(2003) 07 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 47210 of 2002

Shantesh Gureddi APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Karnataka Stamp Act, 1957 — Section 45 A (1), 45 A (2), 45 A (5), 67 A (2)

Citation : (2003) ILR (Kar) 3862 : (2003) 6 KarLJ 149 : (2003) 4 KCCR 3133

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : R. Sridhar Hiremath, for the Appellant; Rosa Paramel, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Rangavittalachar, J.—Though the matter is listed for Orders, with the consent of the learned Counsel appearing for the parties, the matter is finally disposed of.

2. The petitioner purchased the property bearing Municipal No.516/4, 10th Cross, Rajmahal Vilas, Bangalore, under a sale deed dated 31-8-2000 and presented it for registration: The Sub-Registrar, Gandhinagar, suspecting that the property was under valued to evade stamp duty referred the matter to the Deputy Commissioner, u/s 45-A(1) of the Stamp Act (here-in-after referred to as an "Act" for brevity) for determination of market value and for payment of proper stamp duty thereon.

3. The Deputy Commissioner, after notice and enquiry, by his order dated 29-12-2000 vide Annexure-C determined the market value of the property at Rs.72,35,366/- and called upon the petitioner to pay or deposit Rs. 7,01,220/- being the difference of the amount of the stamp duty. Accordingly, the petitioner paid the said sum on 3-1-2001 by means of a Pay Order No. 011812 drawn on Grain Merchant Co-operative Bank, receipt also was acknowledged by the Sub-Registrar, thereupon, the sale deed was registered in favour of the petitioner.

4. After the proceedings thus ended, the Deputy Commissioner tried to re-open the case by issuing another show-cause notice dated 19-9-2002 vide Annexure-D for conducting a fresh enquiry. This show-cause notice is challenged in this Writ Petition mainly, on the ground that once the Deputy Commissioner exercised his power u/s 45-A(2) of the Act by determining the market value and levying proper stamp duty, he exhausts his power. There is no power to review the said order.

5. The learned Government Pleader-Smt. Rosa Paramel,defended the show-cause notice on two grounds: Firstly, that u/s 67-A(2) of the Karnataka Stamp Act, 1957, such a power is available to re-open a case. Secondly, it is only a show-cause notice, the petitioner can reply to the same and will get a cause of action only when an order is passed to his disadvantage. The petition at this stage is premature.

6. In order to appreciate the rival contentions, necessary provisions of the Stamp Act, relevant for the disposal of the case, are referred to herein:-

7. Section 45-A(2) of the Karnataka Stamp Act, reads as under:

"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".

8. Once Deputy Commissioner determines the proper market value of the property after holding an enquiry, the Act has not made any provision for reviewing or recalling the said order except filing an appeal u/s 45-A(5) of the Act or an application u/s 67-A(2) of the Act.

9. Section 67-A(2) was introduced by the Amending Act 29 of1962, which reads as:

"The State Government, the Chief Controlling Revenue Authority or the Deputy Commissioner may suo moto or on application of any party affected at anytime within three years from the date of any order passed by it or him review such order and rectify any mistake, or error apparent from the record:

Provided that no such rectification shall be made to the prejudice of any person unless a reasonable opportunity to be heard is given to such person".

10. By a reading of this amended Section, it is clear that the section limits the power of Review to rectify the mistake or error apparent on the Face of Record noticed in the orders passed: The mistake in the context would only mean clerical or arithmetical mistake. Error of record means ''self evident error'' i.e. the error should be demonstrated from record: To illustrate if the Deputy

Commissioner had over looked any factual material relevant to the factual aspect of the matter while deciding. On discovery of the same, he may correct the mistake and adjust the decision accordingly: but, this does not mean that in other cases also he can exercise the power and recall and Review his own orders; It is well known, there is no inherent power to Review: A power to Review must be conferred specifically by the Statute and when conferred should be limited to the circumstances stated in the "power conferring section" and not beyond: So understood, the power to Review his own order should be limited to the two situation referred to in Section 67-A(2) of the Act: But, what the Deputy Commissioner now proposes to do vide his show-cause notice is to conduct a de novo enquiry under the guise of exercising his power of Review which is impermissible in law.

11. On the objection that the Deputy Commissioner has only issued a show-cause notice, the petitioner can file objections raising all these contentions. No doubt, normally, this Court will not interfere against issue of show-cause notices. But, a reading of the show-cause notice shows that the Deputy Commissioner has opined that "the property is under-valued and therefore, the petitioner is called upon to show-cause why proper stamp duty should not be levied". When I have already held that the Deputy Commissioner has no power to review his orders except where the conditions mentioned in Section 67-A(2) of the Act exists; The petitioner should not be driven to answer a notice which is wholly without jurisdiction. Hence, the 2nd contention of the learned Government pleader is rejected.

12. Accordingly, this Writ Petition is allowed. The impugned notice Annexure-D is quashed.

