

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 3103 of 2020

 Vinod Shankar Jha @ Binod Shankar Jha

.... Petitioner

Versus

1. State of Jharkhand
2. The Principal Secretary, School Education and Literacy Department,
Government of Jharkhand
3. The Deputy Commissioner, Deoghar
4. The Circle Officer, Deoghar
5. The District Sub Registrar, Deoghar
6. The Deputy Superintendent of Education, Deoghar
7. The Head Master, Government Middle School, Ram Mandir, Deoghar

.... Respondents

WITH
W. P. (C) No. 2985 of 2020

Kiran Devi @ Kiran Singh Petitioner

Versus

1. The State of Jharkhand
2. The District Registrar-cum-Deputy Commissioner, Deoghar, Deoghar
3. The District Sub Registrar, Deoghar Respondents

WITH
W. P. (C) No. 3369 of 2020

Ramawtar Khetan Petitioner

Versus

1. The State of Jharkhand
2. The Deputy Commissioner-cum-Registrar, Deoghar
3. The Deputy Collector, Incharge, District Legal Section, Deoghar
4. The Sub Registrar, Deoghar
5. Circle Officer, Deoghar

.... Respondents

WITH
W. P. (C) No. 3492 of 2020

Vijay Kumar Ray Petitioner

Versus

1. District Registrar-cum-Deputy Commissioner, Deoghar
2. Ganga Prasad Yadav Respondents

WITH
W. P. (C) No. 7 of 2021

Mrs. Arati Roy Choudhary Petitioner

Versus

1. The State of Jharkhand through the Secretary, Department of Revenue,
Registration & Land Reforms, Ranchi
2. The Deputy Commissioner, Deoghar
3. Kiran Singh
4. Shashi Kumar Singh Respondents

WITH
W. P. (C) No. 140 of 2021

Purushotam Rai @ Purushotam Kumar Rai @ Purushotom Kumar

.....

Versus

1. The State of Jharkhand
2. Deputy Commissioner, Giridih
3. Additional Collector, Giridih
4. The Sub-Registrar, Giridih
5. The Circle Officer, Bengabad
6. Nabin Kumar Rai

..... Respondents

WITH**W. P. (C) No. 515 of 2021**

Dhanya Bhooti Enterprises Petitioner

Versus

1. The State of Jharkhand
2. District Registrar cum Deputy Commissioner, Deoghar
3. Sub-Registrar, Deoghar
4. Kishore Singh
5. Malo Devi
6. Anita Devi
7. Suma Devi
8. Gunja Devi
9. Lalita Devi
10. Mithlesh Kumar Singh
11. Chandan Kumar Singh
12. Nanki Devi
13. Radhika Devi
14. Rekha Devi
15. Nandu Singh

..... Respondents

WITH**W. P. (C) No. 518 of 2021**

Online Entertainment (P) Limited Petitioner

Versus

1. The State of Jharkhand through Secretary, Department of Registration, Revenue and Land Reforms
2. Manjunath Bhajantri
3. Sub-Registrar, Deoghar
4. Kiran Devi

..... Respondents

WITH**W. P. (C) No. 694 of 2021**

1. Nageshwar Prasad Sultania
2. Binod Kumar Sultania

..... Petitioners

Versus

1. The State of Jharkhand
2. The Secretary, Department of Revenue, Registration and Land Reforms, Government of Jharkhand
3. The Deputy Commissioner, Deoghar
4. The Additional Collector, Deoghar
5. The District Sub Registrar, Deoghar
6. The Circle Officer, Deoghar
7. M/s Kipton Marketing Private Ltd. through its Director, Ramawatar Khetan

..... Respondents

WITH**W. P. (C) No. 701 of 2021**

1. M/s Cosy Care, a partnership firm, having its office at 57-D, Circular Road,

12. Abdul Gaffar Respondents

WITH
W. P. (C) No. 1426 of 2021

1. Bajrang Prasad Umar
2. Dasrath Sah
3. Dinesh Kumar

..... Petitioners

Versus

1. District Registrar cum Deputy Commissioner, Deoghar
2. Biplav Boss

..... Respondents

WITH
W. P. (C) No. 1544 of 2021

Rajesh Kumar Singh

..... Petitioner

Versus

1. The State of Jharkhand
2. The Dy. Commissioner-cum-District Registrar, Bokaro
3. The District Sub Registrar, Bokaro
4. Ravindra Singh

..... Respondents

WITH
W. P. (C) No. 2358 of 2021

1. Mukesh Nag
2. Samir Sunil Nag
3. Sanjay Shashi Abhay Nag
4. Pradeep Nag
5. Ashok Nag

..... Petitioners

Versus

1. The State of Jharkhand through the Secretary, Department of Revenue, Registration and Land Reforms, Government of Jharkhand
2. Deputy Commissioner-cum-District Magistrate, Ranchi
3. Deputy Collector (In-charge), Legal Cell, Ranchi
4. Hari Krishna Mahto
5. Rameshwar Kumar Yadav
6. Lakshman Kumar Yadav

..... Respondents

WITH
W. P. (C) No. 2846 of 2021

Gayan Prakash Singh

..... Petitioner

Versus

1. The State of Jharkhand
2. The Dy. Commissioner-cum-District Registrar, Bokaro
3. The District Sub Registrar, Bokaro
4. Madhusudan Singh

..... Respondents

WITH
W. P. (C) No. 4118 of 2021

Mokarram Salehjee

..... Petitioner

Versus

1. The State of Jharkhand through the Secretary, Department of Revenue, Registration and Land Reforms, Government of Jharkhand
2. The District Registrar-cum-Deputy Registrar, Deoghar
3. Onkernath Dey
4. Adinath Dey

..... Respondents

WITH
W. P. (C) No. 4498 of 2021

1. Nezamuddin
2. Mohammad Nayeemuddin
3. Mohammad Shamim

4. Md. Muslim Petitioners
Versus

1. The State of Jharkhand
2. Deputy Commissioner, Ranchi
3. District Sub Registrar, Ranchi
4. Atiya Amreen Respondents

WITH
W. P. (C) No. 4766 of 2021

Lakhan Singh Petitioner
Versus

1. The State of Jharkhand
2. The Principal Secretary, Revenue and Land Reforms, Jharkhand
3. The Deputy Commissioner, Ranchi
4. The District Sub Registrar, Ranchi
5. The Deputy Additional Collector, Ranchi
6. The Circle Officer, Namkum Anchal, Ranchi
7. Kanhaiya Lal Sahani
8. Madan Nath Shahdeo Respondents

WITH
W. P. (C) No. 4882 of 2021

Amit Kumar Jha Petitioner
Versus

1. The State of Jharkhand
2. The District Magistrate-cum-Deputy Commissioner, Seraikella Kharsawan
3. Buna Gope
4. Sukmati Devi
5. Niraso Devi
6. Baisagu Gope
7. Sanjeev Gope
8. Rakesh Gope
9. Gauri Gope
10. The Secretary, Department of Revenue, Registration and Land Reforms, Government of Jharkhand
11. Pancho Gope Respondents

WITH
W. P. (C) No. 26 of 2022

1. Pawan Kumar Kejriwal
2. Prabhat Kumar Pandey Petitioners
Versus

1. The State of Jharkhand
2. District Registrar cum Deputy Commissioner, Ranchi
3. Sub Registrar, Ranchi
4. Rupa Nath Sahdeo Respondents

WITH
W. P. (C) No. 27 of 2022

M/s Shakambari Builders (P) Limited Petitioner
Versus

1. The State of Jharkhand
2. District Registrar cum Deputy Commissioner, Ranchi
3. Sub Registrar, Ranchi
4. District Forest Officer, Khunti Division, Ranchi Respondents

WITH
W. P. (C) No. 29 of 2022

M/s Kosi Consultants Private Limited

.... Petitioner

Versus

1. The State of Jharkhand
2. District Registrar cum Deputy Commissioner, Ranchi
3. Sub Registrar, Ranchi
4. District Forest Officer, Khunti Division

.... Respondents

WITH
W. P. (C) No. 108 of 2022

Vikash Kumar Singh Petitioner

Versus

1. The State of Jharkhand through the Secretary, Department of Revenue, Registration and Land Reforms, Government of Jharkhand
2. Commissioner, North Chhotanagpur Division, Hazaribagh
3. District Registrar cum Deputy Commissioner, Giridih
4. Sub Registrar, Giridih
4. Navin Kumar Roy

.... Respondents

WITH
W. P. (C) No. 391 of 2022

Mahima Rai Petitioner

Versus

1. The State of Jharkhand
2. The Secretary, Department of Revenue, Registration and Land Reforms, Government of Jharkhand
3. The Deputy Commissioner, Seraikella Kharsawan
4. The District Sub Registrar, Seraikella Kharsawan
5. Krishna Pradhan
6. Pitobas Pradhan
7. Trilochan Pradhan
8. Ashwini Pradhan
9. Gautam Pradhan

.... Respondents

WITH
W. P. (C) No. 535 of 2022

1. Ram Lakhani Yadav
 2. Smt. Geeta Devi
 3. Smt. Jageshwari Devi
- Petitioners

Versus

1. The State of Jharkhand
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Jharkhand
3. The Deputy Commissioner, Ranchi
4. Mrinal Kumar Das

.... Respondents

WITH
W. P. (C) No. 904 of 2022

1. Krishna Devi
 2. Seema Dubey
- Petitioners

Versus

1. The State of Jharkhand represented through the Inspector General of Registration
2. The Inspector General of Registration, State of Jharkhand
3. The Deputy Commissioner cum Registrar, Ranchi
4. The Sub Registrar, Registry Office, Kanke, Ranchi

5. Ishwar Chandra Prasad Respondents

**WITH
W. P. (C) No. 1169 of 2022**

Akhil Kumar Petitioner

Versus

1. The State of Jharkhand
2. The Secretary, Department of Revenue Registration and Land Reforms,
Government of Jharkhand
3. The District Magistrate cum Deputy Commissioner, Seraikella Kharsawan
4. Buna Gope
5. Sukmati Devi
6. Niraso Devi
7. Baisagu Gope
8. Sanjeev Gope
9. Rakesh Gope
10. Gauri Gope

..... Respondents

**WITH
W. P. (C) No. 1964 of 2022**

Sanjay Singh Petitioner

Versus

1. The State of Jharkhand represented through the Inspector General of Registration
2. The Inspector General of Registration, State of Jharkhand
3. The Deputy Commissioner cum Registrar, Ranchi
4. The Sub Registrar, Registry Office, Kanke, Ranchi
5. Ishwar Chandra Prasad Respondents

**WITH
W. P. (C) No. 2868 of 2022**

1. Ramjeet Ganjhu
 2. Kaleshwar Mahto @ Kaleshwar Mahti
- Petitioners

Versus

1. The State of Jharkhand through the Deputy Commissioner, Ranchi
 2. Deputy Commissioner, Ranchi
 3. District Sub-Registrar, Ranchi
 4. Sahodra Devi
 5. Vijay Mahto
- Respondents

**WITH
W. P. (C) No. 4928 of 2022**

Munna Lal Petitioner

Versus

1. The State of Jharkhand through the Chief Secretary, Government of Jharkhand
2. Principal Secretary, Registration Department, Government of Jharkhand
3. Inspector General of Registration, Department of Registration, Government of Jharkhand
4. Registrar-cum-Deputy Commissioner, Deoghar
5. District Sub Registrar, Deoghar
6. Most. Sanjari Khatoon
7. Shah Manauar Eqbal
8. Shah Arafa Eqbal
9. Shah Halim Eqbal
10. Shah Abdul Kadir Iqbal

11. Shah Mazhar Iqbal Respondents

**WITH
W. P. (C) No. 1242 of 2023**

1. Sushil Kumar Dalmia
2. Ajay Kumar Dalmia
3. Anita Dalmia
4. Anil Kumar Dalmia
5. Sunil Kumar Dalmia
6. Alok Kumar Dalmia
7. Sanjay Kumar Dalmia
8. Anup Dalmia

..... Petitioners

Versus

1. The State of Jharkhand through the Secretary, Department of Revenue and Land Reforms, Government of Jharkhand
2. The District Registrar cum Deputy Commissioner, Ranchi
3. The Sub Divisional Officer, Madhupur
4. Astanand Jha
5. Md. Asif
6. Md. Amjad

..... Respondents

**WITH
W. P. (C) No. 3152 of 2023**

Fuljhari Devi

..... Petitioner

Versus

1. The State of Jharkhand represented through the Inspector General of Registration, Ranchi
2. The Inspector General of Registration, State of Jharkhand
3. The Deputy Commissioner cum Registrar, Ranchi
4. The Sub Registrar, Registry Officer, Kanke, Ranchi
5. Ishwar Chandra Prasad

..... Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioners:

- Mr. Nagmani Tiwari, Advocate
- Mr. Prashant Pallav, Advocate
- Mr. Indrajit Sinha, Advocate
- Ms. Ritu Kumar, Advocate
- Mr. Prabhat Kr. Sinha, Advocate
- Mr. A.K. Singh, Advocate
- Mr. O.N. Tiwari, Advocate
- Mr. Rohit Roy, Advocate
- Mr. Ajay Kr. Singh, Advocate
- Mr. Sumeet Gadodia, Advocate
- Mr. H.K. Shikarwar, Advocate
- Mr. A.K. Sahani, Advocate
- Mr. Vikash Kumar, Advocate
- Mr. Jai Shankar Tiwari, Advocate

Mr. R.R. Tiwari, Advocate
 Mr. Sumit Prakash, Advocate
 Mr. S.S. Prasad, Advocate
 Mr. S.K. Tiwari, Advocate
 Mr. Ritesh Kumar Gupta, Advocate
 Mr. Ramakant Tiwar, Advocate
 Mr. Shailendra Kumar Singh, Advocate

For the State:

Mr. Rajeev Ranjan, A.G.,
 Mr. Ashutosh Anand, AAG-III,
 Mr. Sahbaj Akhtar, AC to AAG-III
 Mr. Ashok Kumar Yadav, Sr. SC-I,
 Mr. Aditya Kumar, AC to Sr. SC.I,
 Mr. Mohan Kumar Dubey, AC to A.G.,
 Ms. Vandana Singh, Sr. SC-II,
 Mr. Mithilesh Singh, GA-IV,
 Ms. Archana Kumari Singh, Ac to GA.IV,
 Mr. Ravi Prakash Mishra, AC to AAG-II
 Mr. Aman Kumar, AC to GP-I,
 Mr. Manoj Kumar, GA-III,
 Mr. Raunak Sahay, AC to GP-V,
 Mr. Shivam Anand Pathak, AC to SC-III,
 Mr. Devesh Krishna, SC.III,
 Ms. Rukmini Kumari, AC to SC Mines-III,
 Mr. Pravin Akhouri, SC Mines-I,
 Ms. Mohini Gupta, AC to SC Mines-I
 Mr. S. Ahmad, AC to SC Mines-I,
 Mr. Rahul Kumar Singh, AC to SC-I.
 Mr. G.R.N.Sahdeo, Ac to SC-IV,
 Mr. Rajesh Kumar Singh, AC to SC (L&C)-II
 Mr. Rukmini Kumari, AC to SC (Mines)-III
 Ms. Archana Kumar, AC to AAG V
 Mr. Harshpreet Singh, AC to GP-V

For the Respondents:

Mr. A.K. Sahani, Advocate
 Mr. Satish Kr. Keshri, Advocate
 Mr. Abhishek S. Sinha, Advocate
 Ms. Priyanka Bobby, Advocate
 Mr. Amritansh Vats, Advocate
 Mr. Anurag Vijay, Advocate
 Mr. Laxman Kumar, Advocate
 Mr. K. K. Saw, Advocate
 Mr. Ranjan Pd. Sinha, Advocate
 Mr. Rahul Pandey, Advocate
 Mr. Antariksh Narayan, Advocate
 Mr. Sudhansu Kumar Deo, Advocate

C.A.V. ON: 28.11.2023

PRONOUNCED ON: 11.01.2024

1. State of Jharkhand issued Circular No.16930 by the Secretary, Department of Revenue and Land Reforms, Government of Jharkhand, Ranchi. By this Circular, jurisdiction has been conferred on Deputy Commissioner-cum-Registrar for cancellation/annulment of sale deeds, and in exercise of this power, miscellaneous cases have been registered/notices issued/order of cancellation passed against the petitioners, who have moved this Court for quashing of such cases and notices issued against them.
2. This notification and the consequent miscellaneous proceedings initiated pursuant to it, are under challenge in these writ petitions.
3. In some of writ petitions, the notification has not been challenged, but the legality of the miscellaneous proceeding initiated for cancellation, or the order passed for cancellation by the Deputy Commissioner-cum-Registrar, is under challenge. As they all raise common question with regard to the power of the Registrar to cancel the registered deeds of conveyances, all these writ petitions are heard together and will be disposed of by common order.
4. The common question of law involved is that Registrar has power to cancel a registered instrument and can such power be conferred to cancel registered sale deed, that too by an executive order?
5. Sum and substance of the impugned notification is that in cases where execution of deed of conveyance has been obtained fraudulently by presenting forged document, Registrar shall have power of cancellation of such deeds. Such power can be exercised also, in case of execution of document by an imposter after an enquiry into the matter. **Salient features of Circular No.930 dated 21.09.2016**
 - i. All the complaints of fraudulent registration received by the Department is to be forwarded to the respective District Registrar who shall register the same in the register of complaints relating to fraudulent registration;
 - ii. After entering the complaints, the District Registrar shall issue notice to the executant of the documents and witnesses to appear for enquiry along with the complainant and he should also take witness of the registering officer;
 - iii. When the enquiry is completed following summary procedure and it is proved that the registration has taken place through impersonation, the District Registrar shall pass orders to that effect recording his findings and issue direction to the concerned registering officer to Lodge FIR against the concerned persons **and also to make a note in the index-II of the document which was fraudulently registered to the effect that the registration was annulled as per the proceedings of the district registration, duly noting the details of the proceeding number and the said note shall have the same effect as prescribed under Section 49 of the Registration Act;**
 - iv. After receiving the order of the District Registrar, the registering officer shall immediately Lodge FIR and make entries as stated above in the index without any loss of time;
 - v. The procedure prescribed is only to deal with fraudulent registrations done and it should in no way be construed to mean that registering authority shall go into the issue of deciding the title in case of rival claims on certain basis. District Registrar will concluded the enquiry within three months and if the parties are not appearing then two summons, ex-parte proceedings will be drawn.

6. The main question for consideration in the present case is
- I. Can the Registrar cancel a registered instrument on the ground of fraud by impersonation?
 - II. Can the State Government issue executive order conferring power on a registrar to cancel registered instruments?

ARGUMENT ON BEHALF OF PETITIONER

7. The order of challenge to the said Circular proceeds on the ground that specific provision has been provided for cancellation of sale deed under Section 31 of the Specific Relief Act and it is settled law that sale deed cannot be cancelled by the Registrar without appropriate order under Section 31 of the Specific Relief Act. Reliance is placed on *Satya Pal Anand v. State of M.P.*, (2016) 10 SCC 767 wherein it has been held that if the stipulation contained in Sections 17 and 18 of the 1908 Act are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in sections such as Sections 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration, even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the civil Court.

8. The second ground of challenge is that the power of cancellation of registered sale deed could not have been delegated to the Registrar in exercise of executive power, without any legislation and enactment to that effect. There is no provision in the Registration Act for cancellation of sale deed. However, there are provisions for correction of typographical defect in the sale deeds and that too by Registrar after process of registration of a document is complete. The registering authority thereafter become '*functus officio*' and cannot exercise power to cancel the registration of document.

Under Section 83 of the Registration Act, power of Registrar is confined to initiate prosecution against any one making false statement, delivering false copies etc. in the registration process, but there is no provision to annul the said registration.

Sections 82 and 83 of the Registration Act are not enabling provision, rather they are penal provision. Therefore, the Government cannot exercise power under these provisions to confer power on the registering authority to cancel the sale deed.

9. Learned counsel appearing on behalf of petitioner in W.P.(C) No.3103 of 2020, W.P.(C) No.140 of 2021 and W.P.(C) No.4928 of 2022 submits that in all these writ petitions, the order of cancellation of registration of sale deed is under challenge. It is submitted that in view of ratio decided in *Satya Pal Anand* (supra), the Deputy Commissioner cannot cancel the registration of sale deed.

10. In W.P.(C) No.140 of 2021, the respondent no.6 had filed suit for cancellation of power of attorney as well as the sale deed which was executed on the strength of the said power of attorney and concealing this fact, he filed a complaint to the Registrar on the basis of which the sale deed has been cancelled by the Registrar in Registration case No.1 of 2020.

11. In W.P.(C) No.3103 of 2020, the petitioner had earlier filed suit against the State authorities after giving the notice under Section 80 of the C.P.C., but despite this cancellation order has been passed by the Registrar.

12. In **W.P.(C) No.2868 of 2022**, learned counsel has adopted the argument of learned counsel, Mr. Prashant Pallav appearing in W.P.(C) No.07 of 2021, W.P.(C) No.515 of 2021, W.P.(C) No.518 of 2021, W.P.(C) No.732 of 2021, W.P.(C) No.26 of 2022, W.P.(C) No.27 of 2022, W.P.(C) No.29 of 2022 and W.P.(C) No.108 of 2022.

13. It is submitted by learned counsel for the petitioners in W.P. (C) No. 535 of 2022 that respondent no. 4 has already filed Title Suit being No. 184 of 2013 for declaration of right, title and interest and recovery of possession against the petitioners. Despite this, during pendency of the civil suit, the Respondent, Deputy Commissioner, filed suit for cancellation of deed under Sections 82 and 83 of the Registration Act before the Registrar in which the deed has been cancelled in Fraudulent Registration Case No. 33 / 2017-18.

14. In W.P.(C) No.694 of 2021 learned counsel for the petitioners, Mr. Indrajit Sinha raises the question whether adjudicatory function can be delegated by administrative order to the Deputy Commissioner, that too by a Circular. The Deputy Commissioner has been given the power to direct for institution of FIR and also to cancel the registration deed.

It is contended that the delegation is in the teeth of the ratio decided by the Hon'ble Supreme Court, reported in **Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136** "Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The Court cannot derive jurisdiction apart from the statute. In such eventuality, the doctrine of waiver also does not apply".

15. The second limb of the argument is with regard to competence of the authority issuing the Circular, as this Circular is not issued under the direction of the State Government. It is argued that the Circular has not been issued in exercise of power by the State Government in terms of Article 166(3) of the Constitution of India, as it is not in the name of the Governor, but under the signature of the Secretary, Department of Revenue, Registration and land Reforms. Reliance is placed on the judgment reported in **Gulf Goans Hotels Co. Ltd. v. Union of India, (2014) 10 SCC 673**. Article 77 of the Constitution provides the form in which the Executive must make and authenticate its orders and decisions. Clause (1) of Article 77 provides that all executive action of the Government must be expressed to be taken in the name of the President. The celebrated author H.M. Seervai in *Constitutional Law of India*, 4th Edn., Vol. 2, 1999 describes the consequences of government orders or instructions not being in accordance with Clauses (1) or (2) of Article 77 by opining that the same would deprive the orders of the immunity conferred by the aforesaid clauses and they may be open to challenge on the ground that they have not been made by or under the authority of the President in which case the burden would be on the Government to show that they were, in fact, so made.

16. In the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent an expression of opinion. In law, the said guidelines and their binding effect would be no more than what was

expressed by this Court in *State of Uttaranchal v. Sunil Kumar Vaish* [(2011) 8 SCC 670 : (2011) 4 SCC (Civ) 325 : (2011) 3 SCC (Cri) 542 : (2011) 2 SCC (L&S) 410] in the following paragraph of the report: (SCC p. 678, paras 23-24).

“23. It is settled law that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in the manner specified in the rules made by the President or the Governor, as the case may be [Articles 77(2) and 166(2)]. In other words, unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government.”

17. So far, the case of cheating by impersonation is concerned, party aggrieved has both i.e. Civil as well as criminal remedy under the existing law. Conferring parallel jurisdiction on the Registrar is uncalled for and will give rise to multiplicity of proceedings and conflicting orders.

18. Under Article 162 of the Constitution of India, the State has no power to issue such a Circular in view of the fact that the area of Circular is covered by a statute i.e. The Registration Act, and, therefore, an executive Circular cannot be passed for promulgation in derogation to the statutory provisions. Reliance is placed upon the judgment reported in *P.H. Paul Manoj Pandian v. P. Veldurai*, (2011) 5 SCC 214 :

46. Under Article 162 of the Constitution, the executive power of the State extends to matters with respect to which the State Legislature has power to make laws. Yet the limitations on the exercise of such executive power by the Government are twofold; first, if any Act or law has been made by the State Legislature conferring any function on any other authority, in that case the Governor is not empowered to make any order in regard to that matter in exercise of his executive power nor can the Governor exercise such power in regard to that matter through officers subordinate to him. Secondly, the vesting in the Governor with the executive power of the State Government does not create any embargo for the legislature of the State from making and/or enacting any law conferring functions on any authority subordinate to the Governor.

47. Once a law occupies the field, it will not be open to the State Government in exercise of its executive power under Article 162 of the Constitution to prescribe in the same field by an executive order. However, it is well recognised that in matters relating to a particular subject in absence of any parliamentary legislation on the said subject, the State Government has the jurisdiction to act and to make executive orders. The executive power of the State would, in the absence of legislation, extend to making rules or orders regulating the action of the executive. But, such orders cannot offend the provisions of the Constitution and should not be repugnant to any enactment of the appropriate legislature. Subject to these limitations, such rules or orders may relate to matters of policy, may make classification and may determine the conditions of eligibility for receiving any advantage, privilege or aid from the State.

48. The powers of the executive are not limited merely to the carrying out of the laws. In a welfare State the functions of the executive are ever widening, which cover within their ambit various aspects of social and economic activities. Therefore, the executive exercises power to fill gaps by issuing various departmental orders. The executive power of the State is coterminous with the legislative power of the State Legislature. In other words, if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue government orders with respect to it, subject, however, to the constitutional limitations. Such administrative rules and/or orders shall be inoperative if the legislature has enacted a law with respect to the subject. Thus, the High Court was not justified in brushing aside the Government Order dated 16-11-1951 on the ground that it contained administrative instructions.

19. In **W.P.(C) No.701 of 2021**, it is submitted by Mr. Rohit Roy, learned counsel for the petitioners that power and scope as envisaged under Section 68 of the Registration Act no way confers power on the Registrar to cancel a sale deed which has been already executed. Reliance is

placed on *2018 SCC Online Jharkhand 2906 at Para 43(c)*. It is further submitted that Section 34 is intended for before the registration and not after as will be apparent from the plain reading. After registration of the document, the Registrar becomes *functus officio*.

ARGUMENT ON BEHALF OF STATE

20. It is submitted by learned Advocate General that existing provisions of the Registration Act failed to curb fraudulent registrations, which necessitated need to strengthen the legal regime to confer power of cancellation on the Registrar by an executive order. Jharkhand has attempted to take cue from State of Tamil Nadu and Andhra Pradesh where Registrar has been conferred power to cancel registration. Inspector General of Registration (IGR) Tamil Nadu came up with Circular No. 67 dated 03.11.2011 which conferred power which are *pari-materia* to the power of the registration which has been conferred by Circular under challenge in the instant case.

21. Tamil Nadu circular came under challenge in 2014 (4) CTC 627 (Ramasamy Vs. State of Tamil Nadu) wherein the Madras High Court (Madurai Bench) upheld that Circular. It was held that power of cancellation is not quasijudicial in nature but administrative and the procedure for registration as laid down under Section 68 of the Registration Act mandates the registration that he will perform read with Section 34 of the said Act, that the Registering Officer shall enquire whether or not such document was executed by the persons by whom in purported to have been executed by satisfying himself to be identity of the person executing the same. Further, the Court relied on the ratio laid down by Hon'ble the Supreme Court in (1996) 5 SCC 550 (Indian Bank Vs. Satyam Fibers (India) Pvt. Ltd.) wherein it has been held that fraud which vitiates the entire proceeding and he can very well recall or rescinded the order on being satisfied after due enquiry that a particular document was registered after playing fraud under the inherent power of Court under Section 21 of the General Clauses Act.

22. Subsequently, the matter came up for judicial scrutiny before the Madras High Court in the case of *G. Muniratnam Vs. The District Collector, Tuticorin, 2017 (0) Supreme (Mad) 1057*. Against the judgment, S.L.P. was filed before the Hon'ble Supreme Court which was dismissed vide order dated 06.01.2022 in S.L.A. No. 20454 of 2017. Reliance is placed in (2022) 8 SCC 201 para 64.

ANALYSIS

23. It has been rightly argued by the learned Advocate General that the menace of fraudulent registration is on the rise. Problem is not confined to fraudulent registration, there is a spurt in land centric litigation whether civil or criminal. There cannot be two views that law needs to grow to meet emerging challenges. Oliver Wendel Holmes famously remarked, the *life of law is not logic but experience*.

Aharon Barak, in his book *Judge in a Democracy*, adds "*the life of law is not just logic or experience. The life of law is a renewal based on experience and logic caused by change in society*".

24. What need to be examined in the present context, is whether the means to check the menace adopted in the form of the impugned circular, by vesting power of cancellation on the Registrar, is legally sustainable or not. Mere right object cannot cloth an executive order with legality, as the said order gives power to deprive citizens of their valuable legal right of property.

25. There cannot be two views that existing provisions of the Registration Act, do not confer the Registrar with power to cancel a document which has been already registered. Even in cases of fraud or forgery, Registration Act, does not confer such a power on the Registrar to cancel a registered instrument. Under the scheme of the Registration Act, 1908, Registrar has a power to refuse the registration of deed under different provisions of the Act, but does not extend to cancellation of it. Scope of scrutiny by the registering authority, is confined to the pre-registration stage and not after the document is executed and registered.

26. Power of cancellation can be exercised under Section 31 of the Specific Relief Act or the same can be declared null and void under Section 34 of this Act in a civil suit by a civil Court. Only power that has been conceded under Section 83 of the Registration Act to the Registrar, in cases of furnishing false statements, delivering false copies of translations, false personation by the executant, is to initiate criminal prosecution against the person concerned. It has been held in **Satya Pal Anand v. State of M.P., (2016) 10 SCC 767**

“There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered”. (emphasis supplied)

The very need to bring in the Circular by the State Govt vesting the power on Registrar of cancelling a registered instrument arose, as no such power existed in the existing statute. Thus, the power of cancellation that has been vested by the impugned order is beyond the scope of Registration Act.

27. Registration of a document comprises of three essential steps among others. They are:

- (i) execution of the document, by the executant signing or affixing his left hand thumb impression;
- (ii) presenting the document for registration and admitting to the registering authority the execution of such document; and (iii) the act of registration of the document.

Power of cancellation of Registration under the impugned Circular, can be invoked on the ground that executant did not in reality sign the document and the said document was executed by some imposter. Such an allegation may be true, or it may be false, giving rise to criminal and/or civil cases. But veracity of such allegation cannot be decided in a summary inquiry, as it will give rise to liability under civil and criminal law. It has been held in **Prem Singh v. Birbal, (2006) 5 SCC 353** that *there is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law.* Such presumption can be rebutted by leading evidence in a civil suit and not in a summary enquiry before the registrar.

28. Under Section 48 of the Registration Act, title passes in a property on the registration of the deed of conveyance witnessing the transfer. Annulment of the registration therefore, will entail legal consequences affecting the title which had passed on its registration. Whether such a registration was valid or was vitiated by fraud is a triable issue which can be determined only in a civil or criminal proceeding by a Court of competent jurisdiction.

29. There are further complex questions of title of the executant, which in any case can only be adjudicated in a civil suit. In cases where title of an executant of a deed is disputed, based on genealogy or a right of inheritance, the same cannot be decided by a Registrar.

30. The unintended consequence of this move will give rise to multiplicity of proceedings. There may be a proceeding before a Registrar for cancellation of such a deed and then there can also be civil and criminal cases before the civil Court arising out of the same set of facts. To confer power of cancellation to the Registrar will open floodgates of litigation in such matters. One of the cardinal principle that finds echo both in civil as well as criminal jurisprudence, is avoidance of multiplicity of proceeding arising out of the same facts/ cause of action. Instant Circular will run counter to this established principle. Parallel jurisdiction to the registrar will also engender possibilities of conflicting judgments and orders, compounding and confounding the adjudicatory process further.

31. How these provisions are open to misuse shall be evident from some of the writ petition wherein the order of cancellation is under challenge. In W.P.(C) No.140 of 2021, Respondent No.6 got the sale deed cancelled by filing complaint before the Registrar, by concealing the fact that suit for cancellation had already been filed by him.

32. To appreciate the argument raised on behalf of the Respondent that power of registration perforce vests the power of cancelation, in view of Section 21 of the General Clauses Act, it shall be desirable to extract the relevant provision which reads as under:

“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules, or bye-laws.— Where, by any (Central Act) or Regulations, a power to (issue notifications) orders, rules, or byelaws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and condition (if any), to add to, amend, vary or rescind any (notifications), orders, rules or bye-laws so (issued).”

Scope of exercise of power under Section 21 has been elucidated in ***Shree Sidhali Steels Ltd. v. State of U.P., (2011) 3 SCC 193***

“38. Section 21 is based on the principle that power to create includes the power to destroy and also the power to alter what is created. Section 21, amongst other things, specifically deals with power to add to, amend, vary or rescind the notifications. The power to rescind a notification is inherent in the power to issue the notification without any limitations or conditions. Section 21 embodies a rule of construction. The nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification, etc. However, there is no manner of doubt that the exercise of power to make subordinate legislation includes the power to rescind the same. This is made clear by Section 21. On that analogy an administrative decision is revocable while a judicial decision is not revocable except in special circumstances. Exercise of power of a subordinate legislation will be prospective and cannot be retrospective unless the statute authorises such an exercise expressly or by necessary implication”.

(emphasis supplied)

In ***Industrial Infrastructure Development Corpn. (Gwalior) M.P. Ltd. v. CIT, (2018) 4 SCC 494***
Court held:

“21. The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject-matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi-judicial order. A quasi-judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules

under which it is made. (See Interpretation of Statutes, Ninth Edn., by G.P. Singh, p. 893.)”

(emphasis supplied) **Indian**

National Congress (I) v. Institute of Social Welfare, (2002) 5 SCC 685 :

39. On perusal of Section 21 of the General Clauses Act, we find that the expression “order” employed in Section 21 shows that such an order must be in the nature of notification, rules and bye-laws etc. The order which can be modified or rescinded on the application of Section 21 has to be either executive or legislative in nature. But the order which the Commission is required to pass under Section 29-A is neither a legislative nor an executive order but is a quasi-judicial order. We have already examined this aspect of the matter in the foregoing paragraph and held that the function exercisable by the Commission under Section 29-A is essentially quasi-judicial in nature and order passed thereunder is a quasi-judicial order. In that view of the matter, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of deregistration/cancellation of registration after enquiry by the Election Commission. We, therefore, hold that Section 21 of the General Clauses Act has no application where a statutory authority is required to act quasi-judicially.

The principles that can be culled from the above exposition of law is that Section 21 of the General Clauses Act cannot be invoked to annul a quasi-judicial order and that too when an indefeasible right has accrued in favour of a party. As discussed above, title of the executant in the property is transferred from the date the sale deed is registered, provided the executant had a title in the property. Such indefeasible legal right flowing from a registered instrument cannot be taken away without any statutory basis only by having recourse to Section 21.

The plea of the Respondent State on this count is, therefore, rejected.

33. There can be cases where the party without any title over the property executes a deed of conveyance by sale or gift in favour of a third party. In such cases, no title will transfer by the said registered instrument in view of principles of *Nemo Dat Quod Non Habet*. There may not be even requirement of cancellation of a registered deed of conveyance executed by a stranger having no title, in favour of a third party. Law on the point has been summed up in **Yanala Malleshwari v. Ananthula Sayamma, 2006 SCC OnLine AP 909 : AIR 2007 AP**

57 by the full Bench of the High Court of AP, which has been referred to by

Hon’ble the Apex Court in **Deccan Paper Mills Co. Ltd. Versus Regency Mahavir Properties;(2021) 4 SCC 786.**

Unless and until, a person is competent to contract and entitled to transfer the property, a valid transfer of property cannot take place (Sections 5 and 7 of TP Act). As a necessary corollary, if the transfer of property is by a person without title or such transfer is opposed to nature of interest or for an unlawful object or consideration within the meaning of Section 23 of the Contract Act or transferee is legally disqualified to be transferee, title in the property does not pass to the transferee (Sections 6(h) and 8 of TP Act and Section 23 of the Contract Act).

What would happen when the transfer is made by a person without any valid title? What would be the situation when a sale takes place by reason of the fraud played by the transferor and transferee, which drastically affects the person with absolute title and ownership? In situations such as these, does the law contemplate only remedy of seeking declaration or cancellation of the fraudulent transfer deed or does it enable the true Owner to execute a deed nullifying the fraudulent transfer deed? When Sections 7 and 8 of TP Act contemplate that only person is competent to contract and entitled to transfer property can transfer, any other transfer (otherwise than as contemplated under Section 7 of the TP Act) must be treated as void.

INDIAN CONTRACT ACT : VOID TRANSFERS

33. *The law, therefore, may be taken as well settled that in all cases of void or voidable transactions, a suit for cancellation of a deed is not maintainable. In a case*

where immovable property is transferred by a person without authority to a third person, it is no answer to say that the true owner who has authority and entitlement to transfer can file a suit under Section 31 of the Specific Relief Act for the simple reason that such a suit is not maintainable. Further, in case of an instrument, which is void or voidable against executant, a suit would be maintainable for cancellation of such instrument and can be decreed only when it is adjudicated by the competent Court that such instrument is void or voidable and that if such instrument is left to exist, it would cause serious injury to the true owner.....

34. The discussion thus far would show that even in the matter of transfer of immovable property, there could be two situations. One, where the owner himself executes a registered transfer deed, but later feels that such instrument is void or voidable for any of the reasons as per TP Act or Contract Act. The second situation is where the true owner never executed transfer deed but such transfer (transaction) materialized between two strangers one impersonating vendor and another as vendee, where there is a possibility to presume fraud in the transaction.

35. If the title passed on is defective, the law gives the option to the purchaser to avoid such sale and sue for recovery of consideration and/or damages for breach and misrepresentation. In a situation there could also be a criminal charge against the spurious vendor for cheating under Penal Code, 1860. Even in a case where the vendor has no title at all but the purchaser was made to believe that what is passed on is a valid title in the property demised under the instrument, the vendee has remedy in civil law as well as criminal law.....

36. What would be the remedy for the person who actually and factually holds a valid title to a property in respect of which a fraudulent transfer was effected by deceitful vendors and vendees or deceitful vendors and genuine vendees, who parted with consideration. The legal maxims 'nemo dat quod non habet' and 'nemo plus juris ad alium transfere potest quam ipse habet' postulate that where property is sold by a person who is not the owner and who does not sell under the authority or consent of the real owner, the buyer acquires no title to the property than the seller had. The Indian law recognizes this principle in various provisions of various statutes which in pith and substance deal with Contracts, Transfer of property and Specific relief (See Sections 17, 18, 19, 20, 23, 25 and 29 of the

Contract Act; Sections 6(h), 7, 25, 38, 42 to 48, 52, 53 and 55 of TP Act and Sections 13, 15, 17, 21, 31 and 34 of the Specific Relief Act).....

71. In *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1 : (AIR 1994 SC 853), quoting Lord Edward Coke (that 'fraud avoids all judicial acts, ecclesiastical or temporal'), Supreme Court of India emphasised that the Judgement or decree obtained by fraud on the Court is nullity and non est in the eye of law. It was also held that a decree/Judgment vitiated by fraud must be ignored treating it as nullity by every Court whether superior or inferior as "finality of litigation is not available when fraud is alleged". The following passage from the said Judgment is relevant here (Paras 7 & 8 of AIR).

"..... The principle of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not. Process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation..... A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage..... (Emphasis supplied)

77. In the considered opinion of this Court if a person sells away the property belonging to other, it would certainly be fraud on the statute. It would be adding insult to injury, if such person is asked to go to civil Court and get the subsequent sale deed cancelled or seek a declaration. Be it also noted that under common law, as discussed supra, the title of a person remains intact even if a stranger conveys that title to another stranger, which is ineffective".

Suhrid Singh v. Randhir Singh, (2010) 12 SCC 112

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him”.

34. What follows from the above settled position of law, is that an executant can seek cancellation of a registered instrument on the ground of fraud, by a suit filed under Section 31 of the Specific Relief Act. In case, where a stranger without any title has executed a sale, such a suit will not lie under Section 31. Real owner may file a suit under Section 34, if his peaceful enjoyment of ownership right is impinged due to the said sale.

35. Unless there is a declaration by a civil Court that a deed is vitiated by fraud, a registered deed cannot be cancelled by the Registrar.

36. Lastly, I find merit in the plea taken on behalf of the Petitioners that State cannot by recourse to Article 162 of the Constitution of India, issue circular/executive order which is in derogation with the statutory provisions. The executive power of the State Government under Article 162 is coextensive with the legislative power of the State legislature. But, in the absence of any law, the State or its officers in the exercise of executive authority, cannot infringe citizen's rights merely because legislature has power to make law on the subject. As discussed above, registration of an instrument entails legal consequence affecting the legal rights of a citizen, and power of cancellation of such document cannot be permitted by an executive order, as it will be against the scheme of statutory provisions as contained in the Registration Act, 1908.

Under the circumstance, this Court is of the view that Registrar has no power to cancel registered sale deed and the State Government cannot by an executive order, confer such a power on the Registrar. For the reasons as discussed above, impugned Circular vesting power of cancellation on the Registrar is not sustainable in law and is accordingly set aside, along with the cases instituted/ notices issued/orders passed under it along with the consequential order for institution of F.I.R. Cancellation of sale deeds otherwise also by the Registrar, which is under challenge in the writ petitions is also set aside. Party aggrieved by the said order will have remedy before the Civil Court.

Writ Petitions are, accordingly, allowed. Interlocutory Application, if any is disposed of.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi

Dated the 11th January, 2024

AFR /Anit