

(2005) 03 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 34707 of 2003

K.B. Nagendra and Another	Vs	APPELLANT
State of Karnataka and Others		RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Karnataka Stamp Act, 1957 — Section 33 (1), 37 (2), 39 (1) (a), 46 A, 46 A (3)

Citation : AIR 2005 Kar 305 : (2005) ILR (Kar) 2105 : (2005) 2 KCCR 1529

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

Bench : Single Bench

Advocate : M.R. Rajagopal and M. Nagaraja, for the Appellant; G.P. Suresh, HCGP, for the Respondent

Final Decision : Allowed

Judgement

H.G. Ramesh, J.—In this writ petition, the petitioners have challenged the order dated. 4.7.2002 passed by the Karnataka Appellate Tribunal by which the Tribunal has dismissed the appeal of the petitioners which was filed u/s 46-A(3) of the Karnataka Stamp Act, 1957 ("the Act" for short) and also the order dated. 20.6.2001 passed by respondent No. 3 namely the Deputy Commissioner of Stamps and Registration, Tumkur District directing the petitioners to pay stamp duty and registration fee of Rs. 1,46,174/- in respect of the sale deed dated 13.2.1997 executed in their favour.

2. The facts essential for disposal of this writ petition are as follows:

The petitioners purchased a certain property as per the sale deed dated. 13.2.1997 produced as Annexure-B. The said deed was presented for registration before the jurisdictional Sub-Registrar. The Sub-Registrar impounded the said document u/s 33(1) of the Act on the ground that the instrument was not duly stamped. Accordingly, he sent it to the Deputy Commissioner as provided under Sec. 37(2) of the Act. The Deputy Commissioner examined the document and was of opinion that the document was not chargeable with duty as per

government order dated 28.9.1994 and accordingly certified to the said effect in exercise of his power u/s 39(1)(a) of the Act as per his order dated 16.4.97 produced as Annexure "C". Subsequently, the staff of the Accountant General during the course of their inspection found that the document in question was not duly stamped. Following the said finding, the Deputy Commissioner initiated a proceeding u/s 46A of the Act and ultimately by his order dated 20.6.2001 which is produced as Annexure "F" directed the petitioners to pay Rs. 1,46,174/- as duty on the aforesaid instrument of sale. Against the said order, the petitioners presented an appeal in Appeal No. 484/2001 u/s 46A(3) of the Act before the Karnataka Appellate Tribunal. The Tribunal dismissed the said appeal by its order dated 4.7.2002 produced as Annexure "H". Being aggrieved by the aforesaid two orders, the petitioners have presented this writ petition.

3. I have heard learned Counsel appearing for the parties and perused the impugned orders.

4. The sole contention urged by the learned Counsel appearing for the petitioners is that the order dated. 20.6.2001 passed by the Deputy Commissioner is wholly without jurisdiction. He submitted that in view of the order dated. 16.4.97 passed by him in exercise of the power u/s 39(1)(a) of the Act to the effect that the document was not chargeable with duty, it was not open to the Deputy Commissioner in law to exercise the power u/s 46A of the Act to review or redetermine the issue already decided in exercise of the power u/s 39(1)(a). He relied on Section 39(2) of the Act in support of his contention. He also submitted that this aspect is not properly considered by the tribunal.

5. Learned Govt. Pleader appearing for the respondents submitted that the impugned order-Annexure F was passed by the Deputy Commissioner in exercise of the power u/s 46A of the Act and hence cannot be said to be without jurisdiction. He further submitted that the impugned orders do not suffer any legal infirmity to warrant interference by this court.

6. In the light of the above rival contentions, the only question that falls for determination is as to whether the Deputy Commissioner had power to pass the order dated. 20.6.2001, which is produced as Annexure-F?

7. It is not in dispute that respondent No. 3-Deputy Commissioner had passed the order dated. 16.4.1997 as per Annexure-C to the effect that the document was not chargeable with duty by relying on a government order dated 28.9.94. This order was passed by the Deputy Commissioner in exercise of the power conferred on him u/s 39(1)(a) of the Act. The question is as to whether the Deputy Commissioner can again review or re-determine the said issue in exercise of his power u/s 46A of the Act?

8. In this context, it is relevant to notice Section 39 of the Act, which reads as follows:

"39: Deputy Commissioner's power to stamp instruments impounded:

(1) When the Deputy Commissioner impounds any instrument u/s 33, or receives any instrument sent to him under Sub-section (2) of Section 37, not being an instrument chargeable with a duty not exceeding fifteen paise only or a mortgage of crop [Article (35) (a) of the Schedule] chargeable under Clause (a) or (b) of Section 3 with a duty of twenty five paise, he shall adopt the following procedure:

(a) If he is of opinion that such instrument is duly stamped or is not chargeable with duty he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable as the case may be:

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or if he thinks fit, an amount not exceeding ten times, the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Deputy Commissioner may, if he thinks fit, remit the whole penalty prescribed by this Section.

(2) Subject to any orders made under Chapter VI, every certificate under Clause (a) of Sub-section (1) shall, for the purpose of this Act be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Deputy Commissioner under Sub-section (2) of Section 37, the Deputy Commissioner shall, when, he has dealt with it as provided by this section, return it to the Impounding Officer.""

(Underlining supplied)

9. A plain reading of sub section (2) of the above provision would show that the certification made u/s 39(1)(a) shall be conclusive or final for the purpose of the act subject to any orders that may be made under Chapter VI of the Act. In other words, the certification made u/s 39(1)(a) cannot be reviewed under any of the provision of the act except under chapter VI of the Act. In this case, the certification made by the Deputy commissioner u/s 39(1)(a) was reviewed by himself in exercise of the power conferred on him u/s 46A of the act which is not permissible in law as it does not fall within the ambit of chapter VI of the act. It is relevant to state the power of the Deputy Commissioner to review or redetermine the issue already decided by him u/s 39(1)(a) of the Act cannot be traced to any of the provisions of Chapter VI of the Act to sustain his order dated 20.6.2001. None of the provisions of Chapter VI of the Act confer power on the deputy commissioner to review the certification made by him u/s 39(1)(a) of the act therefore, the impugned order of the Deputy commissioner dated 20.6.2001 is clearly without authority of law as it cannot be sustained by relying on any of the provisions of chapter VI of the Act. The approach of the Karnataka Appellate

Tribunal on this aspect is totally erroneous in law.

10. In view of the above, the order dated. 20.6.2001 passed by the Deputy Commissioner which is produced as Annexure-F and the order of the Karnataka Appellate Tribunal dated 4.7.2002 produced as Annexure-H are liable to be set aside and are accordingly set aside.

The writ petition is allowed in the above terms. No costs.