

(2002) 04 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No"s. 38076 of 1992 and C/W 42158 of 1993

Mahadev Naik

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Constitution of India, 1950 — Article 39A

Mysore Court-fees and Suits Valuation Act, 1958 — Section 7 (2) (a), 7 (2) (d)

Citation : AIR 2002 Kar 338 : (2003) ILR (Kar) 1724

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : S.R. Hegde Hudlamane and A. Lobo, for the Appellant; Jayaram and Jayaram, A.G. and K. Srinivasa Gowda, A.G.A. and H.N. Srinivas Anand, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—The complaint in this case is that the doors of Temple of justice is closed to the poor agriculturists courtesy Karnataka Court-fees and Suits Valuation Act of 1958 u/s 7(2)(d).

2. The facts in W.P. No. 38076/1992 are as under :

Mahadev Narayan Naik is in possession of 1 acre 20 guntas in Sy. No. 22/1 for more than 50 years. The said land belongs to Hanumanth Tippayya Naik and his family. Adverse possession is claimed. The 2nd respondent Hanumanth Tippayya Naik obstructed the enjoyment of the suit lands and hence the petitioner was compelled to file a suit for in O.S. No. 47/90. The petitioner has paid the Court-fee in terms of Section 7(2)(a). The respondent-defendant entered appearance and contested the matter. They raised an issue with regard to Court-fee in terms of Section 7(2)(d) and not in terms of Section 7(2)(a). The Trial Judge accepted the contention of the defendant. An unsuccessful petition was filed in this Court by the petitioner. In the light of the order of this Court, the petitioner is now challenging the very provision of Section 7(2)(d) as unconstitutional.

3. W.P. No. 42158/1993 is a petition again filed by the Society represented by a President Sister A.L. Mariella. She is the Superior-General of a Women's Religious Congregation. According to the petition averments, respondents 3 and 4 interfered with the possession of the petitioner to an extent of 21 guntas of land forming part of Survey No. 48/1 of Byrasandra Village, Bangalore. A suit came to be filed in O.S. No. 3006/ 1991. A Court-fee of Rs. 200/- was paid. The defendant entered appearance and raised an issue with regard to Court-fee. The Trial Judge accepted the plea of the defendant-respondent. The petitioner, in these circumstances is challenging Section 7(2)(d), in so far as the Court-fee at the rate of market value in respect of the land not having a definite share and not having a separate assessment is concerned as being violative of Article 14 of the Constitution of India.

4. Notice was issued and the respondents have entered appearance.

5. The contesting respondent-State Government contends in the objection statement that Section 7(2)(d) is Constitutionally valid and legally permissible in law. They say that there is a rational basis to classify this type of land u/s 7(2) (d).

6. Matter is heard fairly for a long time for final disposal.

7. Sri. A. Lobo, and Sri, Hegde, learned Counsels took pains to convince me that the present Section is in total disregard to the mandate of Articles 14 of the Constitution of India. According to them, it is discriminatory and arbitrary in character. The Counsels say that the State cannot commercialise the Court-fees as is being done in these cases. The Counsels also attack the same in the light of an earlier Judgment of this Court in the year 1985. They further say that In other States rectification has been done in the larger interest of the poor agriculturists. They refer to various citations to which I would be making reference, in my later paragraphs.

8. Learned Advocate General appearing for the State states that commercialisation of Court-fees has no Constitutional approval but still he contends that Section 7(2)(a) and 7(2)(d) If read independently would show that the contention of arbitrariness/discrimination raised by the petitioners has no basis. According to the learned Advocate General, Section 7(2)(a) forms Clause by itself and Section 7(2)(b) forms a different Clause.

9. After hearing the Counsel, I am of the view that four issues are raised by the petitioners in these cases.

1) Scope of Court-fee and the understanding of the Court-fee by Judiciary.

2) Development of Court-fee in other States in identical circumstances.

3) Violation of Article 14.

4) Harmonious Interpretation.

I. Scope of Court-fee :

A Constitution Bench of the Supreme Court in *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, in the case of *the Secretary, Government of Madras v. Zenith Lamps and Electrical Ltd.* has noticed the concept of Court-fee in paras 30, 31, 42 and 45.

In para 30, the Supreme Court has observed as under (at page 729-730) :

"It seems plain that "fees taken in Court" are not taxes, for If it were so, the word taxes" would have been used or some other indication given. It seems to us that this conclusion is strengthened by two considerations. First, taxes that can be levied by the Union are mentioned in List I from Entry 82; in List II taxes that can be imposed start from Entry 45. Secondly, the very use of the words not including fees taken in any Court in Entry 96, List I and Entry 66, List II, shows that they would otherwise have fallen within these entries. It follows that "fees taken in Court" cannot be equated to Taxes".

In para 45, the Supreme Court has ruled as under (at page 733) :

With respect, the fees taken in Entry 66 List I are of the same kind. They may differ from each other only because they relate to different subject-matters and the subject-matter may dictate what kind of fees can be levied conveniently, but the overall limitation is that fees cannot be levied for the increase of general revenue. For instance if a State were to double Court-fees with the object of providing money for road building or building schools an enactment would be held to be void."

10. In *Lakshmi Ammal Vs. K.M. Madhavakrishnan and Others*, , the Supreme Court considered the Court-fee of Tamil Nadu. The Supreme Court has noticed in para 2 as under :

"Court-fee if it seriously restricts the rights of a person to seek his remedies in Court of justice, should be strictly construed. After all access of justice is the basis of the legal system. In that view, where there is a doubt, reasonable, of course, the benefit must go to him who says that the lesser Court-fee alone be paid."

11. The Supreme Court again in the case of *Central Coal Fields Ltd. and Another Vs. Jaiswal Coal Co. and Others*, has noticed the directive principles under Article 39-A. The Supreme Court in the said case has ruled that "the right of effective access to justice has emerged in the Third World Countries as the first among the new social rights what with public interest litigation, community based actions and pro bono public proceedings. "Effective access to justice can thus be seen as the most basic requirement the most basic "human right" -- of a system which purports to guarantee legal rights".

12. In the light of these accepted principles, it is made clear that the Court-fee stands on a different footing than Tax legislation. It is held to be a fee which

cannot be a commercial fee since, the fee is collected for the noble cause of legal justice and to ensure legal remedy in terms of Article 39-A of the Constitution of India.

13. P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, is a case, which arose with regard to the Karnataka Court Fees and Suits Valuation Act. The Supreme Court noticed the importance of rationalisation of Court Fees in Para 37 reading as under at page 121 :

"108 ad valorem Court Fees operates harshly and almost tends to price justice out of the reach of many distressed litigants. The Supreme Court has noticed that the directive principle constitutes conjures in a Welfare State. The prescription of such high rates of Court Fees even in small claims "as also without an upper limit in larger claims is perilously close to arbitrariness, an unconstitutionality. The ideal is, of course, a state of affairs where the State is enabled to do away with the pricing of justice in its Courts of justice. The Supreme Court ultimately emphasised the need for immediate steps to rationalise the levy. The Supreme Court expressed that the Government concerns should bestow attention and bring about the rationalisation of the levies."

II. Development of laws in identical circumstances in respect of this very issue:

The present Section 7(2)(d) is nothing but a virtual reproduction of a pre-Constitutional Central Act of 1870.

14. Noticing this anomaly, several States have, either amended or redone, to provide the benefits to the weaker sections of the agricultural sector.

15. Court Fees Act of 1955 provides for the Court Fees on proportionate basis of the survey assessment of the entire survey fee.

The Bombay Court Fees Act of 1959 makes a distinction with house or garden vis a vis land. In the case of land, the same market value is not applicable.

In Manipur and Tripura, they have removed the Clause v (d).

In Madhya Pradesh proportionate assessment is introduced. A pro rata levy is made applicable in Pondicherry Act, 1972. This is being mentioned to show that in various State Governments as understood the need for re-formation in the larger interest of the Society as a whole particularly in the matter of Court fee.

III. Article 14 :

The petitioners' strong point is that this Section is violative of Article 14. Let me quote the entire Sections 7(2)(a) and 7(2)(d) for proper understanding :

"7(2)(a) : Where the land forms article fire estate or a definite share of an estate. paying annual revenue to Government, or forms part of such an estate and is recorded in the Deputy Commissioner's register as separately assessed with such revenue, and such revenue Is permanently settled --twenty-five times the revenue so payable:

7 (2) (d) : Where the land forms, part of an estate paying revenue to Government but is not a definite share of such estate and is not separately assessed as above mentioned or the land is a garden or the land is a house site whether assessed to full revenue or not, or is land not falling within the foregoing description-the market value of the land."

Section 7(2)(a) provides for Court Fees, 25 times the revenue payable on the land in the case of lands, forming an entire estate or a definite share of an Estate, paying annual revenue to Government, or forms part of such an estate.

Section 7(2)(d) with which we are concerned, provides for as market value of the land In respect of the land forming part of an estate paying revenue to Government, but is not a definite share of each estate and is not separately assessed market value.

16. This very question of arbitrariness in respect of this very provision was raised in Bheemanda Devaiah Vs. Kanjithanda Karumbaiah, . The learned Judge, who dealt with this case has noticed in Para 5 as under :

"Estate" used in Clauses (a) (b) and (c) of the sub-section, means only land which is subject to payment of revenue, becomes evident from the explanation found therein. If the land, which is the subject matter of the suit, forms an entire estate, or a definite share of an estate paying annual revenue to Government, or forms part of such an estate and is recorded in the Deputy Commissioner's register as separately assessed with such revenue and such revenue is permanently settled, its market value shall be deemed to be twenty-five times the revenue so payable under Clause (a) of the sub-section. Next, If similar land is assessed to revenue as before, but if such revenue is not permanently settled, its market value shall be deemed to be twelve and a half times the revenue so payable under Clause (b) of the sub-section. What shall be deemed to be the market value of land, which is the subject matter of the suit, if no revenue is payable therefore or is partially exempted from paying such revenue, or is charged with any fixed payment in lieu of such revenue, is covered by Clause (c) of the sub-section. But, when it comes to Clause (d) of the sub-section, it declares that the market value of the lands described therein and any land not described therein shall be the market value of the lands themselves. The lands covered by Clause (d) above, therefore, may be categorised thus :

- (1) Any land forming part of an estate paying revenue to Government, but not forming a definite share of such estate and not separately assessed either permanently or not permanently; or
- (2) Any land which is a garden; or
- (3) Any land which is a house site whether assessed to full revenue or not;
- (4) Any land not falling within the above categories.

Land In Item 1 of the plaint schedule to the suit, the market value of which has

to be determined, falls in category (1) above. It is so because (1) Its extent is 3 acres only as against the extent of 3 acres 89 cents comprised In Survey No. 33/2 and it forms only a specified part of an estate paying revenue to Government; (11) It is not a specific share of an estate in Survey No. 33/2; and (Iii) it is not also separately assessed to revenue. Thus, when land in Item 1 of the plaint schedule falls in category (i) of lands in Clause (d) above, its market value, that is, what it would have fetched if had been sold in the open market on the date of presentation of the plaint, should be of relevance and Court fee under the Act is payable on such market value."

After noticing, this Court again noticed in Para 7 as under :

"Lands covered by Clauses (a) to (c) of sub-Section (2) of Section 7 of the Act, are agricultural lands. Their market value is determinable on the fictional basis created in those clauses. Such fictional basis created by the Legislature is obviously Intended to benefit the agriculturists, in that, they can have easy access to Courts for establishing their legitimate claims respecting agricultural lands by paying negligible Court-fee on such claims. Though category (1) lands of Clause (d) of sub-Section (2) of Section 7 are agricultural lands of agriculturists, their market value for purposes of Court-fee is determinable as required by that clause on the basis of their real market value, that is, what they would fetch in the open market if sold on the date of suit and not on a fictional basis as provided for in Clauses (a) to (c) of sub-Section (2) thereof. Benefit of fictional basis of determination of market value of agricultural lands, appears to have been denied to lands in category (1) lands in Clause (d), for, they are only specific portions of lands covered by Clauses (a) or (b) and they are not separately assessed. When both category (1) lands in Clause (d) and lands in Clauses (a) to (c) are agricultural lands and of agriculturists, to deny the benefit of fictional basis of determination of market value to the former class of lands merely because they form smaller (specific) portions of assessed survey numbers and are not, by themselves, separately assessed, would amount to denial of well intended benefit with no rationale or logic behind it. After all, it is common knowledge that it is small agriculturists who would very much need the assistance of Courts in establishing their claims respecting smaller (specified) portions of their agricultural lands, which may form parts of larger lands. But, denying the fictional basis of determination of market value for these lands to small agriculturists and to demand from them Court-fee on the real market value of those lands for establishing their claims respecting them, may, in several cases, result in closing the doors of Courts for their entry. Moreover, such an anomaly, which is brought about by the exception created by Clause (d) regarding portions of agricultural lands not separately assessed to revenue, creates an impression that is only big agriculturists who are allowed to have access to Courts to establish their claims respecting their large agricultural lands (holdings) by paying little Court-fee and not the small agriculturists, who may be in dire need of establishing their claims in Courts, respecting their small agricultural lands because of the exorbitant Court-fee which they are liable to

pay on such claims. To my mind, it looks that this is an anomaly which might not have been really intended by the Legislature itself. However, as this is an anomaly which requires to be remedied by the Legislature alone, all that the Court can do is to invite its attention to this aspect and leave it at that."

17. A reading of the said Judgment would show that this Court has virtually given its finding of arbitrariness in respect of this very provision. This Court could not strike down the provision since that was a case of a Revision Petition. Levy of Court-fee is on market value in terms of Section 7(2)(d) just because the definite share is not assessed though the estate as such is assessed. This Court noticed the anomaly and thought that the Legislature would remedy the situation. No remedial steps are taken by the Government even after 16 long years. A mere look at the Section would show that a mere separate non-assessment of a share in an estate though assessed, not definite, being asked to pay a market value as compared to the assessed estate at 25 times revenue is arbitrary. Even without Article 14 it looks arbitrary and discriminatory. There is no rational behind fixing market value for an agricultural land Just because it is not separately assessed notwithstanding the factum of assessment of the entire estate. Moreover, agricultural lands are levied Court fee in terms of Section 7(2)(a). But for a portion of an estate for the purpose of Court-fee it is tagged on to garden land/house sites. An agricultural land stands on a different footing when compared to garden land/house sites. This very grouping of agricultural land to garden land/house sites, itself is discriminatory and arbitrary. An agricultural land stands on an entirely different footing when compared to a garden land or house sites. When the entire estate in the event of assessment is entitled for assessment of 25% assessable value as Court-fee, a small portion of that estate is liable for market rate Court-fee is beyond any acceptable reasons and virtually stands on no reasonings. No logic is available for Court-fee at the rate of market value in respect of a small portion of a land. In tries circumstances, I am clear in my mind that this levy at the rate of market value insofar as agricultural land is concerned is discriminatory, arbitrary and violative of Article 14. Arbitrary because no logic is available. Discriminatory because it is grouped with house sites and garden land.

18. The Supreme Court in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, has noticed Article 14 in the following words in Para 15 at page 327:.

"Article 14 was considered at length in the *The State of West Bengal Vs. Anwar Ali Sarkar*, and according to the law laid down there, the Court must be satisfied on two points before it can strike at a law on the ground of unlawful discrimination. It must be satisfied (1) that the law in fact discriminates and (2) that such discrimination is not permissible on the principle of a rational classification made for the purposes of the legislation".

19. The Supreme Court in the case of *Madhaorao and Others Vs. The State of Maharashtra*, has ruled in Paras 4 and 5 as under at page 46 :

"It appears that according to the view of the High Court the Court-fee is payable u/s 6(i)(v) even with regard to land on its value which according to the counsel for the State would be the market value. In our Judgment S. 6(i)(v) does not admit of any such method of calculating the Court-fee where the subject matter is land. There is no doubt that where the subject matter is a house or a garden, in a suit for possession the Court fee has to be paid according to the market value of the house or garden but where the subject matter is land the Court-fee has to be calculated according to what has been provided in the sub-Clauses (a), (b) and (c) with regard to different categories of land. It may be that in Clause (v) the land which has not been assessed to land revenue is not covered by Sub-clauses (a), (b) and (c) but then the Court-fee will have to be calculated under some other provision of the Act but not on the basis of the value of the land.

If there is any lacuna in the Bombay Act that will not justified the Court in straining the language of Clause (v) and reading it in such a way that If the land does not fall within Sub-Clauses (a), (b) and (c) mentioned therein it must be valued in the same way as a house or a garden and Court-fee should be paid on that value.

20. In *Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another*, the Supreme Court has ruled with regard to Article 14 in Para 27 as under (at page 615-616 of AIR) :

"It is true that whenever a special provision like the Rent Control Act, is made for a section of the society it may be at the cost of another section, but the making of such a provision or enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largess or windfall to another, without appropriate corresponding relief, then the continuation of such a law which necessarily, or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary."

The Supreme Court in this Judgment has categorically ruled that it Is the responsibility of the Court to look at the legislation under Article 14 of the Constitution of India.

The Supreme Court has noticed in Para 30 reading as under :

"When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have a narrow or short-sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abduction of responsibility of the legislative authority. Social legislation is treated with deference by the Courts not merely because the legislature represents the people but "also because in representing them the entire spectrum of views is expected to be taken into account. The legislature is not shackled by the same constraints as the Courts of law. But power is coupled with a responsibility. It is

also the responsibility of the Courts to look at legislation from the alter of Article 14 of the Constitution. This article is intended, as is obvious from its words, to check this tendency giving undue preference to some over others."

21. The Court-fee also has to be viewed from the angle of justice to a common man in terms of Article 39A and in terms of various Constitutional provisions in the matter of justice. Access to justice is vital in a democratic set up. Nobody is to be denied entry on account of a huge Court-fee particularly payable by the poorer sections of the people. The doors of justice is not to be closed on the ground of money, by way of Court fees. This draconian levy of market value Court-fee in terms of Section 7(2)(d) is also opposed to Article 39-A of the Constitution.

22. However, I must notice the contention of the contesting respondents with regard to this aspect of the matter. He has invited my attention to three Judgments reported in Balu Deochand Kulmi and Another Vs. Fundibai Amichand Kulmi, and Secretary to Government of Madras and another Vs. P.R. Sriramulu and another, in the Calcutta Weekly is a case of pre-Constitution. It was not a challenge to the very provision. This Judgment cannot come to the aid of the contesting respondents. The Full Bench of Madhya Pradesh High Court was considering S. 7(5)(d) and that case did not consider, the Constitutional validity in terms of Article 14. Therefore, this Judgment is not available to the present case where the section is challenged as violative of Article 14. Equally Secretary to Government of Madras and another Vs. P.R. Sriramulu and another, is only with regard to the challenge to the Court Fees Act. It was not a case with reference to a present case wherein equal classes are treated unequally by way of discrimination. Therefore, with respect to the Counsel, all the three Judgments are not only applicable to the facts of this case but are factually distinguishable.

23. Lastly, it was argued by the respondent that this Section was in Statute for a long time. Firstly, I am unable to accept this argument for the simple reason that way back in 1985, a learned Judge of the Court has noticed this absurdity and the discriminatory character of the Section and the discriminatory character of the Section and hoped that the legislature would step in and correct the mistake. The legislature has failed to look into this. Therefore, it cannot be said that this has withstood the time as contended. In fact, the Supreme Court in 1984 SC 127 has noticed in Para 24 as under:

"It is argued that since the impugned provision has been in existence for over 23 years and its validity has once been upheld by the High Court, this Court should not pronounce upon its validity at this late stage. There are two answers to this proposition. First, the very fact that nearly 23 years are over from the date of the enactment of the impugned provision and the discrimination is allowed to be continued unjustifiably for such a long time is a ground of attack in these cases. As already observed, the landlords of the buildings constructed subsequent to Aug. 26, 1957 are given undue preference over the landlords of buildings constructed prior to that date in that the former are free from the shackles of the

Act while the later are subjected to the restrictions imposed by it. What should have been just an incentive has become a permanent bonanza in favour of those who constructed buildings subsequent to Aug. 26, 1957. There being no justification for the continuance of the benefit to a class of persons without any rational basis whatsoever, the evil effects flowing from the impugned exemption have caused more harm to the society than one could anticipate. What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century. The second answer to the above contention is that mere lapse of time does not lend constitutionality to a provision which is otherwise bad. "Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported". We are constrained to pronounce upon the validity of the impugned provision at this late stage because the garb of constitutionality which it may have possessed earlier has become worn out and its unconstitutionality is now brought to a successful challenge,"

24. The Supreme Court in unmistakable terms has stated that a mere lapse of time does not run constitutionally to a provision which is otherwise bad. Time does not run in favour of the legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity.

All these Judgments are available to the petitioner in this case. These Judgments do support my findings on Article 14.

IV. Harmonious interpretation

25. It is a well settled principle of law that the Courts are to prefer a harmonious construction to a literal one. The Heydons Rule is that the purpose of the Act is to be advanced; absurdity, ridiculous effect of literal construction and mischief is to be avoided in Draftsmanship. As mentioned earlier, the present Section 7(2)(d) is nothing but a reproduction of the Central Act of 1870.

26. In Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders, the Supreme Court in Para 10 has ruled that "if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature." If the argument of the State is accepted, it would result in an anomalous result of a poorer section in paying a higher Court-fee on the basis of marked basis for a small piece of land as against a lessor Court-fee paid by a rich landlord for the entire estate. In fact, this very section came for interpretation at the hands of various Courts.

27. In AIR 1929 Mad 1002, Subramania Ayyar v. Ama Awar, the Madras High Court ruled that this section is to be liberally construed.

28. In AIR 1948 9 (P & H.) the Central Act Section 7(5)(d) was considered that the (sic) accounts of land to which it is put to be and the Court ruled that a suit for possession of land separately assessed lands revenue Is governed by sub-Clause (b) of Clause 75.

29. In this connection, it is also necessary to notice a classical Judgment of the Division Bench of this Court in AIR 1971 Mys 336, Ramachandra Gajanana Hegde v. Ganapati Umamaheshwar Hegde. The Court was considering this very provision. This Court noticed that Arecanut trees planted on the land cannot be considered as a garden land. This Court noticed the meaning of garden as under :

"The term garden is coupled with the term "house" shows what the legislature contemplated is a piece of ground which Is used by the owners of a house as a place of recreation and as one on which vegetables and the like are grown for purposes of home consumption."

30. This Court, as a matter of fact, noticed the remark made by Justice Seshagiri Aiyar that the Court Fees Act was drafted by an English Lawyer and as such the connotation of garden that he had in mind was an appendage to a house or a place which was kept for purposes or pleasure. This is what he said "so it can very easily be said that the Legislature never intended to term that piece of land as a garden upon which trees whether fruit trees or other kinds of trees stood, or which in popular language is called an orchard."

31. This Court also refused to accept that Clause 7 (2) (b) has to read as an exception to Clauses (a), (b) and (c) of sub-section (2) of Section 7 of the Act.

32. On these principles, I am of the view that proper Interpretation is not to Court Fee at market price in terms of Section 7(2)(d).

33. Concluding remarks :

I have categorically come to a conclusion on the basis of the Rules of interpretation, the history of Court-fee and the impact of Article 14 that Section 7(2)(d) suffers from arbitrariness insofar as levy of Court-fee on market value in respect of agricultural properties are concerned. This Court, as early as in the year 1985 has noticed arbitrariness but could not strike down on account of Judicial difficulties. This Court left it to the legislature to correct the errors. I must point out at this stage that the Courts, while rendering Judgments make some suggestions for the benefit of the State and for the law Ministry to look Into and take necessary remedial action in the matter. It is rather unfortunate that even after 16 long years, no remedial steps are taken and the parties are before this Court again. I deem it proper to observe that Law Ministry may create a separate cell for taking note of the suggestions of the Court made from time to time in remedying the situation.

34. The Indian Constitution provides for a Welfare State and a Welfare Society. It provides for equality and equal opportunity. It further provides for a life and liberty under Article 21. If these Constitutional goals are to be achieved, then a

Welfare State has to have a second look in the matter of Court Fees and come to the aid of those oppressed and suppressed in the matter of Court Fees. Temple of justice can under no circumstances be closed on the ground of poverty or no money. The doors of justice has to be kept open to these helpless poor people of this great country. It cannot be forgotten that India" is basically an agricultural country. Agricultural litigation is the major litigation particularly, in Rural Sector. If these poor agriculturists are compelled to pay a higher Court-fees at the market rate, as argued by the Counsel for the State, days are not far off that these poor litigants may not come anywhere near Courts not because they do not want Justice but justice is denied to them not by Courts but by the State itself on account of its exorbitant Court-fee.

35. This Court, cannot, but observe that the Government is expected not to contest all cases where injustice is staring at them. They should on their own accept and redo the mistake in the interest of Welfare Society.

Result:

36. In the result, this petition is allowed. The words in Section 7(2)(d) of the Karnataka Court Fees and Suits Valuation Act "where the land forms part of the estate paying revenue to the Government, but is not a definite share in such estate and are not separately assessed is Constitutionally invalid and is unenforceable.

37. The petitioners are agreeable to pay Court-fee in terms of Section 7(2)(a) of the Act. In these circumstances, they are directed to make necessary application before the appropriate Court and pay the Court-fee in terms of Section 7(2)(a). If any such payment is made, the Court is directed to proceed in the matter without insisting on any further Court-fee.

38. This litigation is pending for a long time. The Counsels for the petitioners have taken sufficient pains to argue this case. The petitioners are poor litigants. In these circumstances. I deem It proper to award costs as well. Costs are quantified at Rs.2,500/-payable to each one of the petitioners.

39. Order accordingly.