



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4180 OF 2022

Siddharth Goel]
Age - 46 years, Occupation - Service,]
R/o. Bungalow No. 32,] ...Petitioner
Suyojana Society, Koregaon Park,]
Pune - 411 001.]

Versus

1. The Sub-Registrar Class II,]
Haveli No. 10,]
Pune City, Pune;]
]]
2. The District Registrar and]
Additional Collector, Pune;]
] }
3. Inspector General of Registration] ...Respondents
and Collector of Stamps,]
Maharashtra State, Pune; and]
]]
4. State of Maharashtra]
Through the Additional Chief]
Secretary, Department of Revenue]
and Forests, Mantralaya,]
Mumbai - 400 032.]

WITH
WRIT PETITION NO. 4179 OF 2022

Shantanu Santoshkumar Goel]
Age - 45 years, Occupation - Service,]
R/o. Bungalow No. 32,] ...Petitioner
Suyojana Society, Koregaon Park,]
Pune - 411 001.]

Versus

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| 1. | The Sub-Registrar Class II,
Haveli No. 10,
Pune City, Pune; |] | |
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| 2. | The District Registrar and
Additional Collector, Pune; |] | |
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and Collector of Stamps,
Maharashtra State, Pune; and |] | ...Respondents |
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Through the Additional Chief
Secretary, Department of Revenue
and Forests, Mantralaya,
Mumbai - 400 032. |] | |
| | |] | |

Ms. Rachana Harpale i/b. Nitin P. Deshpande, Advocate , for the
Petitioner.

Mr. S.P. Kamble, AGP for Respondent Nos. 1 to 4. in W.P. No. 4180 of
2022.

Mr. M. M. Pabale, AGP, for Respondent Nos. 1 to 4 in W.P. No. 4179 of
2022.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED: 05 FEBRUARY 2026.

JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-

1. Rule. Rule made returnable forthwith. The matter is taken up
for final disposal with the consent of parties.

2. Both these Writ Petitions challenge the order passed by the District Registrar and Additional Collector of Stamps, Pune, passed in exercise of powers under Section 72 of the Registration Act, 1908, refusing to register the sale deed *vide* orders dated 21.12.2021 and 24.03.2021, in Appeal Nos. 188 of 2021 and 63 of 2021, respectively. The subject matter of the Writ Petition is plot Nos. 21 and 22 situated at village Talavade, Taluka Haveli, District-Pune. The Registration Authority has refused to register the sale deed executed in respect of these two residential plots on the ground that the land allegedly constitutes a fragment, thus affected by the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

3. The other objection is that the land is situated in a Red Zone, hence requires permission of the competent authority. The impugned order also raises an objection that, the sale deed is of the plot of land from the private layout, for which the Non-Agricultural permission is not obtained.

Since both these Writ Petitions raise identical issues, they are heard and decided together.

4. The learned advocate appearing for the Petitioners submit that the Petitioners have executed a sale deed on 30.12.2020, for which they have paid full consideration. The lands in question fall in a residential zone as per the development plan of Pimpri Chinchwad Municipal Corporation, and covered by the Government Notifications dated 18.08.2009 and 02.03.2015. It is contended that there is no bar for execution of sale deed with respect to the subject lands, still the

Respondent No.1-Sub Registrar Class II, Haveli No. 10, Pune, by order dated 20.05.2021, has refused registration of the sale deed on the ground that, the sale deed covers an area of land which is affected by the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The registration is also refused on the ground that there is no NA permission of the land, for which the sale deed is executed, and the said land falls in Red Zone, due to which, there are restrictions on the construction to be carried out. Hence, the sale deed, without NOC from the respective Competent Authority, cannot be registered.

5. The order dated 20.05.2021 passed by the Sub-Registrar was further subjected to challenge in an Appeal under Section 72 of the Registration Act, 1908, before the Assistant Registrar and Additional Collector of Stamps, Pune, who has in turn confirmed the order passed by the Sub Registrar *vide* order dated 21.12.2021. In addition to upholding the grounds stated by the Sub Registrar, the Respondent No.2 Appellate Authority also took a view that Section 23 of the Registration Act, 1908, requires a document to be registered within four months from the date of execution, if there is a delay in approaching the Competent Authority for registration of the document, penalty is required to be paid.

6. The learned advocate for the Petitioner submits that none of the grounds assigned for refusing registration of the documents are maintainable in law. The property in question is situated at village Talawade, Taluka Haveli, District-Pune, which falls within the limits of the Pimpri-Chinchwad Municipal Corporation. Therefore, the provisions of the Maharashtra Prevention of Fragmentation and

Consolidation of Holdings Act, 1947, would not be attracted, hence the registration of the document cannot be refused on that ground.

Similarly, the other ground that the property falls under the Red Zone, is also not tenable for the reason that, though the provisions of Indian Works of Defence Act (7 of 1903), apply to the land in question in both Writ Petitions, merely seeking registration of sale deed is not prohibited, the restriction would apply only in case when permission is sought for construction or development in the Red Zone.

In the present case, the Petitioners in both the Writ Petitions do not seek construction or development permission, but merely seek registration of the sale deed. Thus, the bar would not be applicable to the present fact situation. Hence, on both the counts, the impugned order suffers from non application of mind, requiring interference by this Court.

7. The learned AGP Mr. M. M. Pabale and Mr. Kamble, relying on the affidavit-in-reply on behalf of the Respondent Nos.1 to 4 would submit that, the Petitioner seeks registration of fragmented land, without any sanctioned layout or Non-Agricultural permission from the competent authorities. Relying on Rule 44 (1)(i) of the Registration Act, 1908, it is contended that, said provision mandates the Registering Authority to ascertain fulfillment of certain conditions before accepting the document for registration. It mandates the registering officer to ascertain, whether the transaction intended by the document is prohibited by any existing Act of Central or State Government, requiring a true copy of no objection certificate from the Competent Authority to accompany the document.

8. The learned AGP submit that, just because the land falls within the Municipal limits it does not exempt the transaction from the purview of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, nor does it exempt the Petitioner from obtaining a Non-Agricultural use permission. Thus, necessary permission and approvals from the Competent Authority are required to be verified before registering a document.

It is further contended that, the land of the Petitioner is also affected by the provisions of the Indian Works of Defence Act 1903, since concerned land comes within the Red Zone, of the Dehu Road Ammunition Depot. As such, the Sub Registrar has rightly held that in absence of necessary permission and sanction from the competent authorities, as provided under Rule 44 (1)(i) of the Registration Rules, 1961, the document of the Petitioner cannot be registered. Hence, the permission has been rightly refused by the Respondent No.1-Sub Registrar Class II Haveli No. 10, Pune, and the District Registrar and Additional Collector of Stamps, Pune, as such the prayers of the Petitioner does not deserve consideration, and both Writ Petitions deserved to be dismissed.

9. We have heard the learned counsel for the petitioner and the learned AGPs appearing for the Authorities, perused documents on record with their assistance.

The order impugned in this Writ Petition is passed by the Respondent No.2 Additional Collector and District Registrar, Pune under Section 72 of the Registration Act. By this order, the Respondent No.2 has refused to interfere with the order passed by the Joint Sub Registrar, Pune dated 20.05.2021, holding that the

Petitioners were liable for penalty in accordance with Sections 25 and 34 of the Registration Act, 1908, due to delay in registering the document; the land in question is less than the standard area, forming part of private layout, require Non Agriculture permission, which was not produced; since the lands come within the Red Zone of Dehu Ammunition Depot, makes it necessary to produce the NOC of the Competent Authority as contemplated in Rule 44 (1)(i) of the Maharashtra Registration Rules, 1961.

11. So far as the first objection regarding imposition of penalty on account of delay in registration of the document is concerned, it has been rightly pointed out by the Petitioner that after the sale deed was executed on 30.12.2020, it was submitted for adjudication immediately. In Writ Petition No. 4179 of 2022, it was submitted for adjudication on 15.03.2021 and received back on 15.04.2021, while in Writ Petition No. 4180 of 2022, it was submitted for adjudication on 29.01.2021 and received back on 24.03.2021. The time limit prescribed for registration of document is four months from the date of its execution.

Section 23 of the Registration Act, 1908 reads thus:

23. Time for presenting documents.- *Subject to the provisions in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:*

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

In both the Writ Petitions, the document has been presented for registration on 28.04.2021, when the process of registration commenced. Even going by the outer limit, the period of four months for the document executed on 30.12.2020 would end on 30.04.2021. Thus, there is no delay in presenting the document.

Hence, the explanation offered by the Petitioners has not been appropriately considered by the Respondent No.2 claiming that, the document was presented twice on 07.04.2021 and 14.04.2021, through a third person and thereafter it was presented through the executants of the documents on 28.04.2021, which is beyond prescribed period entailing in imposition of penalty since penalty was not paid, it could not be registered. We do not find substance in the findings so recorded, considering the satisfactory explanation given by the Petitioners, we find that penalty is not leviable on the said document.

So far as the other two objections raised by the Respondent No.2 is concerned, reliance is placed on Rule 44(1)(i) of the Maharashtra Registration Rules 1961, which requires the Registering Authority before accepting any document for registration, to satisfy himself and ascertain that the document is not prohibited by any existing Central or State legislation.

Rule 44 (1)(i) of the Maharashtra Registration Rules, 1961 reads thus:

“44. Certain requirements to be verified before accepting a document for registration

(1) Before accepting any documents for registration, a registering officer may not concern himself with its validity, but shall ascertain-

...

(i) that if the transaction which is indented by the document, is prohibited by any existing act of Central or State Government, then the true copy of requisite permission or No Objection Certificate from the Competent Authority under the said act, has been attached along with the document and that the document is not written in contradiction with any vital term or condition mentioned in that permission or No Objection Certificate.”

12. The impugned order is passed relying on the aforementioned Rule claiming that the NOC from the Competent Authority is not accompanying the document, which is necessary for the Registering Authority to ascertain its validity before registration of the document.

The first NOC, which was allegedly required to be obtained from the Competent Authority is under the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holding Act, 1947, certifying that the land does not form a fragment, as a result of Sub Division.

Even the second objection as regards land coming under the Red Zone is concerned it is also alleged to be governed by the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, requiring a sanctioned layout by the Planning Authority.

13. Both these objections pertain to non compliance of the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. According to us, the registration of documents is governed by the Registration Act, 1908, whereas the registration is refused for non-compliance of provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The applicability of the provisions of both the enactments i.e. the Registration Act, 1908, and the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 operate in two distinct fields. Provisions of one enactment cannot be read into other enactment unless it is so expressly provided in the Act itself.

Incidentally, in an identical situation wherein registration of the sale deed was refused, by registering authority on the ground that sanctioned layout was not accompanied with the documents sought to be registered, which was under challenge was declared to be in violation of the circular issued by the State of Maharashtra purportedly issued in furtherance of Rule 44 (1)(i) of the Maharashtra Registration Rules, 1961, which has been declared to be contrary to the provisions of Registration Act in a judicial pronouncement of this Court in *Govind Ramling Solpure and Ors. Vs. The State of Maharashtra and Ors.*¹. While deciding the aforementioned Writ Petition, this Court has observed that Rule 44(1) (i) directing the Registering Authority to ascertain whether the transaction is prohibited by any existing Act of Central Government or the State Government and requiring permission or no objection from the Competent Authority, is required to be read down and not

¹ 2022 SCC OnLine Bom 978

required to be followed by the registering authority, while Registering document under Section 34 read with Section 35 of the of Registration Act, 1908.

It is held that the Rules cannot travel beyond the rule making power conferred by the parent statute. Since, Rule 44(1)(i) was not in consonance with Sections 34 and 35 of the Registration Act, it will have to be read down appropriately.

Relying on the judgment in the case of *M/s. Sunderson Vs. State of Maharashtra*², it is held that, Sections 34 and 35 of the Registration Act, 1908, do not give power to the Collector to give directions to the Sub-Registrar to refuse registration of a document. The provisions regarding registration of document are enumerated in Registration Act, 1908, itself. The executive instruction of the State cannot circumvent a statutory provision.

Section 34 of the Registration Act, 1908 reads thus:

“34. Enquiry before registration by registering officer.-(1) *Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:*

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

2 2008 Mah L. J. 82

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon-

- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;*
- (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and*
- (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.*

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

Upon perusal of Section 34 Sub Clause (3), it is evident that the Registering Authority is supposed to enquire that the document executed is by the same person who purports to have executed it; satisfy about the identity of such person appearing before him; and in case a person is represented through an agent satisfy himself of right of such person to appear. Thus, upon examining the scope of the aforementioned provision, this Court has held that the Registering Authority cannot travel beyond the statutory provisions.

The State Government is thus not empowered to issue directions to the Sub-Registrar, to desist from registration of a document on

account of breach of conditions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

The above position of law, laid down by this Court as recorded in paragraph nos. 32, 35 and 38 of the judgment in case of **Govind Ramling Solpure and Ors. (Supra)**, is reproduced hereinbelow, which read thus:

“32. In our view, the scope of enquiry made by the registering authority under sections 34 and 35 of the Registration Act is limited by the Registration Act to the factum of execution and identity of the person executing the document other than the levy of stamp duty, collection of registration charges and the completion of procedural formalities such as attestation etc. In our view, the provisions of the Registration Act are self-contained and neither any rule can be framed by the State Government which would be inconsistent with the provisions of the Parent Act conferring powers to frame the rules nor any circular can be issued which was contrary to the provisions of the Parent Act. This Court in the above judgment has held that no subordinate legislation can control the transactions which fall out of the scope of the Parent Act. The principles laid down by this Court in the said judgment of Mis Sundarsons vs. State of Maharashtra applies to the facts of this case. We are respectfully bound by the principles laid down by this Court in the said judgment. We do not propose to take any different view in the present matter.

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35 In our view, there is no substance in the submissions made by the learned Government Pleader that registration of the sale deeds/transfer deeds in respect of the plots/properties fall under sections 45 and 47-B of the Maharashtra Land Revenue Code have been rightly banned/prohibited by the respondent Nos. 4 and 5 being in violation of the provisions of the Maharashtra Prevention

of Fragmentation and Consolidation of Holdings Act. In our view, the Sub-Registrar while registering the document under sections 34 and 35 of the Registration Act is not an adjudicating authority and has no power of adjudication as to whether the transaction which is subject matter of the document lodged for registration is validly executed or not or is prohibited by any law or not. If the respondents wanted to confer such powers upon the Sub-Registrar or registering authority, such powers would have been conferred specifically by carrying out appropriate amendment by following due procedure in the Parent Act and not by framing rules or by issuing circular.”

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38. In our view, the impugned circular dated 12-7-2021, exercising the powers under Rule 44(1)(i) of the Rules being contrary to sections 34, 35 and 69 of the Registration Act, thus, deserves to be quashed and set aside. Rule 44(1)(i) of Rules deserves to be read down and not required to be followed by registering authority while registering the document under sections 34 r/w. Section 35 of the Registration Act.

From the observation in the foregoing paragraphs, it can be discerned that, the circular issued by the State Government, directing the Registering Authority to insist for certain other documents to be accompanied while presenting a document for Registration, has been held to be contrary to Sections 34 and 35 of the Registration Act, 1908. Rule 44(1)(i) of the Registration Rules, 1961 is also directed to be read down, so as to make them consistent with Sections 34 and 35 of the Registration, Act, which squarely covers the case of the Petitioners in the present Writ Petitions.

14. Hence, in view of the aforementioned position of law as laid down by this Court in case of *Govind Ramling Solpure and Ors. (Supra)* the orders impugned becomes unsustainable and are accordingly quashed and set aside.

15. Rule is made absolute in terms of prayer Clause (A).

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)