUDGMENT PRONOUNCED ON: 19.04.2023

THE HON'BLE SMT. JUSTICE V. SUJATHA

Whether Reporters of Local newspapers
may be allowed to see the Judgments?

Whether the copies of judgment may be marked to
Law Reporters/Journals

Whether Their Ladyship/Lordship wish to see the fair
copy of the Judgment?

*** THE HON'BLE SMT. JUSTICE V. SUJATHA**

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! Counsel for the petitioner :

1. Sri N. Ashwani Kumar

^ Counsel for the respondents :

1. Learned Government Pleader for Stamps and Registration for respondent Nos.1 to 3.
2. Sri K.V. Ratna Rao, Learned counsel for respondent No.4.

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^ Counsel for the respondents :

1. Learned Government Pleader for Stamps and Registration for respondent Nos.1 to 4.
2. Sri T.V.S. Prabhakara Rao. Ratna Rao, Learned counsel for respondent No.5.

<GIST:

> HEAD NOTE:

? Cases referred

¹ 2022 SCC OnLine AP 2774

¹ 2016 SCC OnLine Hyd 815

¹ MANU/DE/2661/2012

¹ 2022 SCC OnLine AP 2222

¹ 1977 RLR 487

¹ AIR 1965 SC 1856

¹ MANU/DE/2661/2012

¹ 2012 (1) ALD 90 (SC)

¹ MANU/TN/6694/2022

¹ 2016 (10) SCC 767

¹ (2001) 5 Supreme Court Cases 101

HONOURABLE SMT. JUSTICE V. SUJATHA

**WRIT PETITION Nos.41920, 41921, 41922 of 2015 & 367,
484 and 485 of 2017**

COMMON ORDER:

As the issue involved in all these cases is one and the same, with consent of all, these writ petitions are decided by this common order.

i) W.P. No.41920 of 2015:

The writ petition came to be filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue an appropriate Writ, Order or Direction more particularly one in the nature of Writ of Certiorari to call for the records relating to the order passed by the 2nd respondent dt.17.12.2015 in Appeal No.1 of 2015 and quash the same as being illegal, arbitrary, unilateral, without jurisdiction and to grant...”

ii) W.P. No.41921 of 2015:

The writ petition came to be filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue an appropriate Writ, Order or Direction more particularly one in the nature of Writ of Certiorari to call for the records relating to the order passed by the 2nd respondent dt.17.12.2015 in Appeal No.3 of 2015 and quash the same as being illegal, arbitrary, unilateral, without jurisdiction and to grant...”

iii) W.P. No.41922 of 2015:

The writ petition came to be filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue an appropriate Writ, Order or Direction more particularly one in the nature of Writ of Certiorari to call for the records relating to the order passed by the 2nd respondent dt.17.12.2015 in Appeal No.2 of 2015 and quash the same as being illegal, arbitrary, unilateral, without jurisdiction and to grant...”

iv) W.P. No.367 of 2017:

The writ petition came to be filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue any writ, order or direction more particularly one in the nature of writ of Certiorari call for the records pertaining to the Impugned proceedings vide Doc. No.9680 of 2015 dated 21.12.2015 passed by 4th respondent i.e. the Deed of Cancellation and quash the same as being illegal, arbitrary, void, abinitio, without jurisdiction

and violation of the provisions of the Act and consequentially suspend the proceedings vide Doc. No.9680 of 2015, dated 21.12.2015 issued by the 4th respondent...”

v) W.P. No.484 of 2017:

The writ petition came to be filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue any writ, order or direction more particularly one in the nature of writ of Certiorari call for the records pertaining to the Impugned proceedings vide Doc. No.9679 of 2015 dated 21.12.2015 passed by 4th respondent i.e. the Deed of Cancellation and quash the same as being illegal, arbitrary, void, abinitio, without jurisdiction and violation of the provisions of the Act and consequentially suspend the proceedings vide Doc. No.9679 of 2015, dated 21.12.2015 issued by the 4th respondent...”

vi) W.P. No.485 of 2017:

The writ petition came to be filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue any writ, order or direction more particularly one in the nature of writ of Certiorari call for the records pertaining to the Impugned proceedings vide Doc. No.9681 of 2015 dated 21.12.2015 passed by 4th respondent i.e. the Deed of Cancellation and quash the same as being illegal, arbitrary, void, abinitio, without jurisdiction and violation of the provisions of the Act and consequentially suspend the proceedings vide Doc. No.9681 of 2015, dated 21.12.2015 issued by the 4th respondent...”

2. As the issue, petitioners as well as the respondents involved in all these cases is one and the same, all these writ petitions are decided by way of a common order.

The petitioner, initially filed 3 writ petitions i.e. W.P. Nos.41920, 41921 and 41922 of 2015 challenging 3 individual orders passed in 3 Appeals, dated 17.02.2015, and later on filed the other 3 writ petitions, i.e., W.P. Nos.367, 484 and 485 of 2017 challenging the 3 cancellation deeds, dated 21.12.2015, which were registered pursuant to the impugned orders of the District Registrar, dated 17.12.2015. (Interim direction was passed by this Court on 04.12.2017 suspending the cancellation deeds subject to the condition that the petitioner shall not create any third-party rights over the property).

3. The brief facts are that the 4th respondent-'the State Government Gazetted Officers Co-operative House Buildings Society (herein after referred as 'Society') being a registered society purchased the land admeasuring Acs.8.20 cents in Sy. No.60 of Maddilapalem from one Aratla Surya Narasinga Rao and his sons by virtue of a registered Sale Deed bearing Doc. No.634/1970, dated 23.02.1970 and later on, proposed to construct houses and to allot the same to its members after

obtaining the layout and necessary permissions. Subsequently, the 4th respondent-Society developed the said land by laying the roads and demarcating the plots and transferred a part of the plots to some of its members.

4. Apart from the above said land, the 4th respondent-Society also acquired the adjacent land in Sy. No.61/2 (Part) of an Ac.0.34 cents for the purpose of laying an approach road by virtue of an Exchange Deed bearing Doc.No.1624/1977, dated 08.06.1977 and accordingly they have laid road with necessary permission. After laying the road, an extent of 800 Sq. yards was available on either side of the road which was encroached by some unauthorized persons by raising some temporary structures. Apart from that, some hut-dwellers encroached the left over land to an extent of Acs.3.07 cents and they filed suit O.S. No.889 of 1979 on the file of the I Additional District Munsiff Court, Visakhapatnam, for grant of perpetual injunction against the 4th respondent-Society, which was dismissed and after appeals and counter appeals, the matter was remanded to be tried along with the suit O.S. No.113/1986 and A.S. No.1961 of 1993 were clubbed together in O.S. No.616 of 2012.

5. Thereafter, the petitioner purchased a separate extent of land admeasuring an extent of 595 Square yards under a registered Sale Agreement-Cum-GPA vide Document No.5041 of 2016, dated 23.10.2006, for the construction of the office building and compound wall around the land.

6. As the 4th respondent-Society was not able to pursue the legal disputes vigorously and resist the illegal occupants in the land in Sy. No.61/2 Part and in Sy. No.60, which litigation was pending for the past 3 decades, the 4th respondent-Society called for a General Body and passed a resolution on 30.09.2008 to assign the work of settlement of all legal disputes in the land to the petitioner and after settlement of disputes, the petitioner would be assigned with construction of flats total admeasuring 63,000 Square feet in 3150 Square yards in Sy. No.60 and in Sy. No.61/Part, each flat not less than 1500 Square feet and get them registered in favour of the members of the 4th respondent-Society and everything was to be done at the cost of the petitioner. Upon such settlement and construction of flats, the 4th respondent-Society shall register the balance land in favour of the petitioner. The petitioner was also to construct an office and compound wall.

7. The copy of resolution, dated 30.09.2008, was communicated to the petitioner on the same day and pursuant to which the petitioner entered into a Compromise Agreement, dated 21.10.2008, with one Gudla Kamala & 7 others for taking steps to vacate the encroachers from the land in Sy. No.61/2 part of Maddilapalem Village by paying Rs.13 lakh to the encroachers on behalf of the 4th respondent-Society to withdraw all the cases filed by them against the 4th respondent-Society as a part of out of Court settlement.

8. In the said process, on 24.10.2008, the petitioner paid an amount of Rs.2,00,000/- to one Mr. A. Kameswararao, Advocate, Visakhapatnam, as fee for settlement of A.S No.306/2007 and CMA 98/2006 filed by the said Gudla Kamala & 7 others on behalf of the 4th respondent-Society, which was acknowledged by the 4th respondent-Society represented by its then President Dr. Ch. Parvathesam.

9. Thereafter, the petitioner and the 4th respondent-Society entered into an Agreement/Memorandum of Understanding, dated 12.07.2009, *inter-alia* agreeing for construction of 63,000 Square Feet including common areas in Sy. No.60 and Sy. No.61/2 part by constructing about 21 Flats

with 3,000 Square Feet each (for 21 members of the 4th respondent-Society) and office building for the 4th respondent-Society and in consideration the 4th respondent-Society agreed to register the balance land in Sy. No.60 and 61/2 Part through a deed of conveyance.

10. Thereupon, the petitioner constructed 15,000 Square feet in the 4th respondent-Society's land in Sy. No.61/2 part in the year 2011 and offered to register the same in the name of the 4th respondent-Society of its beneficiaries in terms of the MoU dated 12.07.2009 read with clause No.4 of the letter dated 30.09.2008. However, the 4th respondent-Society refused to accept the same as four (4) of its members died in a span of nine (9) months between July, 2009 to March, 2010 and also for the reason that there were disputes among the members as to whom the constructed flats of 15,000 Square feet should be allotted.

11. In view of the changed circumstances, the 4th respondent-Society entered into an Agreement for Partial Modification of MoU dated 12.07.2009, on 01.03.2010 by stipulating that the construction of agreed 3,000 Square feet for

each beneficiary to be enhanced to 3860 Square feet to each member.

12. Accordingly, the 4th respondent-Society entered into three different registered Agreements of Sale-cum-General Power of Attorney in favour of the petitioner vide Document Nos.2420, 2421 and 2422 of 2010 dated 18.03.2010 for resolving all the disputes with regard to the subject land.

13. In pursuance of the agreement of sale dated 18.03.2010, the petitioner entered into a Settlement Deed with one Juni Laxmi Bhai Kour, Juni Sarda Chinna Singh, Juni Thani Singh GPA Holders of Juni Sardar Hanuman Singh and 16 others who are encroachers of the 4th respondent-Society's land admeasuring 884.22 Square yards in Sy. No.60 by paying an amount of Rs.10,00,000/- in cash on the date of execution of the said Settlement Deed i.e.,01.09.2010 and pursued the litigation in respect of the land in Sy. No.60 and got O.S. No.930/2008 disposed of on 18.11.2015.

14. While the things stood thus, the 4th respondent-Society got issued a legal notice dated 24.01.2012 seeking cancellation of the MoUs, Construction Agreement and the 3 registered Agreements for Sale-cum-GPA in respect of the land

in Sy. Nos.61/2 part and in Sy. No.60 of Maddilapalem of Visakhapatnam executed in favour of the petitioner, 'in response to which the petitioner got issued a reply notice on 06.02.2012 through their advocate explaining the efforts put in by the petitioner in resolving the disputes and the amounts spent by them for pursuing the cases against the 4th respondent-Society'. It was further stated in the reply notice that the registered Agreements-cum-GPA were coupled with interest and therefore, the same cannot be revoked to the detriment of the petitioner, to which the 4th respondent-Society got issued a rejoinder notice on 25.02.2012.

15. In spite of the same, the 4th respondent-Society filed O.S. No.97 of 2012 on the file of the VI Additional District Judge, Visakhapatnam seeking cancellation of 3 Agreements of Sale-cum-General Power of Attorney, dated 18.03.2010 on the ground that the petitioner committed default and later on, the same was withdrawn without seeking any liberty on 14.10.2016.

16. Pending the suit seeking cancellation of the 3 Agreements of Sale-cum-General Power of Attorney, dated 18.03.2010, the 4th respondent-Society had presented three

deeds of Cancellation of Agreements of Sale-cum-general Power of Attorney vide Document Nos.2420, 2421 and 2422 of 2010 before the Joint-Sub-Registrar-I, Visakhapatnam and as the Joint-Sub-Registrar-I, failed to register the cancellation deeds, the 4th respondent-Society filed W.P. No.5749 of 2014, but however, the said writ petition was also withdrawn on 13.11.2014.

17. The Joint-Sub-Registrar refused to register the Cancellation Agreements which are kept pending vide P.Nos.294, 295 and 296 of 2014. Challenging which (Pending O.S. No.97 of 2012 on the file of VI Additional District Judge, Visakhapatnam) the 4th respondent-Society preferred a statutory appeal under Section 72 of the Registration Act, 1908 before the 2nd respondent –District Registrar of Assurances, Visakhapatnam, who allowed the three appeals bearing Nos.1, 2 and 3 of 2015 on 17.12.2015, by passing three individual orders by directing registration of 3 cancellation deeds, unilaterally cancelling the three registered Agreements for Sale-Cum-General Power of Attorney executed in favour of the petitioner vide Document Nos.2420, 2421 and 2422 of 2010, dated 18.03.2010. Challenging the orders dated 17.12.2015, initially, the petitioner filed 3 writ petitions i.e. W.P. Nos.41920, 41921

and 41922 of 2015. Thereafter, the 3 cancellation deeds were registered as Document Nos.9679, 9681 and 9680 of 2015 dated 21.12.2015 in spite of the fact that O.S. No.97 of 2012 filed by the 4th respondent-Society seeking similar prayer was pending for adjudication. Challenging the said unilateral registration of the 3 cancellation deeds dated 21.12.2015, the petitioner filed other 3 writ petitions, i.e., W.P. Nos.367, 484 and 485 of 2017.

18. Challenging the order of the 2nd respondent-District Registrar dated 17.12.2015, the petitioner preferred a revision to the 1st respondent-The State of Andhra Pradesh, wherein the 1st respondent vide proceedings Memo No.REV01-REGSOMISC/10/2019-REGN.I-1, dated 03.05.2020, held as follows:

“...Hence, the Law Department has also opined that District Registrar Visakhapatnam is not having any judicial power like civil court to entertain appeal once documents were registered by both the parties, hence the order of the District Registrar shall be set-aside and shall be treated as non-est in the eye of law.

Government after careful examination of the matter and as per opinion of the law department, the Commissioner and Inspector General, Registration and

Stamps, AP Vijayawada is requested to pass necessary order in compliance with the above interim orders of Hon'ble High Court for cancelling the order of the District Registrar, Visakhapatnam in Appeal Nos.1, 2, 3 of 2015, dated 17.12.2015 with direction to the Sub-Registrar, Visakhapatnam to cancel the documents bearing No.9679, 9680, 9681 dated 21.12.2015 and shall make necessary entries in the registration books subject to the result of the W.P. No.367 of 2017, W.P. No.484 of 2017 and W.P. No.485 of 2014 which are pending before the Hon'ble High Court."

19. Thereafter, the Commissioner and Inspector General vide Memo G3/425/2020, dated 16.06.2020, gave directions to the District Registrar, Visakhapatnam, as under:

"In this connection, the District Registrar, Viskhapatnam is requested to take immediate necessary action for cancelling the orders of the then District Registrar, Visakhapatnam in Appeal Nos.1, 2 and 3 of 2015, dated 17.12.2015 with a direction to the Sub-Registrar, Visakhapatnam, to cancel the documents bearing Nos.9679, 9680, 9681 dated 21.12.2015 and shall make necessary entries in registration book subject to the result of the W.P.No.367 of 2017, W.P. No.484 of 2017 and W.P. No.485 of 2017 which are pending before the Hon'ble High Court, in accordance with the provisions of law."

20. The 4th respondent-Society filed a counter affidavit stating that the disputes arose between the petitioner and the

Society in the year 2012 itself, as such the Society issued legal notice dated 24.01.2012 to the petitioner cancelling the MOUs , Construction Agreement and GPAs-cum-Sale Agreements executed by the 4th respondent-Society and the same was published in Enadu city edition on 25.01.2012, for which, the petitioner also issued reply through paper add on 28.01.2012 and also issued a reply notice, dated 06.02.2012 inviting the 4th respondent-Society for mutual discussions as per clause-16 of the Construction Agreement within 15 days from the date of receipt of the reply dated 06.02.2012, failing which, the petitioner will act in accordance with agreement. The 4th respondent-Society has issued a rejoinder dated 25.12.2012 to the reply notice dated 06.02.2012 informing that the question of mutual discussion between the petitioner and the 4th respondent-Society does not arise and also mentioned that the petitioner may take whatever the action he likes and the same will be resisted by the 4th respondent-Society. But the petitioner did not take any steps after exchange of notices even till today and hence, the legal right of the petitioner seeking claim against the above subject documents has been barred by limitation.

21. It is further stated in the counter affidavit that the petitioner by invoking the clause-23 of the MoU, dated

12.07.2009, has filed AOP No.867 of 2016 on the file of the II Additional District Judge, Visakhapatnam and the same was dismissed on merits on 05.12.2016. The petitioner has also approached the Co-operative Tribunal by making some or the other claims against the 4th respondent-Society by suppressing the material facts and also without having any *locus standi* which were dismissed by the Co-operative Tribunal.

22. The 4th respondent-Society has further stated that suppressing all the above facts, the petitioner has also filed CAOP No.34/2019 on the file of the Special Judge for Trial and Disposal of Commercial Disputes at Visakhapatnam under Section 9 of Arbitration and Conciliation Act invoking the clause-16 of the Construction Agreement dated 10.03.2010 and the same was dismissed on merits on 05.08.2021, wherein it is stated as follows:

"In the present case as seen from the application filed by the petitioner in para(m) it was categorically stated that the petitioner is contemplating to initiate appropriate proceedings by invoking clause 16 of agreement. There is no whisper in the entire application about the issuance of notice to the 1st respondent society in the year 2016 i.e., on 05.09.2016 calling upon the 1st respondent to accept the appointment of a mutual accepted Arbitrator to refer the disputes. Where Court passes order for any interim measure under Section 9(1) of the Act

before commencement of the Arbitral proceedings, the arbitral proceedings shall be commenced within period stated in sub-section. Commencement of arbitral proceedings within period stated in Section 9(2) of the Act is made mandatory by parliament. Intention of parliament in making commencement of arbitral proceedings within period stated in Section 9(2) mandatory is to see that order for any interim measure passed under Section 9(1) shall not continue to be in force indefinitely in absence of arbitral proceedings. Therefore, commencement of arbitral proceedings within period stated in sub-section (2) is requirement for legal effectiveness of order passed for any interim measure. Hence, if arbitral proceedings in respect of dispute are commenced within period stated in Section 9(2), order granting any interim measure under Section (1) shall automatically stand vacated on expiry of the said period.”

23. It is also stated in the counter affidavit that the intention of the 4th respondent-Society in entering into the MoU, modified MoU, Construction Agreement (3 sale agreements cum GPAs subjected documents) is to settle the dispute in or outside the Courts as early as possible as the ages of the members of the society are advanced and the clauses and conditions stipulated in the agreements and registered documents reiterate that the petitioner is to settle all the pending litigations in or outside the Courts with their funds, thereafter taking of the possession from the litigants by entering into compromise deeds between the Society and litigants, was much after making

constructions as per the construction agreement. Thereafter it is agreed between the Society and the petitioner as a consideration to transfer the remaining property situated in S.No.60 and 61/2 part by way of a registered sale deed and till such time the petitioner was not conveyed with any right, title, possession or interest over the subject mentioned property, hence the order of the 2nd respondent-District Registrar is in accordance with law.

24. It is further stated in the counter affidavit that the 4th respondent-Society took objection that the subject documents Nos.2420, 2421 and 2422 of 2010, dated 18.03.2010, are not Sale Agreement-cum-GPA, since the ingredients to treat it as a Agreement of Sale-cum-GPA has not been satisfied, more particularly there is no transfer of title, right in the subject matter of the property and admittedly, there is no consideration or payment to the vendor under the said document and as such the provision of law of Registration Act as raised by the petitioner will not come in the way of cancellation of such document and the registering authority can cancel it unilaterally. It is also submitted that the GPA-cum-Sale Agreement will come into force only after the terms and conditions of the agreement are fulfilled, more particularly as follows:-

- i) to settle the disputes,*
- ii) entering compromise deeds,*
- iii) construction of 65,620 Sq. ft. of built up area and*
- iv) handing over the flats to the vendors/Society;*

then as a consideration, the vendor promises i.e., the 4th respondent-Society to register the remaining land through deed or deeds of conveyances duly registered in favour of the vendee i.e., the petitioner, which the petitioner has miserably failed to do so, and hence the 4th respondent-Society has got every right to cancel the said document which is executed for settlement of disputes.

25. It is further stated in the counter affidavit that the construction agreement was executed by the 4th respondent-Society in favour of the petitioner for construction of flats in an extent of 2550 Sq. yards out of 3600 Sq. yards which is in the North-East corner of the property covered in Sy. No.60 of the 4th respondent-Society's land. The 4th respondent-Society has executed individual sale deeds in favour of 17 individual members for an extent of 150 Sq. yards each being undivided and unspecified share out of the total extent of 3600 Sq yards; therefore, the said individual members became title holders of the said extent of 2550 Sq. yards collectively and thereby the 4th

respondent-Society has lost the right over the said extent; and accordingly, the said construction agreement became null and void and non est in the eye of law as the title holders have not executed the construction agreement in favour of the petitioner and the construction agreement will come into force only after compliance of the terms and conditions mentioned in the three GPAs-cum-Sale Agreements, dated 18.03.2010, construction agreement, MoU and amended MoU.

26. The further contention made by the Society in the counter affidavit is that the Society has settled the litigations with third parties in respect of the subject mentioned properties by spending huge funds obtained from third parties i.e. M/s. Sagara Durga Developers (P) Ltd; accordingly acquired possession from the litigants and hence, there is no chance to the petitioner to settle the litigations with third parties with its own cost, which is the first condition of the subject document, as such the question of consideration through that document cannot be taken into consideration.

27. The Society has further stated in the counter affidavit that after refusal by the Joint Sub-Registrar-I, Visakhapatnam, they preferred an appeal before the District

Registrar of Assurances, Visakhapatnam, who in turn issued a notice to the petitioner to appear before him and represent his case and accordingly, on hearing both the parties on legal aspect as well as the factual aspect and on perusing the documents and its recitals, has rightly concluded that the participation of the petitioner is not necessary for cancelling the subject document; and as such requested this Court to dismiss the present writ petitions.

28. Heard learned Senior Counsel Mr. D.V. Sitharama Murthy representing Mr. N. Ashwani Kumar, learned counsel for the petitioner; learned Government Pleader for Stamps and Registration; and learned Senior Counsel Mr. K.S. Murthy representing Mr. K.V. Ratna Rao and T.V.S. Prabhakar Rao, learned counsels for the respondent-Society.

Learned Senior Counsel appearing for the petitioner relied upon the following judgments:

*a) Maruturi Raghavendra Rao and Another Vs. State of Andhra Pradesh and others*¹

*b) Gaddam Laxmaiah and Others Vs. Commissioner and Inspector general, Registration and Stamps, Hyderabad and others*²

*c) Hardip Kaur Vs. Kailash and Ors.*³

¹ 2022 SCC OnLine AP 2774

² 2016 SCC OnLine Hyd 815

- d) *Smt. Tummidi Bala Nagamani Vs. The State of Andhra Pradesh*⁴
- e) *Harbans Singh vs Shanti Devi*⁵.
- f) *S.Chattanatha Karayalar v. The Central Bank of India Ltd. & Ors.*⁶
- g) *Hardip Kaur Vs. Kailash and Ors.*⁷
- h) *Kaitha Narasimha v. the State of A.P. (W.P.NO.3744 of 2007)*
- i) *Thota Ganga Laxmi and another v. Government of Andhra Pradesh and others*⁸
- j) *Sasikala Vs. The Revenue Divisional Officer, cum Sub Collector, Devakottai and others*⁹
- k) *Satyapal Anand vs. State of Madhya Pradesh* ¹⁰

Learned counsel for the respondents relied upon the judgment in *Her Highness Maharani Shantidevi Vs. Savjibhai Haribhai Patel and Others*¹¹.

29. Now, for proper appreciation of the case, this Court feels it appropriate to frame the following issues/points for consideration;

³ MANU/DE/2661/2012

⁴ 2022 SCC OnLine AP 2222

⁵ 1977 RLR 487

⁶ AIR 1965 SC 1856

⁷ MANU/DE/2661/2012

⁸ 2012 (1) ALD 90 (SC)

⁹ MANU/TN/6694/2022

¹⁰ 2016 (10) SCC 767

¹¹ (2001) 5 Supreme Court Cases 101

1. Whether the respondent Society has called for a General Body meeting before resorting to cancellation of the Agreement of Sale-cum-GPA ?

1. It is a fact that as the 4th respondent-Society was not able to pursue the legal disputes vigorously and resist the illegal occupants in the land in Sy. No.61/2 Part and in Sy. No.60, which were pending for the past 3 decades, the 4th respondent-Society called for a General Body and passed a resolution on 30.09.2008 to assign the work of settlement of all legal disputes in the land to the petitioner at the cost of petitioner and after settlement of disputes, the petitioner would be assigned with construction of flats total admeasuring 63,000 Square feet in 3150 Square yards in Sy. No.60 and in Sy. No.61/Part, each flat not less than 1500 Square feet at the cost of the petitioner and get them registered in favour of the members of the 4th respondent-Society at the cost of the petitioner. Upon such settlement and construction of flats, the 4th respondent-Society shall register the balance land in favour of the petitioner. The petitioner was also to construct an office and compound wall.

2. A letter, dated 30.09.2008, was issued by the 4th respondent-Society to the petitioner communicating the above said terms and conditions, pursuant to which the petitioner entered into a Compromise Agreement, dated 21.10.2008, with Gudla Kamala & 7 others to vacate the land in Sy. No.61/2 part of Maddilapalem Village by paying Rs.13 lakh to the litigants on behalf of the 4th respondent-Society to withdraw all the cases filed by them against the 4th respondent-Society as settled out of Court.

3. On 24.10.2008, the petitioner paid an amount of Rs.2,00,000/- to one Mr. A. Kameswararao, Advocate, Visakhapatnam, as fee for settlement on behalf of the 4th respondent-Society in respect of A.S No.306/2007 and CMA 98/2006 filed by the said Gudla Kamala & 7 others, which was acknowledged by the 4th respondent-Society represented by its then President Dr. Ch. Parvathesam.

4. On 12.07.2009, the petitioner and the 4th respondent-Society entered into an Agreement/Memorandum of Understanding, dated 12.07.2009, *inter-alia* agreeing for construction of 63,000 Square Feet including common areas in Sy. No.60 and Sy. No.61/2 part about about 21 Flats with 3,000

Square Feet each (for 21 members of the 4th respondent-Society) and office building for the 4th respondent-Society and in consideration the 4th respondent-Society agreed to register the balance land in Sy. No.60 and 61/2 Part through a deed of conveyance.

5. Thereafter, the petitioner constructed 15,000 Square feet in the 4th respondent-Society's land in Sy. No.61/2 part in the year 2011 and offered to register the same in the name of the 4th respondent-Society of its beneficiaries in terms of the MoU dated 12.0.2009 read with clause No.4 of the letter dated 30.09.2008. However, the 4th respondent-Society refused to accept the same as four (4) of its members died in a span of nine (9) months between July, 2009 to March, 2010 and there were disputes among the members as to whom the constructed flats of 15,000 Square feet should be allotted.

6. Thereafter, on 01.03.2010, the 4th respondent-Society entered into an Agreement for Partial Modification of MoU dated 12.07.2009, modifying the MoU dated 12.07.2009 by stipulating that the construction of agreed 3,000 Square feet for each beneficiary to be enhanced to 3860 Square feet to each member.

7. On a perusal of the above facts it is apparent on the face of the record that Respondent Society entered into MOU dated 30.09.2008 only after passing of Resolution by the General Body. Such a resolution was the basis for entering into three different Registered Agreement of Sale-cum- GPA in favour of the Petitioner by Doct.Nos. 2420,2421 and 2422 of 2010 dated 18.03.2010. But, however, there is no material to indicate that any such a resolution was passed before taking a decision for the cancellation of the above mentioned registered agreement of sale-cum-GPA.

In view of the same the issue is answered in favour of the petitioner.

2. Whether the Agreement for Sale-cum-General Power of Attorney coupled with recitals of Development/construction executed by the Society in favour of the petitioner can be treated as a conveyance?

1. For appreciation of the said issue this Court would like to look into the contents of the Resolution dated 30.09.2008 which are as under:

“...the General Body resolved to entrust the matter of settlement of civil and other legal disputes relating to the Society’s land in Sy. No.61/2P and Sy. No.60 to M/s. Sri Udaya Bhanu Associates, Visakhapatnam. The Executive Committee is authorized to take immediate action in the matter on the following guidelines:

i) In respect of Society’s land of Ac.0.30 cents in Sy. No.61/2(Part) M/S. Udaya Bhanu Associates shall get the civil suits in respect of this land settled in the first place at his cost and expense.

ii) After settlement of all the disputes in respect of the above land, he will be assigned the work of construction of flats in whatever extent of land that is available and admit of construction as per Municipal Corporation Rules, excluding the area covered by the 40 feet Approach road laid by the Society across the land.

iii) The construction of flats shall be according to the plans approved by the Executive Committee, each flat measuring not less than 1500 sft each at the cost of the builder who shall bear all the expenses connected with obtaining permissions from the VUDA, GVMC and Electricity Board etc., and also the cost of construction.

iv) On completion of the construction in Sy. No.61/2 part, the builder shall offer the flats so constructed in the Society’s land as Security or shall register them in the name of the Society or its nominees at his cost and expenses and the same constructed area so registered will be deducted from the total constructed area of 63,000 sft in Sy. No.60 and Sy. No.61/2 (Part).

v) In respect of Society’s land of Ac.3.07 (or whatever land that is available therein as per Advocate Commissioner’s report in o.S.889/1979) in Sy. No.60. M/s. Sri Udaya Bhanu

Associates shall have to undertake the responsibility to vacate the interim stay order in I.A.37/2007 in A.O.P.129/2007 filed by M/s.ISNAR Estates(Pvt.)Ltd. at his cost and expense.

vi) After getting the stay vacated, an M.O.U. will be submitted to the Co-operative Department for approval.

vii) After obtaining the approval from the Co-operative Department, M/s.Sri Udaya Bhanu Associates shall have to clear all the remaining civil suits in respect of the Society's land in Ac.3.20 cents in S.No.60 by his efforts and at his cost and expenses within a time frame stipulated in the M.O.U.

Simultaneously, after settlement of all the civil disputes and clearing the encroachments M/s.Sri Udaya Bhanu Associates shall start construction of flats of 36,000 sft (including common areas) as per the plans and specifications approved by the Society in an area of 3150 sq. yds in Society's land in S.No.60 and Sy. No.61/2(Part) at his cost and expense duly bearing the Registration charges, taxes, levies etc. on mutually agreed terms as per his letter dated 11th August, 2008 subject to deduction of constructed area and land registered in the name of the Society members in Sy. No.61/2(Part).

viii) The conditions laid above in respect of Society's land in S.No.60 will be subject to the result in the Election Petition in E.O.P.2/2008 ending in favour of the Society.

ix) On fulfillment of all the above conditions by M/s. Sri Udaya Bhanu Associates, the Society has to Register the remaining entire available land in Sy. No.60 and Sy. No.61/2 in favour of the Builder after retaining 63000sft of constructed area in 3150 sq. yds. of land."

2. It would be proper to look into the contents of the MoU made on 12.07.2009, which are as follows:

"8. Whereas, pursuant to the General Body Resolution Dt.28.09.2008 as stated in clause-7, the Executive Committee of the First Party issued a letter Dt.30.09.2008 to the Second Party to settle all the civil disputes and take possession of the land in Sy. Nos.61/2 Part and 60 at his cost and risk and also handover the constructed area of total of 63,000 (Sixty Three Thousand) Sq.ft. of Flats including the Common Area for the First Party in an area of 3150 (Three thousand one hundred and Fifty) Sq. yards in Sy. Nos.61/2 Part and 60 and an Office Area of 700(Seven Hundred) Sq. ft. in Sy. No.61/2 Part as per GVMC Rules.

As a consideration for the above clause, the First Party agrees to Register the entire remaining First Party's lands in Sy. No.61/2 part and Sy. No.60 through a Deed or Deeds of conveyance duly Registered in favour of the Second Party after fulfillment of the above conditions.

9. Whereas the Second Party having been made aware of all disputes and civil suits in respect of First Party's lands in Sy. Nos.61/2 Part and 60 pending in various Courts at several stages in respect of the above mentioned lands and has agreed to settle the disputes till final settlement is over and taking possession of site on behalf of First Party either by pursuing the litigations in Court or by arriving at a negotiated settlement outside the Court with the litigant parties at his cost, expense and efforts.

The Second Party agreed to construct and handover of total 63,000 (Sixty Three Thousand) Sq. ft. of flats including common areas in First Party's land in Sy. Nos.61/2 Part and 60 to the First Party in consideration through exchange of the

entire remaining land of First Party property in Sy. Nos.61/2 part and 60 by the First Party.

10. Whereas, the civil disputes having been settled outside the Court in respect of First Party's land in Sy. No.61/2 Part between the First Party and the illegal occupants through the efforts and at the expense of the Second Party and the First Party had taken delivery of the possession of its land in Sy. No.61/2 Part (excluding the 40' road) by virtue of Court's order in A.S. No.486/1987 (E.P.82/03) dated 29.01.2009 and delivery was made by court Aminas on 07.02.2009 due to efforts and expenses made by the Second Party.

11. Whereas the First Party agreed to entrust the work of construction of Flats to Second Party in whatever extent of land available on East side of the road in Sy. No.61/2 Part as per GVMC Rules excluding the 40 feet road subject to bearing the cost and expenses of the construction together with the necessary permissions from VUDA, GVMC, APEPDCL without deviating from the approved plan or in violation of GVMC norms.

12. The First Party entrusted to the Second Party to construct Office Building and compound wall around the land of First Party's property for the purpose of construction of Apartment Complex by the Second Party in Sy. No.61/2 Part in the Schedule mentioned property.

13. Whereas the Second Party acquired an extent of 595 Sq. yds under a Registered Sale Agreement cum G.P.A. by paying the entire Sale consideration to the owner through Doc.No.5041/2006 Dt.23.10.2006 and the land is abutting to 408 Sq. yds of the First Party's property and represented that in case of construction of individual units in the individual

sites, there will not be any benefit for both parties and if the both the plots are clubbed together, both parties will get additional F.S.I. from GVMC and one more floor on the 3rd floor will be permitted if the sites of First and Second Parties joined together. Whereas the General Body of the First Party through another resolution Dt.29.03.09 authorized the Executive Committee to negotiate for an increase in the plotted area of flats to be constructed in the First Party's land in Sy. No.61/2 Part.

The Executive Committee in its resolution Dt.07.05.2009 accepted the proposal of the Second Party as fair, reasonable and beneficial to the members of the First Party and agreed the same by the First Party.

The First Party should not insist or claim more than the constructed area of 63,000 Sft including common areas and Office Building under any circumstances from the Second Party.

14. Whereas the Second Party agreed to construct total 15,000 (Fifteen Thousand) Sft constructed Flats including common areas by way of Flats consisting of cellar, ground plus four floors for the First Party in the First Party's land of 408 Sq. yds on the east side of 40' road in Sy. No.61/2 Part clubbed with the Land of 595 Sq. yds acquired by the Second Party and the Second Party is entitled to sell the constructed flats in 595 Sy. Yds acquired by the Second Party without the signatures of the First Party or its members with easement rights of entry and exit for both.

The application for approval of building plans for the construction of total 15000 sft of flats including common areas in First Party land in Sy. No.61/2 Part including Second Party

land shall be filed by both parties jointly immediately after Signing of this MoU.

15. Whereas, as stated above the Second Party has agreed to make all attempts simultaneously for settlement of other disputes with regard to the land covered by Sy. No.60 of an extent of Ac.3.07 cents and evacuate the occupiers and earmark an extent of 3,150 Sq. yds. out of the total extent by constructing a boundary wall in which he undertook to construct a total area of 63,000 Sft. including common areas in Sy. Nos.60 and 61/2 Part i.e. about total 21 (Twenty One) flats of 3,000 (Three Thousand) Sft including common areas for each flat as per specifications annexed to this MoU and in consideration of the construction of the above said 21 Flats of an area of total 63,000 Sft (Sixty Three Thousand) including common areas in Sy. Nos.60 and 61/2 Part and office building for the First Party by the Second Party, the First hereby agreed to Register the remaining extent of vacant land in Sy. Nos.60 and 61/2 Part through a Deed or Deeds of conveyance duly registered in favour of the Second Party.

16. This agreement will not be treated as a Partnership between the First Party and the Second Party. The Second Party is entitled to the entire remaining land in Sy. Nos.60 and 61/2 Part in the Schedule mentioned Property of First Party's land after handing over the constructed area of total 63,000 sft of flats including common areas and Office Building to the First Party through a Deed or Deeds of conveyance duly registered."

3. The contents of the partial modified MoU made on 01.03.2010, are as follows:

“Now therefore this Agreement seeks to Modify the M.O.U. dated 12.07.2009 as follows:

01. The Second Party agreed to construct 24 flats of 3860 sft for each Flat including common areas in an area of 3600 Sq. yds. With specified boundaries in the North-East Corner plot of First Party’s land in Sy. No.60 of Maddilapalem after settlement of Disputes of First Party’s land in Sy. No.60 of Maddilapalem and handover the 17 flats to the First Party intended the remaining 17 beneficiary members and remaining 7 flats shall be retained by the Second Party. The cost of construction, Registration charges and other levies shall be borne by the Second Party as agreed in covenant no.18 of M.O.U. dated 12.072009. The construction of flats shall be according to the plans approved by the Board of the First Party and shall conform to the Rules and Regulations of GVMC and other local Authorities.

02. The First Party agreed to give irrevocable status to the Second Party for settlement of civil disputes of First Party’s land in Sy. No.60 of Maddilapalem as the Second Party agreed to spend huge amounts for Registration of Construction Agreement for 65,620 Sft. Including common areas to the First Party intended for the following 17 beneficiary members/nominees/legal heirs of the First Party out of total 92,640 sft., in the First Party’s land in Sy. No.60.

03. The First Party agreed to register the First Party’s land of 408 Sq. yds. i.e. East side of the road with built-up area thereon to be constructed by the Second Party in Sy. No.61/2 part of Maddilapalem at the time of entering the Compromise Deed with litigant parties for settlement of

civil disputes in the First Party's land in Sy. No.60 of Maddilapalem.

04. *The Second Party agreed that the First Party need not register 2000 Sq. yds. of First Party's land in Sy. No.60 as a part consideration after settlement of disputes.*

05. *The Second Party agreed to complete the construction of flats and handing over to the First Party intended for the 17 beneficiary members nominated by the First Party within a period of 18 months from the date of handing over of First Party's land in Sy. No.60 by the litigants and if the construction is delayed beyond the stipulated period by the First Party except for reasons beyond the control of the First Party, then the First Party shall pay to the First Party Rs.5000/- per month for each of the 17 Flats.*

06. *The First Party agrees to register the entire remaining available First Party's land (after deducting 2550 Sq. yds. utilized for construction of 17 flats in Sy. No.60) approximately Ac.2.70 cents in Sy. No.60 and also entire remaining land of First party's land in Sy. No.61/2 part of Maddilapalem after deducting the office room construction area in Sy. No.61/2 part in favour of the Second Party as a full consideration on the date on which the Second Party will handover the 17 flats to the First Party intended for the 17 beneficiary members. The cost of construction, registration charges shall be borne by the Second Party.*

07. *That in case in any of the pending suits/litigations filed by occupants (Relly and Peetala families) in respect of 3600 Sq. yds. in Ac.3.07 cents in which it is proposed to construct 24 flats, if any order is passed by any court in favour of the litigants for 1000 Sq. yds in Sy.*

No.60, the Second Party agreed to indemnify the First Party to reallocate similar extent of 3600 Sq. yds. of First Party's land by the side of present agreed site on the North-east corner in First Party's land in Sy. No.60 and again to register the same in favour of First Party or its nominees and Registration charges including stamp duty will be borne by Second Party.

08. The Second Party undertakes to settle the disputes at his cost through courts or outside the courts if any civil or criminal cases are filed by occupiers or litigants either against the First Party or allottee members or their nominees or legal heirs of the First Party.

09. The Second Party agreed for settlement of the pending disputes for First Party's land in Sy. No.60 of Maddilapalem within a period of 15 months from the date of Registration of Construction Agreement in favour of the First Party. If for any reason there is any delay for settlement of disputes beyond the control of the Second Party, the said period shall be extended after mutual discussion between the First Party and Second Party and the M.O.U.dated 12.07.2009 and this Agreement dated 28.02.2010 for partial modifications to M.O.U. dated 12.07.2009 shall be extended for a further period as agreed to between the First Party and Second Party.”

4. Admittedly the Resolution dated 30.09.2008, which is the basis for entering into an MoU dated 12.07.2009 and as well as the subsequently modified MoU on 01.03.2010, which lead for the execution of Agreement of sale-cum-GPA vide three different registered documents dated 18.03.2010, indicate that

consideration for validating the agreement of sale –cum-GPA is done in the shape of conveyance.

5. The learned counsel for the Petitioner relied upon a judgment in **Gaddam Laxmaiah and Ors. Vs. Commissioner and Inspector General, Registration and Stamps and Ors.** (2 Supra), wherein a Division Bench of the then Common High Court for the State of Telangana and the State of Andhra Pradesh, held as follows:

“...the use of expression ‘conveyance’ and the circumstances warranted making of the said rule, would lead to a conclusion that it applies not only to cancellation of sale deeds pure and simple but also to the transactions, that have the ingredients and characteristics of a sale...”

6. As upheld in High Court of Madras (AIR 2022 Mad 323), even according to Section 202 of the Indian Contract Act, 1872, the power of attorney coupled with interest is irrevocable and cannot be revoked/terminated even upon the death of the Principal.

7. In **Harbans Singh vs Shanti Devi** (5 Supra), the Court held that the GPA was executed for a valuable consideration and the agent had an interest in the property and

therefore, the GPA was irrevocable. It was also held that the purchaser had an interest in the immovable property for the purposes of Section 202 of the Contract Act, if not for the purposes of transfer of Property Act and Registration Act. The findings of the Division Bench are as under:

“10. For the purposes of the Law of Contract, therefore, it would not be useful to restrict the meaning of the word “interest” by the narrow compass in which this world is used at times in relation to immovable property. For instance, the last sentence of Section 54 of the Transfer of Property Act states that a contract for sale of itself does not create any interest in or charge on immovable property. Similarly, Section 17(1)(b) of the Registration Act makes only those documents compulsorily registerable which create, declare, assign, limit or extinguish any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in Immovable Property. Since an agreement for sale does not create such a right, title or interest, it may not be compulsorily registerable. But in the context of the Contract Act, it cannot be said that a person who is the beneficiary of an agreement of sale has no right or interest in the subject-matter of the sale. He has a legally enforceable right and interest in enforcing the contract of sale by the execution of a sale deed and in getting possession of the property agreed to be sold under the provisions of the Specific Relief Act. In the English Common Law, the specific performance of contracts was a part of the law of contract. This is why Chapter IV of the Contract Act deals with the performance of contracts which includes the performance of contracts relating to immovable

property also. In fact, Section 4 of the Transfer of Property Act says that the chapters and sections of that Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872. Therefore, the respondent in whose favour the appellant had executed an agreement for the sale of an immovable property had an interest in the subject-matter of the contract, namely, the shop, for the purposes of section 202 of the Contract Act if not for the purposes of the Transfer of Property and the Registration Acts.”

8. In the case on hand, the original MoU and the subsequent modified MoU and the Agreement of sale-cum-GPA executed by the respondent Society in favour of the Petitioner have created an interest, in favour of the Petitioner who has performed his part of execution to some extent, and in view of the same, the principle that the General Power of Attorney was executed for a valuable consideration and the agent had an interest in the said property and therefore the GPA is irrevocable would apply even to the Agreement of sale-cum- GPA dated 18.03.2010. The issue is accordingly answered.

3. Whether all the documents entered into by the Petitioner and the Respondent Society such as the initial

MoU, Partial MoU, Agreements of Sale-cum-General Power of Attorney should be treated as one document?

1. In the present case, the Agreement of Sale-cum-GPA cannot be considered in isolation, as the activities prior to such as Resolution of the General Body , MoU and partial MoU also need to be considered as one document as held by Apex Court in **S.Chattanatha Karayalar v. The Central Bank of India Ltd. & Ors.** (6 Supra) as under:

“The principle is well established that if the transaction is contained in more than one document between the same parties they must be read and interpreted together and they have they have the same legal effect for all purposes as if they are one document”.

2. The said principle laid down by the Apex Court was also followed by the High Court of Delhi in **Hardip Kaur Vs. Kailash and Ors.** (7 Supra)

3. Therefore, all documents and agreements viz.Letter dated 30.09.2008, Compromise Agreement dated 21.10.2008 between Petitioner, Respondent No.4 and Gudla Kamala & 7 others, Agreement/Memorandum of Understanding dated 12.07.2009, Agreement for Partial Modification to MoU dated 12.07.2009 on 01.03.2010 and registered Agreements of Sale-cum-General Power of Attorney executed by Respondent No.4 in

favour of the Petitioner vide Doc. Nos.2420 of 2010, Doc. No.2421 of 2010 and Doc. No.2422 of 2010 dated 18.03.2010, must be read and interpreted together and they have the same legal effect for all purposes as if they are one document, which admittedly was not taken into consideration by the respondent authorities.

The issue is answered accordingly.

4. Whether a Registered Agreement for Sale-cum-General Power of Attorney coupled with Development /construction can be cancelled unilaterally?

1. For proper appreciation of the above issue, this Court feels it appropriate to extract Rule 26(1)k(i) of the Registration Act, 1908, which is as under:

"..26(1)(k)(i)-The registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him, that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on

sale; Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyance on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law.”

2. A plain reading of this Rule does not indicate that before the deed of cancellation is executed, the affected party is entitled for a notice. However, the case law relied upon by the learned counsel includes the judgment in ***Kaitha Narasimha v. the State of A.P. (W.P.NO.3744 of 2007)***, wherein a Division Bench held that Rule 26(1)(k)(i) of the Andhra Pradesh Rules under the Registration Act, 1908 incorporates one of the facets of the rules of natural justice in the procedure laid down for registration of a cancellation deed. The Rule, according to the Division Bench, is intended to ensure that a duly registered sale deed is not cancelled without the executant and the claimant getting an opportunity to contest the registration of the cancellation deed.

3. In the case of **Thota Ganga Laxmi and another v. Government of Andhra Pradesh and others** (8 Supra), the Hon'ble Supreme Court also considered Rule 26(1)(k)(i). In the concluding paragraph, the Hon'ble Supreme Court held as under:

"...that only when a sale deed is cancelled by a competent Court that the cancellation deed can be registered and that too after notice to the concerned parties."

In that case, the Hon'ble Supreme Court noticed that there was no declaration by a competent Court nor was there any notice to the parties. The said law was also followed by this Court in **Maruturi Raghavendra Rao and Another Vs. State of Andhra Pradesh and others** (1 Supra), wherein the components of the Rule 26(1)(k)(i) were analyzed as under:

"This is the sum and substance of the Rule in question. If it is broken down into its component parts, the following are discernible:

(i) Cancellation deed should be executed by all the parties concerned.

(ii) There should be a declaration showing mutual consent which should be presented along with the deed of cancellation or there should be an order of a competent Civil

Court or High Court or the State or the Central Government 'annulling' the transaction.

(iii) If the deed is executed by a Government Officer, it should reflect the fact that: that the properties contained in the previously registered conveyance are government properties, assigned lands or endowment lands or properties are not registerable by any provision of law.

(iv) the Officer executing this deed of cancellation should also be 'competent to execute the document.'

4. The learned counsel for the Petitioner relied upon a judgment reported in **Gaddam Laxmaiah and others v. The Commissioner and Inspector General, Registration and Stamps and others**, (2 Supra), wherein a Division Bench of the then Common High Court of the State of Telangana and the State of Andhra Pradesh has held as follows:

"...28. Thus, having regard to the law laid down by the Supreme Court and provisions of the Act, in our opinion, whenever registered documents such as Development Agreement-cum-GPA, is sought to be cancelled, execution and registration of such a document/deed must be at the instance of both the parties i.e., bilaterally and not unilaterally. If a deed of cancellation is allowed to be registered without the knowledge and consent of other party

to the deed/document, sought to be cancelled, such registration would cause violation to the principles of natural justice and lead to unnecessary litigation, emanating therefrom. In any case, as stated earlier, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration without the signatures of both the parties to the document, the deed cannot be entertained. Moreover, if the Registrars are allowed to entertain a deed of cancellation for registration without signatures of both the parties to the document sought to be cancelled, such power would tantamount to conferring the power to decide disputed questions between the parties. No party to the document would ever approach for cancellation of registered document unilaterally unless there is a dispute with the other party in respect of the subject-matter of the document. In the result, we answer the question in the negative. In other words, we hold that registration and unilateral cancellation of documents such as Development Agreement-cum-General of power of Attorney under the Registration Act is not permissible in law."

5. The High Court of Madras reported in **Sasikala Vs. The Revenue Divisional Officer, cum Sub Collector, Devakottai and other** (9 Supra), while referring to judgment of the Hon'ble Supreme Court in **Thota Ganga Laxmi & Anr. v. Government of Andhra Pradesh & Ors.** (8 supra) and other judgments have framed the following propositions:

“a) A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

b) Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property.

c) Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

d) The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration.

e) However, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the Civil Court at the instance of transferor as contemplated under Section 31 of Specific Relief Act.

f) As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment.

g) The legal principles above stated by us cannot be applied to cancellation of Wills or power of Attorney deed which are revocable and not coupled with interest.”

6. The Hon'ble Supreme Court of India in Civil Appeal No.7464 of 2021, while referring to the case of **Satyapal Anand vs. State of Madhya Pradesh** (10 Supra) and as well as **Thota Gangalaxmi and another Vs. Government of Andhra Pradesh and others** (8 supra) held as follows:

"It is settled legal position that registration of document is always subject to adjudication of rights of parties by the competent Civil Court."

7. The learned Senior counsel appearing for the respondent relied upon a judgment reported in case **Her Highness Maharani Shantidevi Vs. Savjibhai Haribhai Patel and Others** (11 Supra), wherein this Court held as under:

"51. It has been held that "in the case of an ambiguous instrument, there is no reason why subsequent interpreting statement should be inadmissible". In the present case we are concerned with an unambiguous document and, therefore, we have to go by its plain meaning. Further, the affidavit-cum- declaration only reiterated what was contained in the agreement. It did not enlarge the agreement. It did not substitute any clause in the agreement. It was not a document executed between the parties. It was a document executed by original Defendant 1 alone for the purposes of filing it before the competent authority. Clause 17 of the

agreement does not call for any other interpretation except that the contract could be unilaterally rescinded before delivery of possession.”

The issue involved in the judgment pertains to an affidavit-cum-declaration executed by the appellants only for the purpose of filing it before the competent authority, by which document it was neither intended to confer any additional rights in favour of the plaintiffs nor to place restriction on the appellants which was not envisaged by the agreement. The said agreement also does not contemplate that the title in the land would pass on to the plaintiff. But, however, the Court had concluded as under:

“It also deserves to be noticed that, strictly speaking, it is not a contract for transfer of the property but is a contract to carry out the scheme which is incapable of being carried out at this stage on account of reservation in the master plan and also repeal of the ULC Act.”

8. The above referred judgment has no application to the facts in the present case on hand. The respondents having rightly approached the Hon'ble Civil Court by filing O.S.No.97 of 2012 on the file of the VI Additional District Judge, Vishakhapatnam, seeking cancellation of the three Agreements

of sale-cum- GPA dated 18.03.2010, and simultaneously approached the Joint Sub-Registrar I, Vishakhapatnam seeking cancellation of the said three Agreements of sale-cum- GPA, and when the Joint Sub-Registrar failed to register the same, the Respondent Society filed W.P.no.5749 of 2014, which was also subsequently withdrawn on 13.11.2014, and thereafter the Joint Sub-Registrar has refused to register the cancellation of Agreements of sale-cum- GPA vide P nos 294,295 and 296 of 2015. Challenging the same, the Respondent Society filed statutory appeals under Section 72 of Registration Act,1908 before the District Registrar, Vishakhapatnam, who erroneously allowed the three appeals bearing nos.1,2 and 3 of 2015 dated 17.12.2015 by directing the Sub-Registrar to register the three cancellation deeds, unilaterally cancelling the three registered Agreements of sale-cum- GPA dated 18.03.2010 and thereafter the Sub-Registrar registered the three cancellation deeds vide Doct.No.9679,9681 and 9680 of 2015 dated 21.12.2015 in spite of pendency of Suit in OS no.97 of 2012 which was later on withdrawn on 14.10.2016.

9. Though the Petitioner invoked the Arbitration clause mentioned in the MoU dated 12.07.2010 and filed AOP 867 of 2016 and the same was dismissed on 05.12.2016, on the ground

that the Petitioner failed to appoint an arbitrator in terms of Section 9(2) of Arbitration Act.

10. The entire facts of the present case indicates that the 3 cancellation deeds dated 21.12.2015 were unilaterally registered contrary to the provisions of the Indian Stamps and Registration Act, 1908, Indian Contract Act, 1872 law for specific performance T.P. Act and as well as the law laid down by the High Court and Supreme Court.

Accordingly, this issue is answered.

30. The Government also issued Circular memo no.G1/CAN/4028/2010 dated 31.10.2010 which reads as follows:

“...the following instructions are issued that no Registering Officer shall register a deed of revocation/cancellation of GENERAL POWER OF ATTORNEY coupled with previously registered documents of Agreements of Sale to safeguard the interest of the Agent/Vendee. In case if any such deeds of revocation/cancellation of General Power of Attorney combined with Agreement of Sale/Development Agreements is presented for registration, the Registering Officers are directed to refuse the document for registration citing the instructions issued in this memo.”

31. The above said circular instructions are binding on the sub-registrar as well as the District Registrar. The issue was discussed in the case of **Gaddam Laxamaiah and Ors Vs Commissioner and Inspector General , Registration and Stamps and Ors.** (2 Supra) as under:

“...24. From a plain reading of sub-section (1) of Section 69, it is clear that it defines two separate powers of the Inspector General; firstly, general superintendence over all the registration offices and, secondly, to make rules consistent with the Act in respect of different functions specified in clauses (a) to (f) thereof. Sub-section (2) does not indicate even remotely, as contended by learned counsel for the parties opposing circular/instructions of Commissioner and Inspector General of Registration and Stamps, that circulars and instructions issued by the Inspector General, in exercise of power of general superintendence under Section 69(1) need to be published in the Official Gazette. Sub-section(2) provides for publication of only Rules framed in exercise of powers under Section 69(1) in Official Gazette. It further provides that on publication, the Rules shall have effect as if they are enacted under the Registration Act. The contention that the impugned circular has not been published in the Official Gazette, and therefore, has no effect of law deserves to be rejected outright. In our opinion, the Inspector General has power to issue circulars. In other words, the Inspector General, under Section 69 of the

Registration, Act, can exercise power of general superintendence over all registering officers in the territory under the State Government by issuing directions/circulars/instructions to the registering officers in the matter of registration of particular type of document [See B.Ratnasnndari Devi and others v. The Commissioner of Urban Land Ceiling, A.P., Hyderabad and others MANU/AP/0380/1993 : 1993 (2) ALT 428 (DB)]. Even otherwise, in our opinion, instructions/circulars, issued by the competent authorities are meant to be followed by all the subordinates.”

32. Pending the present Writ Petitions, challenging the orders passed by the District Registrar dated 17.12.2015, the Petitioner preferred a revision to Government, the 1st respondent herein, who vide Memo No.REV01-REGSOMISC/10/2019-REGN.1-1, dated 03.05.2020 held as follows:

“...Hence, the Law Department has also opined that District Registrar, Visakhapatnam is not having any judicial power like civil court to entertain appeal once documents were registered by both the parties, hence the order of the District Registrar shall be set-aside and shall be treated as non-est in the eye of law.

Government after careful examination of the matter and as per opinion of the law department, the Commissioner and Inspector General, Registration and

Stamps, AP Vijayawada is requested to pass necessary order in compliance with the above interim orders of Hon'ble High Court for cancelling the order of the District Registrar, Visakhapatnam in Appeal Nos.1, 2, 3 of 2015, dated 17.12.2015 with direction to the Sub-Registrar, Visakhapatnam to cancel the documents bearing No.9679, 9680, 9681 dated 21.12.2015 and shall make necessary entries in the registration books subject to the result of the W.P. No.367 of 2017, W.P. No.484 of 2017 and W.P. No.485 of 2014 which are pending before the Hon'ble High Court."

33. Thereafter, the Commissioner and Inspector General Vide memo G3/425/2020 dated 16.06.2020 gave the following directions to the District Registrar:

"In this connection, the District Registrar, Visakhapatnam is requested to take immediate necessary action for cancelling the orders of the then District Registrar, Visakhapatnam in Appeal Nos.1, 2 and 3 of 2015, dated 17.12.2015 with a direction to the Sub-Registrar, Visakhapatnam, to cancel the documents bearing Nos.9679, 9680, 9681 dated 21.12.2015 and shall make necessary entries in registration book subject to the result of the W.P.No.367 of 2017, W.P. No.484 of 2017 and W.P. No.485 of 2017 which are pending before the Hon'ble High Court, in accordance with the provisions of law."

34. In spite of the above said directions, no further course of action could be initiated in view of the pendency of these writ petitions. But, however, the learned Senior Counsel appearing for the respondents vehemently argued that in

compliance to the Rule 26(i)(k)(i), they got issued a legal notice to the petitioner which was also published in the newspaper and thereafter, the petitioners also replied to the said notice. But, however, to the reasons best known to them, they have failed to come forward to execute the cancellation deed. The said argument of the respondents cannot be accepted in view of the fact that the cancellation deed was not signed by both the executants in compliance to the provision of Rule 26(1)(k)(i), and also the law laid down by the Hon'ble Supreme Court in **Gaddam Laxmaiah and Others Vs. Commissioner and Inspector General, Registration and Stamps, Hyderabad and others** (2 Supra).

35. This Court in Smt. Tummidi Bala Nagamani Vs. The State of Andhra Pradesh in W.P. No.17394 of 2021 while referring to the case of **Pinnama Raju Ranga Raju Vs. The State of Andhra Pradesh**¹², wherein in para (g) in **Gaddam Laxmaiah Vs. The Commissioner and Inspector General, Registration and Stamps** (2 Supra) while dealing with the question whether unilateral cancellation of Development Agreement-cum-General Power of Attorney (GPA) and

¹² 2020 LAWSuit (AP) 223

registration thereof under the Registration Act is permissible in law, the Division Bench observed that:

“28.we hold that registration and unilateral cancellation of documents such as Development Agreement-cum General of Power of Attorney under the Registration Act is not permissible in law.”

36. As interpreted by this Court with regard to the word ‘conveyance on sale’ in **Ediga Chandrasekhar Gowd**’s case, also in view of the language used under Section 126 of T.P. Act, the impugned cancellation of registration unilaterally is nothing but violative of Rules 26(i)(k).

37. On the other hand, though the respondent-Society issued legal notice, for which admittedly the petitioner gave a reply, but however the fact remains that the said documents of cancellation of registration does not contain the signatures of both the parties of the original GPA-cum-Sale Deed, in which case, the registrar should not have allowed the registration of cancellation deed as per Rule 26(i)(k) of the Registration Act, 1908 and also as per the law laid down in **Gaddam Laxmaiah and Others Vs. Commissioner and Inspector General, Registration and Stamps, Hyderabad and others** (2 Supra). Hence, the 3 cancellation deeds dated 21.12.2015 are liable to be set aside.

37. In view of the above observations, the writ petition Nos.41920, 41921 and 41922 of 2015 filed by the petitioner challenging the 3 individual orders passed in 3 appeals dated 17.02.2015 are dismissed as infructuous.

38. With regard to the writ petition Nos.367, 484 and 485 of 2017, this Court feels it appropriate to allow the said writ petitions by setting aside the 3 cancellation deeds registered vide document Nos. 9680, 9679 and 9681 of 2015, dated 21.12.2015. Accordingly, the Joint Sub-Registrar-1, Visakhapatnam, is directed to cancel the execution of 3 cancellation deeds dated 21.12.2015, registered vide document Nos.9680, 9679 and 9681 of 2015, in view of the settled legal position on this issue as discussed above and also in compliance with the order passed by the 1st respondent vide Memo No.REV01-REGSOMISC/10/2019-REGN.1-1, dated 03.05.2020, as expeditiously as possible, preferably within a period of eight (8) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE V. SUJATHA

Date: 19.04.2023

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Note: LR Copy to be marked

HONOURABLE SMT. JUSTICE V. SUJATHA

**WRIT PETITION Nos.41920, 41921, 41922 of 2015 & 367,
484 and 485 of 2017**

Date:19.04.2023

ASH

Note: LR Copy to be marked