Nagaraja Vs. State of Karnataka

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Court : Karnataka

Decided On : Oct-01-1985

Reported in : ILR1985KAR4113

Judge : K.A. Swami, J.

Acts : Karnataka Stamp Act, 1957 - Sections 45A

Appeal No. : W.P. Nos. 14840 and 14841 of 1985

Appellant : Nagaraja

Respondent : State of Karnataka

Disposition : Petition allowed

Judgement :
ORDER

K. A. Swami, J.

1. In these petitions under Articles 226 and 227 of the Constitution the petitioners have sought for quashing the Circular dated 8-7-1985 bearing No. RD 268 ESR 84 issued by the State Government fixing the minimum market value of immovable properties in various localities of Bangalore City.

2. The Circular is purported to have been issued under Section 45A of the Karnataka Stamp Act, 1957 (hereinafter referred to as the 'Act'). Similar Circular issued by the Deputy Commissioner of another District was challenged in Writ Petition No. 42106 of 1982 and other Writ Petitions M.G. Kulkarni - v. - State of Karnataka, : ILR 1985 KAR2152 . This Court has held that it is not permissible to issue such a circular fixing the market value of the property. Relevant portions of the Judgment are as follows :

'19. The term market value of the property has not been defined in the Act. But, the explanation to sub-section (5) of Section 45A of the Act really achieves or provides for that. This explanation declares that the market value of the property that is covered by the instrument shall be the price that would have fetched or fetch if sold in the open market as on the date of execution of that instrument. In reality and substance, this explanation brings in the concept of a willing purchaser and a willing buyer of that and that very property with all the advantages and disadvantages that very property possesses or enjoys on the date of the instrument. This is analogous to what is called as the comparable sales method in ascertaining the market value of a property acquired in Land Acquisition cases, which is considered as the best method to ascertain the market value of the acquired property. The Rules and in particular Rule 5 makes this position crystal clear. What emerges from this is that the market value that has to be stipulated in an instrument or to be determined must necessarily relate to that very property and there is nothing like a general or universal market value in the City or a part of the City that can be predetermined by the D. C. On this analysis itself, the notifications issued by the D.C. cannot be upheld ....'

'What emerges from these cases is that there is nothing like a general market value of immovable properties in a city or a locality and the same cannot be pre-determined on any notional or hypothetical considerations and the market value of the particular property has necessarily to be fixed on a particular date with due regard to the factors enumerated in the statute. From this it follows that the general market value fixed by the D.C. which is not authorised by Section 45A of the Act or the Rules and in derogation of them, unnecessarily restricting the power of the Registering Officers as also his own determination to be made as and when a case arises before him, is without jurisdiction and illegal.

21. On the above discussion, it necessarily follows that the impugned notification of the D.C. is liable to be quashed. But, thequashing of the notification cannot be understood as in any way fettering the discretion of the Registering Officer or the DC to exercise their powers under the Act, which has necessarily to be examined and decided with due regard to the factors enumerated in the Act and the Rules.'

3. The aforesaid decision squarely applies to the impugned circular.

4. Following the aforesaid decision these Writ Petitions are allowed. The Circular No. RD 268 ESR 84 dated 8th July 1985 produced as Annexure-C is hereby quashed. It is further made clear that notwithstanding the quashing of the aforesaid circular the Registering Officer of Instruments, under the Registration Act, 1908 and the DeputyCommissioner are free to exercise their powers under and in accordance with Section 45-A of the Act and the Rule made for that purpose.