

Case No. N.P.(C) Th 24/2008

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27.	23.08.12	<p style="text-align: center;">BEFORE HON'BLE THE CHIEF JUSTICE MR. JUSTICE PERMOD KOHLI</p> <p>Present: M/s. Ciccu Mukhopadhyaya and A.K. Upadhyaya, Sr. Advocates with Sanjay Sarin, Ashish Aggarwal, Binita Chhetri and Dawa Jangmu Sherpa, Advocates for the Petitioner.</p> <p>M/s. J.B. Pradhan, Addl. Advocate General with Karma Thinlay Namgyal, Govt. Advocate and S.K. Chettri, Asstt. Govt. Advocate for respondent No. 1.</p> <p>Mr. Tashi Norbu Basi, Advocate for respondents No. 2 to 5.</p> <p>Mr. B. Sharma, Sr. Advocate with Mr. Norden Tsh. Bhutia and Mr. Bhola N. Sharma, Advocates for respondent No. 6.</p> <p style="text-align: center;">...</p> <p>Before commencement of hearing, learned counsel appearing for the respondents submit that the respondents No. 2 to 5 as also the respondent No. 6 have filed some additional documents along with the affidavits, same may be taken on record. Other side has no objection, if the documents are taken on record and considered during the course of hearing.</p> <p>Heard learned counsel for the parties.</p> <p>2. This petition is directed against the Order dated 25.08.2008 passed by the Sub-Registrar/District Collector, East District cancelling the Lease Deed dated 16.10.2007 earlier registered on 05.01.2008 by him. The impugned Order dated 25.08.2008 reads as under: -</p> <p style="text-align: center;">"Examined the facts presented by various parties and submissions made during the hearing.</p>


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1	2	<p style="text-align: center;">3</p> <p style="text-align: center;">Following issues are framed in the present case.</p> <ol style="list-style-type: none"> 1. Whether the objectors have any locus standi in the case and whether Dutchi Committee has any power to transfer the land of Monastery to a third party. 2. Whether the registration has been done as per the procedure prescribed by Sikkim Registration Rules, 1930. 3. Competency and jurisdiction of the present Court to de-register the Lease Deed document. <p>The decision on the above mentioned three issues is as under:</p> <ol style="list-style-type: none"> 1. The objectors in the present case are the residents of the 13 blocks which is covered by the Rumtek Monastery. The land of the Rumtek Monastery belongs to the devotees and is for the purpose of welfare of the Monastery. Dutchi Committee is only given the responsibility of managing the affairs of the Monastery. If the land which belongs to the public institutions such as Rumtek Monastery is sold to a commercial organization, devotees are well within their rights to object to the registration process. The issue of authority of the Dutchi Committee to dispose off the land will be addressed at a later stage if found necessary as title of the land is not disputed. 2. The fact that one month notice was issued by Sub-Registrar and objection dated 16/11/2007 was filed by 16 persons, has not been denied by the Opposite Party Dutchi Committee and Alembic Company. It is also a fact that objection was withdrawn by only three persons and identity of the three persons is also doubtful and needs to be verified. As a principle of natural justice, it is mandatory that if during the notice period an objection has been filed by an interested party, same should have been heard and disposed off as per law. The same has not been done in the present case. <p>Hence, I am satisfied that prescribed procedure has not been followed in the present case and lease deed should be de-registered due to procedural anomalies.</p> <ol style="list-style-type: none"> 3. The orders of the Hon'ble Bombay High Court and Hon'ble Andhra Pradesh Court quoted by the Learned Counsel of the Dutchi Committee are not applicable a Sikkim Registration Rule at para 23 says proceeding should have been adjourned in case objection is raised by any party without deciding into the title by the registering authority. As in the present case, once objection was raised by the petitioner party same was not disposed and parties were not directed to move the appropriate Court to decide on the authority of the Dutchi Committee to dispose off the land. As the registration done is procedurally wrong and Sub-Registrar is well within its power to correct the anomalies without going into the merit of the case. <p>Accordingly, I, Vishal Chauhan, Sub-Registrar, East District, pass an order for cancellation of Lease Deed of land owned by Rumtek Monastery executed by the Dutchi Committee in favour of Alembic (P) Ltd. M/s Alembic (P) Ltd. is</p>

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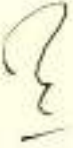
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		<p>The Sub-Registrar in his wisdom issued notice under Rule 23 of the Rules inviting objections in respect to the registration of the Lease Deed. It appears from the record that some objections were raised by some persons claiming to be the residents of the adjoining villages vide their written representation dated 16.11.2007. The Sub-Registrar forwarded the matter to the Government for No Objection from various Departments including the Ecclesiastical Department of the State, in-charge of religious affairs in the State of Sikkim. When the matter was under consideration of the Secretary, Land Revenue Department objection dated 16.11.2007 were allegedly withdrawn by the objectors. All the concerned Departments granted No Objection for the registration of the document. Based upon such clearance by the Government, the Sub-Registrar registered the Lease Deed on 05.01.2008 and the registered document was handed over to the petitioner, the Lessee thereof.</p> <p>5. It seems that another set of objections was filed on 05.06.2008 (Annexure P-6) by four persons objecting to the registration of the document and asked for its cancellation. These objections were followed by another complaint/representation to the Chief Minister of the State. It appears that the matter was examined at the</p>


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		<p>Government level and the Government was of the opinion that the registration of the Lease Deed needs to be cancelled and accordingly some instructions were imparted to the Sub-Registrar to do the needful. The Sub-Registrar, taking cognizance of the objection dated 05.06.2008 and the directions of the State Government, issued notice to the complainants/objectors, the Monastery and the petitioner-Company, who are parties to this petition and caused their appearance before the Sub-Registrar in response to its notice.</p> <p>6. After hearing the parties, the Sub-Registrar passed the impugned order dated 25.08.2008.</p> <p>7. From the perusal of the impugned order it is revealed that the Sub-Registrar decided to cancel the registration of the Lease Deed primarily on the ground that the objectors who filed the objection dated 16.11.2007 numbering 16 were not afforded any opportunity nor the objection was disposed before registration of the document. Thus on account of alleged procedural anomaly, viz. violation of Rule 23 of "the Rules", the Sub-Registrar cancelled the registration of the Lease Deed and directed the petitioner to submit the original lease document in his office within one month. Petitioner is aggrieved by the aforesaid order.</p>


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		<p>8. During the course of hearing Mr. Ciccu Mukhopadhyaya, learned Senior Advocate appearing for the petitioner has challenged the very jurisdiction of the Sub-Registrar to pass the impugned order. It is <i>inter alia</i> submitted that the Sub-Registrar after registering the document becomes <i>functus officio</i> and ceased to have any authority or jurisdiction whatsoever under the Rules/Law to cancel the registered document and call for its production. His further submission is that in absence of any power to review, the exercise of review jurisdiction by the Sub-Registrar renders the impugned order void <i>ab initio</i> warranting interference by this Court. Various other objections are raised in respect to the impugned order which are not adverted to.</p> <p>9. Respondent No. 1, the Sub-Registrar, whose order is under challenge, has filed a detailed reply. Respondents No. 2 to 5, who are the complainants/representationists have supported the impugned order, whereas performa respondent No. 6 i.e. the Monastery has stood by the side of petitioner.</p> <p>10. Mr. J.B. Pradhan, learned Additional Advocate General appearing for the respondent No. 1 has vehemently argued that in view of the mis-representation having been made and the procedural anomalies the Sub-</p>

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		<p>Registrar was within his competence to pass the impugned order. In so far as the question of mis-representation is concerned, there is no specific pleading in this respect nor any allegation as to who mis-represented before the competent authority and thus the question of mis-representation or fraud in the present case does not arise.</p> <p>11. Now the only question remains to be examined is the procedural anomaly. It is not in dispute that at the time of registration of the document the objections dated 16.11.2007 allegedly filed before the registration of the document was never disposed of by any order as no such order is forthcoming from the record. The second set of objections dated 05.06.2008 are post registration which became the basis for passing the impugned order.</p> <p>12. From the perusal of the impugned order it is evident that the Sub-Registrar was persuaded by the fact that the objections dated 16.11.2007 were not disposed of before or at the time of registration of Lease Deed and accordingly ordered cancelation of the registration of the document holding that there is violation of principles of natural justice. In this context the moot question arises who has the right of hearing in such matter. Right of hearing cannot be claimed by each and every person. It is available only to an aggrieved and interested person.</p>

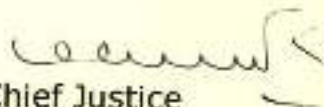
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		<p>13. The identity and status of the representationists in representation dated 16.11.2007 has not been disclosed or revealed. Therefore, it is difficult to say whether they were interested persons or had any right of hearing or to raise objection in respect to the registration of the document between Monastery and a petitioner-Company. No inquiry whatsoever in this regard was conducted by the Sub-Registrar at the time of passing the impugned order. This aspect <i>per-se</i> is sufficient to set aside the impugned order.</p> <p>14. At this stage, without going into the question of jurisdiction of the Sub-Registrar to pass the impugned order as argued by the learned counsel for the petitioner, the impugned order dated 25.08.2008 is hereby set aside and the matter is remitted back to the respondent No.1 for passing a fresh order after according hearing to the petitioner, who shall have the liberty to file written objections, as no such liberty was granted to it at the time of passing of the impugned order. However, the Sub-Registrar will hear the petitioner, the Monastery and the complainants/ representationists numbering 16 including respondents No. 2 to 5. Mr. Tashi Norbu Basi, the learned counsel appearing for the respondents No. 2 to 5 submits that only the representationists No. 1 to 16 (which include</p>

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		<p>two respondents) in the Xerox copy of the representation dated 16.11.2007, placed on record as Annexure P-8, whose identity is known be allowed to appear before the Sub-Registrar. Thus the right of hearing before the Sub-Registrar shall be confined to the representationists at Sl. No. 1 to 16 in representation dated 16.11.2007, three remaining respondents amongst No. 2 to 5, the petitioner and the performa respondent No. 6, the Monastery. The Sub-Registrar will hear the parties only in respect to the objections dated 16.11.2007 and 05.06.2008. It is further made clear that the parties before this Court shall have the right to place before the Sub-Registrar any document which is part of the present writ petition as part of their submissions in support of their respective contentions.</p> <p>15. The parties, particularly, the petitioner and the respondent No. 6 shall have the right to question the jurisdiction of the respondent No. 1, who shall decide the same as well while passing fresh order. It is further clarified that appearance of the petitioner and respondent No. 6 before the Sub-Registrar pursuant to this order shall not be construed to be an estoppel against their right if they chose to object to the jurisdiction of respondent No. 1 in any future proceedings.</p>

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<p>Index : Yes / No Internet : Yes / No pm/jk</p>		<p>16. Since 14 out of 16 representationists are not before this Court, the Sub-Registrar will issue appropriate notice to them. The Sub-Registrar will ensure their service through concerned police agencies and if the existence of the any of the representationists is doubtful, the Sub-Registrar is at liberty to proceed with the matter in their absence.</p> <p>17. The Sub-Registrar will complete the proceedings and pass the fresh order within a period of three months from the date of appearance of the parties. If for any reason it is not possible to pass order within the above period, he shall have the liberty to seek extension from this Court explaining reasons.</p> <p>18. With the above directions, the writ petition is disposed of.</p> <p>19. The parties are directed to appear before the Sub-Registrar on 28.09.2012.</p> <p style="text-align: right;">  Chief Justice 23.08.2012 </p>