
(2001) 04 KAR CK 0066

In the Karnataka High Court

Case No : Writ Petition No's. 39368-70, 39380-81 and 39383-84 of 2000 and 3479-81, 3483-86, 8825, 8889 and 9509 of 2001

Raj Trust and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Karnataka Stamp Act, 1957 — Section 45 A

Citation : AIR 2001 Kar 472 : (2001) ILR (Kar) 5501 : (2001) 3 KCCR 2151

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Y.K. Narayana Sharma, S.N. Bhat, N.R. Krishnappa, B. Srinivas and G, Balakrishna Shastry, for the Appellant; Shobha Patil, HCGP, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—These petitions are filed by the petitioners, who have got registered the sale deeds in their favour in respect of their respective immovable properties by getting registered the same before the respective Sub-Registrars under the provisions of the Indian Registration Act. The petitioners, being aggrieved of the impugned orders passed by the respective District Registrars for Detection of Under-valuation of Stamps under the provisions of Karnataka Stamp Act, 1957 (in short "Act") have filed these petitions seeking for issuance of a writ of certiorari to quash the orders passed by the respective District Registrars in exercise of their powers u/s 45-A(2) of the Act r/w. relevant Rules; and also for issuance of an appropriate direction to the respective District Registers to initiate proceedings against them for determination of the market value of the property as per the unamended provisions of the Karnataka Stamp Act, 1957 read with the Karnataka Stamp (Prevention of Under-Valuation of Instruments) Rules, 1977 which were in force till they were amended by way of substitution under the Notification dated 17-8-1999 urging various legal contentions. In addition to the prayers, referred to supra in writ petition Nos. 8825, 8889, 9509/2001 and W. P.

20909/2000, the petitioners have also challenged the impugned orders passed by the Divisional Commissioner who is the appellate authority u/s 48(A)(5) of the Act wherein the appeals have been rejected on the ground that they have not deposited 50% of the difference in the amount of stamp duty as determined by the District Registrars and has directed the petitioners to pay the stamp duty as well as Registration Fee under the provisions of Section 45-A(5) read with Rule 9 of the amended Rules, 1977 urging various legal contentions.

3. Since common facts and legal questions are involved in these cases, all these matters are clubbed together, heard and disposed of by this common order.

4. Smt. Shobha Paul, learned HCGP has filed statement of objections in some of the writ petitions and adopted the same in the remaining petitions, justifying the impugned orders.

5. It is stated by the learned counsel for the petitioners that the petitioners have got registered their sale deeds before the respective Sub-Registrars in respect of their immovable properties and paid the stamp duty as required under the provisions of the Act of 1957; that after the registration of the documents by the concerned Sub-Registrars, reference was made by them to the respective District Registrars u/s 45-A(1), of the Act on the alleged ground that the market value of the properties in respect of the sale deeds which have been executed in their favour by the executants have been under-valued, for determination of the correct market value of the properties in question for the purpose of payment of correct stamp duty the District Registrars have to follow the procedure as contemplated under the unamended provisions of Section 45-A(1) Act read with Rules 4, 5, 6 and 7 of unamended Rules, 1977. It is further contended by the learned counsel for the petitioners that in the case of reference made by the concerned Sub-Registrars to the respective District Registrars, the procedure which was required to be followed by the District Registrars in determining the market value of the properties which are the subject-matter of conveyance deeds in favour of the petitioners is under the provisions of unamended Act but not under the provisions of amended Act and the Rules, therefore they have urged that the impugned orders passed by the concerned District Registrars in exercise of their power under the amended provisions of Section 45-A(1) of the Act, 1957 and the amended Rules is without jurisdiction and authority and as such the same suffers from error in law and required to be quashed.

6. The 2nd legal submission made on behalf of the petitioners by the learned counsel is that the proceedings which were initiated by the District Registrars at the instance of the respective Sub-Registrars on the basis of making a reference under the unamended provisions of the Act and therefore they should have conducted the proceedings following the unamended provisions of the Act r/w. relevant rules but not the amended provisions of the Act by Act No. 24/99 and amended Rules referred to in the impugned order. In support of the above said submission they have placed strong reliance upon the judgments of the Apex Court in the catena of cases reported in Hoosein Kasam Dada (India) Ltd. Vs.

The State of Madhya Pradesh and Others, , State of Bombay Vs. Supreme General Films Exchange Ltd., , Amireddi Rajagopala Rao and Others Vs. Amireddi Sitharamamma and Others, , Mukund Deo (Dead) represented by his legal representatives Kasibai and Others Vs. Mahadu and Others, , Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P., Nagpur, , New India Sugar Works Vs. State of Uttar Pradesh and others, , Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, , Bhagat Ram Sharma Vs. Union of India (UOI) and Others, and the Full Bench of this Court in ILR 1978 Kant 1573 and D.B. Avalakki and Another Vs. Union of India and Others, and the decision reported in AIR 1998 AP 252 wherein the Apex Court has clearly laid down the law stating that the pre-existing rights conferred, upon the parties under the unamended provisions of the Act both with regard to conduct enquiry for determination of the market value of the properties and to file an Appeal under the unamended provisions of Section 45-A(1) of the Act against the orders that would be passed by the District Registrar continues to exist in law for the reason that right of appeal conferred upon the persons must also exist to support the continuation of that right the old law continues to exist for the purpose of supporting the pre-existing right of appeal that old law must govern for its exercise and enforcement of that right of appeal and there can be no question of application of the provisions of the amended provision which would prevent the exercise of the substantive right of Appeal conferred upon the parties under the provisions of unamended Act. Further, it is submitted by the learned counsel for the petitioners that the amended provisions of the Act and Rules are not applicable unless the same have been expressly provided in the Statute, to the effect that the amended provisions of the Act will have retrospective effect and the rights conferred upon the parties under the amended provisions of the Act and Rules. In the instant cases, by careful reading of the provision of Section 45-A(1) of the Act, it is clear that the said provisions are not applicable to the facts of these petitions for the reason that the concerned Sub-Registrars have referred the documents of sale deeds after registration of the same to the jurisdictional District Registrars to determine the correct market value of the properties for registration of the document and for payment of correct stamp duty and Registration Fees. But the amended provision of Section 45-A(1) provides for making reference to the District Registrars before Registration of the documents. For the reasons stated supra the said amended provisions of the Act are not attracted to the facts of the present cases and that therefore, though the reference was made by the concerned Sub-Registrars in exercise of their power u/s 45-A(1) of the unamended provisions, the District Registrar should have continued the enquiry following the procedure contemplated under the unamended provisions of the Act and Rules referred to supra and passed the orders. But in the instant cases, the District Registrars have given a go by to the existing substantive rights conferred upon the petitioners and resorted to follow the procedure under the amended provisions of the Act and Rules thereby the valuable rights accrued in favour of the petitioners have been denied by them, therefore orders are contrary to the law declared by

the Apex Court this Court and the Andhra Pradesh High Court in the case cited supra. Hence, the learned counsel on behalf of the petitioners submits that these are fit cases for this Court to exercise its extraordinary and supervisory jurisdiction and power under Articles 226 and 227 of the Constitution of India to examine the legality and validity of the impugned orders and grant the reliefs as prayed by them in these petitions.

7. The learned counsel for the petitioners further submit that in the last four writ petitions namely W.P. Nos. 8889, 8825, 9509/2001 and 20909/2000, the dismissal of the appeals by the Appellate Authority in exercise of the power under the amended provisions of Section 45-A(1) of the Act and the Rules of 1977 stating that the petitioners have not deposited 50% of the difference of the stamp duty and the registration fee on the market value determined by the District Registrars in exercise of their power under the amended provision of Section 45-A(1) in passing the impugned order and directed the petitioners to pay such amounts and therefore the aggrieved parties have statutory duty to deposit 50% of the stamp duty and registration fee under the provisions of Section 45-A(1) read with Rule 9 of the Rules and that, the stand taken by the Appellate Authority in issuing the impugned endorsement to the petitioners stating that Appeals cannot be entertained unless pre-deposit amount of 50% of the amount determined by the District Registrar is deposited is contrary to the provisions of the Act and the law declared by the Apex Court and this Court. Therefore, the learned counsel for the petitioners have prayed for quashing the impugned endorsements issued by the Appellate Authority in the cases referred to supra.

8. The learned HCGP Smt. Shoba Patil has sought to justify the impugned orders passed by the respective District Registrars applying the provisions of amended provisions of Section 45-A(1) of the Act, according to the learned counsel the said provisions have been rightly invoked and applied to the cases on hand for the reason that there is no 11s pending between the petitioners and the State prior to the amendment to the said provisions of the Act for determination of the market value and that therefore the amended provisions of Section 45-A(1) is attracted and the determination of the market value by the District Registrars applying Section 45-A(1) in respect of the properties covered under the sale deeds is perfectly legal and valid. Further, the learned Govt. Pleader submits that the Rules 5 and 6 of the Rules 1977 have been deleted by way of substitution and incorporating the present rules in the place of repealed Rules and therefore those rules have come into force from the date of framing of the original Rules 1977. The State Govt. has got the power under the provisions of the Act; to frame the Rules for the purpose of implementation of the provisions of the Act. The constitutional validity of the amended rules by substitution of the present Rules 5 and 6 and the deletion of the earlier Rules by substituting the existing rules are not questioned by the petitioners, and therefore the petitioners are not entitled for the reliefs sought for by them and therefore the District Registrars are not statutorily bound to conduct enquiry following the procedure as provided

under the unamended provisions of the Act and Rules. Further, the learned Government Pleader submits that the amendment to the provisions of the Act and Rules are fully in conformity with the law declared by the Apex Court in the cases reported in *New India Sugar Works Vs. State of Uttar Pradesh and others*, at page 2617 paragraph 37. Therefore, the learned Government pleader submits that the amended provisions of Section 45-A(1) and proviso r/w. Rule 9, of the amended Rule 1977 and the earlier unamended Rules 4, 5, 6 of Rules, 1977 are procedural rules framed for determination of market value of the property which are subject matter of conveyance deeds which will not confer any substantive right upon the parties and as such the submissions made on behalf of the petitioners that they have got a substantive procedural right under the provisions of unamended Act and Rules, which have been contravened by the District Registrars while passing the impugned orders and determining the market value of the properties by not conducting enquiry by them following the procedure as contemplated under the unamended provisions of the Act and Rules, 1977 referred to supra is not tenable and further she has submitted that the Impugned endorsements Issued by the Appellate Authorities is also in accordance with the amended provisions of the Act and Rules as such she has made submissions that these writ petitions are liable to be dismissed with exemplary costs.

9. Heard the learned counsel for the parties. I have to examine the following questions that would arise in these cases :--

"Whether the amended provisions of Section 45-A(1) are attracted to the facts of the case having regard to the facts of these cases and that the sale deeds have already been registered in favour of the petitioners and the concerned Sub-Registrars have made reference of the sale deeds in exercise of their power under the unamended provisions of Section 45-A(1) of the Act for determination of the market value of the properties covered in the sale deeds by issuing show cause notices as contemplated under the Rules of 1977 and

(2) Whether the amended provisions of Section 45-A(1) and provisions of Section 45-A(1) proviso r/w. Rule 9 of the amended Rules are applicable to the facts of the case where reference was made by the concerned jurisdictional Sub-Registrars under the unamended provisions of the Act and that the petitioners are liable to pay and pre-deposit 50% amount of the difference of the market value of the properties and pay the value of the stamp duty and the registration fee as determined by the District Registrars?"

10. To answer the above said questions, I have carefully examined the provisions of both unamended and amended provisions of the Act of 1957 which are extracted as hereunder,

"Unamended provisions of the Karnataka Stamp Act, 1957:--

Section 45-A:-- Instrument of conveyance etc., undervalued how to be dealt with:-- If the registering officer appointed under the Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance,

(exchange, gift, settlement, partition or dissolution of partnership, having regard to the estimated market value notified by the State Government, if any or otherwise) has reason to believe that the market value of the property which is the subject-matter of conveyance, (exchange, gift, settlement, partition or dissolution of partnership 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 the market value of such property and the proper duty payable thereon.

Section 45-A(1). On receipt of a reference under Sub-section (1) the Deputy Commissioner shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as the State Government may by rules prescribe, determine by order the market value of the property which is the subject-matter of conveyance, (exchange, gift, settlement, partition or dissolution of partnership) and the duty payable thereon. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty."

Amended provisions of the Karnataka Stamp Act, 1957

"Section 45-A(1). Instrument of Conveyance, etc., Under-valued How to be Dealt with:--(1) If the Registering Officer appointed under the Registration Act, 1908 (Central) Act XVI of 1908) while registering any instrument of conveyance, gift, exchange, settlement, partition, dissolution of partnership (released) or an agreement to sell covered under Sub-clause (1) of Clause (e) and Clause (f) of Article 5, a lease covered under item (iv) of Sub-clause (a), item (if) of Sub-clause (b), item (ii) of Sub-clause (c) of Clause (1) of Article 30, a power of attorney covered under Clause (ea) or (eb) of Article 41 or any conveyance under a decree or final order of any Civil Court, has reason to believe, having regard to the estimated market value published by the Committee constituted u/s 45-B, if any, or otherwise, that the market value of the property which is the subject-matter of such instrument has not been truly set forth, he shall after arriving at the estimated market value, communicate the same to the parties and unless the parties pay the duty on the basis of such valuation, shall keep pending the process of registration and refer the matter along with a copy of such instrument to the Deputy Commissioner for determination of the market value of the property and the proper duty payable thereon.

(2) On receipt of a reference under Sub-section (1), the Deputy Commissioner shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as the State Government may by rules prescribe, determine by order (as far as may be within ninety days from the date of receipt of such reference) the market value and after holding an inquiry in such manner as the State Government may by rules prescribe, determine by order (as far as may be within ninety days from the date of receipt of the reference) the market value of the property which is the subject-matter of conveyance, (exchange, gift, settlement, partition, dissolution of partnership (release), an agreement to sell covered under Sub-clause (i) of Clauses (e) and

(f) of Article 5, a lease covered under item (iv) of Sub-clause (a), item (ii) of Sub-clause (b), item (ii) of sub-clause EC) of Clause (i) of Article 30 (of a power of attorney covered under Clause (ea) or (eb) of Article 41 or every decree or final order of any Civil Court) and the duty payable thereon. The difference. If any. In the amount of duty, shall be payable by the person liable to pay the duty."

11. By reading Section 45-A (1) and (2) of the unamended provisions, it makes it very clear that the jurisdictional Sub-Registrars had the power to make a reference of the registered documents to the Dy. Commissioner for determination of the market value of the properties covered under the sale deeds in exercise of their power u/s 45-A(1) of the Act. The present cases are all of the said category. But, it is an undisputed fact that in respect of the petitioners cases, the documents have been registered and the reference has been made by the Jurisdictional Sub-Registrars to the respective District Registrars for determination of the market value of the properties covered under the sale deeds to find out whether the market value of the properties mentioned in the respective sale deeds are correct or not and the same is in conformity with Rules 1977 or not. In some cases, the concerned Jurisdictional District Registrars have issued notices along with provisional orders for which some of them have filed statement of objections. After that stage, the District Registrars have proceeded further in determining the market value of the property applying the amended provisions of Section 45-A(1) of the Act without following the further procedure which was provided under unamended Rule, 5 of the Rules 1977 which is required to be mandatorily complied with by them, which has not been done in these cases. Further, the submission made on behalf of the petitioners by their learned counsel with reference to the case laws cited supra, are extensively referred to in this judgment in the earlier paragraphs where the legal contentions urged on behalf of the petitioners are clearly referred to. Much reliance is placed by the learned counsel on behalf of the petitioners, upon the judgments of Apex Court and this Court which has laid down the law that the rights conferred upon the parties under the old law or the unamended provisions of the Act and Rules will continue to exist despite the fact that there is an amendment to the provisions of the Act. Further, a reading of Section 45-A(1), 45-A(1) r/w. unamended Rules 4, 5 and 6 of unamended provisions of Rules, 1977 would abundantly make it very clear that the procedural rights provided to the parties are substantive in nature and thereby the protection is given to the persons who have got the documents registered before the provisions of the unamended Act while determining the market value of the properties covered under the sale deeds, the guidelines are enumerated under Rules 5 and 6 of the unamended Rules, 1977 should have followed by the District Registrars in exercise of their statutory power under the provisions of the Act, and Rules referred to above. Therefore, this Court has to record a finding after careful reading of the relevant provisions of the unamended and amended provisions of the Act and Rules referred to supra and considering the law laid down by the Apex Court and this Court in the cases reported in Mukund Deo (Dead) represented by his legal

representatives Kasibai and Others Vs. Mahadu and Others, , Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, and State of Bombay Vs. Supreme General Films Exchange Ltd., which relevant portions are extracted respectively as hereunder :

"3. It is clear that under that Code a second appeal lay to the High Court on questions of fact as well as of law. Counsel for the appellants concedes that this was the position in law at the date when the suit was instituted. But he says that the Hyderabad CPC was repealed, and the CPC (Act 5 of 1908) was extended on April 1, 1951 to the Part "B" State of Hyderabad after it became part of the Indian Union and the power to hear and decide the second appeal before the High Court was derived from Sec. 100 of the CPC (Act 5 of 1908) and the High Court could not set aside the findings of fact recorded by the First Appellate Court. We are unable to agree with this contention. It is true that as a general rule, alteration in the law of procedure are retrospective but a right of appeal to a particular forum is a substantive right and is not lost by alteration in the law, unless provision is made expressly in that behalf or a necessary implication arises.

17. All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not."

"12. It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment."

In view of the cases cited supra upon which the learned counsel have rightly placed reliance and having regard to the nature of the rights provided to the petitioners under the unamended provisions of the Act, Rules and the law laid down by the Apex Court referred to supra, the substantive procedural rights conferred upon the petitioners should be continued despite the amendment to the relevant provisions of the Act and the Rules. Apart from the said finding, this Court holds that the provisions of the amended Section 45-A(1) of the Act has no application to the facts of the cases on hand for the reason that the State has altogether inserted new provisions by way of an amendment to the provisions of

the above said section wherein the Sub-Registrars before Registration of the documents produced before him for their registration, he can refer such documents to the District Registrars for determination of the market value of the property which will be sought to be transferred in favour of the vendees. Therefore, on facts the exercise of the power by the District Registrars in all these cases under the amended provisions of Section 45-A(2) without following the procedure which was contemplated under Rules 4, 5, 6 and 7 of Rules 1977 is bad in law as the legal safeguards provided to the petitioners have been denied by the 2nd respondent-District Registrars under the guise of their exercise of power under the amended provisions of Section 45-A(1) of the Act. The District Registrars without taking into consideration of the relevant fact namely that the concerned jurisdictional Sub-Registrars, after registration of the documents of the petitioners have made reference in exercise of their powers under the unamended provisions of Section 45-A(1) of the Act. Therefore, under the Unamended provisions of Section 45-A(1) of the Act, the District Registrars were required to exercise their power keeping in view the unamended provisions of the Act read with Rules 4, 5 and 6 of the Rules, 1977. Therefore, the impugned orders passed by the District Registrars in all these petitions determining the market value of the properties which are covered under the conveyance sale deed documents applying the amended provisions of the Act totally suffers from error in law and lack of jurisdiction and hence, the impugned orders are liable to be quashed. The submissions made by the learned counsel on behalf of the petitioners that their rights are saved and protected in law despite the amendment to the provisions of the Act and Rules by way of substitution to the said Rules, the reliance placed upon the judgments of the Apex Court and this Court by the learned counsel on behalf of the petitioners are well founded and the same should be accepted as correct, in view of the fact that the law laid down in the aforesaid cases with all fours applicable to the facts of these cases. Therefore, this question has to be answered against the State.

12. Having answered the first question in favour of the petitioner, applying the ratio laid down by the Apex Court and this Court, the second question also must be answered in favour of the petitioners for the reason that the petitioners are not liable to pay 50% of the difference in the amount of stamp duty determined by the District Registrars in respect of the documents in question for the reasons recorded while answering on the first question framed by this Court. Therefore, the provisions of the amended Section 45-A(1) proviso and Rule 9 of the amended Rules are not attracted to the facts of these cases in view of the law laid down by the Apex Court in the case reported in Garikapatti Veeraya Vs. N. Subbiah Choudhury, which proposition of law has been followed by the Division of this Court in the similar case in W.A.No. 3509/2000 disposed of on 30-5-2000. For the reasons stated supra, the WR Nos. 8825, 8889, 9509 of 2001 and W.P. 20909/2000 wherein the order passed by the Appellate Authority stating that the appeals filed by them against the orders passed by the District Registrars are not legal and valid are liable to be set aside for the reason that the petitioners in

those cases are not required to deposit 50% of the amount as stated in the impugned orders passed by the Appellate Authorities in the respective cases.

13. The submission made on behalf of the learned Government Pleader Smt Shoba Patil that the amended provisions of the Act and the earlier Rules namely Sub-rule(4) of Rules 4, 5 and 6 have been deleted by way of substitution which rules will come into force from the date of framing of the Original Rules, 1977 and that therefore the District Registrars are required to follow the said procedure is wholly untenable and the same is examined with reference to the reliance placed upon the judgments of the Apex Court referred to supra. On careful consideration of law laid down by the Apex Court and this Court, I have to record a finding that the reliance placed upon the judgments of the Apex Court referred to supra by the learned Government pleader are totally inapplicable to the facts of the case. On the other hand, the reliance placed upon the judgments cited supra by the learned counsel for the petitioners is well founded and the same must be accepted.

For the reasons stated, the petitioners must succeed and accordingly, I proceed to pass the following :--

ORDER

Writ petitions are allowed. The impugned orders in all these writ petitions are hereby quashed. The matters are remitted back to the respective District Registrars with a direction to re-examine the matters keeping in view the observations made in this order under the unamended provisions of the Act and Rules and to conduct enquiry as contemplated under the Rules within six months from the date of receipt of this order following procedure contemplated in law.