(2011) 03 KAR CK 0240

In the Karnataka High Court

Case No : Writ Petition No. 6300-301 of 2011

Sri A. Ramakrishna APPELLANT

Vs

State Government RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Karnataka Registration Rules, 1965 — Rule 193, 194
Karnataka Stamp Act, 1957 — Section 52, 52 A

Citation : AIR 2012 Kar 3 : (2011) ILR (Kar) 2231 : (2012) 3 KarLJ 624 : (2011) 4 KCCR 2483

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : N. Ravindranath Kamath, for the Appellant; R. Devadas, AGA, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In these writ petitions, Petitioner is calling in question the Government Order No. 2010 dated 11.11.2010 wherein a direction is issued to deduct 25 paise per rupee on the total amount of Rs. 10,51,875/- paid as stamp duty towards registration of the sale deed while according sanction for refund of the balance amount to the Petitioner.

2. The case of the Petitioner is that he intended to purchase property bearing Sy. No. 61 (Old No. 16/A) situated at Puttenahalli Village, Uttarahalli Hobli, Bangalore South Taluk measuring 1 acre 15 guntas. The deed of conveyance was executed on 30.09.2008 with the owner of the property one Smt. Kusum Thayal. Petitioner purchased the stamp duty of Rs. 10,51,875/- and presented the sale deed by using the said stamp duty along with payment of registration charges of Rs. 1,23,750/-.

3. It is the case of the Petitioner that both the amounts, towards registration fee and the stamp duty have been paid by way of Demand Draft. However, due to some litigation and difficulty in the title of the ownership, which the Petitioner

claims to have noticed subsequently, the sale deed could not be registered. As a result the Petitioner requested for withdrawal of the document and also the registration of the sale deed from the Sub-Registrar''s Office on 23.11.2009 and requested for refund of the entire stamp duty and the registration charges vide representation dated 24.11.2009.

4. Petitioner was asked to approach the 1st Respondent-State Government. Accordingly, Petitioner made a representation on 04.01.2010 addressed to the Secretary, Department of Revenue, Government of Karnataka. After certain departmental correspondence and after obtaining necessary comments and response from the 2nd Respondent, the impugned Government Order is passed in exercise of the powers conferred u/s 52A of the Karnataka Stamp Act, 1957 thereby holding that the Petitioner is entitled for refund after deducting 25 paise per rupee on the amount paid towards the stamp duty.

5. Learned Counsel for the Petitioner draws the attention of the Court to Rules 193 & 194 of the Karnataka Registration Rules, 1965 to contend that the Registering Officer may, before the order of registration is passed, at the request in writing of the party presenting the document for registration, allow him to withdraw the same. In such an event, one half of the registration fee and all the copying fee in respect of a document presented for registration, which is subsequently withdrawn before the order of registration is passed shall be refunded and refund of the amounts as per Rule 193 may have to be allowed by the Registrar if the cases do not exceed three years and by the Inspector General, if they do not exceed 5 years from the date of collection.

6. There is nothing in Rules 193 and 194 of the Karnataka Registration Rules, 1965 which confers a right on the Petitioner to seek refund of the amount of stamp duty paid towards registration. Rule 193(i) of the Karnataka Registration Rules, 1965 states that before an order of registration is passed, if the party makes a request in writing to the Registering Officer seeking to withdraw the document from being registered, then the Officer concerned may pass an order to that effect permitting such withdrawal, whereupon, one half of the registration fee and all the copying fees in respect of such document can be refunded. Therefore. Rules 193 and 194 of the Karnataka Registration Rules, 1965 do not come to the aid of the Petitioner nor do they clothe him with a right to seek refund of the stamp duty. The relevant provisions which may come to the help of the Petitioner is Section 52 and 52A of the Karnataka Stamp Act, 1957, which read as under:

52. Allowance for stamps not required for use.- (1) When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Deputy Commissioner shall repay to such person the value of such stamp or stamps in money, deducting ten naye paise for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Deputy Commissioner''s satisfaction.

(a) that such stamp or stamps were purchased by such person with a bona fide intention to use them; and

(b) that he has paid the full price thereof; and

(c) that they were so purchased within the period of [one year] next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the Deputy Commissioner may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

(2) An appeal shall lie against the orders of the Deputy Commissioner within sixty days from the date of the order passed under this chapter to the Chief Controlling Revenue Authority.

52A. Power of State Government to grant relief -Notwithstanding anything in the preceding sections of this Chapter, the State Government, after consultation with the Chief Controlling Revenue Authority, if satisfied that it is just and equitable to grant relief in any case or class of cases,-(i) other than those to which any of the said sections is applicable:

or

(ii) after the period specified in any of the said sections; may by order direct the grant of such relief as may be specified in the order and the Deputy Commissioner shall dispose of the case or class of cases conformably to such order.

Provided that the provisions of this section shall not apply to cases where refunds are claimed for loss of stamps.

7. It is brought to the notice of the Court by the learned Additional Government Advocate that by a Government Order vide G.O. No. dated 21.02.2009 in exercise of the powers conferred u/s 52A of the Karnataka Stamp Act, 1957 and on the basis of the recommendation made by the 2nd Respondent, the State Government has specified the amount to be deducted while refunding the stamp duty paid by the concerned person regarding the document presented for registration which has been subsequently withdrawn that can be classified as spoiled or unusable stamp. According to the said Government Order, if an application seeking refund is made after one year but before the expiry of two years from the date of purchase of the stamp duty, the deduction shall be at 25 paise per rupee.

8. In the light of the above Government Order, the State Government has passed the impugned Government Order in exercise of its powers u/s 52A of the Karnataka Stamp Act, 1957 directing refund of stamp duty paid by the Petitioner by deducting at the rate of 25 paise per rupee. Neither the rules framed nor the provisions of the Karnataka Stamp Act, 1957 clothe the Petitioner with any other right to seek refund of amount in excess of what has been provided as per the

Government Order dated 21.02.2009. Therefore, the present writ petitions filed by the Petitioner seeking refund of the entire amount of stamp duty paid, cannot be entertained.

9. Writ Petitions being devoid of merit are therefore dismissed.