

(1993) 09 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 31126 of 1992

M. Mohan Shet

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 08-09-1993

Acts Referred:

Income Tax Act, 1961 — Section 230 A, 230 A (1)

Citation : (1994) 121 CTR 29 : (1993) ILR (Kar) 2906 : (1994) 206 ITR 174 : (1993) 4 KarLJ 737 : (1994) 77 TAXMAN 399

Hon'ble Judges : K. Shivashankar Bhat, J

Bench : Single Bench

Advocate : Ashok Haranahalli, for the Appellant; B.V. Muralidhar, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The petitioner is aggrieved by the endorsement dated September 9, 1992, issued by the second respondent refusing the registration of the sale deed presented before him. The sale deed referred to the consideration as Rs. 1,18,000. According to the petitioner, the deed was presented for registration and the second respondent proceeded to register the same, in fact he had put his seal on the document, and at this stage, for reasons best known to him, he refused to complete the process of registration; instead he made the endorsement which states :

"I find according to records of the office, the value of the property shown in the document is more than two lakhs. Hence, this document is refused to be accepted for registration with request to produce the Income Tax clearance certificate."

2. The petitioner has attributed ulterior motive to the second respondent which has been denied by the second respondent. For the purpose of this writ petition, it is unnecessary for me to consider the same. I think it is open to the petitioner to agitate this matter elsewhere.

3. The undervaluation of an instrument produced for registration is taken care of by section 45A of the Karnataka Stamp Act, 1957. The said provision states that, while registering any instrument, if the registering officer has reason to believe that the market value of the property has not been truly set forth in the instrument, he may refer the same to the Deputy Commissioner for determination of the market value after registering such an instrument. Section 45A, therefore, does not empower the registering officer to decline to register the document on the ground that the market value has not been truly disclosed in the deed in question. He should have reason to believe that the property has not been properly valued and on the basis of this reason, he should refer the document for proper valuation after registering the document. The Deputy Commissioner shall have to proceed to determine the market value of the property as provided in the said provision. The power vested in the registering officer to make a reference is not an arbitrary power but a power to be exercised, provided he has valid reason to believe that the property has been undervalued. The existence of a reason is the foundation for exercising the power u/s 45A. This aspect shall have to be borne in mind while considering the validity of the action taken by the second respondent in the instant case.

4. According to the second respondent, the records of his office disclose that the market value of the property shown in the document in question is more than Rs. 2 lakhs and, therefore, instead of making a reference u/s 45A after registering the document, he invoked the provisions of section 230A of the Income Tax Act, 1961. Section 230A(1) to the extent it is relevant to the instant case reads as follows :

"230A. Restrictions on registration of transfers of immovable property in certain cases. - (1) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of section 17 of the Indian Registration Act, 1908 (16 of 1908), purports to transfer, assign, limit, or extinguish the right, title or interest of any person to or in any property valued at more than two lakhs rupees no registering officer appointed under that Act shall register any such document, unless the Assessing Officer certifies that -" (rest omitted)

5. According to the above provision where any document purports to transfer, etc., the right of the person in any property valued at more than Rs. 2 lakhs, the registering officer shall not register the document without the certificate contemplated by the said provision. According to Sri Ashok Haranahalli, learned counsel for the petitioners, the word "valued" in the above provision refers to the valuation done in the sale deed itself and not to the valuation done by the registering officer.

6. Section 230A is a provision found in a fiscal legislation. It shall have to be understood by reference to the language used and not with the supposed intention behind the provision. If the document purports to transfer any right in

any property valued at more than Rs. 2 lakhs, the provision is attracted. The section does not say that, where any document purports to transfer any right in any property "value of which" is more than Rs. 2 lakhs, then the section is attracted; instead, it says, that requisite certificate is necessary when the property is valued at more than Rs. 2 lakhs.

7. There is a difference between the meaning conveyed by the phraseology which says that the property valued at and the phraseology "property value of which is". In the latter case, it is the actual value of the property that shall have to be taken into consideration, while in the former, it is the valuation that has been done by someone who is concerned with the property or the transaction in question. A plain reading of section 230A conveys the idea that if the document purports to transfer any property valued at more than Rs. 2 lakhs, the said provision would be attracted. If the valuation is less than Rs. 2 lakhs, the registering authority is not given the power to enquire into the actual value of the property. Section 230A nowhere provides for an enquiry by the registering authority at all.

8. The learned Government Pleader relies on a decision of the Allahabad High Court in *Swastic Sahkari Awas Samiti Ltd. and Another Vs. State of U.P. and Others*, . In the said decision the Bench held that the Sub-Registrar before whom the sale deed is presented for registration shall have to value the property sought to be transferred in accordance with the "circle rates" fixed by the Collector concerned and if the valuation is more than Rs. 2 lakhs he should insist on the production of a "no objection certificate" u/s 230A.

9. It is obvious that the aforesaid decision is based on a particular circular governing the exercise of power by the Sub-Registrar. There is no such circular in the instant case governing the second respondent. The Allahabad High Court had no occasion to consider the language of section 230A.

10. In the circumstances of this case, the second respondent had no competence to reject the registration of the document only on the ground that the certificate u/s 230A was not produced. The impugned order shall have to be set aside and it is so set aside. The respondent is directed to proceed according to law and register the document unless there is any other impediment against registration.

11. It was contended that there is an alternative remedy available to the petitioner by way of an appeal. Exercise of writ jurisdiction is discretionary. The question raised by the petitioner in the instant case is of general importance and is likely to affect a large number of cases. Hence, I have considered it fit to exercise the writ jurisdiction and dispose of the writ petition on the merits.

12. The writ petition is allowed accordingly. No costs.