IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2021

PRONOUNCED ON : 29.10.2021

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.28728, 27778 & 383 of 2018, 23023 of 2004,
45728, 45729 & 16510 of 2006, 21984 of 2008,
13705, 10151, 10176, 10177 of 2011, 2243 & 2244 of 2012,
6737 of 2014, 17532, 28181 & 32194 of 2016,
9, 6008, 19674 & 20946 of 2017
and
All connected Writ Miscellaneous Petitions

W.P.No.28728/2018:

S.Kanniammal @ Mangai ... Petitioner

-vs-

1.The State of Tamil Nadu,
The Chief Minister Cell,
Secretariat, Fort St., George,
Chennai – 600 009.

2.The District Collector,
Office of the Collectorate,
Villupuram District.

3.The Sub-Registrar,
Marakkanam,
Villupuram District.

4.T.Venkataraman ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the third respondent to cancel the sale deed in Document No.28 of 2002 dated 17.01.2002 stands in the name of Mr.Venkataraman in Old Survey No.204/1, New Survey No.137/2, to the extent of 0.59 cents, situated at Chettikuppam Village, Marakanam, Tindivanam Taluk, Villupuram District.

Appearance

Sl.No.	Case No.	Petitioner Counsel	Respondent Counsel
1.	W.P.No.28728/2018	Mr.C.Kanagaraj	Mr.Richardson Wilson, Government Counsel
2.	W.P.No.6008/2017	Ms.M.Ezhilarasi	Mr.Richardson Wilson, Government Counsel for R1 to R3 Mr.K.V.Ananthakrushnan for R6 Mr.P.Balamurugan for R7
3.	W.P.No.2243/2012	Mr.S.Sivakumar	Mr.Richardson Wilson, Government Counsel
4.	W.P.No.2244/2012	Mr.S.Sivakumar	Mr.Richardson Wilson, Government Counsel
5.	W.P.No.9/2017	Mr.C.Prakasam	Mr.Richardson Wilson, Government Counsel for R1 Mr.L.Karthiga for R2
6.	W.P.No.383/20	Mr.K.Thilageswaran	Mr.Richardson Wilson,

	18		Government Counsel
7.	W.P.No.6737/2014	Mr.R.Dhamodaran	Mr.Richardson Wilson, Government Counsel
8.	W.P.No.10151/2011	Mr.S.Sairaman	Mr.Richardson Wilson, Government Counsel for R1 Mr.T.S.Baskaran for R2
9.	W.P.No.10176 and 10177/2011	Mr.N.R.Anantharama Krishnan	Mr.Richardson Wilson, Government Counsel for R1 Mr.M.G.Harikrishnan for R2 and R3 Ms.K.Leelavathi for R4 to R6
10.	W.P.No.13705/2011	Mr.T.Kabilan	Mr.Richardson Wilson, Government Counsel for R1 to R4 Mr.D.Ashok Kumar for R5
11.	W.P.No.16510/2006	Mr.A.V.Bharathi	Ms.Akila Rajendran, Government Counsel for R1 to R3
12.	W.P.No.17532/2016	Mr.C.Subramanian	Mr.Richardson Wilson, Government Counsel for R1 & R2 Mr.J.Tamilarasi for R3
13.	W.P.No.19674/2017	Mr.R.Munuswamy	Ms.Akila Rajendran, Government Counsel for R1 to R3
14.	W.P.No.20946/2017	Mr.C.S.Saravanan	Mr.Richardson Wilson, Government Counsel for R1 to R3
15.	W.P.No.21984/2008	Mr.J.Feroz Khan	Mr.Richardson Wilson, Government Counsel for R1 & R2
16.	W.P.No.23020/2004	Mr.M.Mani Narayanan	Ms.Akila Rajendran, Government Counsel for R1 to R3
17.	W.P.No.27778/2018	Mr.R.Kannan	Ms.Mala, Government Pleader (Puducherry) for R1 Mr.C.Prabhakar for R2.
18.	W.P.No.28181/2016	Mr.P.Balamurugan	Ms.Akila Rajendran, Government Counsel

19.	W.P.No.32194/ 2016	Mr.P.Balamurugan	Mr.Richardson Wilson, Government Counsel for R1 to R4 Ms.M.Ezhilarasi for R5
20.	W.P.Nos.45728 and 45729/2006	Mr.S.K.Nachimuthu	Ms.Akila Rajendran, Government Counsel

COMMON ORDER
****

If there is any perennial problem prevailing in the society, in order to address and redress such problem by legal means, to give a quietus, people would certainly approach the law Courts. Courts also, within the four corners of the law prevailing, would find a legal solution for any such perennial issue and ultimately, the finality would be given.

2. If such final verdict has come, certainly, there will be a permanent solution made available to the stakeholders in the society. Thereafter, most probably such kind of issues would not again knock the doors of the Court. However, in some occasions, there will be some exceptions to this general perception, where, even though law Courts made sincere efforts to give a quietus to the issue which is considered to be perennial one, even then there would not be a complete subsiding of the issue, as again and again, the same issue or problem would emerge consistently and in such situation or circumstances, people will have no other option except to be triggered to once again approach the law Courts.

3. The issue that we are going to confront in this batch of cases is one such issue, where, though many number of decisions had come from law Courts ie., from this Court as well as various High Courts and the Hon'ble Supreme Court of India, there is no complete calm down of the issue, as recurringly the same problem or issue erupts or emanates. Therefore, in order to redress that grievances, constantly people are approaching this Court, of course with the same issue or problem.

4. With this background introductory, if we look at the prayers sought for in this batch of cases, it go to show that, the people's desire to hold and enjoy the immovable property, whether it may be a land or a building or fixtures, whatever it may be, is not limited. Such desire is two fold. One set of people wants to achieve the desire or goal in lawful means, by investing their lawful fortune which they derived in their lifetime by doing hard work, but, another set of people without having any such fortune out of hard work in lawful means want to achieve such illegal desire, with the result, there have been instances of fraudulent transactions of immovable properties and that would go to the Registration

Department being governed under the provisions of the Registration Act, 1908, [in short would be called as '1908 Act'] and there are registrations and counter registrations of instruments dealing with such immovable properties, with a result, there has been hot burning issues and the people who are otherwise the lawful owners or lawful claimants of any such immovable property, would come to the Court of law, especially before the High Courts, invoking Article 226 of the Constitution of India as an instant grievance redressal mechanism. The present batch of cases are the illustrative cases which have come to this Court for redressing such kind of grievances.

5. Based on the prayer sought for in this batch of cases, it can be categorised under three broad categories:

> “**Category 1:** Writ Petitions have been filed seeking for a prayer to cancel the registered sale deed or settlement deed in respect of immovable property registered in the concerned Registrar office.
>
> **Category 2 :** Writ Petitions have been filed, where, the action on the part of the Sub-Registrar concerned to refuse to register a document or instrument pertaining to immovable property are challenged.

Category 3 : Writ Petitions have been filed questioning the action of the Sub-Registrar in keeping the document as a pending document, either on the alleged ground of under valuation of documents or payment of deficit stamp duties."

6. Among the three categories, Category No.1 is vulnerable, where, there has been hue and cry from the real owners of the immovable properties concerned that, their property without their consent or knowledge had been subjected to creation of third party right by way of sale deeds and in some cases, settlement and thus documents have been registered by the concerned Sub-Registrar office and when the said registration have come to the light of the original owners concerned, only at a later point of time, their attempt to cancel such alleged fraudulent registrations could not yield any desired result, in view of the settled legal proposition in this regard. Therefore, they approached this Court by filing writ petitions, seeking such a prayer under Article 226 of the Constitution of India, to cancel such alleged fraudulent sale or settlement deed registered in the concerned Registrar office.

7. When this batch of cases came up for hearing before this

Court, it was pointed out by the learned Counsel appearing for both sides that, the law has been settled in this regard, by very many authoritative pronouncements of this Court and also by the Hon'ble Supreme Court of India that, once the registration has been entertained and has been completed and the document is released by the authority concerned, thereafter, such registering authority or any other authority under the Department of Registration being governed under the provisions of the 1908 Act, cannot have any power to revisit the same, either to recall or to revoke the same, under the rules made thereunder. Thus, Counsel have made a plea that, atleast the system which are available with the registration department in this State has to be testified, whether it is a foolproof system to verify any previous illegal encumbrance created in respect of any immovable property, other than the owner or his or her legal representatives, power of attorney or assignee and that kind of information is very much required, so that, what best this Court can do at this juncture in dealing with these writ petitions, can be decided. In order to ensure that, such a foolproof system is legally backed either under the provisions of 1908 Act, or the rules made thereunder or various circulars issued in this regard by the IG of Registration, the learned Counsel sought indulgence of this Court to know the mechanism available in the registration department.

8. Considering this preliminary submissions made on behalf of the petitioners by the respective counsel, this Court on 17.06.2021, had issued an interim direction to the respondent ie., IG of registration with the following direction:

> *"8.For further arguments, post the matter on 05.07.2021. In the meanwhile, the Inspector General of Registration, Government of Tamil Nadu shall file a detailed report about the facilities available in all Registration Offices to verify the earlier encumbrance entered into in respect of immovable property and also about the system, through which, every Registrar or Sub-Registrar of the Registration office concerned can get information about the earlier encumbrance entered into in respect of any immovable property through the Centralized Software System, if any available. In respect of these aspects, the report shall give the details and such report shall be filed during the next hearing date."*

9. In response to the said query raised by this Court as stated supra by order dated 17.06.2021, the IG of registration Government of Tamil Nadu, has filed a detailed report dated 02.07.2021, where, *inter alia,* the IG of Registration has stated the following:

(a) The registration department in the State was formed in the year 1864 and has been providing service to the people for the last 158 years.

(b) The department has been doing the service to the people by administering two legislations namely the Indian Stamp Act and the Indian Registration Act. The land registration documents in our country are not a Government guaranteed title to the property, but only a record of the transfer of property. 1908 Act does not explicitly or impliedly empower or authorise sub-registrar to verify the right and title of the executants of the document. Thus, the registering officer is not empowered under the Registration Act, 1908, to verify whether the person conveying the property has good and marketable title over the property or not.

(c) Therefore, land ownership in India, as determined by such sale deeds or any transfer deeds is presumptive in nature and subject to challenge in competent civil Court. The Digital India Land Records Modernization Programme (DILRMP) is being undertaken throughout the country and the computerization of land records are yet to be completed.

(d) As per the Indian Registration (Filing of True Copies)

Rules, 1967, before the advent of computerization of registration process and scanning of registered documents, upon registration of documents, true copies of the documents were to be filed in accordance with the said rules. The details of the Book 1 documents are to be entered in Index 2 register kept for that purpose. Besides, when the revocation, cancellation, rectification or modification is made in document relating to immovable property, a corresponding note shall also be entered in Index 2. The Encumbrance Certificates ie., EC were made after the manual search made using Index 1 and 2 Registers and in pre-computerization era, such process was time consuming and prone to errors.

(e) Therefore, the Government with a view to render speedy and efficient services to the citizens started computerization of the registration process in the year 2000 from 06.02.2000 and implemented a project called Project Star 1.0. Under the said project, in a phased manner, initially 13 offices were computerized and the original documents registered were scanned and were stored digitally. From 05.07.2009, all the Sub-Registrar offices of the entire State were computerized and every original documents registered were returned to the people after scanning and storing it digitally.

(f) Similarly Index 2 entries in respect of Book 1 documents have also been entered in the computer system and are now being shown digitally. Though, the computerization started in the year 2000, the Government undertook a huge project and digitized the manual Index 2 registers in respect of Book 1 documents of entire State up to 1975. Besides, the entire book 1, 3 and 4 volumes kept in all the Sub-Registrar offices from 1865 to 05.07.2009, are being digitized under a project initiated by the Government.

(g) In order to further enhance the quality of such services, the department has implemented the advanced Star 2.0 module. Under the Star 2.0 module, the registration of documents are being carried out through online mode. The advantages of Star 2.0 module over the Star 1.0 module is submitted as follows:

Activity	**STAR 1.0**	**STAR 2.0**
i) Creation of document	Not available	Simplified facility in the portal
ii) Feeding of Abstract	Not available	Simplified facility in the portal
iii) Online appointment facility	Stand-alone module	Integrated module
iv) Comparison of thumb with previous owner	Not available	Verification done to curtain impersonation (if previous deed was done after 2014 since digitalized finger

		print is available from 2014 only).
v) Sending of SMS to previous owner	Not available	Alert the previous owner to avoid fraudulent registration. (if previous deed was done after 13.02.2018 since mobile number of purchaser is available from that date only).
vi) Registration of Documents	60 minutes	10 minutes
vii) Issue of EC	15 Minutes	Digitally signed QR coded certificate delivery through online
viii) Issue of CC	30 Minutes	Digitally signed QR coded certificate delivery through online
ix) Free viewing of EC	From 1987 onwards	From 1975 onwards
x) Revenue Integration	Physical transmission of forms every week	Instant transmission through software application and sending of SMS/Ack. To Citizen
xi) e-Payment	Integrated with 6 banks with separate locking facility	Integrated with 58 Banks through SBI as an aggregator and facilitated for all modes of payment
xii) e-Stamping	Standalone software with separate locking facility	Integrated locking facility
xiii) SMS/email	Not available	Facility to send at every stage

xiv) Toll Free Number	Not available	1800-102-5174
xv) Storage	Storage at local server	Storage at centralized location and at three places to avoid tampering
xvi) Work Flow	Disintegrated system	Work flow based system
xvii) MIS	Not available	MIS with dashboard
xviii) Society Registration	Stand alone module	Integrated end to end module
xix) Firms Registration	Not available	Integrated end to end module
xx) Chit Fund Registration	Stand alone module	Integrated end to end module
xxi) Issuing of Birth & Death Registration	Not available	Integrated end to end module
xxii) Issuing of Christian Marriage Extract	Stand alone module	Integrated end to end module

10. The IG of Registration has further stated in the said report that, after the implementation of Star 2.0 module and online registration, the following amendments have been made in respect of Encumbrance Certificate with regard to the immovable property:

> *"i.General Public need not approach the Sub Registrar Office to get Encumbrance Certificates since 'Online' application and service is available to the entire state.*
>
> *ii.QR coded digitally signed Encumbrance Certificates from the year 1975 to till date may be obtained*

through online without visiting the Sub Registrar Offices. Daily around 10,000 QR code Encumbrance Certificates are issued online.

iii.People all over the world can view and download Index II of document registered and Encumbrance details in respect of properties in Tamil Nadu since 1975 at any time through the portal available at free of cost.

iv.Presently, on an average 70000 Encumbrance certificates are being downloaded per day through online.

v.In the event if a transfer document is registered in a particular Sub Registrar Office concerning properties of other jurisdictional offices, the memorandum in respect of registration of such properties are sent to respective jurisdictional offices instantly at the time of registration itself due to the implementation of online registration."

11. The IG of Registration has further stated in the report that, earlier all the scanned documents were stored by way of compact disks, periodically in three places ie., at the office of the

Sub-Registrar, office of the District Registrar and office of the Deputy Inspector General of Registration. However, from 2018 onwards, all scanned images are being centrally stored in a common server. The public are able to access any registered document online at www.tnreginet.gov.in, on payment of charges online by a debit or credit card. Therefore, the position now, according to the IG of Registration, is that, anybody can view a registered document through internet. The computerization of all registered documents have been done for the past 15 years and the remaining documents will be scanned and uploaded on the online database within a period of one year.

12. Therefore, the report further says that, in the present regime of Star 2.0. it is highly impossible to register a fraud document without having original sale deed, patta etc., That apart, fingerprints of executants are captured using biometric device and photograph using web cameras. So, the live fingerprints and photographs of the person appearing before the Registering Officer is being captured. The IG has further stated in his report that, the Government lands belonging to Hindu Religious & Charitable Endowments, Wakf Board lands, Bhoodan Lands etc., are marked in the guideline register with respect to villages maintained in online. No value is fixed for those survey numbers. He would also state that, in order to avoid further legal complications, when a power agent executes a document for registration in respect of immovable property, 'life certificate' of the Principal is verified if one month has lapsed from the date of execution of the power of attorney documents. The aforestated informations have been given in the said report submitted by the IG of registration dated 02.07.2021.

13. Before delving into the issue raised in this batch of cases, as a preparatory, let us first look into the relevant provisions of the 1908 Act. Though this Act contains about 90 provisions, for the purpose of present issue, the following provisions are relevant.

"Sections 17, 22-A, 32, 32-A, 34, 34-A, 34-B, 35, 36, 68, 69, 72 and 77".

14. Section 17 deals with the compulsory nature of registration of documents pertaining to immovable property. What are all the documents which are compulsorily registrable have been stated in this section.

15. Section 22-A under the heading "Refusal to register certain documents" has been inserted by the Tamil Nadu Act 2 of 2009, however, it is to be noted that, the said provision has been given effect to by issuing notification in this regard only with effect from 20.10.2016. Certain documents or instruments relating to transfer of immovable properties by way of sale, gift, mortgage, exchange or lease can be refused by the Registering Authority. If any documents relating to the properties, belonging to the State Government or the local authority, Chennai Metropolitan Development Authority, Hindu Religious & Charitable Endowment lands and Wakf lands, are filed for registration before the registering authority, such registering authority can refuse to register the same, unless a sanction in this regard, issued by the competent authority as provided in the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the Registering Officer.

16. Sub-Section 3 of Section 22-A makes it clear that instruments relating to cancellation of sale deeds without the consent of the persons claiming under the said sale deed, is also a document where the Registering Authority shall refuse the registration.

17. Therefore, it is to be noted that, if any instrument relating to cancellation of sale deed without the consent of the person claiming under the sale deed is filed, the same shall be refused to be registered by the Registering Authority which is a mandatory import of sub-section 3 of Section 22-A.

18. Under Section 32, who are all the persons who can present document for registration, has been provided. Like that, Section 32-A makes it compulsory to affix the photographs as has been inserted by the Registration and Other Related Laws (Amendment) Act 48 of 2001, with effect from 24.09.2001, where it makes clear that, every person presenting any document, at the proper registration office under Section 32, shall affix his passport size photograph and fingerprint to the documents, provided, if the document relates to the transfer of ownership of the immovable property, the passport size photograph of each buyer and seller of that property mentioned in the document shall also be affixed to the document. By insertion of Section 32-A, it becomes mandatory that in every such document which is presented to registration which relates to the transfer of immovable property, the photograph and fingerprint of buyer and seller be affixed in the document concerned, which is the first major step in preventing fraudulent transaction and registration of such documents pertaining to immovable property.

19. The next important Section of 1908 Act is Section 34.

Under this Section, the Registering Authorities are empowered to have an enquiry ie., preliminary enquiry, whereby, the Registering Authority require the persons who are executing such document and in case of sale of immovable property, the person claiming under the document also or their representatives, assignees, or agents to appear before the Registering Officer within the time allowed for presentation. A detailed procedure has been contemplated under Section 34, under which, both the seller as well as the buyer of the sale deed, with regard to the transfer of immovable property, shall appear before the Registering Authority, to satisfy the registering authority by way of conducting a preliminary enquiry before registering, as to the execution of the document and also the acceptance of the same.

20. Like that, Section 34-A was inserted by Registration (Tamil Nadu Amendment) Act 28 of 2000 with effect from 14.04.2001. It provides that, person claiming under the document for sale of the property shall also have to sign the document. Therefore, it has become manifest that the purpose of the said amendment is to restrict or atleast minimise the forgery or fraud committed by the parties and to give legal sanctity once the document is registered according to the provisions of the 1908 Act.

21. Under Section 35, what are all the procedures to be adopted, on admission and denial of the execution of the document, has been stated. In this context, the Registrar must satisfy that, all the persons who are executing the document shall appear before him and are personally known to him or if he is otherwise satisfied that they are the persons they represent themselves and if they all admit the execution of the document, he can proceed to register the document. Therefore, the Registering Authority here, must personally know the persons executing the document which is presented before him and has to accept the execution of the document.

22. These are all certain provisions which are available in the 1908 Act originally or inserted by way of amendment at various point of time, as has been mentioned, in order to avoid fraudulent transaction of immovable property and to ensure that a genuine transaction is taking place in respect of immovable property. When such documents or instruments are registered by the registering authority within the meaning of 1908 Act, utmost sanctity shall be given to such registered documents is the prime concern of the legislation as well as the executants and that is the reason why these amendments have taken place. Apart from these sections of the Act, under Section 68, the District Registrar concerned is having the power of Superintendence and control over Sub-Registrars. Like that, under Section 69, the IG of Registration is having similar power of superintendence and also he is empowered to make rules consistent with the 1908 Act, as enumerated under Section 69.

23. Insofar as any order passed by the Sub-Registrar refusing registration on the ground other than denial of execution, the affected parties are having right to file an appeal to the District Registrar concerned under Section 72 of the Act within 30 days period and if any order is passed by the appellate authority the aggrieved party will have a right only to institute a suit against such order passed by the appellate authority under Section 72 or under Section 76, where the Registrar himself can refuse to register the document, as per Section 77 of the Act.

24. This is how, broadly, 1908 Act has been in the field for more than a century. Since, it is one of the subjects in entry 6 in the list 3 of Schedule VII of the Constitution ie., concurrent list, though 1908 Act is a Central enactment, the State legislatures are empowered to make amendments and that is how the afore cited sections have been inserted by way of amending legislations. With that working pattern of the 1908 Act, it is being administered by the Registration Department of the State where the present system being adopted as has been explained by the IG of Registration through his report referred to above, as a foolproof system. Within the four corners of the said system, whether every lawful owner of the immovable property is protected from being exploited fraudulently by fraudsters or any other third party, by creating a third party right fraudulently or otherwise in respect of rights of immovable property, by way of transferring such right either as a sale deed or as a settlement deed and if those documents are registered with the concerned Sub-Registrar office, such registration can be unilaterally cancelled or not or the affected person or real owners of the property concerned can approach the Court of law ie., by way of filing writ petitions before the High Court under Article 226 of the Constitution of India, seeking redressal of such grievances to cancel such registration of documents allegedly made and if such kind of prayers are made under the writ jurisdiction, whether such prayers can be entertained and prerogative writs either by way of certiorari or Mandamus can be issued or not is the prime question to be answered in these batch of cases.

25. In this context, in earlier occasions the very same questions had come up for consideration, in very many occasions judgments have been rendered by Single Benches as well as Division Benches of this Court and also similar litigations were dealt with by various High Courts as well as the Hon'ble Supreme Court of India. Thus, case laws are governing the field, which would be dealt with in the later part of this order, before which, let me consider the various circulars issued by the IG of Registration, exercising his powers under Section 69 of the 1908 Act.

26. As we discussed above, since there has been no power vested with the Sub-Registrar concerned empowering him to cancel any document once it is registered, the only way to cancel the registered deed is through the cancellation deed signed by all the parties to the original document. However, in view of raising the number of fraudulent registrations, the IG of Registration had issued a circular called Circular No.67 dated 03.11.2011, where the procedure was prescribed to deal with the complaints relating to fraudulent registration of documents through impersonation or by giving false admissions or statements or by presenting false copies or translations of any document / map / plan etc. The relevant portion of the said circular reads thus:

> "(a) All such complaints of fraudulent registration received by the department have to be forwarded to the respective District Registrar

(Admin) who shall register the same in a register of complaints relating to fraudulent registration in the following format.

Sl.No	Date	Name and address of the applicant	Document No. and SR office name	Name and address of the executants, claimants and witnesses

(b) After entering the complaint, he shall issue notices to the executants of the document and witnesses to appear for enquiry along with the complainant and he should also take witness of the registering officer and if needed, call for the records from the revenue department and also summon the respective Village Administrative Officer (VAO) to appear before him with the village accounts.

(c) Once the enquiry is completed following summary procedure and it is proved that the registration has taken place through impersonation and through production of false documents and statements/admissions, he shall pass orders to this effect, recording his findings and issue direction to the concerned registering officers to file 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 is annulled as per the proceedings of the District Registrar (proceeding no. to be noted) and is shall have same effect as prescribed under Section 49 of the Registration Act".

(d) After receiving the order of the District Registrar, the registering office shall immediately file FIR and make entries as stated above in Index-II without any loss of time. The registering officer shall maintain a separate register in this regard in his office to register all such orders of the District Registrar in following format.

Sl.No	Date of receipt of order of DR	Proceeding No.	Doc No. of the document to be annulled	Date of filing FIR	Date of making note in Index-II	Signature of the registering officer

(e) The District Registrar should complete the enquiry maximum in two months in each case and if the parties are not appearing for more than 2 summons, ex-parte order should be passed based upon the documents, evidences and witnesses available. While issuing summons, mode of RPAD should be adopted."

27. The important facet of this Circular No.67 dated 03.11.2011 is Clause 'c' referred to above, where, it has been provided that, the Sub-Registrars also to make note in Index II of the document which was fraudulently registered to the effect that the registration is annulled as per the proceedings of the District Registrar and it shall have same effect as prescribed under Section 49 of the Registration Act.

28. Therefore, the said circular 67 has empowered the Sub-Registrars to cancel the instrument or document pertaining to immovable property, if it is found to be a fraudulent one and must register in Index II, with a note that the registration is annulled, thereby, there has been a complete power vested with the Sub-Registrar to annul a document which is registered already if it is found to be a fraudulent one.

29. The IG of Registration, in order to prevent further fraudulent transaction in the public interest, issued another circular called circular in Letter No.18339/C1/2012 dated 25.04.2012. In the said circular, the following has been stated by the IG of Registration.

"(A) In respect of deeds involving transfer of immovable property, such as sale, gift, settlement,

exchange or creating charge over the property such as Mortgage or Power of Attorney, the registering officer should insist presentation of previous original deed/deeds by which the executants acquired right over the said property before registering the document and then verify the previous documents to satisfy himself that the executants have right over the property.

(B) In case previous documents are not available as the property may be ancestral, the executants should produce revenue records such as Patta copy issued by the Revenue Department and tax receipt in original along with attested/notarized Xerox copies to prove that the properties are owned by them. The Registering Officer should verify the original and return them to the party concerned and preserve the attested xerox copy as part of the document by scanning and numbering it.

(C) In case the previous original document is lost, the party should produce certified copy of the document, copy of complaints recorded in Police Station and copy of advertisement published in local dailies regarding loss of documents. In such case, the party has to produce patta/property tax receipt in original.

(i) In case if the property is Government land/Poramboke land or belonging to religious institution as per revenue records/other records and

the party has not produced any patta to prove his right the Registering Officer should return the document with check slip stating the facts.

(ii) In the above mentioned case, if the party produces patta, then the registering officer should keep the document pending for ascertaining the facts and genuineness of patta from concerned department/revenue officials."

30. Therefore, the further important forward step taken by the Registration department through this circular dated 24.01.2012 is that, the person who present the document for registration pertaining to transfer of right of immovable property should present the previous original deed or deeds by which the executant's secured right over the said property before registering the document and after verifying such original documents alone, the Registering Authority shall proceed to register the document. In case of loss of original documents, the parties were permitted to produce certified copy of the document with the copy of the complaints recorded in the police station and the advertisement issued in this regard in the local daily newspaper. Therefore, this circular has made an attempt to further improve the system in order to prevent fraudulent transactions and registration of documents pertaining to immovable properties. These circulars had been in the regime for some years ie., from 2011 onwards. In

2013, yet another Circular No.18223/C1/2013-3 dated 08.11.2013, was issued which reads thus:

> “,e;epiyapy; nkhro Mtzg;gjpt[fis jtph;j;jpLk; bghUl;L ghh;itapy; fhZk; gjpt[j;Jiwj;jiyth; Rw;wwpf;iffspd; bjhlh;r;rpahf> fPH;f;fhZkhW bray;gl gjpt[mYtyh;fSf;F mwpt[iu tHq;fg;gLfpwJ.
>
> gjptpw;F Mtzk; jhf;fy; bra;a[k; Mtzjhuh; jhk; mt;thtzj;ij vGjpf; bfhLg;gjw;fhd chpikia epiy ehl;Lk; tz;zk; Mtz jhf;fYf;F Ke;jpa 10 ehl;fSf;Fs; bgwg;gl;l tpy;yq;fr;rhd;Wld; Mtzq;fis jhf;fy; bra;a gjpt[mYtyh; typa[Wj;j ntz;Lk;. nkw;go tpy;yq;fr;rhd;wpd;go filrpahf fpiuak; bgw;w/chpik bgw;w eguhy; jhd; mt;thtzk; vGjp jug;gLfpwJ vd;gij gjpt[mYtyh; cWjp bra;a ntz;Lk;.
>
> mt;thW tpy;yq;f rhd;wpy; cs;s egUk; jw;nghJ Mtzk; vGjp jUgtUk; btt;ntW eguhf ,Ug;gpd;> jw;nghJ Mtzk; vGjp jUk; egUf;F brhj;J vt;thW bjhlh;g[ilaJ vd;gJ Fwpj;J Mtz thrfk;> kw;Wk; thhpRhpik Kjypa tptuk; jf;f Mjhuq;fSld; ed;F ghprPypj;J jpUg;jp mile;j gpd;dnu> Mtzg;gjpt[nkw;f;bfhs;sg;glntz;Lk;.”

31. This circular has made one step further, by which, the person who presented the document for registration must produce the encumbrance certificate within 10 days prior to such execution, in order to ensure that, only the last person ie., the owner of the property concerned as per the EC alone executed the deed and after verifying this and ensuring the same, the Registering Authority shall proceed to register the document.

32. At this juncture ie., after 2013, there has been some development in the march of law on the subject concerned, where two important judgments have come. Though, in respect of the issue, with regard to the case law in the given subject chronologically for several years it would be dealt with at later part of this judgment, for the sake of the continuity of the present narration, let me speak about two decisions. One is by a Full Bench of this Court and another is by a decision of the Hon'ble Supreme Court.

33. Before a Full Bench of this Court in the matter of ***Latif Estate Line India Ltd., Vs. Hadeeja Ammal and others*** *reported in* ***2011 (2) CTC 1,*** the following questions were referred for adjudication:

> *"5. Doubting the correctness of the judgment rendered in W.P.No.8567 of 2008, as also the Division Bench judgment in W.A.No.194/2009, these appeals have been referred to a Full Bench for deciding the correctness of these judgments, and also for deciding the following questions formulated*

by the Bench:

> *(i) Whether cancellation of a registration of a registered sale deed of a immovable property having valuation of more than one hundred rupees can be registered either under Sections 17 or 18 or any other provision of the Registration Act?*
>
> *(ii) Whether for such cancellation of a registered sale deed, signature of person claiming under the document for sale of property is required to sign the document, if no such stipulation is made under the Act? and*
>
> *(iii) Whether the decisions of the single Judge dated 10.2.2009 made in W.P.No.8567 of 2008 and the Division Bench dated 1.4.2009 made in W.A.No.194 of 2009 amount to amending the provisions of the Registration Act and the Rules framed thereunder, by inserting a clause for extinguishing right, title or interest of a person on an immovable property of value more than Rs.100/- in a manner not prescribed under the Rules?"*

34. After having elaborately discussed the issue at hand, which were referred to before the Full Bench, their Lordships have ultimately held in paragraph No.59, answering such references which reads thus:

> *"59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -*
>
> *(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.*
>
> *(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.*
>
> *(iii) Where a transfer is*

effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons."

35. The second important judgment as I referred to above is the judgment of the Hon'ble Supreme Court in ***Sathya Pal Anand*** *Vs.* ***State of Madhya Pradesh and others*** *reported in* ***(2016) 10 SCC 767,*** where, one of the important issues which is pertaining to the present issue herein, was referred for consideration which is as follows:

"23.4. (d) Whether the Sub-Registrar

(Registration) has authority to cancel the registration of any document including an extinguishment deed after it is registered? Similarly, whether the Inspector General (Registration) can cancel the registration of extinguishment deed in exercise of powers under Section 69 of the 1908 Act?"

36. Answering the said issue, the Hon'ble Supreme Court in paragraphs 34 and 36 has declared the law, which reads thus:

"34.The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan (supra). Section 17 of the Act of 1908 deals with documents which require compulsory registration. Extinguishment Deed is one such document referred to in Section 17(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to Government maps and surveys. 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.

36.If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the Extinguishment Deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other party to the Deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the Act of 1908 enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the *document by following procedure specified in the Act of 1908 can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the Civil Court."*

37. In view of the said authoritative pronouncement of the Hon'ble Supreme Court in the case of ***Sathya Pal Anand case*** cited supra, it has become necessiated for the registration Department ie., IG of Registration, the Government of Tamil Nadu to withdraw the circular No.67 dated 03.11.2011, as under which, the power of annulling the document was vested with Sub-Registrar concerned and accordingly by Circular No.41530/u1/17 dated 20.10.2017, the earlier circular No.67 dated 03.11.2011, has been withdrawn. The relevant portion of the order in the circular dated 20.10.2017, withdrawing the circular 67 reads thus:

"From the orders of the Honourable Supreme Court of India as referred above, it is clear that the Circular issued by the Inspector General of Registration vide reference 7th cited is not tenable

and implementable as neither it's backed by an Act/Rule nor by a Government Order.

Hence the said Circular No.67 dated 03.11.2011 alone is now withdrawn with immediate effect."

38. Following the said circular dated 20.10.2017, wherein the circular 67 dated 03.11.2011, since was withdrawn, the IG of Registration has issued further circular in the same Letter No.41530/U1/2017 dated 8.11.2017, where the following has been stated:

> *"4. Once the document is registered, it is not open to any Authority, under the Act of 1908 to cancel the registration. The remedy of appeal provided under the Act of 1908, in Part XII, in particular, Section 72, is limited to the inaction or refusal by the Registering Officer to register a document. The power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of documents already registered.* ***[Satya Pal Anand Vs. State of M.P. & Ors, (2016) 10 SCC 767].***
>
> *5. ...*
> *6. ...*
> *7. ...*
>
> *9.In light of the above discussion, the following mandatory procedure is prescribed to*

deal with the complaints relating to the fraudulent registrations due to the non-adherence of the various safeguards stipulated in the circulars issued by the Inspector General of Registration for preventing the fraudulent registration (as enumerated in the Inspector General of Registration's circular dated 20.10.2017 such as verification of EC, Original Title deed and obtaining Life certificate of the Principal, ensuring due attestation of erasures, alterations in a document etc., and any other relevant circulars/orders).

(a)District Registrar (Admin) shall receive such petitions from the aggrieved parties and register the same in the Register of Complaints in the following format:

Sl.No.	*Date*	*Name and address of the applicant*	*Document No and SR office name*	*Name and address of the executants, claimants and witnesses*

(b)After entering the complaint, he/she shall issue notices to the executants, claimants of the documents and witnesses ***if found necessary*** *to appear for the enquiry and he/she should enquire the registering officer and if needed, call for the records from the Revenue Department and also*

shall summon the respective village Administrative Officer (VAO) to appear before him with the Village Accounts.

(c)Once the enquiry is completed by following the summary procedure, he/she shall pass orders to this effect, recording his/her findings. It is instructed that the District Registrars (Admin) shall pass a speaking order by way of a proceedings and the same shall have to be communicated to the petitioner through Registered post under Acknowledgment (RPAD), District Registrars (Admin) should complete the enquiry within two months period in each case and if the parties are not appearing for more than two summons, ex-parte order shall be passed based upon the documents, evidences and witnesses available. While issuing summons also, the mode of registered post under Acknowledgment (RPAD) alone shall be adopted.

(d)It is further emphasized that the procedure prescribed above is only to deal with fraudulent registration which are resulted due to the reason that the Registering Officers not adhered to the instructions/circulars/provisions of Act/Rules. <u>Further it is emphasized that this circular should in no way be construed to mean that the District Registrar (Admin) shall go into the issue of deciding the title.</u>

(e)Any failure in implementing this Circular by the District Registrars(Admin) shall be viewed

very seriously and necessary disciplinary action will be initiated against them in case of any violation.

(f)While disposing the petition if it is found that the fraudulent registration has been caused due to non-adherence of safeguards by the Registering Officers, the District Registrar shall intimate the facts to the Deputy Inspector General of Registration for initiation of disciplinary action against the Registering Officer and apart from this, if any criminal conduct of the Registering Officers is found, then the District Registrar (Admin) shall take necessary further action in accordance with the rules in force and also in consistent with the Registration Act, 1908.

10.Deputy Inspector General of Registration concerned has to review these cases periodically and during inspections the Register of Complaints meant for this purpose shall be reviewed and initiated by the Deputy Inspector General of Registration.

11.It is once again reiterated that the Registering Officers are already empowered under Section 83 of the Registration Act, 1908 to commence the criminal prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity. This *point has been sufficiently emphasized by me vide reference cited above. This circular is now issued to the District Registrars (Admin) to enquire into the petitions filed by the aggrieved parties who are affected by the fraudulent registration due to the no-adherence of the stipulated procedures by the Registering Offices. This difference shall be borne in mind by the District Registrars (Admin) and Deputy Inspector General of Registration (DIGs).*

39. In view of the withdrawal or cancellation of the circular 67 dated 03.11.2011, by circular dated 20.10.2017, what shall be done in respect of annulment of the document, which has been done by the District Registrars after the same having been entered in the Index-II by the Registering Officers, was under the consideration of the IG of Registration. With a result, he has come forward to issue another Circular in Letter No.41530/U1/2017 dated 09.04.2018, which is a continuation of earlier circular dated 20.10.2017 as well as 08.11.2017. In this circular dated 09.04.2018, the IG of Registration has made the following:

"4.Now it has come to my knowledge that certain documents have been annulled by the District Registrars vide circular first cited and the same have been entered in the Index-II by the Registering Officers. Now it is informed that since the said

circular 67/2011 dated 03.11.2011 has been withdrawn, any orders passed by the District Registrar (Admin) by invoking the said circular are also deemed to be withdrawn. Hence, all the District Registrars who have passed orders annulling the documents in question are hereby directed to do the following:

a.Annulment orders passed by the District Registrar (Admin) are to be rescinded by way of proceedings to be issued by the District Registrar concerned.

b.District Registrar shall communicate the rescinding orders/proceedings to the Registering Officer concerned so as to make necessary entries in Index-II without any loss of time.

c.The entry in Index II shall be made as "The annulment of Registration made as per the proceedings of the District Registrar (Proceeding no. to be noted) is rescinded as per the proceedings of the District Registrar (Proceedings no. to be noted)."

d.The District Registrar should send the detailed action taken report to the Inspector General of Registration by duly consolidating the further action taken by the Registering Officers concerned in this regard on or before 30.04.2018."

40. In order to further give some solace to the real owner as against the fraudulent transactions, two more circulars were issued by the IG of Registration in the same number in Letter No.41532/U1/2017 dated 31.07.2018 and 09.11.2018. In Circular dated 31.07.2018, the IG of Registration has made the following:

> *"5.Now it has come to my knowledge that speaking orders have been passed by District Registrars as per the circular 3rd cited. For the cases of proven fraud the further action from the department ends with directing the Registering Officer to file police complaint against the fraudsters concerned. But the original owners could not register their documents since the fraudulent document appears in the Encumbrance Certificate as genuine registration. Due to these encumbrance entries, the real owners succumb to the pressure of the fraudsters and in fact these entries act as an encouraging factor for the fraudsters for repeating such instances.*
>
> *6.Hence, all the District Registrars are hereby directed to do the following:-*
>
> *a)If fraudulent registration is proved, apart from directing the Registering Officers to file police complaints against the fraudsters, specific orders to be passed directing the Registering Officers for making entry in the relevant indexes and also in the copies of documents. The entry in*

index (ii) shall be made as "The registration of document is found as fraudulent vide proceedings of the District Registrar (Proceeding no. and date to be noted) due to -------- (the findings to be given briefly)". The same note has to be made as a footnote in the relevant copies of documents filed and to be signed by the Registering Officer. If it is scanned document, then the note has to be made in a separate white paper, signed by the Registering Officer and to be linked to the main document.

b)District Registrars in his/her proceedings should direct the Registering Officers that no registration of documents should be done based on the fraudulent document as declared by the District Registrar. But, the genuine owner of the property in question should be allowed to proceed with further registration irrespective of the occurrence of the fraudulent registration with respect to the said property."

41. Secondly, under circular dated 09.11.2018, how appeal shall be filed, as prescribed, to the orders passed by the District Registrar and a modification to that effect by way of the instructions was issued, where the IG Registration has made the following:

"Since, appellate authority prescribed in the circular 2nd cited is being Inspector General of Registration; the petitioner has to travel all the way

to Chennai to file their appeal. Further, all petitioners, respondents and witnesses have to travel to Chennai during the enquiry and it is causing hardships for all the parties concerned. Some of the vital witnesses in some of the cases happened to be very old and unable to travel to Chennai. This prolongs the enquiry process also. So, considering hardship faced by the petitioners and others, the appellate provision provided vide letter 2nd cited is modified as follows:

- ***"If the concerned party/ies wishes, he/they can appeal to the Deputy Inspector General of Registration, ------------- (Place and address to be mentioned) against this order within 60 days from the date of receipt of this order."***
- *For the cases in which orders have been passed already, a separate letter shall be sent with a message that "if they are aggrieved by the order they can file an appeal to Deputy Inspector General of Registration, -------------------* ***(Place and address to be mentioned) instead of Inspector General of Registration*** *within 60 days from the date of receipt of this order".*

4.A time limit of 2 months is prescribed for completing enquiry and passing orders in appeal. Deputy Inspector General of Registration is instructed to stick on the time limit while passing *order in appeal.*

5.This circular is issued invoking the powers conferred under Section 69 of the Registration Act, 1908."

42. This is how, the various circulars issued by the IG of Registration by invoking the power under Section 69 of 1908 Act have been occupying the field for about a decade and more.

43. Though initially under Circular 67, such a power was vested with the Sub-Registrar to annul the document, if it is found to be a fraudulent one, subsequently, the same was withdrawn in the year 2017 as referred to above by subsequent circulars of the IG of Registration, in view of the law having been declared in this regard, especially in the case of ***Sathya Pal Anand*** cited supra by the Hon'ble Supreme Court, in the year 2016.

DISCUSSION ON CASE LAWS:

44. One of the early judgment in the subject is the ***State of Rajasthan and others Vs. Basant Nahata*** reported in ***(2005) 12 SCC 77***. In the State of Rajasthan, the Rajasthan legislature inserted Section 22-A in the 1908 Act by Rajasthan Amendment

Act, 1976 being Act 16 of 1976, whereby, it introduced that section under the heading “Documents registration of which is opposed to public policy”, under which, the State Government may, by notification in the Official Gazette, declare that the registration of any document or class of document is opposed to public policy. Notwithstanding anything contained in the Act, the Registering Officer shall refuse to register any document to which a notification issued under Sub-Section (1) of Section 22-A is applicable. Followed by the said insertion of Section 22-A, a notification was also issued by the State Government. The introduction of Section 22-A followed by a notification of the State of Rajasthan was a subject matter before the Rajasthan High Court, where, the High Court declared Section 22-A of the Act as inserted by the amendment in the year 1976 as Act 16 of 1976, as unconstitutional. Therefore, consequently, the notifications as contained in annexures 3, 4, 6 and 7 of the writ petitions concerned were also quashed.

45. In the said decision, the question posed before the Hon'ble Supreme Court was, what is the public policy, whether the determination of public policy is necessarily a legislative function or an executive action and in order to determine what is the public policy, whether such power can be delegated to the legislative authority and if such decision is made by making any provision in the legislation, whether that legislation can be considered to be in conformity with the constitutional mandate or not. Answering the said question, the Hon'ble Supreme Court has held that, essential legislative functions cannot be delegated and while delegating, legislature should lay down criteria or standard. Unguided, uncontrolled and vague delegation would render the Statute or provision unconstitutional. It has also been held that, under separation of powers under Article 50 of the Constitution, function of judiciary is to interpret as to what is public policy, legislature therefore cannot delegate such function to executive. Finality cannot be attached to a decision of executive in this regard when the same falls within the exclusive domain of judiciary, the law dealing with the rights of citizens must be clear and unambiguous. Therefore, the statutory provision was held to be ultravires to Article 14 and 246 of the Constitution on the ground of delegation of essential legislative function to the executive ie., the State. By holding so, the Hon'ble Supreme Court in its conclusion has held as follows:

> *"53.We have noticed hereinbefore that the State of Rajasthan inserted Section 17(1)(f) and (g) in the Act making the registration of agreement to sale and irrevocable power of attorney relating to transfer of immovable property in any way a*

compulsorily registrable document. The State went further to amend Article 23 of the Second Schedule of the Stamp Act, 1899 making an agreement to sale of immovable property and irrevocable power of attorney or any other instrument executed in the course of conveyance, etc. with possession to be deemed to be a conveyance and stamp duty is chargeable thereon accordingly. According to the State, despite such enactments sales were being made by seller on the basis of a power of attorney with a right to sell the property and such powers of attorney were being executed for an unspecified period. A transaction between two persons capable of entering into a contract which does not contravene any statute would be valid in law. The State of Rajasthan does not make such transactions illegal. The Indian Contract Act or the Power of Attorney Act have not been amended. Execution of a power of attorney per se, therefore, is not illegal. Registration of power of attorney except in cases falling under Section 17(1)(g) or 17(1)(h) is not compulsorily registrable. Sections 32 and 33 of the Indian Registration Act also do not bar any such registration.

54.The Act only strikes at the documents and not at the transactions. The whole aim of the Act is to govern documents and not the transactions embodied therein. Thereby only the notice of the public is drawn.

55.In M.E. Moolla Sons, Ltd. (in Liquidation) Vs. Official Assignee, Rangoon and others [AIR 1936 PC 230], while commenting on section 17 and section 49 of the Act, it was stated:

> *"It is to be observed upon a comparison of these different sections that while the Registration Act only requires certain documents to be registered on pain of the consequences entailed by S. 49, T.P. Act, by S. 54 enacts that (with a limited exception) the sale of immovable property can be made only by registered instrument. The provisions of the Registration Act by themselves would not operate to render invalid a mere oral sale. On the other hand the somewhat wide phrase "any interest to or in immovable property" which occurs in Cl. (b), S.17(1), Registration Act, does not occur in S. 54 of the other statute."*

[See also K. Panchapagesa Ayyar and another Vs. K. Kalyanasundaram Ayyar and Others, AIR 1957 MADRAS 472]

56.Similar view has been taken in Syed Abdullah Sahib Vs. Syed Rahmatulla Sahib alias Baji Sahib and others [AIR 1960 MADRAS 274] *stating:*

> *"14. The Transfer of Property Act requires that certain transactions should be effectuated only by registered instruments. Apart from the provisions contained in that enactment, the obligation to register arises only under the Registration Act. Under the latter Act registration is made obligatory in respect of certain specified class of documents, but there is nothing to require a transaction to be effected by a registered instrument. Section 17 of the Registration Act enumerates the documents which require registration.*
>
> *The necessity for registration under that Act would depend upon what a document is or what it purports to be. A bargain or an arrangement between the parties may comprise several transactions. The question whether there should be a writing or registration would depend on each of the transactions and not on their cumulative result."*

57.Hence, Section 22-A of the Act through a subordinate legislation cannot control the transactions which fall out of the scope thereof.

58.We have noticed hereinbefore the effect of a power of attorney under the Indian Contract Act or the Power of Attorney Act. A subordinate legislation which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, in our opinion, thus, would not be valid.

59.The question can be considered from another angle. A person may not have any near relative or is otherwise unable to attend the office of the Sub-Registrar or Registrar within whose jurisdictions the property is situated. He may even be out of the country. In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Section 300 A of the Constitution of India.

60.The scope and effect of public policy has been construed differently by this Court in different cases; see for example Renusagar Power Co. Ltd. vs. General Electric Co. [(1994) Supp. (1) SCC 644] and Oil and Natural Gas Corporation Ltd. vs. Saw Pipes Ltd. [(2003) 5 SCC 705].

61.Hence, it becomes amply clear that it is not possible to define Public policy with precision at any point of time. It is not for the executive to fill these grey areas as the said power rests with judiciary. Whenever interpretation of the concept "public policy" is required to be considered it is for the judiciary to do so and in doing so even the power of the judiciary is very limited.

62.Even for the said purpose, the part dealing with public policy in Section 23 of the Indian Contract Act is required to be construed in conjunction with other parts thereof.

63.A further question which arises is whether having regard to the doctrine of separation of powers what is essentially within the exclusive domain of the judiciary can be delegated to the executive unless policy behind the same is finally laid down.

64.A thing which itself is so uncertain cannot be a guideline for any thing or cannot be said to be providing sufficient framework for the executive to work under it. Essential functions of the legislature cannot be delegated and it must be judged with touchstone of Article 14 and Article 246 of the Constitution of India. It is, thus, only the ancillary *and procedural powers which can be delegated and not the essential legislative point.*

65.The contention raised on behalf of the Appellants herein that the State, being higher authority, having been delegated with the power of making declaration in terms of Section 22-A of the Act, would not be abused is stated to be rejected. Such a question does not arise herein as the provision has been held to be ultra vires Articles 14 and 246 of the Constitution of India.

66.The contention raised to the effect that this Court would not interfere with the policy decision is again devoid of any merit. A legislative policy must conform to the provisions of the constitutional mandates. Even otherwise a policy decision can be subjected to judicial review. [See Cellular Operators Association of India and Others vs. Union of India and Others (2003) 3 SCC 186 and Clariant International Ltd. and Another vs. Securities & Exchange Board of India (2004) 8 SCC 524]

67.For the reasons aforementioned, we do not find any merit in this appeal which is dismissed accordingly. No costs.

68.So far as amendments made by other States are concerned, we are of the opinion that any order passed by a Sub-Registrar or Registrar *refusing to register a document pursuant to any notification issued under Section 22-A of the Act would not be reopened."*

46. One of the subsequent important decision on the subject is the case from a Full Bench of Andhra Pradesh High Court, in ***Yanala Malleshwari and others v. Ananthula Sayamma and others, 2007 (1) CTC 97.*** In the said judgment it was held by the Full Bench of the said High Court that, cancellation of agreement of sale unilaterally by one party of the agreement is valid, by majority it has been held that a writ Court under Article 226 of the Constitution of India has got no power to entertain a writ petition to invalidate a cancellation deed or cancellation of an instrument which purports to nullify a sale deed.

47. Pursuant to the said decision of the Full Bench of the Andhra Pradesh High Court, it triggered the Andhra Pradesh Government to introduce a Rule ie., Rule 26(k) to the Andhra Pradesh Rules, by making an amendment dated 29.11.2006, which reads thus:

"(i) The Registering Officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyance on sale before him that such cancellation deeds are

executed by all executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanies by a declaration showing mutual consent or orders of a competent civil or High Court of State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyance on sale before him if the cancellation deed is executed by a civil Judges 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 registrable by any provision of law.

(ii) Save in the manner provided for above, no cancellation deed of a previously registered deed of conveyance on sale before him shall be accepted for presentation of registration."

48. Subsequently, a writ petition in W.P.No.8567 of 2008 in the matter of ***G.D.Subramaniam Vs. The Sub-Registrar and others*** *reported in* ***2009 (1) CTC 709,*** came up for consideration before a Single Bench of this Court, where the issue was, whether the unilateral cancellation made on the sale deed executed and registered without the knowledge of the purchaser ie., the person who claim under the sale deed is valid? The learned Judge of this Court after having analysed the issue in detail rendered a decision on 10.02.2009, where the learned Judge, after having gone through the import of ***Yanala Malleshwari*** *case* cited supra of the Full Bench of Andhra Pradesh High Court has recorded so, in paragraphs 20 and 21 which reads thus:

> *"20. Now, turning to the judgment of the Full Bench of the Andhra Pradesh High Court in Yanala Malleshwari and others, speaking for majority, His Lordship Justice V.V.S.Rao, after having elaborately dealt with the identical questions, has ultimately held in para 66 as follows:-*
>
> > *"Therefore, when the provisions of the Registration Act and Registration Rules elaborately deal with the circumstances and situations when the registering officer has to accept and register the documents and / or as to when registering officer has to reject the documents for registration, it is not possible to hold as a general rule that whenever a cancellation deed is submitted, the registering officer is bound to reject the acceptance and registration of the same. Such interpretation would render Section*

126 of TP Act (which enables the donor of a gift to cancel / revoke the same) ineffective. Second, there could be unimaginable number of circumstances when the executant himself on his own volition comes before the registering officer and desires to cancel the earlier document. As already pointed out supra, under Section 23-A of the Registration Act, the registering officer can re-register a document totally ignoring the earlier registration. Further more, under schedule 1-A to the Indian Stamp Act as amended by the Stamp (A.P.Amendment) Act, 1922, cancellation deed is one of the legal document recognized in law and a transaction for transfer of immovable property is no exception."

21.With respect, I am unable to subscribe myself to the said view taken by the majority for the reasons which follow. Though in para 54 of the judgment, a reference has been made to Section 32-A of the Indian Registration Act, which was recently introduced, the learned Judge has not dealt with the same elaborately. Nobody can have any quarrel over the legal position that a deed of cancellation of a sale of immovable property of value Rs.100/-and upwards, is a document which needs compulsory registration. But the learned Judge has taken the view that to revoke a sale or to cancel the same, the *consent or knowledge of the purchaser is not at all required. In my considered opinion, as I have already stated, a sale being a bilateral contract, more particularly in view of Section 32-A of the Indian Registration Act, if to be cancelled, it should be done bilaterally by both the parties to the sale. The learned Judge has expressed the apprehension that if the law is so interpreted so as to hold that the Registering Officer has power to refuse to register a cancellation deed, then, it would render Section 126 of the Transfer of Property Act, which enables the donor of a gift to cancel it or revoke the same, ineffective. With respect, I am of the view, that such apprehension has no basis. Section 126 of the Transfer of Property Act is a special provision dealing with the power of the donor to revoke a gift deed in certain circumstances. Such kind of revocation does not require the consent of the beneficiary of the gift. Basically, such a gift is not a contract in terms of the definition of contract as found in the Indian Contract Act, since gift is a transfer made voluntarily without consideration, whereas, a sale of an immovable property is a contract entered into between two parties where consideration is a sine-qua -non. Therefore, revocation of a gift deed cannot be equated to cancellation of a sale deed. Both operate on different spheres. A reference has also been made in the judgment to Section 23-A of the Registration Act. In my considered opinion, Section 23-A which* *speaks of re-registration of certain documents has nothing to do with cancellation of a validly executed document. It is not to say that invariably in all cases, the registering officer should refuse to register a cancellation deed. We cannot generalise all deeds of cancellation as illegal or void so as to say that such documents cannot be registered at all. All I would say is that such cancellation deeds which are executed bilaterally by both the parties to the earlier document can be registered by the registering officer, provided, the other requirements of the Indian Registration Act are satisfied. But those cancellation deeds executed unilaterally by one party to the earlier transaction, without the consent of the other party and without complying with the requirements of Section 32-A of the Indian Registration Act, alone are to be rejected by the Registering Officer."*

49. After having analysed various decisions hitherto rendered on the subject, the learned Judge has ultimately concluded with the following proposition in paragraph No.31 of the judgment which reads thus:

"31. Out of the foregoing discussions, the emerging conclusions are summed up as follows:-

(i) Challenging registration of a unilaterally executed deed of cancellation of a sale, a writ petition is maintainable under Article 226 of the Constitution of India;

(ii) A deed of cancellation of a sale executed by mutual consent by all parties to the sale deed, if presented for registration, the registering Officer is bound to register the same provided the other requirements like Section 32-A of the Registration Act have been complied with.

(iii) The Registering Officer is obliged legally to reject and to refuse to register a deed of cancellation of a sale unilaterally executed without the knowledge and consent of other parties to the sale deed and without complying with sec.32A of the Registration Act."

50. Subsequently, a similar issue came up for consideration before a Division Bench of this Court in ***E.R.Kalaivan*** *vs.* ***The Inspector General of Registration and another*** reported in ***(2009) 4 CTC 618***, where also the question which arose for consideration is that, whether the Registrar who is empowered to register the documents under the Indian Registration Act could register a document unilaterally executed by the vendor cancelling the earlier sale made. In the said Division Bench judgment, the learned Judges having considered various earlier judgments including the Full Bench judgment of Andhra Pradesh High Court in ***Yanala Malleshwari and others*** *v.* ***Ananthula Sayamma and others**, **2007 (1) CTC 97*** and also other related judgments including ***G.D.Subamaniam case,*** held that, the view expressed by the learned Judge in ***G.D.Subamaniam case*** is to be approved. In the said judgment, the Division Bench has also adverted to the decision of the Andhra Pradesh High Court in ***Yanala Malleshwari case*** cited supra and subsequent improvement made in Andhra Pradesh Rules by inserting rule 26(1c) and after analysing these aspects, the Division Bench has held as follows:

> *"14. The said Rule 26(k) was challenged before the Andhra Pradesh High Court in Kalitha Narasimha v. The State Government of A.P., rep. by its Principal Secretary (W.P.No.3744/2007) by contending that the same is ultra vires of the provisions of the Registration Act, 1908 and is contrary to the judgment of the Full Bench in Yanala Malleshwari and others case. The Division Bench of the Andhra Pradesh High Court, by order dated 13.3.2007, while upholding the said Rule, has held as follows:-*
>
> > *"In our opinion, the impugned rule does not in any manner violate the ratio of the*

majority judgment of the Full Bench. Rather, as mentioned above, it is a statutory embodiment of one of the rules of natural justice and is intended to curtain unnecessary litigation emanating from the ex parte registration of cancellation deeds."

15. As indicated in the above judgment, the principles of natural justice are also to be adhered to by the Registering Officer while dealing with a deed of cancellation of sale. If a unilateral cancellation deed is allowed to be registered, without the knowledge and consent of the other party to the earlier contract, as held by the Division Bench of the Andhra Pradesh High Court, such registration would cause violence to the principles of natural justice and lead to unnecessary litigation emanating therefrom.

16. By the said Rule 26(k)(ii), it was directed that no cancellation deed of a previously registered deed of conveyance on sale before him shall be accepted for presentation for registration.

17. That Rule was questioned before the Andhra Pradesh High Court in the case of Kalitha Narasimha v. The State Government of A.P., in W.P.No.3744 of 2007 and on the ground that the amendment was contrary to the judgment of the

Full Bench in the case of Yanala Malleshwari and others v. Ananthula Sayamma and others, 2007 (1) CTC 97. By order dated 13.3.2007, the Division Bench of Andhra Pradesh High Court had upheld the said Rule and as on today, the Rule that prevails in Andhra Pradesh is that the cancellation deed of previously registered deed of conveyance on sale cannot be accepted for presentation by the Registrar unilaterally.

18. 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, 2009 CIJ 243 Madras. 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.

19. 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.*

20. There is one more aspect. A person, who claims that the sale consideration has not been paid, as some undertaking was given at the time of registration, is not without any remedy. A provision of cancellation of such deed of registration is also available to enable such of those vendors to approach the civil Court and redress their grievance. In this context, the judgments of the Supreme Court as well as the Division Bench of this Court are not of any assistance to the appellant on the facts of this case as, particularly, in those two *cases, the prime consideration was whether a document which is opposed to public policy could be registered or not. Merely because the words "cancellation deed" was also incorporated in the Government Order dated 22.9.2000, which was subsequently set aside by the Division Bench, that would not give a right for a vendor to present the document of cancellation of the sale deed for registration without reference to the purchaser. If such a situation is allowed, it would certainly put the purchaser in trouble. Further, the Division Bench of this Court in Writ Appeal No.194 of 2009, by judgment dated 1.4.2009, had in fact set aside such a document of cancellation which was registered. The said judgment of the Division Bench was subsequently followed by another Division Bench in Writ Appeal No.789 of 2009 dated 23.6.2009. We are entirely in agreement with those Division Bench judgments and for all the reasons recorded in this judgment, we are not inclined to interfere with the impugned order dated 19.2.2009."*

51. While that being so, despite all these decisions having been rendered by this Court both by the Single Bench as well as Division Bench and other decisions by various High Courts as well as the Hon'ble Supreme Court on the subject, the issue was not concluded. Therefore, at one point of time, ie., in the year 2011, a similar issue had been referred to a Full Bench constituted in this regard for an authoritative pronouncement in the matter of ***Latif Estate Line India Ltd., represented by its Managing Director*** *vs.* ***Hadeeja Ammal and others*** *reported in* ***2011 (2) CTC 1***, where among other things, what was the question which was relevant for the present subject as recorded, has been extracted herein above already. Ultimately, the Full Bench in ***Latif Estate case*** cited supra in paragraph No.59 has held the legal proposition which has also been quoted hereinabove. While dealing with the said issue the Full Bench also has held in paragraph No.54 that there has been no provision either in the Transfer of Property Act or in the Registration Act to cancel the deed of sale. The relevant portion for easy reference in paragraphs 54 & 55 of the judgment reads thus:

> *"54. There is no provision in the Transfer of Property Act or in the Registration Act, which deals with the cancellation of deed of sale. The reason according to us is that the execution of a deed of cancellation by the vendor does not create, assign, limit or extinguish any right, title or interest in the immovable property and the same has no effect in the eye of law. A provision relating to the cancellation of a document is provided in Section 31 of the Specific Relief Act, 1963 (Old Section # 39). Section 31 reads as under:-*

"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."

55. From the reading of the aforesaid provision, it is manifest that three conditions are requisite for the exercise of jurisdiction to cancel an instrument ie.,

(1) An instrument is voidable against the plaintiff;

(2) The plaintiff may reasonably apprehend serious injury by the instrument being left or outstanding; and (3) In the circumstances of the

case, the Court considers it proper to grant this relief of preventive justice."

52. Therefore, by the said decision of the Full Bench in ***Latif Estate case,*** the issue had been given a quietus at that juncture where, the important facet of the Full Bench judgment is that, a deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property, it is of no effect. Hence such deed of cancellation cannot be accepted for registration. Also it was further held in the Full Bench judgment that, once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor. It is also held in the Full Bench judgment that, if consideration is not passed fully, then it cannot be stated that the right has been transferred. Only in that circumstances, the deed of cancellation with the consent of both the parties on the ground of non-payment of consideration can be made and in all other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

53. Therefore, the position that has emerged following the said authoritative pronouncement of the Full Bench of this Court in ***Latif Estate case*** is that, no unilateral cancellation of sale deed can be registered by the registering authority as such a unilateral cancellation will have no effect. Even with the consent of the transferee, such kind of cancellation cannot be made by way of deed of cancellation of sale deed. Once the transfer has already been completed by registration of the sale deed, in that case, the only course available is to re-convey the property by the deed of reconveyance by the transferee in favour of the transferor. The one exception that was found out by the Full Bench is that, the transfer made has not been completed when the full sale consideration has not been passed on. Only in that case, with the consent of the transferee such kind of transfer could be made and can be registered. In all other cases, even if any sale has been effected out of fraud or forgery or whatever valid reasons, the owner of the property or the transferor cannot cancel the sale already effected but only to approach the Civil Court to get a declaration. Therefore, this is the governing law on the subject in hand in which there could be no much quarrel.

54. While that being so, a similar issue had come up for consideration before the Hon'ble Supreme Court in ***Sathya Pal Anand Vs. State of Madhya Pradesh, reported in 2016 10 SCC 767,*** where, what was the relevant question that was posed for consideration has already been quoted hereinabove, according to which, the prime question that was decided by the Hon'ble Apex Court in ***Sathya Pal Anand*** cited supra is, whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an extinguishment deed after it is registered. Similarly, whether the Inspector General of Registration can cancel the registration of the extinguishment deed in exercise of powers under Section 69 of the 1908 Act.

55. Taking such interjection and the question posed therein, their Lordships having delved into the issue, have held that, 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 it is registered. The power to cancel the registration is the substantive matter and in absence of any express provision in that regard, it is not open to assume that the Sub-Registrar, (Registration) would be competent to cancel the registration of documents in question. Similarly the power of the Inspector General is limited to do superintendence of registration office 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.

56. The Supreme Court has further held in this regard that, since the provisions in the 1908 Act enable the registering officer to register the documents presented for registration by one party and execution thereof be admitted by the other party, thereafter, it is unfathomable as to how the registration of the document by following procedures satisfied in the 1908 Act can be said to be fraudulent. Some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the Civil Court. It has further been held by the Hon'ble Supreme Court in the aforecited case that, 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 registeration of the document. The aggrieved party can challenge the registration and validity of the document before the Civil Court.

57. It has also been held that Section 35 of the Act does not confer a quasi-judicial power on the registering authority. As has been observed in ***Pork View Enterprises*** *Vs.* ***State Government of Tamil Nadu*** reported in ***AIR 1990 Mad 251***, the registering officer is purely administrative and not quasi-judicial. He cannot therefore, decide as to whether the document presented for registration is executed by the person having title as mentioned in the instrument.

58. The Hon'ble Supreme Court has also dealt with Rule 26(k) of Andhra Pradesh Rules made under Section 69 of 1908 Act.

59. Therefore, by virtue of the said decision of the Hon'ble Supreme Court, in ***Sathya Pal Anand*** case cited supra and also in view of the law declared by the Full Bench of this Court in ***Latif Estate*** case cited supra the field is fully occupied by these two decisions.

60. In this context, it is to be noted that, only pursuant to the

Sathya Pal Anand case decision of the Hon'ble Supreme Court, the IG (Registration) has come forward to withdraw the circular dated 03.11.2011, by circular dated 20.10.2017 and new set of procedure has been introduced or added, under various circulars in the same number ie., Circular No.41530/U1/2017, subsequently, ie., on 08.11.2017, 09.04.2018, 31.07.2018 and 09.11.2018. Only these circulars issued by the IG of Registration are holding the field now. When these circulars were issued step by step, the procedure has been made explicit and tightened in order to ensure that fraudulent registration should not be permitted to take place.

61. Nevertheless, there has been cases, where, such fraudulent transactions or transactions by way of misrepresentation or impersonation did take place in the past. Though, because of these measures referred to above taken by the IG of Registration and Registration Department by issuing various circulars, registration of fraudulent transactions now have been reduced, it cannot be said that such fraudulent transactions have been completely stopped or registration on such documents have been totally stopped.

62. Here in the batch of these writ petitions, some of the cases had been filed prior to the present regime ie., before ***Sathya***

Pal Anand judgment of the Hon'ble Supreme Court as well as ***Latif Estate*** case cited supra and various circulars issued in the year 2017 and 2018, referred to above, by the IG of Registration and some of the cases had been filed even subsequent to that ie., in the year 2018 also.

63. In this context, out of all these cases, only few cases illustratively are taken into account for the purpose of narrating the facts in order to demonstrate as to how such kind of fraudulent activities are still going on. As against such fraudulent activities of encumbering with the property of the original owners concerned, without their knowledge where for whatever reason such sale deeds are registered by the department, the innocent and genuine owners of the immovable properties are left with no other option except to approach the Civil Court for initiating appropriate civil proceedings by filing civil suits seeking declaratory decrees against such instruments and documents registered by the registering authority.

64. Since this being the position, in view of the settled legal proposition in this regard, as has been stated or held in number of decisions, very particularly in the Full Bench decision in ***Latif Estate*** case cited supra and the Hon'ble Supreme Court decision in

Sathya Pal Anand case cited supra, these petitioners or similarly placed persons have raised a pertinent question that, merely because they are genuine owners of the immovable properties, should they be driven to the Civil Court, by thus, should they engage a long pending legal battle against the fraudsters and subsequent innocent purchasers or third parties, who might have fell prey with the fraudsters and by thus, to lead the civil case and conduct the case for decades together, to see the light of the day to get back the immovable property from such fraudsters? This question still loom large, for which the Courts of law, though not in a position to give a way out directly, in view of the available provisions under Section 1908 Act as well as various other connected legal provisions such as Transfer of Property Act, Contract Act., etc., this Court, being the judiciary as part of the State, though has to confine with its jurisdiction without transgressing the other wings of the State, namely, Legislature and executive, by strictly adhering to the principle of doctrine of separation of powers, is having the feeling of a duty to throw some light, which may be in the nature of suggestion, which would be greatly helpful to the State and the legislative to think and act, which may yield the desired result, so that the innocent owners of the immovable properties who lost their property right at the hands of fraudsters can retrieve their property and to take a respite by having a summary procedure without being driven to the Civil Court for having a decades run civil litigation.

FACTS OF FEW CASES:

65. The facts of every single case in this batch though not traversed as it may not be required, for the convenience of easy reference and understanding and also to know the intensity of the problem being faced by the litigants, the individual facts of few writ petitions are recorded hereunder:

W.P.No.28728/2018:

66. That the petitioner one S.Kanniammal @ Mangai, purchased the landed property in New Survey No.137/2 and Old Survey No.204/1, to an extent of 0.59 cents situated at Chettikuppam Village, Maduracity Nagar, Marakkanam, Tindivanam Taluk, Villupuram District vide registered Document No.560/2000. The property was purchased from four persons namely, Perumal, P.Sundaram, Sangeetha and M.Vijaya.

67. After some time of the purchase of the property, the petitioner left for abroad to pursue her son's studies, where her husband met with an accident. Therefore, in order to look after the family, the petitioner had to stay abroad for a longer time.

68. After some years, when the petitioner came to India and verified the property by having inspection in the year 2007, to the shock of the petitioner, she found that the fourth respondent in the writ petition one T.Venkataraman, has been in occupation of the property by running a fish farm culture in the name of Sona Shrimps and Hatchery.

69. Thereafter, the petitioner filed a criminal complaint against the fourth respondent and also filed a civil suit in O.S.No.69 of 2015, which is pending before the District Munsif Court, Tindivanam. It is the case of the petitioner that, the fourth respondent, by using her maid by name Kanniammal by hatching a plan to grab the property in question, asked to impersonate the petitioner by executing a sale deed on 04.04.2001, in favour of one Nandha Kumar, which was registered as Document No.497/2001 at Sub-Registrar office, Marakkanam, Villupuram District. The said Nandha Kumar, in the very next month on 29.05.2001, through Document No.819/2001, sold the property to one Ameeral Dhanapalu, which was registered in the same Registrar office. The said Ameeral Dhanapalu, after six months executed a sale deed in Document No.28/2002 dated 17.01.2002 to and in favour of the fourth respondent Venkataraman. This is how the fourth respondent claimed the ownership of the property of the petitioner and all these transactions had taken place in the absence of the petitioner, who had been in a foreign country during those years. Though criminal complaint and a civil suit has been filed by the petitioner, the petitioner could not get back the property so far and therefore, she filed this writ petition seeking a Writ of Mandamus directing the third respondent, who is the Sub-Registrar concerned, to cancel the sale deed, that is, Document No.28/2002, which stands in the name of the fourth respondent, in respect of the petitioner's property.

W.P.No.6008/17:

70. The petitioner in W.P.No.6008/17, one Kasthuriammal, stated that, the petitioner's husband one R.Radhakrishnan, purchased the landed property with an extent of 48 cents in Survey No.9/4B at Irumbedu Village in Chengalpet District in favour of the petitioner for a valuable sale consideration on 17.08.1960, from one S.Krishnan, vide Document No.3576/1960, registered at the office of Sub-Registrar, Sriperambathur. The joint patta was given in patta No.112 to the petitioner's land as well as the adjacent land which was purchased by R5 & R6, who are the cousins of the petitioner. Thereafter, the petitioner wanted to sell the property and when she applied for encumbrance certificate on 26.06.2012, she shockingly came to know that, the fifth and sixth respondents created a forged document in Document No.5187/1989, at the office of the Sub-Registrar, Sriperambathur and sold the property to the seventh respondent one Vasantha Kumari.

71. It is the case of the petitioner that, the fourth respondent is one Rajeshwari, whose husband is T.Radhakrishnan, who is no more and the petitioner's husband one R.Radhakrishnan, who is also no more. Therefore, by taking advantage of the similar names of the petitioner's husband and the fourth respondent's husband, the fifth and sixth respondents along with fourth respondent jointly sold the property which includes the portion of the property belonging to the petitioner. Thereby, the fourth respondent impersonated her husband as if that he was R.Radhakrishnan ie., the husband of the petitioner and for the alleged fraudulent action, R5 & R6 also supported. Against these transactions, though efforts had been taken by the petitioner by making criminal complaint and also by making a request to the revenue authorities to cancel the patta insofar as the ownership of the property in question is concerned, since she could not get back the property, the petitioner filed the present writ petition with an amended prayer of Mandamus to direct the second and third respondents to cancel the forged sale deed in Document No.5187/1989 made in favour of the seventh respondent.

W.P.No.383/18:

72. The facts of this case as projected by the petitioner is that, the petitioner one Devarajan, purchased two vacant house sites measuring 1014 sq.ft each totalling 2028 sq. ft in Survey No.553/2 and 556/2A2B1 of Vellegoundan Palayam Village, Dharmapuri Taluk and District from the legal heirs of one Late. Ravikumar namely, R.Maheswari, R.Rajesh, R.Rameshkumar, R.Sureshkumar by way of Document No.1477/15 dated 03.06.2015 for 1014 sq.ft and Document No.1478/15 dated 03.06.2015 for 650 sq.ft, and 364 sq.ft., both documents were registered at the Sub-Registrar office, Dharmapuri.

73. Tracing the title, the petitioner also contended that, the said Ravi Kumar has purchased the said land from one N.Sundaramurthy, through his power agent D.S.Kanagaraj and one Periyasami through his power agent R.Asaithambi. Therefore, according to the petitioner, the title was so clear and there was no encumbrance and since last 25 years, the petitioner had been enjoying the property. The petitioner after purchasing plots had constructed two residential houses after getting proper approval from the Municipal authorities and resided there till date. Further, due to the old age when the petitioner decided to make settlement of the said properties to his son namely D.Karthikeyan he made a settlement deed. When he approached the Sub-Registrar office concerned on 03.07.2017, for registering the settlement deed, it was to the shock of the petitioner that the Sub-Registrar claimed to have refused to register the settlement deed stating that, the property in question had already been sold by way of the earlier parental Document No.1112/96 to two different persons through two different sale deeds. Therefore, the Sub-Registrar concerned refused to register the settlement deed of the petitioner.

74. In fact, in response to the said case projected by the petitioner, the second respondent in this writ petition ie., Sub-Registrar, Dharmapuri, had filed a counter affidavit, where he has disclosed the following:

> *"8.**<u>The real facts are follows:-</u>***
>
> *I state that my previous officer elaborately given the details to the 1st respondent herein. Because the 1st respondent herein given a letter No.3549/A1/2016 dated.08.11.2016 regarding the petitioner petition dated 04.11.2016 our office letter no.1901/R/2016 dated.15.11.2016 the real*

facts and also the explanation given my previous officer to the 2nd respondent stating that in letter the said petitioner have not presented any document before the sub registrar No.1 Dharmapuri but the petitioner enquiry about the guideline value Vellagounden Palayam village S.No.553/2 in person for that purpose. After verifying valuation register one chitturajan and one Vasumathi objection petition has been mentioned opposite to the said survey number. Because of that after verifying the same only the document will be receive. The petitioner will not present any document before our office for registration aspect. But after receiving the letter from respondent No.1 my previous officer verified the consent registry.

9. As per the verification SRO joint-2 document No.1112/1996 Vellagounden Palayam village S.No.553/2 within specific boundaries for the extent of 2028 sq.ft. vacant site was purchased by one Jayakumar and the said Jayakumar gave a General power of attorney to one M.Prakash through General Power of Attorney document No.109/1997. As per the General Power of Attorney agent sold the said property to one Krishnan through sale deed No.1864/1997. In that part of the extent 1014 sq.ft. one Sundaramoorthy purchased through document No.2972/1997 and he given General power to one

Kanagaraj through the Dharmapuri SRO Joint-1 Book 4 document no.329/2010. The said Power agent Kanagaraj sold said property to one Ravikumar through document No.1541/2010 the said petitioner purchase the property from the Ravikumar's legal heirs through our officer document No.1478/2015.

10. The same Jayakumar who is the previous owner of the property through the document No.1112/1996 was already sold the property through the power agent as above again given a general power to one Dhakshinamoorthy through the document No.88/1998. The said Dhakshinamoorthy power agent of Jayakumar sold the very same property to one Chinnasamy for the extent 2262 sq.ft. through the Document No.1727/1998 the said property was already sold by the principal through his power agent M.Prakash to one Krishnan. Further the the Chinnasamy given the general power to one Chitturajan through the document No.75/2009 Dharamapuri SRO West.

11. The facts are remind so for the extent of 1014 sq.ft. within specific boundaries was registered two different persons two different documents. So because of that my previous officer given the above details with encumbrance certificates regarding the said details to the 1st *respondent through letter No.1901/R/2016 dated 15.11.2016."*

W.P.17532/16:

75. This writ petition is filed by one V.Sukesh Kumar @ V.Sukesh Nair. He states that since he purchased the property in Plot Nos.1252 & 1252-A, in Survey No.247/6A at Mevalurkuppam Village, Sriperumbudur Taluk, Kanchipuram District, measuring an extent of 5740 sq.ft he became the absolute owner of the said property. The said property was purchased from one Sundaravalli Rajan, through the sale deed dated 17.02.1997, which was registered as Document No.781 of 1997, at the office of the Sub-Registrar, Sriperumbudur.

76. The petitioner had been working at China, as such he could not maintain the property. Therefore, the petitioner had entrusted the same to the petitioner's father one V.Viswambaran, to maintain the same on behalf of the petitioner. He had also handed over the original documents in respect of the above said property including the original sale deed dated 17.02.1997. While so, during the year 2000-2001 one Saseendran, has became a close friend of the petitioner's father and very often he used to visit the petitioner's house at Chennai and he made the father of the petitioner to become addict for the habit of Alcohol.

77. In the year 2004, the petitioner's father went away from the house, but he did not return back. Despite the efforts taken by the petitioner by giving police complaint, the whereabouts of the petitioner's father could not be traced. In the year 2012, the petitioner came down to Chennai from China and during his visit the petitioner has applied for encumbrance certificate in respect of the property. However, shockingly it revealed that, the petitioner's property was sold to a third party by using a forged power of attorney deed dated 20.07.2001, registered as Document No.1200/01, on the file of the Sub-Registrar, Virugambakkam. It is to be noted that on 20.07.2001, that is the date of execution of the power by the petitioner, in favour of the petitioner's father, the petitioner was not at all in India. Based on the said forged power of attorney dated 20.07.2001, by using the name of the petitioner's father, a sale deed was executed dated 23.08.2001, in favour of the third respondent in the writ petition one S.Dayakumari, which was registered as Document No.4131/01, at the office of the Sub-Registrar, Sriperumbudur.

78. After coming to know about the forged transaction, the petitioner had lodged a police complaint before the Superintendent of Police, Kanchipuram, where FIR has been registered against the fourth respondent, including the third respondent and also made a representation to the first respondent ie., the District Registrar, Chengalpat, who on the said representation issued notice to conduct enquiry. However, when the enquiry was pending and the investigation of the police complaint was also pending, the third respondent in turn had sold out the property to another third party namely Arunachalam, which was also registered as Document No.10934/12 dated 28.11.2012, before the Sub-Registrar office, Kancheepuram District.

79. Therefore, after coming to know about the further sale effected on 28.11.2012, over the property of the petitioner, he made further representations to the first respondent. However, the issue could not be moved further. The police investigation revealed that the power of attorney dated 20.07.2001 is a forged one as it was created fraudulently. Thereafter, after knowing the said developments, the subsequent purchasers namely the third respondent and the said Arunachalam realised that they purchased the property in question from some body who did not have any right or title over the property, and came forward voluntarily to cancel the forged sale deed and accordingly, the sale deed between the third respondent and Arunachalam stood cancelled and those cancellation had been registered as documents in the concerned Registrar office. The cancellation deed executed by Arunachalam in favour of the third respondent was registered. However, the cancellation of sale deed dated 23.08.2001 of the third respondent when was presented before the Registrar office for registration, the same was refused to be registered stating that, by virtue of the present cancellation, the rights already been transferred in favour of the third respondent is again being re-transfered to the petitioner and therefore, it should be treated only as a separate sale and accordingly, the Stamp Duty should be paid. Stating the same, an order has been passed by the Sub-Registrar on 21.09.2015 and challenging the same, the present writ petition is filed.

80. The facts of the aforestated cases have been given as only illustrative cases to demonstrate as to how these fraudsters have been continuing in their onslaught, despite several measures are being provided under the guidelines and circulars issued by the Inspector General of Registration and because of which how the real and true owners of the immovable properties are put into trouble, thereby they met the agony and sufferance for years together without a final and complete remedy.

81. As we discussed in the earlier part of this order, the cases can be treated under three broad categories. Insofar as the first category of cases are concerned, the question is whether the writ petitions seeking a prayer to give a direction to the Registering authorities to cancel the sale deed or settlement deed in respect of the immovable property, can be allowed or not?

82. Insofar as the cases which fall under the first category, on the basis of the legal position as has been settled by plethora of decisions, especially by the decisions of the Full Bench of this Court in ***Lathif Estate case*** and also the decision of the Hon'ble Supreme Court in ***Sathya Pal Anand case*** cited supra, that kind of remedy cannot be given by this Court exercising its powers under Article 226 of the Constitution of India. As of now, the only remedy open to or available to them is either the beneficiary out of the forged or fraudulent instruments, under which the title of the property transfers in their favour, should voluntarily come forward to re-convey the property in question to and in favour of the true owners or the true owners shall necessarily approach the competent Civil Courts to get a remedy by seeking a declaratory relief.

83. After the hearing of this batch of cases and when the cases have been reserved for passing orders, this Court has come to know about a significant development in this regard, where, the State legislature has come forward to legislate an amendment act called The Registration (Tamil Nadu Second Amendment) Act, 2021. Under the said amendment Act, it sought to insert certain provisions in the 1908 Act and the Bill was introduced on 2nd September, 2021. Subsequently, it seems that, the Bill was passed. In order to take note of the salient features of the Amendment Act referred to above, the contents of the Bill as published in the Tamil Nadu Government Gazette No.392 dated 2nd September, 2021, is extracted hereunder:

"BILL INTRODUCED IN THE LEGISLATIVE ASSEMBLY OF THE STATE OF TAMIL NADU

Under Rule 130 of the Tamil Nadu Legislative Assembly Rules, the following Bill which was introduced in the Legislative Assembly of the State of Tamil Nadu on 2nd September, 2021 is published together with Statement of Objects and Reasons for general information:—

L.A. Bill No. 27 of 2021

A Bill further to amend the Registration Act, 1908 in its application to the State of Tamil Nadu.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Registration (Tamil Nadu Second Amendment) Act, 2021.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force at once.

2. In section 2 of the Registration Act, 1908 (hereinafter referred to as the principal Act), after clause (5), the following clause shall be inserted, namely:—

"(5-A) "forged document" shall have the same meaning assigned to it in section 470 of the Indian Penal Code, 1860;".

3. After section 22-A of the principal Act, the following section shall be inserted, namely:—

***"22-B. Refusal to register forged documents and other documents prohibited by law.—** Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:—*

(1) forged document;

(2) document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;

(3) document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;

(4) any other document as the State Government may, by notification, specify."

4. After section 77 of the principal Act, the following sections shall be inserted, namely:—

"77-A. Cancellation of registered documents in certain cases.— *(1) The Registrar, either suo motto or on a complaint received from any person, is of the opinion, that registration of a document is made in contravention of section 22-A or section 22-B, shall issue a notice to the executant and all the parties to the document and parties to subsequent documents, if any, and all other persons who, in the opinion of the Registrar, may be affected by the cancellation of the document, to show cause as to why the registration of the document shall not be cancelled. On consideration of reply, if any received therefor, the Registrar may cancel the registration of the document and cause to enter such cancellation in the relevant books and indexes.*

(2) The power under sub-section (1) may also be exercised by the Inspector General of Registration.

77-B. Appeal.- *(1) Any person aggrieved by an order of the Registrar under sub-section (1) of section 77-A may prefer an appeal to the Inspector General of Registration within thirty days from the date of cancellation of the document and the Inspector General of Registration shall pass an order confirming, modifying or cancelling the order of the Registrar.*

(2) In the case of an order passed by the Inspector General of Registration under sub-section (2) of section 77-A, an appeal shall

lie to the State Government within thirty days from the date of the order."

5. After section 81 of the principal Act, the following sections shall be inserted, namely:—

"81-A. Penalty for registering documents in contravention of sections 22-A and 22-B.—*(1) Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with registering the documents presented for registration under this Act, registers documents in contravention of section 22-A or section 22-B, shall be punishable with imprisonment for a term which may be extended to three years, or with fine, or with both.*

(2) Nothing contained in this section shall apply in the case of registration of a document made in good faith.

Explanation.— *For the purpose of this sub-section, the expression "good faith" means any act believed or done by a person in good faith with due care, caution and sense of responsibility or by mistake of fact believing himself justified by law under section 79 of the Indian Penal Code, 1860.*

81-B. Offences by companies.—*(1) Where an offence under this Act has been committed, by a company, every person who, at the time the offence was committed, was in-charge of, and was responsible to, the company for the conduct of the business of* *the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence, has been committed with the consent or connivance of, or it attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be, liable to be proceeded against and punished accordingly.

***Explanation.—** For the purposes of this section,—*

(a) "company" means anybody corporate and includes a firm or other association of individuals, and

(b) "director" in relation to affirm means a partner in the firm.".

84. The amending Act inserted 6 new Sections namely Section 5(A), 22-B, 77-A, 77-B, 81-A & 81-B. Probably in order to overcome the existing legal position, whereby, there is no power vested with the registering authorities or any one who administer the Registration Act, 1908, including the Inspector General of Registration concerned, to cancel any document registered for any reason, Section 77-A has been introduced.

85. In Section 77-A it is made that, if the Registration of any document is made in contravention of Section 22-A or 22-B, it may be cancelled by the Registrar concerned. Section 22-B enumerates four types of documents whose registration can be refused by the Registrar, wherein the first type of document is a forged document. Under Clause 5-A of Section 2 as has been inserted by the amending Act, the word "forged document" has been explained that it shall have the same meaning assigned to it in Section 470 of the Indian Penal Code, 1860.

86. Section 470 of IPC reads thus:

> *"**470. Forged [document or electronic record].**— A false document or electronic record made wholly or in part by forgery is designated "a forged document or electronic record".*

87. The word 'false document' has occurred in Section 470, as if it is made wholly or in part by forgery which is designated "a forged document". Since the words "by forgery", is indicated in Section 470, the meaning of the word "forgery", as provided under IPC in Section 463, can be taken into aid. Section 463 of IPC reads thus:

> *"**463. Forgery.**—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."*

88. Who ever makes any false document with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contact or with intent to commit fraud or that fraud may be committed, he is said to have committed forgery.

89. The process of making a false document also is explained in IPC under Section 464, which reads thus:

> *"**464. Making a false document. —** A person is said to make a false document or false electronic record—*

First. — Who dishonestly or fraudulently —

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly. — Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly. — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of *unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."*

90. That is how a forged document must have the meaning. Therefore, such kind of forged document, if it comes for registration, the same can be refused by the Registrar under Section 22-B, which is one of the proposed amendment as per the amending Act referred to above.

91. Though certain other documents had been mentioned, in respect of the present issue, we need not traverse into those aspects. So, if the Registrar comes to a conclusion that a particular document presented before him is a forged document, he can refuse to register the same. If he refused to register the same under Section 22-B, then, appeal can very well be filed against such refusal under Section 72 of the 1908 Act. At the same time, if already a document is registered which comes to the notice of the Registrar either *suo motu* or by complaint, after giving notice to the persons concerned including the parties who may be affected by the cancellation of such documents and after getting show cause from them, such document may be cancelled. Such power is now vested with the Registrar concerned under Section 77-A as inserted by the amending Act.

92. Once a cancellation is effected by the Registrar concerned under Section 77-A, appeal would lie against such order, to be preferred by any aggrieved party, under Section 77-B to the Inspector General of Registration, within 30 days from the cancellation of the document. Since the power under Section 77-A can also be exercised by the Inspector General of Registration under sub-section 2 of Section 77-A, if any order is passed by Inspector General of Registration under sub-section 2 of Section 77-A, appeal would lie before the State Government under Sub-Section 2 of Section 77-B.

93. Section 81-A makes it as a punitive action against the registering officer and the persons employed in the office of the Registrar, in case if they register any document in contravention of Section 22-A or 22-B. Similar punitive action is possible against the persons who committed the same offence who are companies, where the Director, Secretary or any person who are incharge or responsible of the company's affairs, for the conduct of the business of the Company, shall be deemed to be guilty of the offence and liable to be punished accordingly. Therefore, by inserting these provisions, the State legislature now has opened a way to find out a solution for the vexed problem which has been lingering in the society despite number of orders having been passed by law Courts as discussed in the earlier part of this order.

94. However, insofar as the present status is concerned, if the present amending Act has come into effect or the amended provisions which have been inserted in the 1908 Act are given effect to, certainly the parties can work out their remedy seeking for cancellation of such documents, which, according to the aggrieved parties, were documents registered out of fraud or forgery etc. But, in this context, whether a particular document is a forged document within the meaning of Section 470 of IPC is to be proved by the party who seeks such cancellation at the hands of the Sub-Registrar under Section 77-A of the Act.

95. Be that as it may, till such a mechanism comes to effect, in other words, till the amended provisions of 1908 Act, as discussed above, comes to effect, the prayer sought for to cancel any instrument registered already by a registering authority, cannot be granted by this Court, in view of the settled legal position as discussed extensively in the earlier part of this order.

96. Though such a opening has been given by the State Government through the amending Act namely Registration (Tamil Nadu Second Amendment) Act, 2021, whether this amendment would be sufficient to meet all situations, itself is a question. However, the same cannot be gone into by this Court in this batch of cases, as the validity or otherwise of these amendment Act is not questioned here as that stage is yet to come.

97. However, as on today, taking into account, the prevailing legal positions, as discussed hereinabove, this Court, before parting with this batch of cases, in the interest of general public, wants to give certain suggestions to the State for its consideration and needful action.

SUGGESTIONS:

98. Assuming that the power of cancellation now has been vested with the registering authorities, to cancel the forged document, if any registered, either against the order of such cancellation or order of refusal of such cancellation, the aggrieved party can prefer an appeal under Section 77-B to the Inspector General of Registration. At the same time, the Inspector General of Registration himself can exercise such power of cancellation or otherwise under sub-Section 2 of Section 77-A and in that case, as against the order of Inspector General of Registration, the aggrieved party can prefer appeal to the State Government.

99. In this context, it is to be noted that, hitherto ie., till the amending provisions come into effect, the legal position would be that, aggrieved party has to approach the civil Court to get a declaration. Therefore, the power hitherto being exercised by the Civil Court now is going to be exercised by the Inspector General of Registration or the State Government as the case may be.

100. Though the Inspector General of Registration or the State Government authorities in exercising their appeal powers under Section 77-B can be treated as quasi-judicial authorities or such exercise of appeal power can be treated as a quasi-judicial function, whether such kind of summary disposal to be undertaken either by the Inspector General of Registration or State Government official would be sufficient to find out the solution of any mixed issue of title over the property as that would be inevitably involved in every such case.

101. Therefore, in order to have an effective judicial / quasi-judicial mechanism, as against the order of cancellation of instruments by registering authorities or order of refusal of cancellation of instruments by the registering authorities, in every revenue district, the concerned District Registrar (Registration) can be conferred with the power to act as an appellate authority. As against the order to be passed by such first appellate authority / District Registrar (Registration), further appeal shall lie before one or more Appellate Tribunal to be constituted in this regard.

102. Such appellate Tribunal shall be headed by a judicial person who is or has been a Judge of a High Court. Two members, among whom one shall be deputed by the State Government from the Registration Department not below the rank of DIG of Registration and another shall be deputed by the State Government from the Revenue Department not below the rank of District Revenue Officer, shall be nominated.

103. The decision to be made by the Appellate Tribunal may be treated as final and for all practical purposes, the Tribunal shall be treated as a Civil Court and for regulating the procedure of deciding the appeal, the code of civil procedure can be made applicable.

104. This kind of mechanism can be made possible as already under the Maintenance and Welfare of Parents and Senior Citizens

Act, 2007 [In short, 'Senior Citizens Act'], the Sub-Divisional Magistrates ie., Revenue Divisional Officers are constituting Tribunal under Section 7 of the Senior Citizens Act, who are vested with the power under Section 23 of the said Act to declare any document of settlement or gift made by senior citizens to and in favour of legal heirs or any person as void.

105. Therefore, if this kind of redressal mechanism is provided, it would be a viable and effective alternative redressal forum for number of persons who have been hitherto driven from pillars to posts for retrieval of their valuable immovable properties which they acquired either by way of inheritance or out of their legally hard earned fortune.

CONCLUSION:

106. In view of the aforestated discussions, the prayer sought for in the First Category of cases in W.P.Nos.10176 & 10177 of 2011, 6737 of 2014, 20946, 6008, 19674 of 2017 and 28728 & 27778 of 2018, for a Writ of Mandamus to cancel the instruments registered already in the concerned Registrar office on the ground of fraud or otherwise, cannot be granted by this Court, where, the parties can be relegated either to approach the competent Civil

Court or to approach the Registrar concerned, if the amending Act is given effect to.

107. In the second category of cases in W.P.Nos.45728 & 45729 of 2006, 2243 & 2244 of 2012, 17532 of 2016, 9 of 2017 & 383 of 2018, where they come to this Court as against the order of refusal of registration made by the Registrar for various reasons, even this category of cases cannot be entertained here and pass orders, in view of the appeal remedy provided under Section 72 of the 1908 Act as against which, further appeal also is provided under Section 77 of the 1908 Act.

108. In respect of third category of cases where the writ petitions have been filed questioning the action of the Sub-Registrar in keeping the document as pending document either on the alleged under-valuation or payment of deficit stamp duty and for other prayers that is altogether a different issue which cannot be covered under the present set of cases for which judgment is rendered now. Therefore, those third category of cases in W.P.Nos.23023 of 2004, 16510 of 2006, 21984 of 2008, 10151 & 13705 of 2011, 28181 & 32194 of 2016 are hereby de-linked and the Registry is directed to list those cases before the appropriate Bench for decision.

109. With the aforesaid directions, the writ petitions in Categories 1 & 2 referred to above are dismissed and the writ petitions in category 3 are de-linked. However, there shall be no order as to costs. Consequently, all connected miscellaneous petitions are closed.

29.10.2021

Index : Yes
Internet: Yes
MR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chief Minister Cell,
State of Tamil Nadu,
Secretariat, Fort St., George,
Chennai – 600 009.

2.The District Collector,
Office of the Collectorate,
Villupuram District.

3.The Sub Registrar,
Marakkanam,
Villupuram District.

R.SURESH KUMAR., J.

MR

PRE-DELIVERY ORDERS MADE IN
W.P.Nos.28728, 27778 & 383 of 2018, 23023 of 2004,
45728, 45729 & 16510 of 2006, 21984 of 2008,
13705, 10151, 10176, 10177 of 2011, 2243 & 2244 of 2012,
6737 of 2014, 17532, 28181 & 32194 of 2016,
9, 6008, 19674 & 20946 of 2017

29.10.2021