



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2025



BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 41844 OF 2017 (GM-ST/RN)

BETWEEN:

1. SRI B C PRASAD
S/O LATE SRI RAMASESHAIAH,
AGED ABOUT 69 YEARS,
2. SRI GURU PRASAD
S/O SRI B C PRASAD,
AGED ABOUT 49 YEARS,

BOTH ARE RESIDENTS OF
NO.280 NEAR HOPE FARM
OPPOSITE UJJWAL VIDYALAYA SCHOOL
WHITEFIELD
BANGALORE-560

...PETITIONERS

(BY SRI. K.N. PHANINDRA SR. ADVOCATE FOR
SMT. VAISHALI HEGDE.,ADVOCATE)

AND:

1. THE DISTRICT REGISTRAR AND DEPUTY
COMMISSIONER OF STAMPS
GANDHINAGAR REGISTRATION DISTRICT,
NO.17 MARUTHI PLAZA, 2ND MAIN ROAD,
VYALIKAVAL EXTENSION
BANGALORE-560003
2. THE SUB-REGISTRAR, YELAHANKA
NO.15 1ST MAIN ROAD,
SREE RUDRESHWARA CHAMBERS
YELAHANKA NEW TOWN
BANGALORE-560 084

...RESPONDENTS

(BY SRI. MAHANTESH SHETTAR., AGA FOR R1 & R2)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR SUCH OTHER APPROPRIATE WRIT OR ORDER OR DIRECTION QUASHING THE ORDER DATED 28.2.2017 PASSED BY THE KARNATAKA APPELLATE TRIBUNAL IN APPEAL NO. 141/2014 VIDE ANNEX-A AND THE ORDER DATED 8.11.2013 BEARING CASE NO. 46-A/Y/44/2010-11 AND DASTAVEJU NO. 725/95-96 PASSED BY R-1 AT ANNEX-B AND ALL FURTHER PROCEEDINGS THERETO.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioners are before this Court seeking for the following reliefs:

- i. To issue a writ of Certiorari or such other appropriate writ or order or direction quashing the order dated 28.02.2017 passed by the Karnataka Appellate Tribunal in Appeal No.141/2014 vide Annexure-A and the Order dated 08.11.2013 bearing Case No.46-A/Y/44-2010-1 and Dastaveju No. 725/95-96, passed by the 1st respondent vide Annexure-B and all further proceedings thereto in the interest of justice and equity.*
- ii. Issue such other appropriate writ or order or direction as deemed fit under the facts and circumstances of the case, in the interest of justice and equity.*

2. Sri.B.R.Sreenivas Murthy and others were the owners of the following properties;

- a. 03 Acres in Sy.No.75/1A (Old Sy.No.75/2).
- b. 05 Acres 15 Guntas in Sy.No.75/1B (Old Sy.No.75/1B)



c. 02 Acres 20 Guntas in Sy.No.75/2 (Old Sy.No.75/1A)

3. The said landowners had appointed the petitioners as their lawful attorneys on 23.11.1995, which was presented before the respondent No.2-Sub-Registrar, Yelahanka for registration. Respondent No.2 called upon the petitioner to make payment of registration fee, which was so paid and thereafter the document came to be registered as document No.725/1995-96 on 23.11.1995.
4. Subsequently on 30.12.2010 the respondent No.1 issued a notice, calling upon the petitioner to remit a shortfall in the stamp duty of Rs.98,500/- on the GPA dated 23.11.1995, which is stated to have been issued on the basis of instructions and directions of the Inspector General of Stamps & Registration as per the Official Memorandum (OM) dated 16.12.2010.
5. The petitioner appeared before respondent No.1 on 15.01.2011 and sought for a copy of the OM, which



was not so provided. The respondent No.1 passed an order on 8.11.2013 without providing the said document, calling upon the petitioner to make payment of sum Rs.98,500/- within 60 days. The petitioner challenged said order before the Karnataka Appellate Tribunal (KAT) in appeal No.141/2014, which came to be dismissed by order dated 28.2.2017, it is challenging the same, that the petitioners are before this Court seeking for the aforesaid reliefs.

6. The submission of Sri.K.N.Phanindra., learned Senior counsel appearing for the petitioner is that the action which has been taken by the respondents is contrary to the applicable law on two main grounds;

6.1. Firstly, that the notice has been issued to the power of attorney and not to the person who has executed the power of attorney. The stamp duty, if any, would be liable to made payment of by persons who have executed the power of attorney.



- 6.2. Secondly, he submits that any action under Section 46A of the Karnataka Stamp Act, 1957 was required to be taken within five years from the date of execution of the document. In the present case, the document has been executed and registered on 23.11.1995, notice has been issued on 30.10.2010 i.e., little over a month after the expiry of fifteen years and as such he submits that under Section 46A, there are no powers vested with the respondents to reopen the matter and issue notice calling upon the petitioner to make payment allegedly on account of deficit stamp duty.
7. Learned AGA seeks to support the order by stating that though notice was issued on 30.12.2010, the OM had been issued on 16.12.2010 and it took some time for necessary action to be initiated. Therefore, the delay will not come in the way of the respondents initiating the action and the order passed by the respondent No.1 and the KAT in this regard are



proper and correct. He further submits that the period of five years has been substituted by a period of ten years in Section 46A and therefore, the notice which has been issued is proper and correct.

8. Heard Sri.K.N.Phanindra., learned Senior counsel appearing for the petitioner and Mahantesh Shettar., learned AGA appearing for respondents No.1 and 2. Perused papers.

9. The short question that would arise for consideration is;

"Whether proceeding under Section 46A for recovery of stamp duty not levied or short levied could be initiated after five years after the registration of the document?"

10. Section 46A of the Karnataka Stamp Act, 1957 is extracted hereunder for easy reference;

46A. Recovery of stamp duty not levied or short levied.

(1) Where any instrument chargeable with duty has not been duly stamped, the Chief Controlling Revenue Authority or any other officer authorized by the State Government (hereinafter referred to as the authorized officer) may, within [five years] from the date of commencement of the Karnataka Stamp (Amendment) Act, 1980 or the date on which the duty became payable whichever is later, serve notice on the person by whom



the duty was payable requiring him to show cause why the proper duty or the amount required to make up the same should not be collected from him:

Provided that where the non-payment was by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the provisions of this sub-section shall have effect, as if for the words [five years] [Substituted by Act 16 of 1983 w.e.f. 1.4.1972] the words [ten years] [Substituted by Act 16 of 1983 w.e.f. 1.4.1972] were substituted:

Provided further that nothing in this sub-section shall apply to instruments executed prior to first day of April, 1972.

Explanation. - Where the service of a notice, under this sub-section is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of [five years] [Substituted by Act 16 of 1983 w.e.f. 1.4.1972] or [ten years] [Substituted by Act 16 of 1983 w.e.f. 1.4.1972], as the case may be.

(2)The Chief Controlling Revenue Authority or the authorized officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of duty due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3)Any person aggrieved by an order under sub-section (2), may prefer an appeal before the Karnataka Appellate Tribunal within three months from the date of such order.

(4)[All duties payable under this section shall be recovered in accordance with provisions of section 46.]



11. A perusal of the sub-section (1) of Section 46A would indicate that the controlling revenue authority or any other officer authorised in that regards may within five years from the date of commencement of the Karnataka Stamp (Amendment) Act, 1980 or the date on which the duty became payable whichever is later, serve a notice on the person by whom the duty was payable requiring the show cause why the proper duty or the amount required to make up the same should not be collected from. Thus, under normal circumstances, an action for payment of proper duty can only be made by issuance of a show cause notice from the date on which the stamp duty fell due, in this case from the date on which the document was registered.
12. The proviso provides that when due to reason of fraud, collusion or any willful misstatement, the due payment of stamp duty is not made then such a show cause notice could be issued within ten years from the date on which the stamp duty was due in



terms of the amendment which has been carried out in the year 1983.

13. In the present case, there is no allegation of fraud, collusion or willful misstatement which has been made. What has been stated is that the adequate stamp duty has not been paid on the GPA.
14. In that view of the matter, it is only five years which would be applicable in terms of the proviso to Sub-section (1) of Section 46A. As such, any proceedings which could have been initiated by issuance of a show cause notice by the controlling revenue authority or any other authorized officer on behalf of State ought to have been done within five years from 23.11.1995. The same not having been done by 22.11.2000 and the proceeding having been initiated only on 30.2.2010 after a period of nearly 15 years is clearly and hopelessly barred by Section 46A.
15. Even if it were to be contended that the short payment of the Stamp Duty is on account of fraud, collusion or willful misstatement, making the



amendment applicable the show cause notice ought to have been issued within 10 years from 23.11.1995, i.e., on or before 22.11.2005. The proceeding having been initiated only on 30.2.2010 after a period of nearly 15 years is clearly and hopelessly barred even in terms of the amendment to Section 46A.

16. Hence, I answer the point raised by holding that proceedings by way of show cause notice under Section 46A for recovery of stamp duty not levied or short levied cannot be initiated five years after the registration of the document, being the date on which the stamp duty fell due. The exception being a case where it is contended that the short payment of the Stamp Duty is on account of fraud, collusion or willful misstatement, in such a situation the proceedings by way of show cause notice under Section 46A for recovery of stamp duty not levied or short levied cannot be initiated after 10 years



after the registration of the document, being the date on which the stamp duty fell due.

17. In that view of the matter, I pass the following;

ORDER

- i. The writ petition is ***allowed***.
- ii. A certiorari is issued, the order dated 28.2.2017 passed by the Karnataka Appellate Tribunal in Appeal No.141/2014 at Annexure-A and the Order dated 08.11.2013 passed in bearing Case No.46-A/Y/44-2010-1 and Dastaveju No. 725/95-96, passed by respondent No.1 at Annexure-B are quashed.

**SD/-
(SURAJ GOVINDARAJ)
JUDGE**

SR
List No.: 1 Sl No.: 78