

**(2013) 12 KAR CK 0531**

**In the Karnataka High Court**

**Case No : Writ Appeal No. 3084 of 2010 (GM-RES)**

T.G. Rangashamaiah

APPELLANT

Vs

Government of Karnataka

RESPONDENT

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**Date of Decision : 09-12-2013**

**Acts Referred:**

**Citation :** (2014) 1 AKR 501 : (2014) ILR (Kar) 456 : (2014) 2 KarLJ 390 :  
(2014) 2 KCCR 1129

**Hon'ble Judges :** N.K. Patil, J; Budihal R.B., J

**Bench :** Division Bench

**Advocate :** D.N. Nanjunda Reddy for Shri. L.K. Srinivasa Murthy for M/s. Law Associates, for the Appellant; B. Veerappa, AGA for R. 1 to R. 3, for the Respondent

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## **Judgement**

N.K. Patil, J.—Learned senior counsel appearing for appellant, at the outset submitted that he would not press prayer (i) sought in the writ petition and further sought permission of this Court to implead the Special Tahsildar, Bangalore Taluk, as the third respondent in the appeal. His submission is placed on record and he is permitted to delete prayer (i) sought in the writ petition and implead the Special Tahsildar, Bangalore Taluk as third respondent in this appeal. The petitioner/appellant assailing the correctness or otherwise of the impugned order dated 21st June 2010, passed in Writ Petition No. 12087/2009 (GM-RES), by the learned Single Judge, has presented this writ appeal.

2. In the said writ petition, the two prayers that remain for consideration are to issue a writ of certiorari or any other writ thereby quash both the order made in Complaint No. 4430/1999-2000 dated 20th September 2000 passed by the second respondent vide Annexure B therein and the notice dated Nil issued by the third respondent in Form No. 37 vide Annexure D, according to law.

3. Brief facts of the case leading to this appeal are, the appellant along with three others had purchased a property/site bearing Old No. 28, New No. 2, situate at Theobold Cross Road, Nazarbad Mohalla, Mysore, under a registered

sale deed dated 24th November 1999. Accordingly, the jurisdictional Sub-Registrar registered the document, after finding the said document to be in order and that the stamp duty is in accordance with law.

4. It is the further case of the appellant that the competent authority did not receive any objections and therefore, registered the document and handed over the document to the purchasers. Be that as it may, one Anand Kumar who had nothing to do with the property/site in question, wrote a letter to the second respondent, stating that the property is undervalued and the balance registration charges as well as stamp duty should be recovered from the appellant and other purchasers. On the basis of the said complaint, the second respondent initiated the proceedings and issued the notice in compliance of Rule 4 of the Karnataka Stamp (Prevention of Under Valuation, etc.) Rules, 1977, (hereinafter referred to as the "Rules" for short), to all the purchasers and also the vendor which is mandatory and if the competent authority has not issued notice to all the purchasers and vendors, then the whole proceedings is vitiated as per the mandatory provision of the Rules referred above and also in view of the judgment of the Division Bench of this Court.

5. It is the further case of the appellant that, it is not the case of the second respondent that the said authority has issued notice to all the purchasers and also to the vendor through its authorized representative, which is mandatory, but proceeded to pass the order on the sole ground that the son of the petitioner/appellant herein, one T.R. Chandrashekaraiah appeared before the competent authority and showed the spot of the property and therefore, the said authority concluded the proceedings, fixing the rate at Rs. 1,000/- per sq. ft. instead of Rs. 350/- per sq. ft. Thereafter, the appellant has filed the application for rectification of the registered sale deed. The same was accepted and a rectification order came to be passed on 1st February 2001 vide Annexure C, under the bona fide impression that in pursuance of the rectification deed, the stamp duty paid is sufficient and there is no proceedings as such initiated by the second respondent. When things stood thus, to the shock and surprise of the appellant, he came to know in the month of April 2009 that, a notice was alleged to have been affixed on the property. The appellant does not know the exact date of the said notice as he was neither personally present when the notice was affixed nor the same is served on him personally or any other purchasers or the vendor nor the said notice consists of the date. Immediately after he came to know of the said notice issued some where in the month of April 2009, he has redressed his grievance by filing a writ petition before the learned Single Judge in W.P. No. 12087/2009, on 22-04-2009, without any further delay, questioning the correctness or otherwise of the order passed by the second respondent and notice issued by the third respondent. But, the learned single Judge has rejected the writ petition filed by appellant on the ground of delay and laches and also on the ground that there is substantial compliance of Rule 4 of the Rules.

6. The said writ petition had come up for consideration before the learned Single

Judge and the learned Single Judge, after hearing both sides and perusal of the entire material available on record, rejected the writ petition filed by the petitioner/appellant on the ground of delay and laches as also on merits, holding that there is inordinate delay of nine years in redressing his grievance by questioning the correctness of Annexure B passed by second respondent and the notice issued by third respondent vide Annexure D and that the notice affixed is just and proper and does not call for interference at that distance of time. While so rejecting the writ petition on the ground of delay and laches, the learned Single Judge observed that there is substantial compliance of the provision of Rule 4 of the Rules. Being highly aggrieved by the said order passed by the learned Single Judge, and also the order passed by the second respondent and the notice issued by the third respondent, the appellant herein felt necessitated to present this appeal, seeking appropriate reliefs as stated supra.

7. The principal submission canvassed by learned senior counsel appearing for appellant at the outset is that, the order passed by the second respondent, notice issued by the third respondent and the order passed by the learned Single Judge are liable to be set aside at the threshold. To substantiate the said submission, he submitted that, the second respondent has passed the order on the basis of the alleged complaint given by one Anand Kumar who has nothing to do with the property in question and without following due procedure as envisaged under Rule 4 of the Rules, which is mandatory in nature.

Further, he vehemently submitted that the second respondent, on receipt of reference under sub-Section (1) of Section 45-A from a registering officer, is supposed to issue a notice in Form II to every person by whom and to every person in whose favour, the instrument has been executed, informing him of the receipt of the reference and asking him to submit to him, his representation if any, in writing to show that the market value of the property has been truly set forth in the instrument, and also to produce all evidence that he has in support of his representation, within 21 days from the date of service of the notice. Indisputably, this mandatory provision is not complied with. Hence, the whole proceedings initiated by second respondent is vitiated and the same is liable to be declared as null and void-ab-initio. Consequently, without any basis, the demand notice has been issued by the third respondent in the month of April 2009, after lapse of more than 8 years. Immediately after coming to know of the notice alleged to have been affixed on the property/site in question, without any further delay, the appellant has questioned the correctness or otherwise of the order passed by the second respondent and also the notice issued by the third respondent by filing a writ petition before the learned Single Judge. Therefore, he vehemently submitted that the order passed by the second respondent and also the notice issued by the third respondent are liable to be set aside in view of gross violation of the mandatory provision of Rule 4 of the Rules and for non compliance of the principles of natural justice and consequently, the order passed by the learned Single Judge cannot be sustained and is liable to be set aside.

8. As against this, learned Additional Government Advocate appearing for respondents 1 to 3, inter alia, sought to justify the order passed by the learned Single Judge stating that the same is passed after due consideration of the entire material available on file and after assigning valid and convincing reasons at paragraph 6 and 7 of his order, on the ground of delay and laches and also on merits. There is inordinate delay of more than nine years in redressing the grievance by the appellant, questioning the Annexure B issued by the second respondent. Further he is quick to point out and submit that one of the purchasers is none other than the son of the appellant herein, i.e. T.R. Chandrashekaraiah, who was very much present before the second respondent and also showed the spot of the suit schedule property in the presence of the jurisdictional Sub-Registrar and the second respondent. This shows that the appellant was well aware and had the full knowledge of the issue in question as on the date of initiating the proceedings by the second respondent and therefore, Rule 4 of the Rules has been substantially complied with. Therefore, he submitted that interference in the impugned order passed by the learned Single Judge is unwarranted.

9. However, it is relevant to note here itself that, one Mr. Siddesha S, the concerned officer of the second respondent, who is present before the Court along with the original records, is unable to substantiate that Rule 4 of the Rules, which is mandatory, has been complied with. He is also not in a position to give proper instruction as to on what date the alleged notice vide Annexure D was issued or affixed on the property in question. The said notice does not bear the date at all. But, learned Additional Government Advocate submitted that the mandatory provision of Rule 4 of the Rules is deemed to have been complied with in view of the fact that the son of the appellant was very much present before the second respondent and was very much aware of the proceedings and the other purchaser was also none other than the wife of the appellant and hence, there is substantial compliance of the mandatory provision of the Rules. Therefore, he submitted that the order passed by second respondent is in accordance with the Rules and by following the procedure as envisaged under the relevant provisions of the Rules and hence, interference in the same is uncalled for.

10. After careful consideration of the submission of the learned counsel appearing for the appellant and the submission of the learned Additional Government Advocate appearing for Respondents 1 to 3, after perusal of the order impugned passed by the learned Single Judge, after perusal of the grounds urged by the appellant in the memorandum of writ petition and also in the writ appeal and also the order passed by the second respondent coupled with the alleged notice issued by the third respondent, it is manifest on the face of the same that, the order passed by the second respondent is in gross violation of Rule 4 of the Rules inasmuch as the said authority has not complied with the mandatory provision of Rule 4 of the Rules. It is worthwhile to exact Rule 4 of the Rules which reads thus:

4. Procedure on receipt of reference u/s 45-A - (1) On receipt of a reference under sub-section (1) of Section 45-A from a registering officer, the Deputy Commissioner shall issue a notice in Form II,-

(i) to every person by whom, and

(ii) to every person in whose favour the instrument has been executed, informing him of the receipt of the reference and asking him to submit to him, his representation if any, in writing to show that the market value of the property has been truly set forth in the instrument, and also to produce all evidence that he has in support of his representation, within 21 days from the date of service of the notice.

(underlining by us)

11. After careful perusal of the afore said provision, it is crystal clear that each and every person by whom and in whose favour the instrument has been executed has to be informed of the receipt of the reference and they must be asked to submit to the said authority, their representation if any, in writing to show that the market value of the property has been truly set forth in the instrument, and also to produce all evidence that they have in support of their representation, within 21 days from the date of service of the notice. But, in the instant case, after critical evaluation of the entire material available on record, it is seen that the order passed by second respondent vide Annexure B does not reflect anywhere that mandatory notice has been issued to all the purchasers and also the vendor to the instrument, which is a mandatory requirement as per Rule 4 of the Rules, as extracted above. The second respondent has only observed at internal page 4 of his order vide annexure B, ink page 36 of the paper book that, the second purchaser, T.R. Chandrashekaraiah, who is none other than the son of the appellant was present during the proceedings before the second respondent and the fourth purchaser, Mrs. Narasamma is the wife of the appellant and hence notice is deemed to have been issued to them and there is substantial compliance of Rule 4 of the Rules. But, after going through the aforementioned mandatory provision of Rule 4 of the Rules, we cannot accept the said stand taken by the second respondent and also the submission of the learned Additional Government Advocate that, the same is substantial compliance of Rule 4 of the Rules. It is significant to note that there are four purchasers and a vendor. The three purchasers are appellant, Shri. T.G. Rangashamaiah, his wife, Mrs. Narasamma and son, Shri. T.R. Chandrashekaraiah and the other one is D. Hary Thomas and the vendor is the Mysore Music Association, Mysore. Even if it is construed that there was a deemed notice to the aforesaid three purchasers, it is an admitted fact that there was no notice, whatsoever of the nature served on the other independent purchaser, i.e. one D. Hary Thomas, S/o. late Sri. R.B. David. Further, it is also an admitted fact that the vendor to the instrument, The Mysore Music Association, Mysore was also not served with the mandatory notice. Hence, in view of non compliance of the mandatory provision of Rule 4 of the Rules, as

stated above, the order passed by the second respondent cannot at any stretch of imagination be sustained and is liable to be set aside at the threshold in view of gross violation of the principles of natural justice.

12. Further, regarding the submission of the learned Additional Government Advocate that there is inordinate delay of more than nine years in redressing the grievance by the appellant by filing the writ petition, questioning the correctness of Annexure B, it can be seen that the said submission also does not stand to any reason and cannot be accepted under any circumstances for the simple reason that neither the second respondent nor the third respondent has made any sincere efforts to issue mandatory notice in compliance of Rule 4 of the Rules immediately or within the reasonable time, subsequent to the passing of the order by second respondent during 2000. It is the specific case of the appellant that the notice issued is in the month of April 2009 and the said submission has got some substance for the reason that it is crystal clear from Annexure D ink page 46 of the paper book that the notice issued by third respondent does not consist of date, but consists of the proceedings Number, which is stated as No. MPSC/CR/153/2008-09. From the same, it can be inferred that, the notice must be issued during the year 2008-2009 only and not prior to that. Immediately in the month of April 2009, without any further delay, they have filed the writ petition before the learned Single Judge, questioning the correctness or otherwise of the order passed by the second respondent. Therefore, there is no delay on the part of the appellant in redressing his grievance before the learned Single Judge and he has redressed his grievance immediately after it has come to his reasonable knowledge. It is not the case of the learned Additional Government Advocate appearing Respondents 1 to 3 that they have initiated the proceedings for recovery of the amount as per Annexure D. This shows that neither the second respondent nor the third respondent has followed the due procedure as envisaged under the relevant provisions of the Act and Rules. Hence, in view of not following the procedure prescribed and for gross violation of Rule 4 of the Rules and for non compliance of the principles of natural justice, the impugned order passed by the learned Single Judge, the order passed by the second respondent and also the notice issued by third respondent are liable to be set aside.

13. Admittedly, the individual purchaser, one D. Hary Thomas and Mrs. Narasamma have not been issued with any notice as such and this fact is not disputed either by the Officer of the second respondent who is present before the Court or by the learned Additional Government Advocate. Therefore, it cannot, under any circumstances and at any stretch of imagination be construed as substantial compliance of Rule 4 and even if it is treated as substantial compliance the same cannot be accepted and permitted for the simple reason that, Rule 4 stipulates that all the parties to the instrument/document should be issued with notice and non issue of notice to any one of the parties to the instrument/document would render the whole transaction vitiated and void. Taking all these aspects into consideration, we are of the considered view that at

any stretch of imagination, the order passed by the second respondent and the notice issued by the third respondent cannot be sustained and are liable to be set aside at the threshold. Further the order passed by the learned single Judge, dismissing the writ petition on the ground of delay and laches and also on merits cannot also be sustained as the mandatory provision of Rule 4 of the Rules has not been complied with. Having regard to the facts and circumstances of the case and in the light of the discussion made above, the writ appeal filed by the appellant is allowed.

The impugned order dated 21st June 2010, passed in Writ Petition No. 12087/2009 by the learned Single Judge; the order dated 20th September 2000 passed by the second respondent bearing Complaint No. 4430/99-00, vide Annexure B to the writ petition and the notice issued by the third respondent dated nil bearing No. MPSC/CR/153/2008-09 vide Annexure D to the writ petition are all hereby set aside;

The matter stands remitted back to the second respondent to reconsider the matter afresh and to decide the same in accordance with law after affording reasonable opportunity of hearing to all the purchasers and vendor to the document/instrument, through its authorized signatories, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

The appellant, and the other three purchasers namely, T.R. Chandrashekaraiah, D. Hary Thomas, and Mrs. Narasamma and the vendor, The Mysore Music Association, Mysore, through its authorized signatories are directed to appear before the second respondent on 26-12-2013 at 11:00 A.M.;

Further learned Additional Government Advocate is also directed to ensure the communication of this order to the second respondent;

The competent authority is directed to issue written communication to the authorized signatories of the vendor of the instrument, The Mysore Music Association, Mysore, and also the independent purchaser, one, D. Hary Thoman, intimating them to be present before the second respondent on 26-12-2013 at 11:00 A.M.;

Further, it is made clear that no individual notices would be issued further, in compliance of Rule 4 of the Rules to the other three purchasers, including the appellant herein, as we have already directed the said parties to appear before the second respondent. Accordingly, issuing individual personal notice to them is dispensed with.