GAHC010117352025

2026:GAU-AS:12237

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3111/2025

NILIMA BAISHYA AND ORS
W/O-LATE MANIK CHANDRA BAISHYA,
R/O- H.NO-73,
VIDYA MANDIR PATH,
BHETAPARA,
GUWAHATI-28,
KAMRUP METRO,
ASSAM

2: RAKESH BAISHYA
S/O-LATE MANIK CHANDRA BAISHYA
R/O- H.NO-73
VIDYA MANDIR PATH
BHETAPARA
GUWAHATI-28
KAMRUP METRO
ASSA

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM,
REVENUE AND D.M DEPARTMENT
DISPUR, GUWAHATI-06.

2:THE DISTRICT COMMISSIONER
KAMRUP (M)
ASSAM
HENGRABARI
GUWAHATI-36

3:THE CO-DISTRICT COMMISSIONER
DISPUR
BASISTHA CHARIALI

P.S- BASISTHA
GUWAHATI-28
ASSAM

4:THE CIRCLE OFFICER
DISPUR REVENUE CIRCLE
DIST- KAMRUP (M)
ASSAM
GUWAHATI-78102

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV, MR DEBA SARMAH,MS N SHYAM,RAKESH CHETRY

Advocate for the Respondent : Mr. R. Borpujari, for R. No.1
Mr. B. Goswami, for R. Nos.2, 3 and 4.

Date on which judgment was reserved	: **02.06.2026**
Date of pronouncement of judgment	: **26.08.2026**
Whether the pronouncement is of the operative part of the judgment?	: NA
Whether the full judgment has been pronounced?	: Yes

-BEFORE-

THE HON'BLE MR. JUSTICE ANJAN MONI KALITA

JUDGMENT & ORDER (CAV)

Heard Mr. D. Sharma, learned counsel appearing for the Petitioners. Also heard Mr. R. Borpujari, learned Standing Counsel, Revenue Department representing Respondent No. 1 and Mr. B. Goswami, learned Senior Counsel, Addl. Advocate General, Assam, assisted by Mr. P. Kakati, learned counsel for State Respondent Nos. 2, 3 & 4.

2. By filing the instant writ petition, the Petitioner has sought to invoke the jurisdiction under Article 226 of the Constitution of India assailing the order No. DCK (M)/CB/3/2024 dated 27.08.2024 passed by the District Commissioner, Kamrup (M), whereby the Deputy Commissioner, Kamrup (M) declared the registered Sale Deed No.26169 dated 16.09.2022 as invalid and cancelled the mutation granted in the name of the Petitioner No. 2. The Petitioners have also assailed the order under Memo No.DCK (M)/CB/3/2024/653-A dated 17.12.2024 passed by the District Commissioner, Kamrup (M), whereby, he dismissed the review petition filed by the Petitioners and held that the Sale Deed did not mention any No Objection Certificate (NOC) obtained from the Guwahati Metropolitan Development Agency (for short, 'GMDA') but the NOC was regarding construction of a RCC Building which did not suffice for the purpose of registration.

3. The facts leading to the filing of the instant writ petition are summarized here under:

3.1. The Petitioner No. 1 owns and possesses a plot of land measuring 3 Kathas covered by Dag No.2920 of K.P. Patta No.1362 of village-Barsajai, Mouza-Beltola, Revenue Circle-Dispur in the district of Kamrup (M), Assam. The Petitioner No. 1 allowed the Petitioner No. 2 to construct an RCC Building therein with due permission of the GMDA and accordingly, obtained NOC in the name of the Petitioner No. 2, i.e. *Mr. Rakesh Baishya*. The Petitioner No. 1 got the ownership of the

said plot of land by way of purchase, vide two sale deeds, i.e. Sale Deed No. 8089 and Sale Deed No. 4919, executed on 07.09.1998. The Petitioner No. 1 is in possession of the aforesaid land till date.

3.2. The Petitioner No. 2 being the son of the Petitioner No. 1, both stays together and the Petitioner No. 2 has been taking the responsibility of the Petitioner No. 1. Being satisfied with the care of her youngest son, i.e. the Petitioner No. 2, the Petitioner No. 1 applied for sale permission to sell a piece of land owned and possessed by the Petitioner No. 1 as a reward for her youngest son, i.e. the Petitioner No. 2. Considering the application of the Petitioner No. 1 for sale permission, the Lat Mandal of Dispur Revenue Circle visited and carried out the verification process for sale permission determining the Government sale value. Subsequently, the then District Commissioner, Kamrup (M) and the Additional District Commissioner, Kamrup (M) stopped the process of the NOC considering the new amendment brought by the Government of Assam in the Registration (Assam Amendment) Act, 2021, more particularly, in Section 21A of the Registration (Assam Amendment) Act, 2021, whereby, building permission alone is sufficient to transfer a land with building, if building permission was obtained from GMDA for construction of the building. The Petitioners visited the office of the GMDA for seeking sale permission from GMDA without having the NOC from the Office of the District Commissioner. The officials of the GMDA verbally

intimated that to apply for sale permission from GMDA, the NOC from the office of the District Commissioner, Kamrup (M) is a mandatory requirement as per the rules. Accordingly, the Petitioners approached the Sr. Sub-Registrar, Guwahati who consented for registration of the Sale Deed relying on the Building Permission granted by GMDA in terms of Registration (Assam Amendment) Act, 2021. For such registration, the revenue to be paid by the Petitioners for a valid sale deed, was fixed by the Sr. Sub-Registrar and the same was paid. Accordingly, after due payment of the revenue, the Sale Deed No. 21429 dated 16.09.2022 was registered for sale of land from the Petitioner No. 1 to the Petitioner No. 2. After execution of the Sale Deed, the Petitioner No. 2 applied for mutation of the aforesaid land in his name, vide application dated 10.10.2022 which was allowed by the Circle Officer, Dispur, Revenue Circle, vide order dated 10.11.2022. Accordingly, the name of the Petitioner No. 2 has been recorded in the land records and since then, the Petitioner No. 2 has been occupying the land with due payment of land revenue to the Government of Assam.

3.3. After passing of almost two years, the Petitioner No. 2 came to know that one person, namely*, Ms. Suhasini Baishya*, i.e. the grand child of the Petitioner No. 1 filed an online objection in the online land record portal against the said plot of land. The Petitioner No. 2, accordingly, submitted an application

for disposal and removal of the online objection submitted by the aforesaid *Ms. Suhasini Baishya*. Thereafter, the Addl. District Commissioner, Kamrup (M), vide letter No.KRM(M)/ Dis/73/2024/10 dated 03.07.2024 issued notices to both the Petitioner No. 2 and the aforesaid person, *Ms. Suhasini Baishya* and fixed the matter on 19.08.2024 for hearing. Accordingly, the Addl. District Commissioner, Kamrup (M) after hearing the submissions of the Petitioner No. 2, being satisfied that the land has been sold by the Petitioner No. 1 as per due procedure of law and the complainant who filed online application, i.e. *Ms. Suhasini Baishya* has no right, title and interest over the said plot of land, assured the Petitioners to dispose of and remove the objection from the aforesaid land portal. The Petitioners were surprised that the Addl. District Commissioner, Kamrup (M) without any intimation, notice/summon or hearing to the Petitioners, passed an order being Memo No. DCK (M)/CB/3/2024 dated 27.08.2024, whereby, it declared the Registered Sale Deed No. 21429 dated 16.09.2022 legally unsustainable and thereby, declared invalid for registration and transfer of ownership. The Petitioners came to know about the aforesaid order dated 16.09.2022 only in the first week of November, 2024 when the Petitioner No. 2 tried to apply for a certified copy of Jamabandi of the aforesaid land. The Petitioners through their counsel approached the District Commissioner, Kamrup (M) who suggested them to file a review petition to revoke his previous order and advised to apply for a

re-mutation in the name of the Petitioner No. 2. As per his advice, the Petitioners through their counsel, filed an application for review of the order Memo No. DCK(M)/CB/3/2024 dated 27.08.2024 passed by the District Commissioner, Kamrup (M), without having a copy of the order under Memo No. DCK(M)/CB/3/2024 dated 27.08.2024. On receipt of the application for review, the District Commissioner, Kamrup (M), directed the Petitioners to be present at Circle Office on 17.11.2024. The Petitioners along with their counsel appeared before the Committee, headed by the District Commissioner, Co-District Commissioner, Circle Officer, Assistant Commissioner etc. on 17.11.2024, wherein, the District Commissioner verbally assured that the order passed earlier dated 27.08.2024 would be revoked by him after enquiry. Subsequently, the District Commissioner, Kamrup (M), vide order dated 17.12.2024, dismissed the review petition filed by the Petitioners mainly on the ground that while registering the Sale Deed, No Objection Certificate from the Deputy Commissioner was not obtained by the Petitioners. The Petitioners inspite of applying for the certified copy of the order, vide Memo No. DCK (M)/CB/3/2024 dated 27.08.2024, passed by the District Commissioner, Kamrup (M), vide their application dated 24.10.2024, the same has not been received by the Petitioners till date and the same was received only on 13.02.2025 from the Office of the Deputy Commissioner, Kamrup (M).

3.4 Being aggrieved by the aforesaid two orders dated

27.08.2024 and 17.12.2024 respectively passed by the Deputy Commissioner, Kamrup (M), the Petitioners, have filed the instant writ petition jointly praying for setting aside of the aforesaid impugned orders dated 27.08.2024 and 17.12.2024 passed by the Deputy Commissioner, Kamrup (M), i.e. the Respondent No. 2.

4. Mr. D. Sharma, learned counsel for the Petitioners submits that the action of the Deputy Commissioner, Kamrup (M) in cancelling the registration of the Sale Deed of the Petitioners is totally illegal, being contrary to the settled position of law laid down by the Hon'ble Supreme Court. He submits that the Sale Deed of the Petitioners has been registered before the Senior Sub-Registrar, Guwahati, Kamrup (M), in terms of the Registration (Assam Amendment) Act, 2021 and once the registration has been duly completed by payment of the requisite fees fixed by the Senior Sub-Registrar, Guwahati, Kamrup (M), the same could not have been cancelled by the Deputy Commissioner, Kamrup (M), without having any valid reason of cancellation. He submits that during the hearing before the Committee, all necessary facts and documents have been properly placed before the Committee and in spite of having right, title and possession of the aforesaid land belonging to the Petitioner No. 1, who sold the land to the Petitioner No. 2, the Sale Deed has been cancelled illegally.

5. The learned Counsel for the Petitioners submits that the reason for cancellation provided in the order dated 17.12.2024 of the Deputy

Commissioner is totally untenable. He submits that the reason given by the Deputy Commissioner that while registering the Sale Deed, the Petitioners did not obtain No Objection Certificate (In short, 'NOC') issued from GMDA as per Section 32 of the GMDA Act, 1985 for absolute sale of plot of land. Therefore, the Deputy Commissioner opined that the Sale Deed may be treated as violative of Section 32 of the GMDA Act, 1985 due to absence of the required NOC. He submits that before the amendment of the Registration (Assam Amendment) Act, 2021, Section 21A of Registration (Assam Amendment) Act, 2021 provides that no registration of Non-testamentary Instruments without NOC. However, the Government of Assam amended the aforesaid provisions of Section 21A as the Registration (Assam Amendment) Act, 2021 by inserting between the words "Immovable Property" and "shall" be the following: "except for house, flat, residential apartment, commercial building or any construction or structure erected on a plot of land". Therefore, he submits that all permissions required under Section 21 (A) of the Registration (Assam Amendment) Act, 2021 became no longer required in terms of amendment provisions of Section 21 (A) as the Registration (Assam Amendment) Act, 2021.

6. The learned Counsel for the Petitioners submits that while passing the order dated 27.08.2024, the Deputy Commissioner, Kamrup (M) ignored the amendment brought by the Government of Assam in Section 21 (A) by the Registration (Assam Amendment) Act, 2021. He submits that in spite of amended provision of Section 21 (A) of the Registration (Assam Amendment) Act, 2021, the District

Commissioner arbitrary and illegally without application of mind. He submits that for whatever reason, once the Sale Deed is registered before the competent authority, i.e. the Senior Sub-Registrar, Guwahati, the Deputy Commissioner, Kamrup (M) could not have cancelled the registered Sale Deed as he does not possess any power to cancel the same after the registration. He submits that after registration of the Sale Deed, the Deputy Commissioner has become *functus officio* and he does not have any power to cancel or set aside the duly registered Sale Deed. He submits that a duly registered Sale Deed can only be cancelled after following due process and procedure by a Civil Court. He submits that such power is only vested with the Civil Court and the Civil Court on an application by the aggrieved party for cancellation of sale deed, may cancel a registered Sale Deed after following the due process of laws. He submits that in many of the cases, the Hon'ble Apex Court as well as various High Courts, including the Hon'ble Gauhati High Court have observed and laid down the principle that power for cancellation of registered Sale Deed is vested only with the Civil Court and once a Sale Deed has been registered by a competent registering authority, the same authority does not retain any power under the Registration Act, 1908 to cancel the Sale Deed. He submits that no such power of cancellation has been provided in the Registration Act, 1908.

7. In support of his submission, the learned counsel appearing for the Petitioners has referred to the following cases:-

(i) ***Satya Pal Anand-vs-State of M.P. & Ors***; reported in ***2016 (10) SCC 767***;

(ii) ***Rattan Sing & Others-vs-Nirmal Gill & Others*****;** reported in***2021 0 AIR (SC) 899*****;**

(iii) ***Asset of Reconstruction Company (India) Limited-vs-S.P. Velayutham and Ors;*** reported in***(2022) 8 SCC 210*****;**

(iv) ***Dipak Kumar Choudhury-vs-State of Assam & Others*****;** reported in ***2014 (2) GLT 821;***

(v) ***Industrial Infrastructure Development Corporation (Gwalior) Madhya Pradesh Limited-vs-Commissioner of Income Tax, Gwalior, Madhya Pradesh*****;** reported in **(*2018) 4 SCC 494;***

(vi) ***Government of Uttar Pradesh and Others-vs-Raja Mohammad Amir Ahmad Khan***; reported in ***1961 0 Supreme (SC) 59; and***

(vii) ***Veena Singh (Dead) through Legal Representative-vs-District Registrar/Additional Collector (F/R) and Another;*** reported in **(2022) 7 SCC 1*.***

8. *Per contra*, Mr. B. Goswami, learned Addl. Advocate General, Assam appearing for the State Respondent Nos. 2, 3 & 4 submits that there was no error or mistake committed by the District Commissioner, Kamrup (M) in cancelling the Sale Deed of the Petitioners. He submits that after due enquiry and after hearing the parties, the Sale Deed was cancelled by the Deputy Commissioner, Kamrup (M) as while registering the Sale Deed, the statutory

mandates under the Registration (Assam Amendment) Act, 2021 was not complied with. He submits that there was a specific complaint received from the granddaughter of the Petitioner No. 1 with certain allegations of fraud being committed by the Petitioner No. 2 and thereby induced the Petitioner No. 1 to sell the aforesaid plot of land to the Petitioner No. 2. He submits that after an enquiry conducted by the Deputy Commissioner, Kamrup (M) on receipt of the aforesaid complaint, the Deputy Commissioner, Kamrup (M) has rightly cancelled the Sale Deed of the Petitioners.

9. Mr. R. Borpujari, the learned Standing Counsel, GMDA, representing the Respondent No. 1 submits that there is no infirmity in the orders dated 27.08.2024 and 27.12.2024 respectively passed by the Deputy Commissioner, Kamrup (M) in cancelling the registered Sale Deed of the Petitioners. He submits that after due enquiry and in terms of the power vested in the District Commissioner, Kamrup (M) after having found that the Sale Deed was registered without mandatory NOC from the Deputy Commissioner, Kamrup (M), the same was cancelled him. He submits that though there is no specific provision available in the Registration Act, 1908, the cancellation can be done under the provisions of Section 21 of the General Clauses Act, 1897 which is *pari materia* to Section 23 of the Assam General Clauses Act, 1915. He submits that in terms of the provisions of Section 23 of the Assam General Clauses Act, 1915, the Deputy Commissioner has the authority to cancel a registered Sale Deed, if the same is found to be obtained by not following the procedure laid down in the Registration (Assam Amendment) Act, 2021. He further

submits that as per Section 32 of the GMDA Act, 1972 which is still holding the field whenever a deed relating to transfer of any immovable property (land) within the Guwahati Metropolitan area, such deed can be registered only after obtaining NOC from the GMDA. He submits that in the instant case, no such NOC was either issued by the GMDA or by the Deputy Commissioner, Kamrup (M) in the instant case.

10. By referring to the case of ***Purbattar Yduog Handicraft Co-operative Societies Ltd.-vs-State of Assam and Others [WP (C) 2321/2014],*** decided by the Hon'ble Gauhati High Court, he submits that the Deputy Commissioner is having jurisdiction to pass the aforesaid impugned orders due to the fact that such powers are vested on him in terms of Section 23 of Assam General Clauses Act, 1915 which is *pari materia* to Section 21 of the General Clauses Act, 1897 which provides that where, by any act "*a power to make or issue notifications, orders, schemes, rules, forms or by laws is conferred than that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, vary or rescind any notification, orders, schemes, rules, forms or bye-laws so made*".

11. In support of his arguments, he has referred to another case of the of the Hon'ble Gauhati High Court decided by a Full Bench in the case of ***Atowar Rahman-vs-State of Assam and Six Others [IA (Civil) 1550/2018]***, wherein, in a similar situation, the Full Bench of the Hon'ble Gauhati High Court held that an order of cancellation

of Certificate of Registration (In short, 'CoR') that had been granted under Section 3 of the Societies Registration Act, 1860 is an order within the meaning of "orders" under Section 21 of General Clauses Act, 1897 and that of Section 23 of the Assam General Clauses Act, 1915, therefore, an order of cancellation of CoR by the Registrar of Societies is neither a legislative nor a quasi-judicial order but purely an administrative order and therefore, a society registered by the Registrar of Firms and Societies under the Societies Registration Act, 1860 can be cancelled by a Registrar after affording opportunity of hearing to the party who may be affected. He submits that in view of the observation of the Hon'ble Gauhati High Court (Full Bench), in the instant case also, the same principle will apply and the same will provide sufficient power and jurisdiction to the Deputy Commissioner, Kamrup (M), to cancel the registered Sale Deed. He submits that due to the aforesaid powers under Section 23 of the Assam General Clauses Act, 1915, the registering authority, in the instant case, the then Deputy Commissioner cannot be said to have become *functus officio* and he still retains the power of cancellation of the registered Sale Deed. Accordingly, he prays that the instant writ petition being without any merit may be dismissed.

12. As per the Registration Act, 1908, non-testamentary instruments purported to create, declare, sign, limit or extinguish, whether in present form or future any right, title or interest, whether vested or contingent of value of Rs.100 and upwards to or in immovable property. **Section 17** of the Registration Act, 1908 requires mandatory registration for such non-testamentary instrument. Sale

Deed for immovable property requires registration and the same can be done as per the provisions of Section 32 of the Act, 1908. ***Section 32*** being relevant is extracted hereinbelow:-

> "*32. Persons to present documents for registration.*
>
> (*Except in sections 31, 88 and 89), every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,*
>
> *(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order; or*
>
> *(b) by the representative or assign of such a person; or*
>
> (c) *by the agent of such a person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned".*

13. ***Section 34*** of the Registration Act, 1908 provides for an enquiry before registering a document by the Registering Officer. ***Section 35*** provides for procedure for admission or denial of execution respectively and ***Section 36*** provides for procedure where appearance of executants or witness is desired.

14. The aforesaid provisions provide for the procedure of registration of a document before the competent Registrar. It is a settled position that the provisions of Registration Act, 1908 do not confer the Registrar with the power to cancel a document which has already been registered. Even, in cases of fraud or forgery, the Registration Act, 1908 does not confer such a power on the Registrar to cancel a registered document, though, under the scheme of Registration Act, 1908, the Registrar has a power to refuse the registration of a deed under different provisions of the Registration Act, 1908 but that does not extend to cancellation of the registration. Therefore, the scope of enquiry or scrutiny by the Registering Authority is typically confined to pre-registration stage and not after the document is executed and registered.

15. The only power that has been provided under **Section 83** of the Registration Act, 1908 to the Registrar, in cases of furnishing false statements, delivering false copies, false personation by the executant is to initiate criminal prosecution against the person concerned. The basic question that has to be considered in the instant writ petition is that once the Sale Deed has been duly registered by the Senior Sub-Registrar, Guwahati, Kamrup (M) whether the same could have been cancelled by the Deputy Commissioner, Kamrup (M), Guwahati for the reason that while registering the Sale Deed, the Petitioners did not submit the required NOC from the GMDA. Though, there have been detailed submissions made by the counsel appearing for the Petitioners as well as the learned counsel appearing for Respondent No. 1 regarding procedural aspects of procuring the NOC from the

GMDA and that the provisions which mandated that such certificate from the GMDA is necessary, under the Registration (Assam Amendment) Act, 2021, those aspects may not be required to be considered in the instant writ petition and this is due to the fact that the issues involved herein is of the power and jurisdiction of the registering authority to cancel the registration, once it has been registered.

16. The Hon'ble Apex Court in the case of ***Satya Pal Anand*-vs-*State of Madhya Pradesh and Ors*;** reported in ***(2016) 10 SCC 767*** has held as follows:-

> "*40. The Andhra Pradesh High Court, in Yanala Malleshwar (supra) was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Sections 17 and 18 of the 1908 Act are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in sections such as Sections 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity*

committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the civil court. The majority view of the Full Bench was that if a person is aggrieved by the extinguishment deed or its registration, his remedy is to seek appropriate relief in the civil court and a writ petition is not the proper remedy.

41. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In Park View Enterprises, it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.

42. In absence of any express provision in the 1908 Act mandating the presence of the other party to the extinguishment deed at the time of presentation for

registration, by no stretch of imagination, such a requirement can be considered as mandatory. The decision in Thota Ganga Laxmi is with reference to an express provision contained in the Andhra Pradesh Rules in that behalf. That Rule was framed by the State of Andhra Pradesh after the decision of Full Bench of the High Court. Therefore, the dictum in this decision cannot have universal application to all the States (other than the State of Andhra Pradesh). It is apposite to reproduce paras 4 and 5 of the said judgment which read thus: (Thota Ganga Laxmi case, SCC pp. 208-09).

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

cancellation deed be executed or registered. This is unheard of in law.

5. In this connection, we may also refer to Rule 26(k)(i) relating to Andhra Pradesh under Section 69 of the Registration Act, 1908, which states as follows:

> "*26 (k) (i) The registering officer shall ensure at the time of preparation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing natural consent or orders of a competent civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale:*
>
> *Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the*

cancellation deed is executed by a Civil Judge or a government officer competent to execute government orders declaring the properties contained in the previously registered conveyance on sale to be government or assigned or endowment lands or properties not registerable by any provision of law."

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

17. After discussing the issues, the Hon'ble Apex Court in the aforesaid case of ***Satya Pal Anand (Supra)***, at ***Paragraph-46*** has observed as follows:

"*46. In our considered view, the decision in Thota Ganga Laxmi was dealing with an express provision, as applicable to the State of Andhra Pradesh and in particular with regard to the registration of an*

extinguishment deed. In absence of such an express provision, in other State legislations, the Registering Officer would be governed by the provisions in the 1908 Act. Going by the said provisions, there is nothing to indicate that the Registering Officer is required to undertake a quasi-judicial enquiry regarding the veracity of the factual position stated in the document presented for registration or its legality, if the tenor of the document suggests that it requires to be registered. The validity of such registered document can, indeed, be put in issue before a court of competent jurisdiction".

18. In terms of ***Section 48*** of the Registration Act, 1908, a title passes in a property on the registration of the deed of conveyance. Therefore, since the right & title of a property is transferred by way of a deed of conveyance or a sale deed, the cancellation of registration of such deed of conveyance or a sale deed, therefore, will have major legal consequences affecting the right and title which had already been passed on its registration. Now, whether such a registration was valid or invalid due to certain reasons is an issue which is definitely triable only in a Civil Court or criminal proceeding before a competent jurisdiction. The complex questions of transfer of right and title can only be examined in a Civil Court if the title of execution of such deed of conveyance or sale deed is disputed. The same cannot be decided by a Registrar and the same can be decided only after proper trial by a Civil Court.

19. Similarly, in the case of ***Asset of Reconstruction Company (India) Limited*** **(supra),** the Hon'ble Apex Court while discussing the above requirement of registration, steps of registration and cancellation of registration, the followings have been observed:-

> "*53. Actually, the registration of a document comprises of three essential steps among others. They are:*
>
> *(i) execution of the document, by the executant signing or affixing his left hand thumb impressions;*
>
> *(ii) presenting the document for registration and admitting to the registering authority the execution of such document; and*
>
> *(iii) the act of registration of the document.*
>
> *54. In cases where a suit for title is filed, with or without the relief of declaration that the registered document is null and void, what gets challenged, is a combination of all the aforesaid three steps in the process of execution and registration. The first of the aforesaid three steps may be challenged in a suit for declaration that the registered document is null and void, either on the d ground that the executant did not have a valid title to pass on or on the ground that what was found in the document was not the signature of the executant or on the ground that the signature of the executant was obtained by fraud, coercion, etc. The second step of*

presentation of the document and admitting the execution of the same, may also be challenged on the very same grounds hereinabove stated. Such objections to the first and second of the aforesaid three steps are substantial and they strike at the very root of creation of the document. A challenge to the very execution of a document, is a challenge to its very DNA and any defect or illegality on the execution, is congenital in nature. Therefore, such a challenge, by its very nature, has to be made only before the civil court and certainly not before the writ court.

55. The third step, namely, the act of registration, is something that the registering authority is called upon to do statutorily. While the executant of the document and the person claiming under the document (claimant) are the only actors involved in the first two steps, the registering officer is the actor in the third step. Apart from the third step which is wholly in the domain of the registering authority, he may also have a role to play in the second step when a document is presented for registration and the execution thereof is admitted. The role that is assigned to the Registrar in the second step is that of verification of the identity of the person presenting the document for registration.

56. Thus, the first two steps in the process of registration

are substantial in nature, with the parties to the document playing the role of the lead actors and the registering authority playing a guest role in the second step. The third step is procedural in nature where the registering authority is the lead actor.

57. In suits for declaration of title and/or suits for declaration that a registered document is null and void, all the aforesaid three steps which comprise the entire process of execution and registration come under challenge. a If a party questions the very execution of a document or the right and title of a person to execute a document and present it for registration, his remedy will only be to go to the civil court. But where a party questions only the failure of the registering authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted. This is for the reason that the writ jurisdiction of b the High Court is to ensure that statutory authorities perform their duties within the bounds of law".

20. In the case of ***Veena Singh(Dead) (Supra)***, the Hon'ble Apex Court while discussing the power of a Registrar viz-a-viz in a matter of execution of document is denied, held as follows:-

"*20.3 A document, once it is registered, can be cancelled*

or set aside only by a civil court of competent jurisdiction. Upon the registration of the sale deed on 16-4-2012, the registration authorities are rendered infructuous and would have no power to cancel registration even on the ground of fraud or other irregularities.

.....

88. Having held that the writ petition before the High Court was not maintainable for the above reasons, this Court also observed that the role of the Sub-Registrar stood discharged once the document had been registered, since there is no express provision in the Registration Act which empowers him to recall the registration. This Court held: (Satya Pal Anand case, SCC p. 792, para 34)

> *34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Mohd. Amir Ahmad Khan[42]). 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.

89. This Court in Satya Pal Anand case observed that Section 35 of the Registration Act does not confer a quasi-judicial power on the registering officer, who is not expected to evaluate title or irregularity in the document. As such, the validity of the registered deed of extinguishment could be placed in issue only before a court of competent jurisdiction. On the above facts, this Court upheld the dismissal of the writ petition by the High Court, with an opportunity being granted to the appellant to pursue a remedy in accordance with law. Therefore, the decision in Satya Pal Anand has held that once a deed of extinguishment had been registered by the registering officer, the registering officer had no power to recall it nor was it amenable to the supervisory control of the Inspector General of Registration under Section 69 of the Registration Act."

21. From the above observations of the Hon'ble Apex Court in the

cases mentioned above, it is crystal clear that a registration of a sale deed once completed by its due execution, the same cannot be cancelled under the Registration Act, 1908 by the Sub-Registrar or the Registrar as the case may be. There is no provision contained in the Registration Act, 1908 which provides for any such power of cancellation expressly or impliedly. ***Section 17*** of the Registration Act, 1908 mandates that a sale deed by which immovable property is transferred has to be registered before the competent Sub-Registrar or Registrar. So, the duty casted upon the Sub-Registrar or the Registrar is only to the extent of registration of a sale deed after following the procedures laid down in Sections 32, 34, 35 & 36 of the Act of 1908. Post registration of the deed, the Registrar has not been given any power to reopen the deed for any kind of enquiry, whether on the basis of any complaint or on the basis of any information received about the validity of the deed.

22. Another aspect which is required to be considered is the position of the Sub-Registrar or the Registrar after registration of the deed. The Hon'ble Apex Court in a string of cases, have held that once the registration is concluded, the Sub-Registrar or the Registrar becomes *functus officio*, meaning, thereby, no further action is expected from the Sub-Registrar or the Registrar in respect of the execution of the deed. In this connection, the case of the ***Government of Uttar Pradesh and Others-vs-Raja Mohammad Amir Ahmad Khan***; reported in ***1961 0 Supreme (SC) 59*** being relevant, observations of the Hon'ble Apex Court at ***paragraph No. 7*** are extracted hereinbelow:-

> "*7. Our attention was drawn to the observations of Rankin C. J. in Re Cook and Kelvey, ILR 59 Cal 1171: (AIR 1932 Cal 736) but those observations are obiter as the High Court held that the reference under Section 57 of the Stamp Act was incompetent. The doctrine of functus officio was applied in several cases: Collector, Ahmednagar v. Rambhau Tukaram, AIR 1930 Bom 392. In that case a certificate of sale had been signed but the certificate was not duly stamped which was pointed out when it was sent to the Sub-Registrar for registration. The Sub-Registrar informed the Judge about it and the Judge got back the certificate from the purchaser and thinking that he had power to impound the document and to impose a penalty asked for the opinion of the High Court and it was held that after he had signed it he was functus officio and could not act any further and could not impound it. The same principle was laid down in Paiku Kashinath v. Gaya Motiram, ILR (1948) Nag 950 & in Panakala Rao v. Kumaraswami AIR 1937 Mad 763 and in our opinion as soon as the Collector determined the duty he became functus officio and he could not impound the instrument under Section 33 and consequential proceedings could not, therefore, be taken."*

23. From the above position of law settled by the Hon'ble Apex Court, it is clear that once the sale deed is registered by the Sub-

Registrar or the Registrar, the Sub-Registrar or the Registrar becomes *functus officio* and he/she does not have any power, thereafter, to cancel or rescind the registration of the deed. Though the law is settled as such, an argument has been made on behalf of the Respondent No. 1 that the Registrar or the Sub-Registrar may have the power under the General Clauses Act, 1897 reading with Assam General Clauses Act, 1915.

24. The learned counsel appearing for Respondent No. 1 has submitted that in terms of Section 21 of the General Clauses Act, 1897 which is *pari materia* to Section 23 of Assam General Clauses Act, 1915, the Registrar has the power to revoke or cancel the registration of a sale deed though the aforesaid power is not specifically provided under the Registration Act, 1908.

25. To appreciate and consider the argument raised by the learned counsel for Respondent No. 1 that since power of registration is vested upon the Sub-Registrar or the Registrar, the power of cancellation, in view of Section 21 of the General Clauses Act, 1897 which is *pari materia* to Section 23 of the Assam General Clauses Act, 1915, is also there with Sub-Registrar or the Registrar, it may be relevant to extract the relevant provisions, which read as under:

The General Clauses Act, 1897

"*21. Power to issue, to include, power to add to, amend, vary or rescind notifications, order, rules or by-law, where, by any Central Act or regulations, a power to (issue*

notifications) orders, rules or by-laws is conferred than the power includes a power exercisable in the like manner and subject to the like sanction and condition (if any), to add to, amend, vary or rescind any notification orders, rules or by-laws (so issued)".

The Assam General Clauses Act, 1915

"*23. Power to make to include, power to add to, vary or rescind order, rules or by-laws, where, by any act, a power to make or issue notifications, order, schemes, rules or by-law is conferred than that power includes power exercisable in the like manner and subject to the like sanction (if any), to add to, amend, vary or rescind any notification, orders, schemes, rules, forms or by-laws so made".*

26. The scope of exercise of power under ***Section 21*** has been discussed in details in the case of ***Shree Sidhbali Steels Ltd and Others-vs-State of Uttar Pradesh and Others***; reported in ***(2011) 3 SCC 193***, wherein, the Hon'ble Apex Court held as follows:-

"*38. Section 21 is based on the principle that power to create includes the power to destroy and also the power to alter what is created. Section 21, amongst other things, specifically deals with power to add to, amend,*

vary or rescind the notifications. The power to rescind a notification is inherent in the power to issue the notification without any limitations or conditions. Section 21 embodies a rule of construction. The nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification, etc. However, there is no manner of doubt that the exercise of power to make subordinate legislation includes the power to rescind the same. This is made clear by Section 21. On that analogy an administrative decision is revocable while a judicial decision is not revocable except in special circumstances. The Exercise of power of a subordinate legislation will be prospective and cannot be retrospective unless the statute authorizes such an exercise expressly or by necessary implication".

27. Similarly, in the case of ***Industrial Infrastructure Development Corporation (Guwalior) Madhya Pradesh Limited-vs-Commissioner of Income Tax, Gwalior, Madhya Pradesh***; reported in ***(2018) 4 SCC 494,*** the Hon'ble Apex Court held as follows:-

"*21. The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject-matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is*

not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi-judicial order. A quasi-judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. (Sec Interpretation of Statutes, Ninth Edn., by G.P. Singh, p. 893.)".

28. From the above, it is seen that ***Section 21*** of the General Clauses Act, 1897 cannot be invoked to annul a *quasi judicial* order that too where an infrangible right has accrued in favour of the respective parties. In the instant case, as discussed above, the title in the property is transferred from the date of the registration of the Sale Deed. Such indefeasible legal rights flowing from a registered instrument cannot be taken away without any statutory basis only by taking recourse to ***Section 21***.

29. The learned Standing Counsel for the Respondent No. 1 has heavily relied on the case of ***Atowar Rahman (Supra)*** to support his argument that if the statute specifically does not provide any power of cancellation of registration of a deed and since the Sub-Registrar or the Registrar is vested with the power of registration, the power of cancellation also has to be vested on the Sub-Registrar or the Registrar in terms of ***Section 21*** of the General Clauses Act, 1897 which is *pari materia* to the Assam General Clauses Act, 1915.

30. On a careful perusal of the case of ***Atowar Rahman (supra)***,

it is seen that the case relates to Societies Registration Act, 1860 under which a certificate of registration is issued by the Registrar of Firms and Societies, Assam. In the aforesaid case, the Full Bench of Hon'ble Gauhati High Court has held as follows:-

> "*15. The certificate of registration under section 3 of the Act is issued in the form of an order whereby the Registrar certifies under his hand a society to be a registered society and authorises the validity of such registration to a time-bound period, with provision for extension. The form and contents of the certificate brings it within the meaning of "orders" under section 21 of the General Clauses Act. Therefore, in the absence of provision for cancellation of certificate under the Societies Registration Act and such certificate being in the nature of an order issued by the statutory authority i.e. the Registrar of Societies, the application of section 21 of the General Clauses Act is clearly available to the Registrar to add to, vary or rescind the certificate".*

Accordingly, the Hon'ble Full Bench summed up at ***Para-17***, as follows:-

> "*(i) an order of cancellation of certificate of registration (CoR) that had been granted under section 3 of the Societies Registration Act, 1860, is an order within the meaning of "orders" under section 21 of the General*

Clauses Act, 1897 and that of section 23 of the Assam General Clauses Act, 1915.

(ii) an order of cancellation of certificate of registration (CoR) by the Registrar of Societies is neither a legislative nor a quasi-judicial order but purely an administrative order.

(iii) an order of the Registrar of Societies cancelling a certificate of registration on a complaint and after giving opportunity of hearing to the contending parties, is an act of expediency and not a quasi-judicial act dictated by rules.

(iv) the provision of section 21 of the General Clauses Act and/or section 23 of the Assam General Clauses Act, in the absence of an express power of cancellation of certificate of registration (CoR) under the Societies Registration Act, is available empowering the Registrar to order cancellation, as above".

31. In view of the aforesaid observations, it is seen that the Hon'ble Full Bench has held that the act of issuance of certificate of registration under ***Section 3*** which is issued in the form of an order is an "*order"* under ***Section 21*** of the General Clauses Act, 1897. However, in the instant case, the issues relates to registration of a sale deed by Sub-Registrar or the Registrar under the Registration

Act, 1908.

32. As discussed above, from the provisions of ***Section 32, 34, 35*** and ***36*** of the Registration Act, 1908, the Sub-Registrar or the Registrar, as applicable, is not required to pass any order rather it is required only to register the sale deed. Therefore, there is actually no order is passed by a Sub-Registrar or Registrar while registering the sale deed under the Registration Act, 1908. Therefore, it is the considered view of this Court that the ratio laid down by the Hon'ble Full Bench in the aforesaid case is typical to the facts and circumstances and procedure followed under the concerned law, i.e. Societies Registration Act, which is not applicable to the instant case.

33. From the above discussions, it is seen that the Hon'ble Apex Court in the abovementioned cases, have already clearly settled the law that a sale deed once registered by competent authority, i.e. the Sub-Registrar or the Registrar, the same cannot be cancelled by the Sub-Registrar or the Registrar. A cancellation of a registered sale deed can only be done by way of filing a suit for cancellation before the Civil Court. Therefore, in the case in hand, wherein, a registration has been duly concluded and rights of immovable properties have already been accrued to the Petitioner No. 2, the cancellation by the Deputy Commissioner, Kamrup (M), vide its order dated 27.08.2024 and 17.12.2024 (Review Order) cannot be sustained under the settled position of law. Accordingly, the impugned orders, dated 27.08.2024 and 17.12.2024 (Review Order) passed by the Deputy Commissioner, Kamrup (M), Respondent No. 2 are set aside and quashed.

34. The interim order dated 10.06.2025 shall merge with the instant judgment and order.

35. In terms of the aforesaid, the instant writ petition is disposed of, as allowed.

36. No order as to cost(s).

JUDGE

Comparing Assistant