(2015) 01 KAR CK 0235

In the Karnataka High Court

Case No : Writ Petition No. 11108/2012 (GM-ST/RN)

Syed Wali Peer Khadri APPELLANT

Vs

The Chairman, Bangalore Development Authority and Others RESPONDENT

Date of Decision : 13-01-2015

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

Citation : (2015) 01 KAR CK 0235

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

Bench : Single Bench

Advocate : M.C. Ravikumar, for the Appellant; K.M. Somashekara, Advocate for C.R. Gopalaswamy and Assts., Advocates for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—Petitioner is aggrieved by the order dated 16.02.2012 passed by the Regional Commissioner, Bangalore Division, Bangalore, dismissing the appeal filed under Section 45-A of the Karnataka Stamp Act, 1957 (hereinafter referred to as the ''Act'' for short), confirming the order dated 05.03.2005 passed by the District Registrar for Undervaluation, Jayanagar, Bangalore.

2. Brief facts leading to the case are that petitioner has purchased two portions of land measuring 2 acres and 7 acres 23 guntas comprised in Sy. No. 18 of Kothanur Village, Uttarahalli Hobli, Bengaluru South Taluk, in a public auction held on 22.08.1987. The auction sale was conducted pursuant to the proceedings initiated in Execution No. 668/1983 arising out of O.S. No. 40/1977. Total consideration of Rs. 2,45,000/- was paid by the petitioner on 23.09.1987. Sale deed was executed and registered on 03.07.1995 as per the orders passed by the XV Addl. City Civil Judge, Bengaluru City. Stamp duty of Rs. 32,500/- was paid based on the market value calculated as obtained at the time when the registration of the documents was effected.

3. Proceedings were initiated alleging undervaluation. An order was passed

ordering for recovery of additional stamp duty. The District Registrar for Undervaluation passed an order dated 05.03.2005 holding that market value of the land at the relevant time was Rs. 4,50,000/- per acre, which would totally come to Rs. 43,08,750/- and therefore, petitioner was required to pay additional stamp duty of Rs. 6,29,920/-. This order was challenged before this Court in W.P. No. 8616/2010. The writ petition was dismissed reserving liberty to the petitioner to file an appeal under Section 45-A(5) of the Act. Accordingly, petitioner filed the appeal.

4. The appellate authority has passed the impugned order confirming the order passed by the District Registrar. In the circumstances, aggrieved by both the orders, present writ petition is filed.

5. I have heard the learned counsel appearing for the petitioner and the learned AGA appearing for the respondents.

6. On perusal of the impugned orders passed by both the authorities, I find that there is no application of mind to the relevant materials. The original authority the District Registrar has not taken into consideration principles required to be kept in mind for determining market value except making reference to the general principles to be looked into. None of the specific principles have been adopted. There is nothing to show whether any enquiry was held with regard to the market value of the adjacent lands or what was the guideline value of the land at the relevant point of time and such other relevant criteria as provided under Rule 5 of the Karnataka Stamp (Prevention of Undervaluation of Instruments) Rules, 1977.

7. It is not known how the District Registrar has found that value of per acre of land was Rs. 4,50,000/-. It is also not forthcoming as to how the District Registrar discarded the consideration amount paid by virtue of public auction conducted in a Court monitored sale.

8. It is however relevant to notice that petitioner did not participate in the proceedings before the District Registrar. He was represented by an Advocate. The appellate authority has dismissed the appeal. No reasons are forthcoming why the sale consideration obtained in public auction was required to be discarded as not reflecting the true market value of the land at the relevant point of time. In the absence of any other cogent material, in such circumstance, it is clear that both the authorities have not recorded specific findings as regards the actual market value of the land on the date of registration of the document.

9. Therefore, as the original authority has not held any enquiry and has not recorded specific finding with regard to the market value prevalent as on the date of execution of the sale deed, the matter deserves to be remitted back to the original authority for fresh consideration in accordance with law by giving a fair and reasonable opportunity to the petitioner. Hence I pass the following order:

ORDER

(i) Writ petition is allowed.

(ii) Impugned orders are set aside.

(iii) Petitioner is directed to appear before the District Registrar for Undervaluation, Bengaluru, on 03.02.2015 at 3.00 p.m.

(iv) Petitioner shall deposit 25% of the amount, now assessed as per the impugned order, as deficit stamp duty payable without prejudice to its contentions and subject to the result of the proceedings before the District Registrar.

(v) The said amount shall be deposited on or before the next date of hearing or within the extended date, if any, to be granted by the District Registrar.

(vi) Petitioner is at liberty to produce relevant documents in support of his case along with his objections.

(vii) Petitioner is also entitled to personal hearing.

(viii) It is open to the Bangalore Development Authority also to appear before the District Registrar as it has contended that the land has been since acquired for the benefit of the BDA.

(ix) The respondent - District Registrar shall hear both parties and pas a reasoned order.