

(1996) 08 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 15715 of 1996

Purushottam Lal Singla and Others	Vs	APPELLANT
State of Karnataka and Others		RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

Registration Act, 1908 — Section 34, 35, 58, 59, 60

Citation : (1996) 08 KAR CK 0003

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : C.C. Raveendran, for the Appellant; S. Udayashanker, A.G.A., for the Respondent

Judgement

R.V. Raveendran, J.—The petitioners claim to have purchased a property consisting of land and a factory building, situated at No. A-192, Industrial Estate, Peenya First Stage, Bangalore, from one U.R. Shenoy, under a sale deed executed in April 1996, registered on 12.4.1996 as document No. 162/1996-97 in the Office of the third respondent. According to the petitioners, third respondent (the Registering Officer) informed them that the document was undervalued and he intended to refer the sale deed for fixation of market value u/s 45-A of the Karnataka Stamp Act, 1957 ("Act" for short) to the second respondent (Deputy Commissioner). In fact in the receipt (Annexure-B) given by the third respondent for having received the registration fee, the Third Respondent has stated that the matter was being referred u/s 45A of the Act.

2. The Petitioners allege that the Factory shed situated in the property purchased by them in very old and is in a dilapidated condition and its value does not exceed Rs. 2.5 Lakhs; and they want to make extensive additions and alternations to the said building to make it suitable for running an industry, by spending Rs. 5 to 6 lakhs; and until such works are carried out, they cannot use the premises.

2.1) It is sated that the registration process involving copying, comparing and

making entries and endorsements in the document and in the Register, takes considerable time. In this case, the registration process is not yet completed. It is only after completion of registration, the Registering Officer will refer the document to the Deputy Commissioner u/s 45A for determination of the market value. On receipt of the reference, the Deputy Commissioner will also take some time to inspect the property and determine the market value. The Registering Officer does not inspect the property. The Deputy Commissioner will not inspect the property nor cause the Property to be inspected until reference is received and notices are served. It is therefore stated that in this case, for several more months, there is no likelihood of inspection of the property by the Deputy Commissioner for determining the market value.

2.2) According to Petitioners, if they carry out the extensive repairs and renovations in respect of the existing old and dilapidated building for making it suitable for their use, even before the building is inspected by the Deputy Commissioner in connection with the determination of the market value, there is every likelihood of the Deputy Commissioner on inspection, taking into consideration, not only the value of the old building as it existed at the time of sale in favour of the Petitioners, but also the value of additions, alterations and improvements made by the Petitioners subsequent to the sale and consequently require the Petitioner to pay additional stamp duty and registration fees on an increased market value, based on improvements made by the Petitioners, after purchasing the property. On the other hand, if the Petitioners do not carry out the repairs and renovation, they cannot use the building at all until the Deputy Commissioner inspects the Building and their investment will be blocked up for several months or several years and they will not be able to make use of the building. They wanted a way out from this dilemma.

3. Hence the petitioners gave a letter dated 2.5.1996 (Annexure "C") to Respondents 2 & 3, requesting them to have the property valued through the Valuation Engineer attached to the Deputy Commissioner immediately, so that they can proceed with the repair and renovation work. There is no response. Hence, the Petitioners have filed this petition seeking a direction to the Registering Officer to refer the sale deed dated 12.4.1996 to the Deputy Commissioner, u/s 45A of the Karnataka Stamp Act, 1957 for determination of market value by using an authenticated copy of the sale deed and seeking a direction to Deputy Commissioner to determine the value of the property within a reasonable time.

4. These points therefore arise for consideration:

(a) Whether a reference can be made by the Registering Officer u/s 45A of the Karnataka Stamp Act, 1957, even before the registration formalities are completed.

(b) Whether the Deputy Commissioner for Detection of under valuation of stamps, inspect the property for determining the market value, before receiving

a reference from the Registering Officer or before registration of the document.

5. Petitioner contends that there is no need for the Registering Officer to wait till completion of the Registration formalities, to refer the matter u/s 45A and that as the Registering Officer has admitted the document for registration and has already reached a conclusion on 12.4.1996 when the document was presented and accepted for registration, that the sale is undervalued (as recorded in the Registration Receipt issued to petitioners), he could proceed to refer the matter for determination of the market value u/s 45A with an authenticated copy of the sale deed. It is contended that once a document is admitted to registration, the procedural formalities like copying, comparing etc., are only ministerial acts and the same need not hold up reference u/s 45A and that such reference will go a long way to solve the problem of delay in settling the under valuation cases.

6. Learned Additional Government Advocate contended that thousands of documents were pending completion of registration formalities in the Office of the Third Respondent and the document presented by the Petitioners could not be copied and compared out of turn and the document could be referred to the Deputy Commissioner only after the registration is completed, that is, after copying, comparing and making of necessary endorsements on the documents; and only after a reference is made to the Deputy Commissioner u/s 45A, the Deputy Commissioner can inspect and value the property. He also contended that having regard to the provisions of Karnataka Stamp Act, 1957, Registration Act, 1908 and Karnataka Stamp (Prevention of under valuation of Instrument) Rules, 1977, inspection and valuation of the property by the Deputy Commissioner will arise only after receipt of the reference from Registering Officer and not earlier; and therefore, the Second and Third Respondents were justified in not acceding to the request of the Petitioners to inspect and value the building of the Petitioner even before the completion of registration and reference u/s 45A,

7. Sub Section (1) of Section 45A provides that if the Registering Officer, while registering any instrument has reason to believe that the market value of the property which is the subject matter of the instrument has not been truly set forth in the Instrument, he may after registering such instrument, refer the same to the Deputy Commissioner for determination of market value. Sub-Section (2) provides that on receipt of a reference, under Sub-Section(1), the Deputy Commissioner after giving a hearing and after holding enquiry in such manner as may be prescribed, determine by order, the market value of the property which is the subject matter of the conveyance or other instrument referred to the Deputy Commissioner. Rule 4 of under valuation Rules provides that on receipt of a reference u/s 45A(1) of the Act from the Registering Officer, the Deputy Commissioner shall issue notice to the parties, record their statements and for the purpose of his enquiry, also inspect the property after due notice to the parties concerned. Thus inspection by Deputy Commissioner can be only after reference by the Registering Officer and reference can only be made after completion of registration. This, of course, is the position where the proceedings u/s 45A get

initiated in pursuance of reference by the registering Officer. Sub-Section (3) of Section 45A provides for initiation of proceedings suo moto by the Deputy Commissioner, to satisfy himself about the correctives of the market value, where no reference is made by the Registering Officer. Such power should however be exercised within the time prescribed from the date of registration. We are not however concerned with a suo moto proceedings in this case.

8. What is "registering" a document? Section 35 of Registration Act, provides that after presentation of a document for registration and admission of execution by the executants, the Registering Officer shall register the document as directed in Section 58 to 61 of the Registration Act. Section 51 requires that documents registered u/s 17 relating to immovable property, shall be entered (or filed) in the Register of Non-Testamentary documents relating to immovable property (known as Book I), Section 52 requires ever document admitted to registration, shall, without unnecessary delay, be copied in the appropriate Book according to the order of its admission. Section 50 enumerated the particulars to be endorsed on a document admitted to registration. Section 59 requires the endorsement to be dated and signed by the Registering Officer, Section 60 deals with certification of registration. It provides that after such of the provisions or Section 34, 35, 58 and 59 (as may apply to any document) have been complied with, the Registering Officer shall endorse thereon, a Certificate containing the word "registered" together with the number and page of the book in which the document has been copied. Such Certificate shall be signed, sealed and dated by the Registering Officer, and shall then be admissible for the purpose of proving that the document has been duly registered in the manner provided by the Registration Act. Section 61 provides that the registration of the document shall be deemed complete when the endorsements and Certificate referred to and mentioned in Section 59 and 60 are copied in the margin of the Register Book. Thus, Presentation of a document for registration and admission to registration is not equivalent to registration. A document is "registered" not when it is presented and admitted, but when, after being copied in the appropriate register, the Certificate of registration is endorsed on the document u/s 60 and endorsements and Certificates made on the Document are also copied in the Register (Book-I).

9. Thus, it has to be held that, as the law stands at present, there can be no reference u/s 45A until the registration is completed and there can be no inspection of the property, before reference. The prayer that the Registering Officer should be directed to refer the document u/s 45A, even before completion of registration, by annexing an authenticated copy of the document, cannot therefore be granted.

10. The present state of affairs, no doubt causes enormous hardship and untold misery to the persons in whose favour the documents are registered; and that if the Registering Officers complete the registration within a short and reasonable time, and where documents will have to be referred u/s 45A, if the Registering

Officers make the reference to the Deputy Commissioner immediately on admission of the document for registration, with an authenticated copy of the Document, there will be considerable relief to the parties to the documents.

11. Citizens purchase houses or house sites by investing their life-time savings, many a time with heavy borrowings. Similarly, persons engaged in business and industry spend small fortunes for acquiring properties so that they can carry on their business or run their industries. Obtaining delivery of the registered documents, and timely clearance of disputes relating to under valuation, will provide much needed succour to such purchasers. The purchasers may require the original Registered document, for obtaining a loan by depositing such deed; or for the purpose of registration or transfer of Khata in the revenue or Municipal records; or for the purpose of any litigation; or for the purpose of reselling the property. Even though a purchaser may not require the original deed for the said purposes, the mere act of possessing the title deed, having spent a huge amount for acquiring the property, gives him a feeling a security and satisfaction. Further, any delay in registration, may also lead to several legal complications regarding title for no fault of the parties, or prevent exercise of certain rights which accrue as a consequence of having a registered sale deed. In fact, realising the need for expeditious delivery of documents which are presented for registration, Section 52 requires that on presentation of a document and admission to registration, the document shall, without unnecessary delay be copied in the appropriate Book.

12. This Court has also recognised the need for expeditious disposal of cases relating to under valuation and the necessity for returning the original documents to the parties. Recently, in *M.K. Kuruvilla Vs. The District Registrar, Bangalore*, and another, , a Division Bench of this Court deprecated retention of registered documents for indefinite periods by the Deputy Commissioners without taking a final decision on market value.

13. The learned Additional Government Advocate states that registration process is to be completed in as many as 5000 documents which are admitted for registration in the Office of the third respondent. The position is more or less similar in the offices of other Registering Officers in Bangalore and other important cities. As a result, it normally takes as much as six months to one year to complete the registration process in the Office of the Sub-Registrar. Thereafter, the proceedings for determination of market value before the Deputy Commissioner also takes considerable time. In fact, it is stated that except in a few cases, the normal time taken between the date of receipt of the reference and inspection of a property by the Deputy Commissioner, will be anything between six months to a year; and the normal period of pendency of a proceeding before the Deputy Commissioner is anything between six months to three years. Such pendency apart from causing hardship the parties, also delays receipt of revenue to the government by way of additional stamp duty and registration fees, which become due on completion of the proceedings u/s 45A.

14. In this background, suitable changes in registration procedures by suitable

amendments to Stamp and Registration Laws for expeditions completion of registrations and delivery of documents are absolutely necessary. With the introduction of micro-filming, photocopying, computer aided indexing, far reaching changes can be made. These aids were not available and not contemplated when the Registration Act was enacted. Even without the advantages of technological advances, the delay can be dramatically reduced by adopting the procedure of "filing" copies of documents instead of "entering" of documents, as a means of copying. Section 51(2) OF Registration Act contemplates both "entering" or "filing", as means of copying. Already, "filing" copies is in vogue in regard to several classes of documents like agreements, leases etc. But entering/ copying is followed in regard to Deeds of conveyance, (except in the case of sale deeds executed by Co-operative Societies, Authorities and other vendors who execute a large number of identical sale deeds.) In neighbouring States, "filing" as an alternative to copying, has been introduced in regard to all sale deeds, which has cut short the time for completing the registration process considerably.

15. Similarly, the Registering Officers are now issuing showing authenticated copies of the documents admitted to registration, even before the registration process as contemplated in Section 60 and 61 is completed. Determination of market value u/s 45A need not wait the completion of registration process. The Registering Officers forms an opinion as to whether the document is undervalued or not at the time when the document is presented for registration and accepted for registration. There is no reason why the Registering Officers should not make a reference to the Deputy Commissioner immediately with an authenticated true copy of the Sale Deed. By resorting to simple and suitable amendments to Section 45A of the Act and the under valuation Rules, and also the Registration Rules, the inconvenience and hardship caused on account of delays can be eliminated. But it is for the Legislature/Executive to take necessary action (a) to amend the Registration Rules or issue guidelines to resort to "filing" of sale deeds instead of entering the documents; (b) to suitably amend Section 45A enabling the Registering Officers to make the reference immediately after a document is admitted to registration; and (c) to amend the under valuation Rules to provide for inspection immediately, on receiving reference. These three steps will reduce the delay to virtually nil. It is hoped that such action will be taken, particularly in view of the mandate contained in Section 52(1)(c) of Registration Act which requires documents, admitted to registration to be copied without unnecessary delay. With the steady increase in the documents registered and consequential increase in under valuation cases, the delays are likely to increased and therefore there is urgent need to streamline and expedite the process of registration and determination of market value.

16. So far as this case is concerned, the petitioners having already requested the second and third respondents to make the valuation and the second and third respondent having failed to comply with the said request it is open to the petitioners to have valuation of the existing Building made though an

independent Government Approved valuer and also record its present condition by taking photographs or video film, and thereafter carry out the work of repairs and alterations. If and when the reference is made by the third Respondent to second Respondent and the second Respondent takes up the matter for fixation of market value, it is always open to the petitioners to use such material (Valuation Report, Photographs etc.,) to demonstrate the condition of the Building on the date of sale and ensure that the value of additions and alternations are not taken into account.

17. The petitioner is not entitled to the reliefs sought. Subject to the observations in para 16 above, this petition is disposed of. Let copies of this order be sent to the rvenue Commissioner and Chief Controlling rvenue Authority in the State.