(1990) 07 KAR CK 0048

In the Karnataka High Court

Case No : W.P. No. 14567/1983

Chitradurga Copper Company Limited APPELLANT

Vs

Special Deputy Commissioner and Chief Controlling Revenue Authority, Chitradurga and Others RESPONDENT

Date of Decision : 20-07-1990

Acts Referred:
Karnataka Stamp Act, 1957 — Section 33(1)
Registration Act, 1908 — Section 66

Citation : (1991) 1 KarLJ 214

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The question for consideration is, whether the petitioner is liable to pay stamp duly to the extent payable under the Karnataka Stamp Act on a copy of the instrument received by the Sub-Registrar in respect of properly coming within his jurisdiction, when the instrument is registered outside the State of Karnataka.

2. Briefly stated, following are the material facts of the case: The petitioner is a company registered under the Companies Act, 1956, besides being a company falling within the definition of Section 617 of the Companies Act belonging to the category of a Government Company which was incorporated in 1966 with the object of developing mineral resources in the State of Karnataka and particularly to undertake mining of ores of copper and allied materials. The company has been carrying on mining of copper ore and production of copper concentrates. The copper mine of the company is located in Ingaldhal in Chitradurga.

3. The company borrowed from the Industrial Finance Corporation of India a long term loan of Rs. 50,00,000/- and as security for the loan, the immovable properties of the company were mortgaged in favour of I.F.C.I. The deed of mortgage was registered at Delhi on 28-2-1975 since the principal office of the I.F.C.I. is situated at Delhi. It is staled that under Section 30(2) of the Indian Registration Act, it is legally permissible for the Registrar of Delhi District to

receive and register any instrument mentioned in Section 17, sub-section (1), clauses (a), (b), (c), (d) and (c) and Section 17(2) insofar as the instrument relating to immovable property is concerned, without regard to the situation, in any part of India in respect of the property to which the document relates.

4. In compliance with the statutory requirement under Sections 66 and 67 of the Indian Registration Act, only a copy of the instrument as required, was forwarded by the Registrar, Delhi under cover of his letter dated 3-1-1976 to the District Registrar, Chitradurga, where the property is located. In accordance with sub-section (3) of Section 66 of the Act, the Registrar of Chitradurga District on receipt of a copy of the instrument (copy of the mortgage deed registered at Delhi) filed the copy in the prescribed Book-I.

5. The petitioner-Company had paid a stamp duly on Rs. 50,00,000/- payable on the deed of mortgage in Delhi in accordance with the requirements of Stamp Act as in force in Delhi.

6. In 1982 which is more than 7 years subsequent to the registration of the mortgage deed and after receipt of a copy of the instrument in the State of Karnataka, the Special Deputy Commissioner of Chitradurga District served a notice on the petitioner in the purported exercise of his power under Section 46-A of the Karnataka Stamp Act. By this notice, the petitioner was called upon to pay the difference in stamp duly payable if the document is registered in Karnataka being higher than the stamp duly payable in Delhi. Thereafter, the petitioner filed objections to the demand made by respondent No. 1 by notice dated 2-11-1982. On 28-3-1983, the case was posted for hearing and the Chief Engineer of the petitioner-Company attended the Court of respondent No. 1 and he was informed that the next date of hearing would be intimated to the petitioner by post, in due course. The company thereafter received a notice dated 2-5-1983 intimating that the case which was fixed for hearing on 28-3-1983 stood adjourned to 16-5-1983 at Chitradurga and in the mean while the company also received a letter dated 29-3-1983 from respondent No. 1 in which it was stated inter-alia that the deed of mortgage executed by the company was not effective unless proper stamp duly is paid in accordance with the rates prevailing in the State of Karnataka and that at the time of execution of the deed, the stamp duly payable in Karnataka was Rs. 2,24,990/- and therefore the amount should be paid. It was further stated in the said letter that the provision of Section 33 of the Karnataka Stamp Act does not Come into the picture and is not attracted to the facts of this case.

7. Since the case had been adjourned to 16-5-1983, the company awaited further hearing for the final order to be passed. On 16-5-1983 when the company''s representative, namely its Chief Engineer, attended the Court of the first respondent, he was informed by the staff of the first respondent that the Special Deputy Commissioner was on leave on that day and a fresh date of hearing will be notified. However, the petitioner learnt that in the order-sheet maintained by the respondent No. 1, a noting had been made that none was

present on behalf of the company. It is asserted that the company''s representative namely the Chief Engineer was in fact present in Court and he did attend the office of the first respondent on 16-5-1983. Later on, the petitioner was served with another notice dated 18-6-1983 in which it was mentioned that on account of the petitioner''s failure to pay a sum of Rs. 2,24,990/- the said amount will be recovered as arrears of land revenue and a copy of this order has been endorsed to the Tahsildar, Chitradurga. The petitioner sought review of this order and filed a Review Petition on 6-7-1983. But the Review Petition was rejected by merely stating that the order sought to be reviewed was in consonance with the Karnataka Stamp Act.

8. These orders of respondent No. 1 demanding payment of alleged deficit stamp duly of Rs. 2,24,990/- is challenged in this writ petition.

9. The learned counsel appearing for the petitioner submitted that the company is not liable to pay the amount demanded by respondent No. 1 on the following grounds:

(1) The copy received by the Registrar which was executed and registered at Delhi does not fall within the prescription of instrument as defined under Section 2(j) of the Karnataka Stamp Act, 1957.

(2) Not being an instrument, the Special Deputy Commissioner has no jurisdiction to demand payment of alleged difference in stamp duly by exercising power under Section 33(1) of the Karnataka Stamp Act, 1957.

(3) Respondent No. 1 is not invested with any power under any law to make a demand of the kind as mentioned in Annexures ''A'', ''D'' and ''E''.

10. On the other hand, it was contended by the learned Government Pleader appearing on behalf of the respondents that the Special Deputy Commissioner, who is respondent No. 1 herein, is empowered to demand and recover from the petitioner, the difference in stamp duly on the basis of the stamp duly leviable in the Slate of Karnataka under the provisions of the Karnataka Stamp Act, 1957, since the properly which is located in Chitradurga is the subject-matter of the registered mortgage deed which was registered at Delhi paying the stamp duly prescribed in Delhi under the relevant Stamp Act. The learned Government Pleader also placed reliance on a decision rendered in New Central Jute Mills Co. Ltd. and Others v State of West Bengal and Others, AIR 1963 Supreme Court 1307.

11. According to Section 2(j) of the Karnataka Stamp Act, 1957:

"instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded."

12. Applying the definition, it cannot be said that the copy of the registered mortgage deed received by the Registrar at Chitradurga satisfies the requirement of the above definition. What the Registrar received from the Registering

Authority in Delhi is only a copy of the instrument that was registered at Delhi for the purpose of being filed in Book-I under sub-section (3) of Section 66 of the Registration Act, 1908.

13. Section 66 of the Registration Act, 1908, lays down the procedure to be followed after registration of a document relating to landed property. According to Section 66:

(1) "On registering any non-testamentary document relating to immovable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

(2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in Section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Sub-Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the properly is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1."

14. According to Section 67 of the Act:

"On any document being registered under Section 30, sub-section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in Section 66, sub-section (1)."

15. In all these provisions, a distinction is made between an instrument and a copy of the instrument, in sub-section (3) of Section 66, the reference is only to a copy of the instrument and also a memorandum of the copy. In Section 67 of the Act, a reference is made to copy of such document meaning thereby any document being registered under sub-section (2) of Section 30.

16. Thus it is manifestly clear that what was received in Chitradurga by the concerned authority is only acopy of the instrument which was registered at Delhi.

17. It is now necessary to examine the power of the Special Deputy Commissioner under sub-section (1) of Section 33 of the Karnataka Stamp Act, 1957. According to Section 33(1) of the said Act:

"Every person having by law or consent of parties authority to receive evidence, and every person in-charge of a public office, except an officer of Police, before whom any instrument, chargeable in his opinion, with duly, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State of Karnataka when such instrument was executed or first executed........"

It is to be seen from the aforesaid provision that the power invested in the Special Deputy Commissioner is limited to the examination of an instrument as to whether or not it is duly stamped. The condition precedent even in the case of an instrument is that it should have been either produced before him or it comes to him in the performance of his functions and if he is satisfied that such instrument is not duly stamped, he can proceed to impound the same.

18. In the instant case, there is no material on record to hold that either the instrument was produced before him or that the instrument came before him in the performance of his functions. When I refer to the word "instrument", I go by the meaning of the definition under Section 2(j) of the Karnataka Stamp Act, 1957. I have already taken the view that a copy of the registered mortgage deed cannot be regarded as an instrument in terms of Section 2(j) of the Act. The document in question in the instant case is a mortgage deed registered at Delhi under the Delhi Stamp Act in respect of immovable property located in Chitradurga. Admittedly, registra- tion never took place in Chitradurga nor was the instrument transferred from Delhi to Chitradurga to the concerned authority. What was transferred was only a copy of the registered mortgage deed which can only be regarded as a copy of the instrument and not the instrument itself. So the question for consideration is, whether the Special Deputy Commissioner had the necessary jurisdiction to take action under sub-section (1) of Section 33 as well as under sub-section (2) of Section 33 by calling upon the petitioner to pay the alleged difference in stamp duly in a sum of Rs. 2,24,990/-. I have no hesitation in holding that the Special Deputy Commissioner has exercised the jurisdiction improperly and has made a demand which is not warranted by law. Ican only observe that the demand for payment of Rs. 2,24,990/- would have been permissible if the instrument itself was produced before him or had come before him in the performance of his functions, which is not the case in the facts and circumstances.

19. It is seen from Annexure-E that power is also exercised by the authority concerned under Section 46-A of the Karnataka Stamp Act. Section 46-A(1) of the Act provides:

"Section 46-A. Recovery of Stamp Duty not levied or short levied: (1) Where any instrument chargeable with duly has not been duly stamped, the Chief Controlling Revenue Authority or any other officer authorised by the Stale Government (hereinafter referred to as the"authorised officer") within three years from the date of commencement of the Karnataka Stamp (Amendment)

Act, 1980 or the date on which the duly became payable whichever is later, serve notice on the person by whom the duly was payable requiring him to show cause why the proper duty or the amount required to make up the same should not be collected from him.

Provided that where the non-payment was by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duly, the provisions of this sub-section shall have effect, as if for the words"three years"the words"six years"were substituted.

Provided further that nothing in this sub-section shall apply to instruments executed prior to First Day of April, 1972." Even in this provision, it is apparent that recovery of stamp duly not levied or short levied is only in respect of an instrument and not on the copy of the instrument. It goes without saying that Section 46-A docs not confer upon the Special Deputy Commissioner the jurisdiction to recover the stamp duly not levied or short levied as contemplated thereunder. I must observe that this is also an instance of improper exercise of power or jurisdiction by the Special Deputy Commissioner. In short, the provisions of Section 46-A are not attracted to the facts of this case in respect of the document in question.

20. The learned Government Pleader strongly relied on the decision rendered in New Central Jute Mills Co. Ltd. and Others v State of West Bengal and Others, AIR 1963 Supreme Court 1307. That was the case in which a company incorporated under the Indian Companies Act had its registered office at Calcutta and had another factory at Varanasi in the State of Uttar Pradesh. The State of Uttar Pradesh having agreed to advance a loan of Rs. 1,45,00,000/- on the mortgage of the Company''s assets at its jute mills at Budge Budge and at Ghusuri, all situated in West Bengal, the deed of mortgage was executed at Lucknow in the State of Uttar Pradesh on March 22, 1957. The first petitioner for his case affixed stamps of the value of Rs. 1,08,751/- purchased from the Collector of Stamps, Calcutta. It was duly registered at Calcutta on April 5, 1957. Thereafter, on March 23, 1957 by a deed executed between the first petitioner and the State of Uttar Pradesh a part of the mortgage property in West Bengal was released and in its place a part of some properties of Uttar Pradesh was substituted. The deed of substitution was duly stamped and registered in Uttar Pradesh. No objection was then taken to the stamp affixed on the original deed of mortgage. In 1960 the first petitioner therein made a request to the State of Uttar Pradesh to release a further part of the mortgage properties included in the original mortgage deed and to accept in their place and stead the assets and properties of the Company''s factory at Varanasi as substituted security. A draft deed for the substitution was sent by the first petitioner to the Collector of Varanasi for ascertaining the stamp duly payable on it and for getting the benefits of reduced rates of duly applicable in case of substitution of security. The Collector then referred the matter to the Board of Revenue for adjudication of the

Stamp duly on the document for substitution. Ultimately, the Board of Revenue, Uttar Pradesh, decided that the original document had been executed at a place within Uttar Pradesh, and it must bear stamps issued by the Uttar Pradesh Government. It rejected the argument that the document of March 23, 1957 was not an instrument and therefore could bear the stamps issued by the West Bengal Government. The Board of Revenue held that the Company was liable to pay Rs. 1,74,000/- as stamp duly on the document dated March 23,1957 before it can avail of the concessional rule provided for in substituted security. Thereafter, the Collector of Varanasi, by a letter dated September 8, 1961 informed the first petitioner that the draft deed submitted by it was a substituted security chargeable under Article 40(c) of Schedule 1-B of the Uttar Pradesh Stamp Amendment Act, 1958 with a duly of Rs. 7,554/- provided the original mortgage deed of March 22, 1957 was "first got properly stamped by payment of deficit duly of Rs. 1,74,000/-." The letter ended with a request for deposit of the deficit of Rs. 1,74,000/- on the mortgage deed of March 22, 1957 and also for deposit of Rs. 7,554/- for the deed of substitution to be executed. This letter from the Collector was followed by a Tahsildar, Chandauli, Varanasi, demanding payment of Rs. 1,74,000/- within a week of the receipt of the letter. On November 30, the first petitioner replied to this letter asking for a month''s time. The present petition was filed on December 22, 1961.

21. It is in these circumstances, the Supreme Court held that if an instrument after becoming liable to duty in one State on execution there becomes liable to duty also in another State on receipt there, it must first be stamped in accordance with the law of the first State and it will not be required to be further stamped in accordance with the law of the second State when the rate of the second Stale is the same or lower. When the rale of the second State is higher, it will require to be stamped only with the excess amount in accordance with the law and rules in force in the second State.

22. It was also held that where a mortgage deed was executed in Uttar Pradesh, though it related to property situated in West Bengal and was received in the State for registration, the first dutiable event was the execution which took place in Uttar Pradesh. The second dutiable event was the receipt in West Bengal. When it came before the officers of Uttar Pradesh for a decision whether it was duly stamped or not, the officers of Uttar Pradesh were bound to hold that the instrument was not duly stamped as it did not bear Uttar Pradesh stamps. In the circumstances of the case, the fact that the instrument had stamped in accordance with the law of West Bengal could not justify conclusion that it had been duly stamped. The instrument can be said to be duly stamped only if it bears stamps of the amount and description in accordance with the law of the State concerned. The law includes not only the Act but also the rules framed under the Act. The facts and circumstances in which the Supreme Court made the above observations are in material variance with the facts and circumstances of the instant case. I am of the opinion that the decision relied upon by the learned Government Pleader is inapplicable to the facts of this case. I may also

observe that the decision relied upon by the learned Government Pleader relates to an instrument and not to a copy of the instrument received by the concerned authority and, therefore, this cannot be an authority for the proposition that even in respect of the copy of the instrument power could be exercised by the Special Deputy Commissioner under Section 33(2) read with Section 46-A of the Karnataka Stamp Act, 1957.

23. In the light of the above discussion, I hold that the writ petition deserves to be allowed. Hence, I make the following order:

The writ petition is allowed and the impugned orders under Annexures ''E'' and ''F'' are quashed. The rule is made absolute.

24. Sri Sateesh M. Doddamani, learned Government Pleader, is permitted to file his memo of appearance within two weeks from today.

Writ Petition allowed.