

SUPREME COURT OF INDIA

Satya Pal Anand

Vs.

State of M.P. & Ors.

C.A.No.6673 of 2014

(Dipak Misra and V.Gopala Gowda,JJ.,)

25.08.2015

JUDGMENT

Dipak Misra,J.,

1. The appellant, a septuagenarian, filed an application dated 4.2.2008 in the office of the Sub-Registrar, Bhopal, the third respondent herein, for cancellation of registered documents dated 9.8.2001, 21.4.2004 and 11.7.2006 which pertain to registration of immovable property situated on Plot No. 7-B, Punjabi Bagh, Raisen Road, Bhopal. As put forth by the appellant in his application, the said plot was allotted to his mother, Smt. Veeravali Anand, by the Punjabi Housing Cooperative Society Ltd. (for short, “the Society”), the fourth respondent herein, by entering into a sale deed dated 22.3.1962, registered on 30.03.1962. Smt. Veeravali Anand expired on 12.6.1988. After her death, the fourth respondent, through its office bearer executed a Deed of Extinguishment on 9.8.2001 unilaterally cancelling the said allotment and on the strength of such document, executed a registered sale deed dated 21.4.2004 in favour of Mrs. Manjit Kaur, the respondent no. 5 herein. Mrs. Manjit Kaur in her turn executed another sale deed dated 11.7.2006 in favour of the respondent nos. 6 and 7, Mrs. Meenakhsi and Mr. S.C. Sharma.

2. As is evident, under these circumstances, the appellant moved the Sub-Registrar (Registration) seeking cancellation of the Deed of Extinguishment dated 9.8.2001. The Sub-Registrar rejected the said prayer on two counts, namely, the dispute between the parties was pending before the competent authority under the M.P. Cooperative Societies Act, 1960 (for short ‘the 1960 Act’) and secondly, his jurisdiction was limited only to the extent of registering the documents and if any party desired its cancellation, then to verify that the cancellation deed is registered on appropriate stamp paper. Thereafter, the appellant filed an application under Section 69 of the Registration Act, 1908 (for brevity, “the Act”), which was rejected by the Inspector General (Registration) stating that the powers conferred on Inspector General (Registration) under Section 69 of the Act is limited to general superintendence of the registration office and making rules and not to provide hearing by any Sub-Registrar. The Inspector General further intimated him that against the order of Sub-

Registrar, it was open to the appellant to initiate appropriate proceedings before a Court of competent jurisdiction.

3. Being aggrieved by the aforesaid orders, the appellant preferred W.P. No. 13505 of 2008 before the High Court. The prayer in the writ petition was for declaring the Extinguishment Deed as well as the subsequent sale deeds as void ab initio with a further direction to the respondents to record the cancellation of such documents. It was contended before the High Court that the Extinguishment Deed was registered contrary to the provisions contained in Section 17(1)(b) of the Act by the Sub-Registrar and, therefore, it was obligatory on the part of the higher authorities in exercise of powers under Section 69 of the Act to declare the said action as ab initio void and consequently the subsequent sale deeds to be void.

4. The said stand and stance of the appellant was resisted by the contesting respondents contending, inter alia, that as the initial allottee, Smt. Veeravali Anand, did not take any steps for 35 years to raise any construction on the plot in question, the respondent no. 4 registered the Extinguishment Deed on 9.8.2001. On the strength of said deed, the respondent society executed and registered the sale deed dated 21.4.2004 in favour of Manjit Kaur. At that juncture, the appellant and the respondents, to avoid any controversy, entered into a deed of compromise dated 6.7.2004 whereunder the appellant received consideration of Rs.6,50,000/- (rupees six lakhs fifty thousand only); Rs. 4,50,000/- by demand draft and Rs.2,00,000/- lakhs by post dated cheques. Thereafter, the appellant filed an application under Section 64 of the 1960 Act before the Dy. Registrar, Cooperative Societies, forming the subject matter of Dispute No. 81 of 2005. Along with said application, an application under Section 57(1) of the 1960 Act was filed for ad interim injunction which was granted by the said authority on 1.2.2006 restraining the respondents to make any construction over the said property. The said order of injunction stood vacated by order dated 12.4.2006. The said order vacating the order of injunction was affirmed by the Joint Registrar and the Deputy Registrar was directed to finally adjudicate the dispute.

5. As the factual matrix would unveil as the appellant instituted many a legal proceeding against the respondents, they issued a notice on 12.7.2007 asking him to refund the consideration amount of Rs.6 lakhs. Against various orders, the appellant preferred three special leave petitions,

“i. e. SLP(C) No. 34857 of 2010, SLP(C) No. 13255 of 2012 and the present appeal arising out of SLP(C) No. 9502 of 2012. The SLP(C) No. 34857 of 2010 was preferred assailing the maintainability of the revision petition and the said SLP is pending. SLP(C) No. 13255 of 2012 relates to appointment of receiver to protect his interest, which stood dismissed by order dated 17.7.2013. I shall refer to the said order in detail at the appropriate time.”

6. The High Court took note of the factual assertions, scanned the relevant provisions of the Act, took note of the authorities cited by the appellant and eventually came to hold that the controversy raised by the appellant could be adjudicated before the appropriate forum and not in the writ proceeding. The High Court further held that the authorities under the Act had

correctly stated that they have no jurisdiction to decide the soundness of registration of Extinguishment Deed or the sale deeds and declare them as null and void.

7. I have heard Mr. Satya Pal Anand, appellant-in-person and Mr. S.K. Dubey, learned senior counsel for respondent nos. 1 to 3 and Mr. Satyajit A. Desai, learned counsel for respondent nos. 5 to 7.

8. Though there are manifold assertions by the appellant and counter asseverations covering various arenas, the core issue that arises for consideration in the obtaining factual matrix is whether the Deed of Extinguishment and the subsequent sale deeds registered by the Sub-Registrar under the Act could be cancelled by the Sub-Registrar or by his superior authority in exercise of powers conferred under the Act. There is no cavil over the fact that Extinguishment Deed was registered on 9.8.2001 and subsequent sale deeds were registered thereafter. The stand of the respondents is that they had paid the amount to the appellant and there is a finding to that effect in the Special Leave Petition that has been dismissed by this Court.

9. Presently, I shall deal with the scheme of the Act. Section 17 occurring in Part III of the Act deals with the documents of which registration is compulsory. The controversy pertains to Section 17(1)(b) of the Act, as urged by the appellant. The said provision reads as follows:-

“17(1)(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;”

10. Section 18 of the Act deals with the documents of which registration is optional. Section 20 of the Act deals with the documents containing interlineations, blanks, erasures or alterations. The said provision is reproduced below:-

“20. Documents containing interlineations, blanks, erasures or alterations. - (1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.”

11. Section 21 of the Act provides for description of property and maps or plans. The said provision is as under:-

“21. Description of property and maps or plans. (1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and land shall be described by their name, if any, and as being the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plans as are equal to the number of such districts.”

12. Section 22 deals with the description of houses and land by reference to Government maps or surveys. The said provision is as follows:-

“22. Description of houses and land by reference to government maps of surveys. - (1)

Where it is, in the opinion of the State Government, practicable to describe houses, not being houses in towns, and lands by reference to a government map or survey, the State Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.”

sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office-

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

(b) by the representative or assignee of such a person, or

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

14. Section 32A of the Act which has been inserted w.e.f. 24.9.2001, lays down compulsory affixing of photographs, etc. Section 33 of the Act stipulates the power of attorney recognizable for purposes of Section 32. Section 34 of the Act provides for enquiry before registration by the Registering Officer.

15. I have referred to the aforesaid provisions to understand the scheme of registration and the role of the Registration Officer. It is urged by the appellant that the Extinguishment Deed was registered contrary to the provisions contained in Section 17(1) (b) of the Act and in a fraudulent manner. Section 17(1)(b) stipulates certain categories of documents which are required to be registered. It stipulates registration of non-testamentary documents which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property. It is contended by the appellant that authority, on the ground of fraud, can declare the deeds to be null and void. To bolster the said stand, he has drawn inspiration from the authority in *Yanala Malleshwari v. Anantula Sayamma*¹] (Full Bench). Before the Full Bench, the question arose whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government, is bound to refuse registration when a cancellation deed is presented. Rao, J., adverting to the provisions of the Act and the Rules and dwelling upon the concept of fraud held thus:-

“The person, who has ex facie right whether such right is registered or not can always approach the registering authority, with a request to cancel a sale deed, which was registered earlier by such registering authority by showing that subsequent registration was obtained by fraud by a person who is not entitled to transfer the property or that such transfer was registered by playing fraud on the owner or on the stranger. In the present statutory dispensation, namely, Transfer of Property Act, Contract Act, Specific Relief Act and Registration Act, the Court does not see any prohibition operating on the exercise of inherent power by the registering authority to cancel the sale deed earlier registered, which is likely to cause prejudice to the true owner as well as to the entire public at large.”

Chandraiah, J., while concurring with Rao, J. opined that:-

“I would like to reiterate that there is no specific prohibition under the Registration Act, 1908 (for short 'the Act') to register a deed of cancellation. The Registering Officer can refuse registration in the situations arising under Sections 19 - 22, 32 and 35 and the relevant rules are Rules 26, 58 and 117. But in all other cases where the conditions under the Act i.e., Sections 17 and 18 of the Act are fulfilled, the Registering Officer is bound to register the document and it is notion dispute that the cancellation deed fulfills the conditions for the purpose of registration. However, the Act does not permit the Registering Officer to enquire into the title of the party presenting the document for registration and the situations mentioned in the above said provisions under which the registration can be refused are for different purpose

and only under those contingencies he can refuse. This Court cannot enlarge the scope of these provisions under the guise of interpretation of statute. Further when there is no prohibition under the Act the Registering Officer has to register the documents presented for registration in accordance with law and this Court by judicial interpretation cannot impose the same into the statute. It is well settled that what has not been provided for in a statute cannot be supplied by Courts and to do so will amount to legislating which is not the function of the Courts.”

16. In the said case, the minority view is to the following effect:-

“The purpose of noting down these provisions of TP Act and the Registration Act is to come to a conclusion as to whether a vendor retains any interest in the property which he sold and of which a sale deed was executed and registered. The answer is emphatic 'no'. Therefore, in my view, when a person transfers all his rights, his rights in the property get extinguished and if he tries to get back the property, it has to be done by challenging the sale deed which he has executed and which is registered by the Sub-Registrar.”

17. It is apt to note here that in the said case, the majority took the view that if a person is aggrieved by the cancellation deed, his remedy is to seek an appropriate relief in the civil court and the writ petition is not the proper remedy.

18. The High Court in the impugned order has also referred to a Division Bench decision of the Madras High Court in *E.R. Kalaivan v. Inspector General of Registration, Chennai and Anr*². In the said case, the Division Bench took note of the decision in *Yanala Malleshwari* (supra) and the Rule 26(k) of the Andhra Pradesh Registration Rules that was introduced after the verdict of the Full Bench. The Division Bench dealt with decision of the High Court of Andhra Pradesh and the constitutional validity of the newly amended Rule, which provides for adherence to the principles of natural justice when there is presentation of unilateral cancellation deed. The Madras High Court observed that the situation is prevalent in Andhra because of rule position and thereafter proceeded to state thus:-

“In this context, we may also usefully refer to the judgment of a learned single Judge of this Court in *G.D. Subramaniam v. The Sub-Registrar, Konur*³. The learned Judge has extensively considered the scope of registration of cancellation of sale deed and had ultimately held that such unilateral cancellation of deed cannot be made in the absence of any specific provision for the Registrar to do so. We are entirely in agreement with the said view taken by the learned single Judge.”

Be it noted, after so stating, the Division Bench opined thus:-

“That apart, on the facts of this case, our attention is not drawn to any of the specific provision under the Registration Act empowering the Registrar to entertain a document of cancellation for registration on the ground that the sale consideration was not paid and consequently, received by the vendor. Further, in our opinion, when

the Registrar satisfies himself on the perusal of the document, wherein it is stated that the full sale consideration is received and on such satisfaction, entertain the document for registration, cannot thereafter be conferred with a power for cancellation of the deed on the ground that the full sale consideration was not paid and received by the vendor. Conferring such power on the Registrar would tantamount to conferring a power to decide the disputed questions. That apart, as already stated, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration, without the signature of both the vendor and the purchaser, the deed cannot be entertained. For the said reason, we find no infirmity in the impugned circular issued by the Inspector General of Registration.”

19. In this regard, I may usefully refer to the judgment referred in *M. Ramakrishna Reddy v. Sub Registrar, Bangalore and Another*⁴ by a learned Single Judge of Karnataka High Court. In the said case, the petitioner therein claimed that he was the lawful owner of the property and the concerned cooperative society had no right over the said site nor could it be sold by the said society in favour of the private respondents. It was contended that the Sub-Registrar could not have registered the sale deed relating to the said site in favour of the second respondent. A notice was sent to the Sub-Registrar by the petitioner calling upon to remove the name of the second respondent as purchaser of the site, but the said request was not complied with by the concerned Sub-Registrar. Being dissatisfied with the said inaction, a writ petition was filed seeking appropriate direction to consider the demand contained in the notice. The learned Single Judge while dealing with the concept of registration of instruments under the Act, observed that:-

“The object and intent of providing for registration of instruments under the Act is to create and maintain a public record of transactions relating to immovable properties, on which every person dealing with an immovable property can rely with confidence, for a full and complete account of the transactions by which his title to the immovable property, may be affected. Section 17 of the Act enumerates the documents of which the registration is compulsory. All instruments (except Wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in regard to an immovable property, the value of which is Rs. 100/- or more, and all Gift Deeds as also leases relating to immovable properties for any term exceeding one year, are compulsory registrable.”

20. There after, the learned Judge referred to various provisions of the Transfer of Property Act, 1885 and also of the Act and concluded as follows:-

“ when a person who claims to be the owner or a person interested in an immovable property, finds that someone else has executed and registered a sale deed or other deed in regard to his property, claiming to be the owner or a person interested in the property, the appropriate course for him is to file a suit for declaration and consequential reliefs. If he is satisfied such sale deed is executed by a person without any title and that the deed is void ab initio, he may even choose to ignore the same

and leave it to the person claiming title under such deed to establish his title in appropriate proceedings. A Court of Law has the jurisdiction to declare a document to be void or even cancel a document. But under no circumstances, a person claiming to be the owner of a property or a holder of a property, can require the Registering Authority to cancel the registration of a document.”

20. In this context, we may refer to a two-Judge Bench decision of this Court in *Thota Ganga Laxmi and another v. Government of Andhra Pradesh and others*⁵. In the said case, the High Court of Andhra Pradesh had dismissed the writ petition relying on the Full Bench decision in *Yanala Malleshwari* (supra). The father of the appellants therein had purchased the plot in question from the 4 th respondent by a registered sale deed dated 21.6.1983 and since then they were in possession and enjoyment of the said property. Subsequently, the fourth respondent unilaterally registered the cancellation deed without any notice to the appellants. A writ petition was filed seeking declaration that the cancellation deed was illegal but the said writ petition was dismissed holding that the appellants should approach the civil court. This Court, in the said factual matrix opined:-

“In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 4-8-2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes the owner of the land. If A wants to .subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.”

Thereafter, the Court referred to Rule 26(k)(i) of Andhra Pradesh Registration Rules framed under Section 69 of the Act which reads as follows:-

“(i) The registering officer shall ensure at the time of preparation 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 natural 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 conveyances 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.”

After reproducing the Rule, the Court proceeded to state:-

“A reading of the above Rule also supports the observations we have made above. It is 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 parties concerned. In this case, neither is there any declaration by a competent court nor was there any notice to the parties. Hence, this Rule also makes it clear that both the cancellation deed as well as registration thereof were wholly void and non est and meaningless transactions.”

21. On a reading of the aforesaid judgment, two aspects are noticed. It is evident from paragraph 4 of the judgment that the Court has opined that the cancellation deed cannot be executed or registered; and in paragraph 5 of the said judgment, reference has been made to Rule 26(k)(i) which has been framed by the State of Andhra Pradesh under Section 69 of the Act and on that basis, it has been ruled that the said Rule supports the observations made by the Court. It is apt to note here that the case had arisen from the State of Andhra Pradesh, where specific rule had come into force after the pronouncement by the Full Bench in the case of Yanala Malleshwari (supra). That apart the observations made in paragraph 4 of the decision is of general import.

22. At this juncture, I think it apt to refer to Section 69 of the Act, which reads as follows:-

“69. Power of Inspector-General to superintend registration offices and make rules -
(1) The
Inspector-General shall exercise a general superintendence over all the registration offices in the territories under the 59 [State Government], and shall have power from time to time to make rules consistent with this Act—

(a) providing for the safe custody of books, papers and documents;

(aa) providing the manner in which and the safeguards subject to which the books may be kept in computer floppies or diskettes or in any other electronic form under sub-section (1) of section 16A;]

(b) declaring what language shall be deemed to be commonly used in each district;

(c) declaring what territorial divisions shall be recognized under section 21;

(d) regulating the amount of fines imposed under sections 25 and 34, respectively;

(e) regulating the exercise of the discretion reposed in the registering officer by section 63;

(f) regulating the form in which registering officers are to make memoranda of documents;

(g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;

(gg) regulating the manner in which the instruments referred to in sub-section (2) of section 88 may be presented for registration;

(h) declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively;

(1) declaring the holidays that shall be observed in the registration offices; and

(j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(2) The rules so made shall be submitted to the State Government for approval, and, after they have been approved, they shall be published in the Official Gazette, and on publication shall have effect as if enacted in this Act.”

23. The Rule which I have reproduced has been framed under the aforesaid provision and has been incorporated as Rule 26(k)(i). The question that emerges for consideration is whether in the absence of any specific rule in the State of Madhya Pradesh, the general principle laid down in the case of Thota Ganga Laxmi (supra) would be applicable.

24. On a careful reading of the provisions of the Act, I do not find there is any prohibition to register a document of cancellation or deed of extinguishment. Section 35 of the Act which deals with procedure cannot be construed to confer a quasi-judicial power on the registering authority. The learned Single Judge of the High Court of Karnataka in M. Ramakrishna Reddy (supra) has observed that:-

“... If a duly stamped document is presented for registration with required registration fee (with supporting enclosures required to satisfy the provisions relating to valuation and payment of stamp duty under the Karnataka Stamp Act, 1957 and the requirements of Section 230-A or 269-UL of Income Tax Act, 1961 and Section 22-A of the Registration Act and Section 26 of Urban Land (Ceiling and Regulation) Act, 1976 and any other relevant statutory provisions), the Sub-Registrar will proceed to register the document. Before registration, the Registering Officer will peruse the document to be registered and supporting documents (like tax paid receipts, revenue register extracts and even copies of earlier title deeds). But such incidental examination is not with the purpose of ascertaining or verifying the title of the executant, but only to ensure that there is no violation of Section 22-A of the Act and that there is compliance with the statutory requirements under Stamp Laws, Taxation Laws, Land Ceiling and Land Reforms Laws etc.”

25. It is apt to note there that the learned Single Judge has referred to a decision of the Madras High Court in Park. View *Enterprises v. State of Tamil Nadu*⁶, wherein it has been

observed that function of the Sub-Registrar, for purposes of registration, are purely administrative and not quasi-judicial and, therefore, he cannot decide whether a document which is registered is executed by a person having title as recited in the instrument.

25. Thus, in the absence of any power conferred on the Registering Authority to adjudicate any aspect, it is difficult to agree with the view in *Thota Ganga Laxmi* (supra) that the Registering Authority cannot unilaterally register a deed of cancellation. In my considered opinion, in the absence of any rule like the one that is prevalent in the State of Andhra Pradesh, which commands the Registering Officer to ensure at the time of preparation 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 declaration showing natural consent, the Registering Authority or the superior authority cannot refuse to register a deed of cancellation solely on the ground that the claimant parties to the previously registered conveyance are not present or they have not given consent.

26. Section 69 empowers the Inspector General to make rules consistent with the Act. He has been allocated certain areas to frame rules. Rule 26(k)(i) relating to Andhra Pradesh under Section 69 of the Act may come under any such regulatory measure. I do not intend to express any opinion with regard to the validity of the Rule. The Rule actually provides the manner of verification of execution. It is a condition precedent for the purpose of execution and registration. In the absence of any rule to opine that by no stretch of imagination can a cancellation deed be accepted or registered by the Registering Authority does not appear to be correct. It seems to me that it has been broadly stated. Hence, I am of the view that general observations in *Thota Ganga Laxmi* (supra) requires to be considered by a larger Bench.

27. Having said that, I would have directed the Registry to place the papers before the Hon'ble the Chief Justice for constitution of the larger Bench, but I am constrained to refer to certain other facts which are imperative to be stated. In the case at hand the factual score that is evincible is that the Society had executed a sale deed in favour of the mother of the appellant on 22.2.1962. As the construction was not raised and there was violation, as claimed by the society, it executed the Extinguishment Deed dated 9.8.2001 and cancelled the sale deed dated 22.2.1962. On the strength of the Extinguishment Deed, the Society executed and registered a sale deed in favour of other private respondents and further transactions took place. As the factual matrix would reveal, the dispute raised by the appellant under Section 64 of the 1960 Act is still pending before the competent authority for adjudication. The said authority has the jurisdiction to hold whether cancellation of the allotment made in favour of the mother of the appellant was justified in law. The said order is further subject to appeal and other proceedings and, therefore, I refrain from adverting to the same.

28. In this regard, I may refer with profit to the order dated July 17, 2013 on which reliance has been placed by the respondents, passed in *Satya Pal Anand v. Punjabi Housing Cooperative Society & Others*⁷. In the said case, the Court has taken note of the dispute

pending before the Registrar under Section 64 of the 1960 Act, questioning the legality of the execution of the Extinguishment Deed and allotment of the property in dispute in favour of other respondents. While dealing with the factum of appointment of receiver, the Court has observed thus:-

“We must also mention herein that during the pendency of these proceedings, the second respondent sold the property in favour of respondent nos. 4 and 5 by sale deed dated 11.7.2006. It appears that the Sub-Registrar on inspection of the disputed plot found that there were two constructed duplex and two more near completion as on the date of inspection i.e. on 13.03.2007 of which one was occupied by respondent no.4. It must be remembered that the instant proceedings arise out of the interlocutory proceedings seeking appointment of the receiver at the instance of the petitioner herein. Having regard to the fact that respondent no. 4 was in possession of the property in dispute at least since 13.03.2007 admittedly and also having regard to the fact that the petitioner received an amount of Rs.6,50,000/- we do not see any justification for the appointment of the receiver.”

29. I have noted this aspect as the counsel for the respondent has highlighted the said aspect for two purposes, namely, a dispute before the appropriate forum is pending for adjudication and that the appellant had entered into a compromise with the respondents. It is also urged that the compromise was entered into to buy peace. Thus, the appellant has raised a dispute, accepted the money from the subsequent purchasers and moved the authority under the Act to cancel the deed of extinguishment. In such a situation, in my view, the writ court has rightly declined to exercise the jurisdiction.

30. In view of the foregoing analysis, while not finding any error on the factual score of the dismissal of the writ petition by the High Court, as stated earlier, I am of the view that the principle by way of general observations stated in *Thota Ganga Laxmi (supra)* requires consideration by a larger Bench and, therefore, the papers be placed before the Hon'ble the Chief Justice for constitution of a larger Bench.

JUDGMENT

V.Gopala Gowda, J.,

31. I have gone through the judgment of my learned brother Judge, Justice Dipak Misra, wherein certain relevant facts have been adverted to by my learned brother on the contentious legal issues urged on behalf of the parties. My learned brother has also adverted to the relevant provisions under Sections 20, 21, 22 and 32 of the Indian Registration Act, 1908.

32. My learned brother Judge has also referred to the full bench decision of the Andhra Pradesh High Court in the case of *Yanala Malleshwari v. Anantula Sayamma*⁸, the judgment of the Madras High Court in the case of *E.R. Kalaiivan v. Inspector General of*

*Registration, Chennai & Anr.*⁹ and the judgment of the Karnataka High Court in the case of *M. Ramakrishna Reddy v. Sub Registrar, Bangalore & Anr*¹⁰. My learned brother judge has also referred the decision of this Court in the case of *Thota Ganga Laxmi & Anr. v. Government of Andhra Pradesh & Ors*¹¹., wherein the High Court of Andhra Pradesh dismissed the Writ Petition of the appellant therein, relying on the Full Bench decision of Yanala Malleshwari (supra).

33. I have also taken into consideration the fact that the sale deed of the property in dispute was executed by the Society in favour of the mother of the appellant on 22.03.1962 in respect of the plot involved in this proceeding. The contention urged on behalf of the Society is that as there was no construction raised by the appellant or his deceased mother on the said plot of land and therefore, there has been a violation of the Bye-laws of the Society, as claimed by the Society and hence, it has executed the Extinguishment Deed dated 09.08.2001 with respect to the said plot of land and cancelled the already registered absolute sale deed in favour of the appellant's mother dated 22.03.1962.

34. On the basis of the registration of the Extinguishment Deed with respect to the said plot of land, the subsequent allotment of the said plot of land took place and the sale deed was registered by the society in favour of Mrs. Manjeet Kaur-respondent No.5, who further alienated the said plot and registered another sale deed in favour of the respondent Nos.6 and

35. My learned brother Judge has also referred to the order dated 17.07.2013 passed by this Court in SLP (C) No. 13255 of 2012 (*Satya Pal Anand v. Punjabi Housing Cooperative Society & Ors.*), arising out of the order dated 03.08.2011, passed in Writ Petition No. 14548 of 2008 by the High Court of M.P. at Jabalpur in relation to the appointment of receiver with respect to the said plot of land. This Court held that since the respondent No.5-Mrs. Manjeet Kaur was already in possession of the property in dispute and the appellant had received an amount of Rs.6, 50, 000/- by way of a compromise deed, there was no justification for the appointment of the receiver in the light of the fact that there was a pending dispute between the parties under Section 69 of the M.P. Co-operative Societies Act, 1960, before the Registrar of Societies. Hence, the Special Leave Petition filed by the appellant was dismissed by this Court. My learned brother, in the present case has also based his findings on similar reasons.

36. I respectfully dissent with the said view taken by my learned brother Judge by giving the following reasons.

37. It is an undisputed fact that the respondent No.4-Punjabi Housing Co-operative Society Ltd. Bhopal (for short "the Society") had allotted the said plot of land in favour of the appellant's mother namely, Smt. Veeravali Anand and it had executed the absolute sale deed dated 22.03.1962 with regard to the said plot of land in her favour and the same was registered on 30.03.1962 before the jurisdictional Sub-Registrar. The mother of the appellant died on 12.06.1988, leaving behind the appellant and his sister as her legal heirs to succeed her intestate property comprising of the said plot of land.

38. Subsequent to the death of the appellant's mother, the Society, represented by its office bearer has executed an extinguished deed dated 09.08.2001, unilaterally cancelling their already registered sale- deed with regard to the said plot of land. Thereafter, on the strength of the extinguished deed, the Society executed a registered sale deed dated 21.04.2004 in favour of respondent No.5- Mrs. Manjit Kaur who in turn has executed another sale deed dated 11.07.2006 in favour of respondent Nos.6 and 7 (Mrs. Minakshi and Mr. S.C. Sharma). The said documents have been fraudulently registered by them which is against the acquired legal rights of the appellant on the said plot of land, the same is void ab initio in law as it is impermissible under the provisions of the Indian Registration Act, 1908 read with Section 31 of the Specific Relief Act, 1963.

39. There is also a reference with regard to the taking of the consideration amount of Rs.6,50,000/- by the appellant from the respondent no.5 vide the execution of the Deed of Compromise dated 06.07.2004. The appellant has also raised a dispute in that regard under Section 64 of the M.P. Co-operative Societies Act, 1960 before the Sub-Registrar, Co-operative Society, Bhopal which is pending in respect of the said plot of land. Besides this, some of the litigations between the parties are pending before different forum i.e. Joint Registrar, Co-operative Society, State Co-operative Tribunal and in the High Court.

40. The appellant filed an application before the Sub-Registrar (Registration), seeking the cancellation of the extinguishment deed dated 09.08.2001 executed by the Society against the appellant's plot of land. By order dated 28.06.2008, the Sub-Registrar (Registration) dismissed the application of the appellant, holding that since the question of sustainability of the extinguished deed dated 09.08.2001 and interpretation of Clause 43(1) of the Bye-Laws of Society are still pending before Sub-Registrar, Co-operative Society and various other competent forum, the jurisdiction of the Sub-Registrar is limited only to the extent to register the document. The Sub-Registrar further held that if any of the parties want its cancellation, then the relevant party may file for the registration of the cancellation deed with regard to the said plot of land. The appellant filed an application under Section 69 of the M.P. Co-operative Societies Act, 1960, before the Inspector General, Registration and the same was dismissed on the ground that it is not maintainable and further directed the appellant to approach the competent court in this regard. Therefore, the aforesaid Writ Petition was filed before the High Court by the appellant wherein he has questioned the correctness of the order dated 15.09.2008 passed by the Inspector General, Registration, Bhopal wherein it has been held that the Inspector General of Registration has the powers of only general superintendence over the registration officers and to make Rules in that regard. He is however, not empowered to hear any proceedings against the order of Sub-Registrar. Inspector General of Registration and further, referring to Section 17(1)(b) read with Rule 69 of the Registration Act, 1908 and Rules, and other judgments of this Court in the cases of *Government of U.P. v. Raja Mohammad Amir Ahmad Khan*¹² and *Government of Uttar Pradesh v. Khan*¹³, has held that as soon as the registering officer has registered the documents presented to him for registration, his function of performance for such document produced before him is over and therefore, he becomes a functus officio and does not have the power even to impound the document under Section 33 of the Registration Act, 1908.

Further, the High Court has referred to the judgment of the Karnataka High Court in the case of M. Ramakrishna Reddy (supra) and dismissed the Writ Petition filed by the appellant in favour of the respondent Society. The correctness of the same is questioned in this Civil Appeal urging various legal grounds.

41. Having regard to the facts, the rival legal contentions and the grounds urged in the writ petition and in these proceedings on behalf of the parties, the following question of law would arise for my consideration:

"Whether the appellant is entitled to seek for the relief of cancellation of the registered documents dated 09.08.2001, 21.04.2004 and 11.07.2006, registered with respect to the immovable property, i.e. plot No.7-B, Punjabi Bagh, Raisen Road, Bhopal?"

of the appellant, Smt. Veeravali which was registered on 30.03.1962. It is also not in dispute that she died on 12.06.1988, leaving behind the appellant and his sister to succeed her intestate property. The respondent-Society has also not disputed the fact that the appellant is the legal heir of the deceased Smt. Veeravali Anand, in whose favour the sale deed was executed for the said plot of land.

42. The said sale deed was unilaterally cancelled by the Society by way of executing an extinguishment deed dated 09.08.2001, with regard to the said plot of land and thereafter, on the strength of such extinguished deed, the Society again executed a registered sale deed on 21.04.2004 in favour of respondent No.5 who in turn executed another sale deed dated 11.07.2006 in favour of respondent Nos. 6 and 7.

43. The contention urged by the appellant is that the action of the Society and the Sub-Registrar, who has cancelled the initially registered sale deed in favour of Smt. Veeravali Anand by registering the extinguished deed unilaterally, is contrary to the statutory provisions of the Indian Registration Act, 1908. In this regard, the judgment of this Court in the case of Thota Ganga Laxmi & Anr. (supra) has been relied upon, wherein this Court has held thus:

"4. In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 04-08-2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes the owner of the land. If A wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.

5. In this connection, we may also refer to Rule 26(k)(i) relating to Andhra Pradesh under Section 69 of the Registration Act, 1908, which states: "(i) The registering officer shall ensure at the time of preparation 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 natural 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 conveyances 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."

A reading of the above Rule also supports the observations we have made above. It is 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 parties concerned. In this case, neither is there any declaration by a competent court nor was there any notice to the parties. Hence, this Rule also makes it clear that both the cancellation deed as well as registration thereof were wholly void and non est and meaningless transactions."

44. Further reliance has been placed upon the decision of the Madras High Court in the case of *E.R. Kalaivan v. The Inspector General of Registration Chennai & Anr.* (*supra*) wherein the powers of the Registrar with regard to the cancellation of the document have been elaborately discussed. The relevant paras of the case read thus:

"12. In this context, we may also refer to Section 32A of the Indian Registration Act providing that all such deeds shall be signed by the vendor as well as the purchaser and the same shall also bear the finger prints and photographs. Section 34 of the Act also needs a reference, whereby the Registering Authority is mandated to hold an enquiry in respect of the validity of the document presented for registration. Having regard to the above provisions, in our opinion, a registered sale deed, if sought to be cancelled, registration of such deed must be at the instance of both the parties viz., bilaterally and not unilaterally. Section 34A of the Act, whereby the Registering Authority is to enquire whether or not such document was executed by the persons by whom it purports to have been executed. A sale is essentially an executed contract between two parties on mutual agreed conditions. Question is as to whether such contract can be unilaterally rescinded, particularly, in a case of sale deed. In this context, we may refer to Section 62 of the Indian Contract Act, 1872 which provides that contract which need not be performed. By that provision, any novation, rescission and alteration of a contract can be made only bilaterally. A deed of cancellation will amount to rescission of contract and if the issue in question is viewed from the application of Section 62 of the Indian Contract Act, any rescission must be only

bilaterally. *See City Bank N.A. v. Standard Chartered Bank and Ors. (2004 (1) SCC 12).*

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45. That apart, on the facts of this case, our attention is not drawn to any of the specific provision under the Registration Act empowering the Registrar to entertain a document of cancellation for registration on the ground that the sale consideration was not paid and consequently, received by the vendor. Further, in our opinion, when the Registrar satisfies himself on the perusal of the document, wherein it is stated that the full sale consideration is received and on such satisfaction, entertain the document for registration, cannot thereafter be conferred with a power for cancellation of the deed on the ground that the full sale consideration was not paid and received by the vendor. Conferring such power on the Registrar would tantamount to conferring a power to decide the disputed questions. That apart, as already stated, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration, without the signature of both the vendor and the purchaser, the deed cannot be entertained. For the said reason, we find no infirmity in the impugned circular issued by the Inspector General of Registration."

46. Thus, the decision of this Court and the Madras High Court in the cases referred to supra, aptly apply to the fact situation of the present case. In the present case also such an extinguishment deed, which is unilaterally registered would be rescinded, particularly, in the case of sale deed or extinguishment deed. In this context, Section 62 of the Indian Contract Act, 1872 would come into play which provides that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. Thus, for any novation, rescission and alteration of the contract, it can be made only bilaterally and with the amicable consent of both the parties. Thus, a deed of cancellation of the earlier registered sale deed executed in favour of the Smt. Veeravali Anand would amount to an illegal rescission of the absolute sale deed because if the issue in question is viewed from the application of Section 62 of the Indian Contract Act, 1872, then it is clear that any rescission must be done only bilaterally.

47. In the case on hand, undisputedly, the extinguishment deed dated 09.08.2001 and the cancellation of the sale deed dated 22.03.1962 in respect of the said plot of land involved in this case is unilaterally done by applying the clause 43(1) of the Bye-laws of the Society which has been amended in the year 1991 bearing No.Panji/ Gram Nirman 90/24 dated 02.01.1992, communicated to the Society by the Deputy Registrar, Co-operative Society, Bhopal. The said clause cannot have a retrospective effect with regard to the cancellation of the sale deed in the name of the mother of the appellant and for executing extinguished deed with regard to the said plot of land as the cancellation deed which was registered on 09.08.2001 is only a subterfuge. The said clause of the Society by-laws, cannot override the statutory provisions under Section 31 of the Specific Relief Act, 1963. Section 31 of the Specific Relief Act reads thus:

"31. When cancellation may be ordered: (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

48. Therefore, the unilateral cancellation of the sale deed with regard to the said plot of land against the appellant is contrary to the provisions as provided under Section 31 of the Specific Relief Act, 1963 read with Article 59 of the Limitation Act, 1963, wherein the cancellation of any instrument can be done only within three years, 'when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him'. Therefore, the respondent-Society had no right to unilaterally cancel the absolute sale deed executed in favour of the appellant's mother in the year 1962 with regard to the said plot of land in the year 2001 after lapse of more than 39 years which is totally impermissible in law, both for the Society and the Sub-Registrar. The respondent has neither any authority under the provisions of the Registration Act, 1908 nor under Section 31 of the Specific Relief Act, 1963 read with Article 59 of the Limitation Act, 1963 to unilaterally cancel the sale deed without the authority of law and as such the registration of the document by the sub-Registrar amounts to playing fraud on the power provided to him under law which is ultra vires the relevant statutory provisions and the Constitution of India. Further reliance has been placed upon the judgment of the Constitution Bench of this Court in the case of *Pratap Singh v. State of Punjab*¹⁴, wherein the Constitution Bench, with reference to the House of Lords, has clearly laid down the aforesaid principle as under :

"6. If this were put aside, the second ground of attack on the orders may be viewed from two related aspects—of ultra vires pure and simple and secondly as an infraction of the rule that every power vested in a public body or authority has to be used honestly, bona fide and reasonably, though the two often slide into each other. Thus Sir Lyman Duff, speaking (in *Municipal Council of Sydney v. Campbell*) in the context of an allegation that the statutory power vested in a municipal corporation to acquire property had been used in bad faith which was held to have been proved, stated:

"A body such as the Municipal Council of Sydney, authorised to take land compulsorily for specified purposes, will not be permitted to exercise its powers for different purposes, and if it attempts to do so, the Courts will interfere. As Lord Loreburn said, in *Marquess of Clanricarde v. Congested Districts Board* 'Whether it does so or not is a question of fact.' Where the proceedings of the Council, are attacked upon this ground, the party impeaching those proceedings must, o

course, prove that The Council, though professing to exercise its powers for the statutory purpose, is in fact employing them in furtherance of some ulterior object."

Similarly, in *Short v. Poole Corporation* Pollock M.R. observed:

"The appellants (represented before the Court by Maugham K.C.— afterwards Lord Maugh-am) do not contest the proposition that where an authority is constituted under statute to carry out-statutory powers with which is entrusted it, ... if an attempt is made to exercise those powers corruptly—as under the influence of bribery, or mala fides — for some improper purpose, such an attempt must fail. It is null and void: see *Reg. v. Governors of Darlington School*".

In the same case Warrington, L.J. said: "No public body can be regarded as having statutory authority to act in. bad faith or from corrupt motives, and any action purporting to be that of the body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative. It may be also possible to prove that an act of the public body, though performed in good faith and without the taint of corruption, was so clearly founded on alien and irrelevant grounds as to be outside the authority conferred upon the body, and therefore inoperative. It is difficult to suggest any act which would be held ultra vires under this head though performed bona fide.""

49. For the aforesaid reasons, I have come to the conclusion that the Society has no right to re-allot the said plot of land in favour of the respondent No. 5 by cancelling the already registered sale deed in favour of the appellant's mother in the year 1962 which was an absolute sale deed. Further, registering the sale deed on 21.04.2004 in favour of respondent no.5, who in turn sold the said plot of land in favour of respondent Nos. 6 and 7, is void ab initio in the light of the fact that according to the bye-Laws of the Society, Mrs. Manjeet-respondent no.5, could not have come in possession of the said plot in the first place as her husband has already got a plot allotted to him in the very same Society. Therefore, the transfer of the said plot of land via subsequent sale deeds are void ab initio in law and therefore, liable to be set aside.

50. For the above stated reasons, it is clear that the appellant has got a valid constitutional right over the said plot of land as guaranteed under Article 300A of the Constitution of India, wherein it has been stated that the deprivation of property without the authority of law is totally impermissible in law. Merely because the cancellation of the void extinguishment deed with regard to the said plot of land and the subsequent sale deed executed in favour of the respondent No.5 has not been sought for by the appellant by approaching the civil court, it does not disentitle him for seeking the relief with regard to the said plot of land for the reason that the cancellation of the sale deed dated 30.03.1962 after a lapse of 39 years has been done without the authority of law by the Society. The subsequent actions of re-registering the sale deed in favour of the respondent No.5 and thereafter in favour of respondents Nos.6 and 7 are void ab initio in law. Thus, this Court has the power to closely

examine the same in these proceedings having regard to the peculiar facts and circumstances of the present case.

51. The scope of the powers of this Court under Article 136 of the Constitution of India has been discussed in a catena of cases. In the case of *Arunachalam v. P.S.R. Sadhanantham and Anr*¹⁵, Chinappa Reddy, J. observed as under:

"4.... Article 136 of the Constitution of India invests the Supreme Court with a plenitude of plenary, appellate power over all Courts and Tribunals in India. The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the Court to set limits to itself within which to exercise such power. It is now the well established practice of this Court to permit the invocation of the power Under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the Court. But within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact making no distinction between judgment of acquittal and conviction, if the High Court, in arriving at those findings, has acted "perversely or otherwise improperly"...."

More recently, in the case of *Ganga Kumar Shrivastav v. State of Bihar*¹⁶, this Court laid down the following principles as regards the power of this Court under Article 136:

- i) The powers of this Court Under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of the fact save in exceptional circumstances.
- ii) It is open to this Court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.
- iii) It is open to this Court to invoke the power Under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.
- iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.
- v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record."

As can be seen from the above case law, the power vested with this Court is quite wide and the Court can examine any case to prevent miscarriage of justice.

52. Therefore, the High Court ought to have granted the relief to the appellant by holding that the extinguishment deed executed with regard to the appellant's said plot of land on 09.08.2001, without following the procedure contemplated under Section 31(1) & (2) of the Specific Relief Act, 1963 and Section 54 of the Transfer of Property Act, 1882, is void ab initio in law. The same is required to be interfered with by this Court in exercise of its appellate jurisdiction as there is a grave miscarriage of justice and the septuagenarian appellant has been suffering unnecessarily for the past 14 years at the hands of the Society and the Sub-Registrar, who have violated the provisions of law and deprived the appellant of his valuable constitutional right guaranteed under Article 300A of the Constitution of India upon the said property. Therefore, the appellant is entitled for the relief as prayed for in this appeal.

53. The contention urged on behalf of the respondents, namely that this Court has already dismissed the SLP No.13255 of 2012 filed by the appellant earlier, wherein, this Court has examined the correctness of the order dated 08.11.2008 of the Joint Registrar passed in exercise of his revisional jurisdiction with regard to the appointment of the receiver under Section 64 of the M.P. State Cooperative Societies Act 1960, at the instance of the respondents, has no relevance to the reliefs sought for in the present appeal. The prayer sought for in the present appeal is with regard to cancellation of the extinguishment deed and the subsequent sale deed executed by Society in favour of respondent No.5, who in turn has executed another sale deed in favour of respondent Nos. 6 and 7 with regard to the said plot of land. Therefore, the prayer in the present appeal is totally different from the one in SLP No.13255 of 2012. The order dated 17.07.2013 passed in SLP No. 13255 of 2012 by this Court, at para 4, is very clear with regard to the extinguishment deed which reads thus:

"4. It appears that after lapse of 40 years, the first respondent purported to have cancelled the sale made in favour of the petitioner's deceased mother. On 9.8.2001, a deed styled as Extinguishment Deed came to be executed by the first respondent before the Sub-registrar, Bhopal-the legality of which deed is required to be examined separately. However, we do not propose to say anything at this stage."

54. In so far as the document of compromise deed dated 06.07.2004 is concerned, the sum of Rs.6,50,000/- allegedly voluntarily received by the appellant from the respondent No.5 to put an end to the dispute over the said property is also a void transaction, as the same has been done during the pendency of the proceedings before the Sub-Registrar in relation to the dispute. The said compromise deed is void ab initio in law and the same cannot be put against the appellant so as to deny him the relief sought by him in the present appeal. Apart from the said reason, the notice dated 12.07.2007 served upon the appellant by the lawyer of respondent No.5 has rescinded the agreement dated 06.07.2004 and she has claimed the refund of 6,50,000/-, to be returned with interest to her, failing which she will file a suit for claim for payment of Rs.6,50,000/- with interest. The said notice is produced at Annexure 'P-6' in the proceedings. The relevant clause 4 of the said notice is extracted hereunder which reads thus:-

"4. That after receipt of money by you frivolous disputes are being raised by you. By raising unnecessary disputes you have violated compromise dated 6.7.2004. Therefore, my client being constrained (makes demand of the amount paid to you). Therefore, you are liable to return and pay to my client the amount of Rs.6,50,000/- (Rupees six lakh and fifty thousand). Therefore, by means of the notice you are informed that the amount of Rs.6,50,000/- (Rupees six lakh and fifty thousand) and interest thereon at bank rate from date of receipt till the date of payment be returned to my client within 30 days of receipt of this notice and obtain a receipt in writing after the said period my client shall be entitled to take action before you in the court of law in accordance with law..."

In view of the aforesaid demand notice, since the agreement has been rescinded, it does not subsist and the High Court by placing reliance upon the same has committed an error in fact and in law and has wrongfully denied the relief to the appellant even though the same was brought to the notice of the High Court by the appellant in the proceedings before it. For the reasons stated supra, I have to grant the reliefs in favour of the appellant as prayed by him and quash the extinguishment deed dated 09.08.2001 along with the subsequent sale deeds registered in favour of the respondent No.5 who in turn has sold property in favour of respondent Nos.6 and 7 without the authority of law. The sale deed can be cancelled under Section 31 of the Specific Relief Act, 1963, by the competent civil court if the same is challenged within the period of limitation stipulated under Article 59 of the Limitation Act, 1963. Since the facts are undisputed in the case on hand and the respondent Society, after the lapse of 39 years has erroneously and illegally cancelled the absolute sale deed registered in favour of the appellant's mother, the appellant has acquired a valid and absolute title to the property in question and the same could not have been cancelled by the respondent Society and the Sub-Registrar as it is void ab initio in law. Hence, the High Court should have responsibly exercised its extraordinary jurisdiction and should have examined the documents of the sale deed with respect to the relevant provisions of the M.P Co-operative Societies Act and Rules, 1962 and the Bye-laws of the Society. The cancellation of the sale deed executed in favour of the appellant's mother in the year 1962 by way of the extinguishment deed could not have been registered by the Sub-Registrar as he is not empowered to do so. Hence, for want of the competent jurisdiction, in registering such document, the High Court should have exercised its extraordinary jurisdiction to annul the extinguishment deed and the transactions of the subsequent sale deeds, which has not been done by it. Reliance has been placed upon the decision of this Court in the case of *CAG v. K.S. Jagannathan*¹⁷, wherein it has been held thus:

"19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago, Martin, B., in *Mayor of Rochester v. Regina* said:

"But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That court has power,

by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute:

Comyn's Digest, Mandamus

(A) Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in *King v. Revising Barrister for the Borough of Hanley*. In *Hochstief Gammon* case this Court pointed out that the powers of the courts in relation to the orders of the government or an officer of the government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield v. Minister of Agriculture, Fisheries and Food* the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In *Halsbury's Laws of England*, 4th Edn., vol. I, para 89, it is stated that the purpose of an order of mandamus

"is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

There is thus no doubt that the High Courts in India exercising their, jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of

conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

(Emphasis laid by me)

55. Further reliance has been placed upon the decision of this Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*¹⁸, wherein it has been held thus:

"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

21. In *Praga Tools Corpn. v. C.A. Imanual* this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed:

"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities."

56. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states:

"To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.",! We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

57. Further, this Court has laid down the following principles with respect to the writ of certiorari in the 7 judge bench decision in the case of *Hari Vishnu Kamath v. Ahmad Ishaque*¹⁹ :

"...(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of facts reached by the inferior Court or Tribunal, even if they be erroneous.

(4) An error in the decision or determination itself may also be amenable to a writ of "certiorari" if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by "certiorari" but not a mere wrong decision. What is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

58. Thus, the High Court has failed to exercise its discretionary power which has resulted in a grave miscarriage of justice, thereby, depriving the valuable constitutional right guaranteed under Article 300A of the Constitution of India to the appellant. I, hereby, set aside the said order of the learned single Judge of the High Court and quash the impugned instruments i.e. the extinguishment deed dated 09.08.2001 and the subsequent sale deeds dated 21.04.2004 and 11.07.2006 and further direct the respondent Nos.6 and 7 to vacate the said property and hand over the possession of the same to the appellant. The respondents are further directed to pay the appellant a compensation amount of Rs.10 Lakhs for his sufferings and the injustice caused to him by the society for the last 14 years as he was deprived of his right to enjoy the property on account of the arbitrary and unilateral action taken by the society in cancelling

the sale deed in respect of the property in question executed in favour of his deceased mother.

59. The appeal is allowed in the above terms.

Judgment Referred.

¹*AIR 2007 AP 0057*

²*AIR 2010 Mad 0018*

³*(2009) CIJ 243 Mad*

⁴*AIR 2000 Kar 0046*

⁵*(2010) 15 SCC 0207*

⁶*AIR 1990 Mad 0251*

⁷*SLP(C) No. 13255 of 2012*

⁸*AIR 2007 AP 0057*

⁹*AIR 2010 Mad 0018*

¹⁰*AIR 2000 Kar. 0046*

¹¹*(2010) 15 SCC 0207*

¹²*AIR 2010 Mad 0018*

¹³*AIR 1961 SC 0787*

¹⁴*AIR 1964 SC 0072*

¹⁵*(1979) 2 SCC 0297*

¹⁶*(2005) 6 SCC 0211*

¹⁷*(1986) 2 SCC 0679*

¹⁸*(1989) 2 SCC 0691*

¹⁹*AIR 1955 SC 0233*