

### ***Right to Privacy as a Human Right***

In *People's Union for Civil Liberties v. Union of India and another*<sup>18</sup>, the Supreme Court declared that the right to privacy is a sacred and cherished human right. There must be strong, cogent and legally justifiable reasons for the law enforcement agencies to interfere with this right. Even then also proper procedure must be followed. An intrusion into a person's home, professional or family life in the name of investigation or domiciliary visits without a proper basis is not permitted<sup>19</sup>.

### ***Conclusion***

Even in the light of these observations, guidelines and directions of the Courts from time to time, human rights violations are unabated. Therefore there should be proactive role of the National Human Rights Commission (NHRC) and the State Human Rights Commissions (SHRC) to deal with human rights violations and safeguard the interest of the victims which includes recommending appropriate compensation to the victims in appropriate cases.

Under the National Human Rights Commission Act 1993, that all the District Courts (Principal Court) are designated as human rights Courts and they are empowered to deal with human rights violations. Therefore what is required is, some one must ignite the jurisdiction of the Court, who may be the victim himself.

There is also the need to create human rights culture among the people in general and the institutions of the state in particular. Proper training and sensitization of the personnel in the law enforcement agencies is very much required not only in a time bound manner but also as a continuous measure.

Therefore there should be an integrated and coordinated effort and the involvement of state actors and non-state actors which include the Courts, the Human Rights Commissions, the NGOs, Educational Institutions and the great bulk of Lawyers and Academicians. Ultimately it depends upon the eternal vigilance of the people and the civil society which will safeguard the human rights of the people effectively.

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## **DEED OF GENERAL POWER OF ATTORNEY SIMPLICITER OR COUPLED WITH INTEREST – PERMISSIBILITY OF CANCELLATION OF SUCH DEEDS BY EXECUTANTS**

*Note about the decision under Andhra Pradesh Registration Rules, 1908 reported in 2009 (6) ALT Page 220, on the above subject rendered by his Lordship Sri Justice L. Narasimha Reddy on 15.4.2009*

*By*

**—A.S. RAMACHANDRA MURTHY,**  
Advocate, Ramaraopeta, Kakinada

While dealing with the permissibility of a deed of Cancellation of deed of Power of Attorney coupled with interest, His Lordship held that such General Power of Attorney

coupled with interest cannot be cancelled unilaterally, and that the registration of the deed of cancellation cannot be in violation of Rule 26(i)(k) of the Registration Rules in

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18. *People's Union for Civil Liberties v. Union of India and another*, AIR 1997 SC 568.

19. *Kharak Singh v. State of Uttar Pradesh and others*, (1964) 1 SCR 332.

Andhra Pradesh. His Lordship further observed that the prohibition contained in the Rule operates only as regards the deeds of conveyance and as such no exception can be taken to the registration of deed of cancellation of power of attorney. It is further held that if there is any grievance by such a G.P.A. coupled with interest, the aggrieved person has to work out his remedies in a Civil Court by filing a suit.

2. In the above decision G.P.A. was executed by 5th respondent in favour of the petitioners on 15.9.1995. The 5th respondent executed a deed of cancellation on 8.7.2008 cancelling the said G.P.A. The G.P.A. in this reported case is one coupled with interest as it is in the form of an Agreement of Sale-cum-general power of attorney, with possession.

3. Rule 26(i)(k) is interpreted in the above decision and it is observed by His Lordship as follows:

“The prohibition contained in that Rule operates only as regards the deed of conveyance. A.G.P.A. even if it is coupled with interest, cannot be treated as a deed of Conveyance. Therefore no exception can be taken to the Registration of a cancellation of Power of Attorney. If the petitioners feel aggrieved by any act or omissions on the part of respondents 5 to 8 they have to work out the remedies by filing a suit.”

4. In view of the above decision, let us first look at the relevant Rule. Rule 26 of the A.P. Rules under the Registration Act deals with the duty of the Registering Officer when a document is accepted by him for registration. The original Rule consisting of sub-rules (a) to (j) did not deal with deeds of cancellation. Development of events and present necessity brought in an amendment of the Rule by adding sub-rule (k). This Rule 26(k)(i) is added by amending the Rules in the year 2006 by way of an amendment in a

Notification No.R.R.1/2006 dated 21.11.2006 and it is published in the Rules Supplement to Part II Extraordinary of the A.P. Gazette on 29.11.2006. The amended Rule 26(k) reads as follows :-

#### Amendment

In Rule 26, framed under Section 69 of the Registration Act, after sub-rule (j), the following shall be inserted as sub-rule (k) namely,

“(k)(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 the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual 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 conveyance 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.

(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 for registration.”

5. Subsequently when doubts arose about the scope of this amended sub-rule, the

Commissioner and Inspector General of Registration of Stamps A.P. Hyderabad issued clarification in Memo No.G1/10547/2008 dated 25.8.2008 specifically clarifying that unilateral cancellation of deeds of Agreement of Sale cum GPA, Development Agreement cum GPA, Partition Release, mortgages, gifts and gift settlements shall not be registered unless both parties to the previously registered deed are present before the Sub-Registrar for execution of the cancellation deed.

6. Another clarification is also issued by the same officer regarding the stamp duty on such cancellation deeds by the same official in Memo No.S1/9884/2008, dated 12.9.2008 regarding stamp duties as follows :

“(1) Fixed stamp duty of Rs.30/- under Article 15 of Schedule 1A to Indian Stamp Act, 1899 may have to be levied in respect of deeds of cancellation of previously registered documents other than sale deeds.

(2) As a separate provision for revocation for settlement was provided under Article 49(B) of Schedule 1A to Indian Stamp Act 1899 maximum stamp duty of Rs.90/- is leviable in respect of revocation/cancellation of settlement deeds and that the above instructions are applicable to the deeds of cancellation of the above type even though they are executed by both the executants and claimants.”

7. This sub-Rule (k) is added *w.e.f.* 29.11.2006 in the aftermath of the judgment of the Full Bench of our High Court reported in 2006 (6) ALT 523 = 2006 (6) ALD 623 = AIR 2007 AP 57 FB. The Full Bench held in this case that a true owner can seek cancellation of the registered sale deed by approaching the registering authority concerned in a case where the sale deed conveying his property was executed by another person “playing fraud” (quotations are mine). The Full Bench held that through Section 31 of the Specific Relief Act provides for such a person a remedy to approach the competent civil

Court, the said remedy does not bar the true owner to seek cancellation of the resignation.

8. The judgment of the majority in the above Full Bench was delivered by the learned Judge Honourable Sri V.V.S. Rao, J. In that decision an executant of a purported sale deed executed a cancellation deed stating that the sale deed was obtained from him by playing fraud, and took it for registration to the registrar who refused to register. Then a W.P. was filed to direct the Registrar to register it. It was urged that the executant of a document has got a right to cancel it and that the Registrar has to register, if a deed is executed and taken to him for registration. The prayer was granted. It was also held that the concerned aggrieved person may seek his remedy in a civil Court.

9. Now by virtue of amendment of the Rule by adding sub-Rule (k) the difficulty is removed and now it is clear that a cancellation deed cannot be executed and got registered unilaterally.

10. The amended Rule shows that in respect of previously registered deed of Agreement of sale under GPA, Development Agreement-cum-GPA, Partition, Release and Mortgage, Cancellation deeds cannot be registered if executed unilaterally by the Executant and that if both parties to the previously executed documents execute such cancellation deed, it can be registered.

11. It is to be noted that the actual word used in the amended Rule is “Conveyance”, which is underlined.

12. In the decision on hand, His Lordship observed in the first instance in Para 3 of the judgment that “it may be true that a GPA coupled with interest cannot be cancelled unilaterally and for such a situation the party should seek remedy through civil Court. It is further observed that the registration of a deed of cancellation cannot be in violation of Rule (i)(k) of the A.P. Rules, and that the

prohibition contained in that Rule operates only as regards the deeds of conveyance, and that GAP even if it is coupled with interest cannot be treated as a deed of conveyance.

13. Therefore it is to be seen if this view expressed and laid down in this decision on hand is correct. The word 'Conveyance' is not defined in the Registration Act or the Rules thereunder. This word is defined in Section 2(10) of The Stamp Act as amended by A.P. Act 8 of 1998 *m.e.f.* 23.4.1998. It reads :—

“Conveyance” includes a conveyance on sale, every Instrument and every decree or final order of any civil Court, by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in or declared to be of any other person, intervivos, and which is not otherwise specifically provided for by Schedule-I or Schedule I-A, as the case may be” (The explanation of this definition is omitted).

14. In this connection we have to also see Section 17(1)(g) of The Registration Act which made agreements of sales entered into on or after 1.4.1999 also compulsorily registerable.

15. From these two instances it can be taken that the intendment of the Legislature seems to be to make an agreement of sale also a conveyance particularly when it is coupled with a GPA and/or possession.

16. Therefore if Agreements of Sales with GPA with possession are entered into, they amount to irrevocable power of attorney, and consequently a 'conveyance'.

17. In this connection it will be necessary to know the meaning of the words 'IRRECOVERABLE GPA' and "GPAs COUPLED WITH INTEREST" in the light of the definition of the word 'conveyance'. As far as I could pick up, there is one decision on this aspect reported in 1984 (2) APLJ 140 = AIR 1985 AP Pg. 30, rendered

by His Lordship Sri *M. Jagannadharao*, J. (as he then was). The relevant observations are contained in Para 7 of that judgment reading as follows :

“Thus it will be seen that if the interest created in the agent is in the result or the proceeds arising after the exercise of the power then the agency is revocable and cannot be said to be an irrevocable agency. However, if the interest in the subject-matter, say a debt payable to the principal, is assigned to the agent as security simultaneously with the creation of the power and thereafter the agent exercises the power to collect the debt for discharge of an obligation owned by the principal in favour of the agent or owed by the principal in favour of a third party, then the agency becomes irrevocable.”

18. Therefore if the principal assigns any or some interest simultaneously with the execution of the GPA, then it will be one coupled with interest and consequently, an “irrecoverable GPA” and a conveyance. If the deed merely creates any interest in favour of the Agent for payment of his dues or remuneration arising out of the exercise of the power, then it is not case of creation of any interest in the Agent. Mere description of documents as GPA or irrevocable GPA is not the test to find out the real nature. The principles mentioned above should be examined to find out the nature of the document. His Lordship Honourable Sri *Jagannadharao* relied upon two decisions of the Apex Court reported in AIR 1969 SC 73 and AIR 1969 SC 313 for arriving at the conclusions and his ultimate decision.

19. In a decision reported in 2008 (3) ALT 706, a Single Judge Honourable Sri *C.V. Nagarjuna Reddy*, J., considered the effect of the new Rule (k) and after referring to the above mentioned Full Bench Decision held :

“The above analysis of the legal provisions (*i.e.*, Rule 26(k) and the Full Bench

Decision) makes it clear that a person, who seeks cancellation of a registered document, has to remedies available under Law. They are (1) to seek invalidation of the registered sale deed by approaching the competent Court of Law under Section 31 of The Specific Relief Act, 1963; or (2) To seek cancellation of the registered document by following the procedure prescribed under Rule 26(k) of the Rules framed by the State of Andhra Pradesh”.

20. Therefore in view of the above discussion I am of the humble opinion

that the first para of the decision on hand that a GPA coupled with interest cannot be cancelled unilaterally is correct, but the second part of the decision holding that the prohibition contained in the Rule operates only as regards deeds of conveyance and that a GPA, even if it is coupled with interest cannot be treated as a conveyance and hence can be cancelled, with due respect to the learned Judge, does not seem to be correct and that this aspect requires reconsideration. This matter is an important subject today because of the present day transactions relating to real estate in several ways.

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### REMEMBERING D. NARASA RAJU

By

—V. VENKATESWARA RAO, Advocate  
Member Editorial Board  
ANDHRA LEGAL DECISIONS  
Hyderabad

If the English are a nation of shop keepers, we are a nation of hero worshippers. Our present day heroes are politicians in power, liquor barons, popular matinee idols, business tycoons and rich industrialists. Scholars, writers, Journalists, artists and men in the learned professions like lawyers, Judges, Professors, doctors and engineers do not figure as ‘heroes’ in our value system. We celebrate the birth and death anniversaries of third rate Politicians whose only merit was their immense capacity for capturing power by hook or by crook, most often by the latter. Did we celebrate the birth anniversary of stalwarts like *Rajamannar* or *Chagla* or *Mulla* or *Alladi* ? A stray article by *F.S. Nariman* or *R. Vasudeva Pillai* is all that the departed great gets by way of remembrance. While the rate of literacy has gone up, respect for learning has come down. Go to any remote village in our great Country, you find at least a couple of liquor shops and a

swarm of eager patrons with a ‘spiritual bent’ of mind ready to imbibe the ‘spirit’ is flowing there in plenty. (It is the spiritual wealth that sustains our Government and keeps it going). Do you find even a single book shop ? Even if there is one, it sells only sex books and text books. If you mention the names of *Shakespeare* or *Milton*, *Gibbon* or *Macaulay*, the shopkeeper will look daggers at you and chase you away as one obstructing his business. Why is it so ? Here is the answer provided by the observation of Dr. *Ambedkar*.

“In the age of *Ramade*, a politician who was not a student was treated as an intolerable nuisance, if not a danger. In the age of Gandhi, learning, if it is not despised, is certainly not deemed to be a necessary qualification of a politician”. The learned Doctor made this observation way back in 1939. How much worse it could be now is any one’s guess.