(2015) 07 KAR CK 0039

In the Karnataka High Court

Case No : Writ Petition No. 10012 of 2014 (GM-ST/RN)

S. Nithin Kumar and Others — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:
Karnataka Stamp Act, 1957 — Section 45-A(5)

Citation : (2015) 6 KarLJ 127

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Prasad B.S., Advocate, for the Appellant; E.S. Indiresh, High Court Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioners are before this Court assailing the order dated 17-5-2012 passed by the 3rd respondent and the order dated 25-3-2013 passed by the 2nd respondent. The petitioners have purchased the property in question under the sale deed registered on 24-3-2011. In respect of the same, the proceedings relating to undervaluation was initiated and the 3rd respondent by order dated 17-5-2012 has arrived at the conclusion that the property had been undervalued and therefore the value according to the 3rd respondent has been fixed.

2. The petitioners claiming to be aggrieved by the same had preferred an appeal under Section 45-A(5) of the Karnataka Stamp Act, 1957 before the 2nd respondent. The 2nd respondent by impugned order dated 25-3-2013 has upheld the order passed by the 3rd respondent. The petitioner therefore claiming to be aggrieved by the said order is before this Court.

3. The order passed by the 3rd respondent would refer to the notice that had been issued to the petitioners and the spot inspection that is said to have been conducted on 28-4-2012. The petitioners would however seriously dispute that

such spot inspection had been conducted on the said date in their presence. The petitioners contend that the notice stated to have issued by the 3rd respondent had not been served on them. The copy of the cover which is stated to have been obtained by the petitioners under the Right to Information Act, 2005 is relied upon to contend that the petitioners in that circumstances had not taken part in the proceedings conducted by the 3rd respondent and the observations made therein is not justified.

4. In the background of the said contentions what is necessary to be noticed is that the document registered on 24-3-2011 under which the petitioners had purchased the property, in the schedule would describe the property to be vacant site. The contention on behalf of the respondents is that the building had existed as on the date but it is registered without disclosing the same. Hence, registration was made as vacant site and therefore the order is passed by the 3rd respondent with reference to existence of the building.

5. The learned Counsel for the petitioners would however refer to the document at Annexure-B to indicate that the vendors themselves had paid tax for the years 2010 and 2011 wherein the property is indicated as vacant site. In fact the 2nd respondent has referred to this aspect of the matter in the order, but has disbelieved the said document, since, the document also indicate that it was not based on any spot verification, but only the assessment that had been made by the owner of the property. The contention on behalf of the petitioners and the observations made by authorities in the order would boil down to the situation that the determination which was required to be made by the authority is, as to whether the construction existed as on the date of sale deed and in that light whether the property had been undervalued indicating the property as a vacant site.

6. Though the order of the 3rd respondent would refer to a spot inspection, in the light of the contention that has urged by the petitioners, the fact as to whether the building existed as on the date of sale deed or the constructions had been made subsequent to the purchase, is a matter which can be decided only if there is a factual determination by permitting the petitioners also to participate in the proceedings before the original authority, namely the 3rd respondent. In that light, even though, there are certain observations in the order passed by the 3rd respondent, the same would have to be assumed that the same has been indicated in the order based on the observations that has been made by the 3rd respondent from the records which were available with the 3rd respondent. Therefore, if the petitioners are also granted liberty of participating in the proceedings by producing such material to indicate the status of the property as on the date of the sale deed and to establish the contention urged by the petitioners that the construction was put up if there are documents in that regard the ends of justice would be met.

7. Hence, the orders impugned herein are quashed. The matter is remitted to the 3rd respondent for reconsideration. The petitioners shall now appear before the

3rd respondent on 10-8-2015 at 11.00 a.m. without issue of notice by the 3rd respondent. The 3rd respondent shall thereafter fix a date for spot inspection and further consideration and conclude the proceedings after providing opportunity to the petitioners in accordance with law.

8. The statutory deposit that has been made by the petitioners shall remains with the authority until conclusion of the proceedings. Based on the conclusion thereon, it shall be indicated as to whether the same is to be retained by the authority or to be refunded. Petition is disposed accordingly.