
(2001) 08 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 9393 of 2000

Jayashree, B.

APPELLANT

Vs

The Divisional Commissioner, Bangalore Division, Bangalore
and Others

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Karnataka Stamp Act, 1957 — Section 45 A (3)

Citation : (2001) 6 KarLJ 329

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : D.L.N. Rao and Anuradha, for the Appellant; T.A. Ramachandraiah,
High Court Government Pleader, for the Respondent

Judgement

The Court

1. This case is taken up for disposal with the consent of the learned Counsel appearing for the parties. The petitioner in this writ petition is aggrieved by the order dated 24-8-1994 (Annexure-G) passed by the second respondent and the appellate order dated 23-2-2000 (Annexure-K) determining a sum of Rs. 99,060/- as the amount payable due to under valuation of the property purchased by her.

2. The petitioner has sought for quashing of the orders impugned under the following circumstances:

The petitioner by a registered sale deed dated 24-4-1987 purchased the property located at No. 204, Binnamangala n Stage Extension, Bangalore City, on payment of consideration of Rs. 7,53,000/-. By a show-cause notice dated 25-11-1988, the Special Deputy Commissioner for Detection of Under valuation of Stamps initiated proceedings u/s 45-A(3) of the Karnataka Stamp Act, 1957 for determination of the correct market value of the property in question on the premise that correct or proper market value of the property had not been truly

indicated in the sale deed. The petitioner by a reply dated 12-12-1988 sought to explain that the value as indicated in the sale deed was a correct one and having regard to the circumstances and the state of affairs of the property which comprised of a dilapidated building, the valuation of the land which was Rs. 130/- per sft. was more than the market value during the year 1987.

3. It appears the matter was allowed to hibernate for a period of six years and by a notice dated 13-6-1994 the petitioner was intimated that the case will be taken up for hearing on 1-7-1994 and the petitioner was called upon to appear for hearing and represent her case by furnishing supporting documents to substantiate her version. The petitioner did give a reply dated 22-6-1994 and urged for dropping of the proceedings.

4. The version of the petitioner is, on 1-7-1994 the date fixed for hearing, she did appear in person and was intimated by the authorities that she will be appraised of the further development in the matter. The petitioner who had already submitted her objections and representation being under the impression that the authorities were satisfied with the same, went back without further development having taken place on that date.

5. It is the assertion of the petitioner that thereafter she was not intimated with further orders and it is only as on 1-7-2000 i.e., after a lapse of another six years she received a recovery notice dated 24-12-1999 issued by the Special Deputy Commissioner for Revenue Recovery, Bangalore South Taluk, Bangalore, calling upon her to make payment of a sum of Rs. 99,060/- being the arrears of land revenue. The petitioner being surprised by the said demand raised on her, made further inquiries with the authorities concerned and was made to understand that an order dated 24-8-1994 had already been passed by the Deputy Commissioner determining this amount as the amount payable by her in view of the under valuation of the property in question and in fact, this had been preceded by the provisional order dated 29-7-1994 to which the petitioner is alleged to have not responded at all.

6. The petitioner thereafter appears to have taken steps to obtain the certified copy of this order and filed an appeal u/s 45-A(5) read with Rule 9 of the Karnataka Prevention of Under valuation of Instruments Rules, 1977 before the first respondent the Divisional Commissioner. The petitioner while receiving a demand notice on 17-1-2000 filed an appeal on 11-2-2000 along with an application for condonation of delay explaining that the order impugned in the appeal, namely the order of the Deputy Commissioner for Detection of Under valuation had never been served on her and she was ignorant of the said order and came to know about the passing of the order for the first time when received a recovery notice dated 24-12-1999 on 17-1-2000. The petitioner pleaded this as the ground for condonation of delay and also urged that the appeal having been filed on 1-2-2000 and the petitioner having come to know of the passing of the order on 17-1-2000 it was well-within the period as contemplated under Rule 9 read with Section 45-A(3) and as such it was a fit case for condonation of delay.

7. The Divisional Commissioner who looked into the appeal and the application, by an order dated 23-2-2000 has rejected the appeal holding that it is barred by time. The first respondent-Divisional Commissioner who is the Appellate Authority was of the view that the petitioner having filed the appeal after the period of 5 years, 3 months and 17 days after the expiry of the period of limitation and it is only obviously due to lack of diligence on her part that such a delay has occurred and if the petitioner had not evinced any further interest in the matter and had kept quiet, she has to blame herself and such an explanation does not constitute a sufficient ground and accordingly, rejected the application and the appeal also. It is against this order, the petitioner has approached this Court under Articles 226 and 227 of the Constitution of India.

8. Smt. Anuradha, learned Counsel appearing for the petitioner submits that the petitioner had never been served with a copy of the order passed by the Divisional Commissioner for under valuation and in fact the petitioner has also not been served with the provisional order said to have been issued by the Special Deputy Commissioner dated 22-7-1994 which according to the respondents had preceded the passing of the final order as on 24-8-1994. Learned Counsel points out that even as per the period contemplated under the Act and Rules, appeal has to be preferred within a period of two months from the date of the receipt of the order and as the petitioner had never been communicated with the order passed by the Special Deputy Commissioner and it was only after she received the demand notice, she took steps to apply for the certified copy and thereafter filed this appeal even within a month from the date of receipt of the demand notice, the appeal cannot be construed to be barred by limitation and even assuming that there is delay and the appeal is beyond the time prescribed by law, non-furnishing of the impugned order to her and keeping her in ignorance of that order constitute a sufficient ground for condonation of delay and the approach of the Divisional Commissioner for declining to enter into the merits of the appeal is not only highly technical but also defeats the valuable right of appeal provided under the Act. Learned Counsel submits that as such the order is vitiated due to the incorrect and erroneous understanding of the provisions of the Act on the part of the Appellate Authority, who has failed to exercise the discretion conferred on him in a judicious manner, and on relevant considerations but has on an erroneous understanding failed to exercise the appellate jurisdiction conferred on him under the Act.

9. Sri T.A. Ramachandraiah, learned Government Pleader appearing on behalf of the respondent has submitted that the delay being inordinate and the petitioner having not made any inquiries into the matter to ascertain whether any order is passed or not the Appellate Authority was fully justified in rejecting the I.A. for condonation of delay and dismissing the appeal.

10. The mere fact that there is delay of 5 years, 3 months and 17 days in itself is not a ground for rejecting the appeal without looking into the explanation offered by the petitioner and without considering the same objectively. In the instant

case, the petitioner has clearly averred that she was totally unaware of the order passed by the Special Deputy Commissioner which is dated 24-8-1994 and which had never been communicated to her. Having regard to the history of the development of this case, which started in the year 1988 and has followed its own course, the petitioner cannot be blamed. She was put to an impression that either no further order would be passed or further development would be intimated, This aspect apart, learned Counsel for the petitioner also points out that the provisional order as well as the final order which had been issued by the Special Deputy Commissioner had not been addressed to the place where she was residing and obviously it had never reached her. Whereas the earlier notice was addressed to her to the place where she was residing at No. 204, Binnamangala II Stage, Bangalore, the provisional order as well as the final orders appear to have been sent to her earlier address. On the other hand, learned Government Pleader is unable to show or satisfy this Court whether the petitioner had in fact been served with the order passed by the Special Deputy Commissioner at any time earlier than the issue of the demand notice. Learned Government Pleader points out that the demand notice was also addressed to the other place and the fact that the petitioner has been served with the demand notice indicate that even the other orders sent to that address should have reached her. The learned Counsel for the petitioner counters the same saying that the demand notice also though has been addressed to the earlier address was in fact served only at the present address and in person. No doubt that the authorities have served the demand notice in person at the present address as they would have taken further steps to have served on her at the present address whereas the orders passed earlier and which were sent to the old address of the petitioner would have been served or unserved and the authorities would not have evinced any further interest in service.

11. Having regard to the circumstances explained by the petitioner, it was incumbent upon the first respondent to have objectively considered, the explanation offered by the petitioner for the delay in preferring the appeal and it should have been considered in a positive manner. In fact, the order passed by the first respondent indicate that it was not considered at all and as such the order is vitiated. Statutory authorities are duty-bound to consider the appeals, applications and relevant materials and not to surmise merely by looking at the extent of delay. Accordingly, the impugned order dated 23-2-2000 is quashed by issue of a writ of certiorari and the matter is remanded to first respondent with a direction that the Appeal No. UV.APPL.117/99-00 filed by the petitioner be restored to the file, the Appellate Authority consider the application for condonation of delay in an objective manner and pass appropriate orders on merits of the appeal.

Rule issued and made absolute to the extent indicated above.

12. No costs.