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Court : Karnataka

Decided On : Mar-18-1985

Reported in : ILR1985KAR4157

Judge : K.A. Swami, J.

Acts : Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provisions) Rules, 1966 - Rule 39 - Sections 72; Karnataka Stamp Act, 1957 - Articles 15 and 20

Appeal No. : W.P. No. 7667 of 1983

Appellant : Shankara Murthy

Respondent : State of Karnataka

Advocate for Def. : S. Udayashankar, HCGP

Advocate for Pet/Ap. : Kadidal Manjappa, Adv.

Judgement :
ORDER

K.A. Swami, J.

1. Though this Petition is posted for orders, it is taken up for final disposal. Respondent-4 though served has remained absent. Respondents 1 to 3 are

represented by Sri Udayashankar, Learned Government Pleader.

2. In this Petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the communications dated 7-3-1983, 20-12-1982 and the Circular dated 2-4-1983 issued by the Deputy Commissioner,Chitradurga produced as Annexures G, H and HI respectively. The petitioner has also sought for issue of a Writ in the nature of Mandamus to respondents 3 and 4 directing them to register the certificate of sale after collecting stamp duty from the petitioner calculated on the basis of the purchase money, in respect of the site bearing No. 336 measuring 35' X 50' situated within the limits of Municipal Council,Davanagere. The said site along with several other sites was put up for auction. In that auction the petitioner was the highest bidder having offered the bid for a sum of Rs. 10,800/-. The auction took place on 26-10-1977. The auction sale has also been confirmed by the StateGovernment on 22-8-1978, by the order bearing No. HUD 285 TMD 78 as mentioned in the endorsement dated 19-9-1978 issued by the Commissioner, Municipal Council, Davangere, produced as Annexure-A. Further case of the petitioner is that even to this day, the Municipal Council has not issued the certificate of sale and as a result thereof, the petitioner is not able to have the certificate of sale registered. It is also further submitted that as the MunicipalCommissioner insisted upon ascertaining the market value for the purpose of stamp duty, the petitioner enquired with the 3rd respondent, who by the endorsement dated 7-3-1983 produced as Annexure-G, has informed the petitioner that the same has to be calculated as per the rate determined by the notification bearing No. CBC/CR No. 11/82-83, dated 20th December, 1982.

3. It appears to me that the Municipal Commissioner is not justified in insisting that the petitioner must ascertain the market value for registration of the document. When once the auction sale is held, following Rule 39 of the Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provisions) Rules, 1966, the highest bidder, whose bid is accepted and confirmed by the State Government as per Section 72 of the Karnataka Municipalities Act, is entitled to a certificate of sale which is the evidence of the fact that his bid has been accepted in respect of the site which is sold in public auction. Therefore, the 4th respondent ought to have issued the certificate of sale as soon as the State

Government confirmed the auction sale. As the 4th respondent has failed to issue the sale certificate, it is necessary to issue a direction.

4. As far as the impugned communication Annexure-G and other circulars produced as Annexures H and H1 are concerned, it is unnecessary to go into the validity of the same in this Petition. Once the sale certificate is issued, the petitioner is entitled to present it for registration and pay the stamp duty as per Article 15 of the Schedule to the Karnataka Stamp Act, 1957 (for short, the 'Act') which specifically covers such sale certificates. It on presentation of sale certificate, the 3rd respondent demands higher stamp duty, it would then be open to the petitioner to approach this Court. As Articles 15 of the Schedule to the Act, standstoday, the stamp duty is payable on a certificate of sale only as per Article 15 thereof, not as an instrument of conveyance covered by Article 20. Even the definition of conveyance as found in Section 2(d) of the Act, also excludes certificate of sale. It specifically states that conveyance includes a conveyance on sale and every instrument by which property, whether moveable or immoveable istransferred inter vivos and which is not otherwise specifically provided for by the Schedule. The Schedule specifically provides for certificate of sale. Article 15 of the Schedule provides for certificate of sale. Columns 1, 2 and 3 of the Schedule contain the serial number of the Article, description of document, proper stamp duty, respectively. In column No. 3, in respect of certificate of sale where the purchase money exceeds Rs. 25/-, it is stated thus: 'The same duty as conveyance (No. 20) for a market value equal to the amount of the purchase money only'. Thus, in the case of certificate of sale, as in the instant case, the purchase moneyi.e. , the highest bid accepted and confirmed, is Rs. 10,800/-, the stamp duty is payable on Rs, 10,800/- even though actual market value may be more than Rs. 10,800/-. It is because, the purchase money is treated as equivalent to market value. Fiscal statutes are required to be interpreted [strictly]. Even on a plain reading of the words ' for amarket value equal to the amount of the purchase money only ' it is clear that in case of certificate of sale for more than Rs. 25/- the market value is equated to the purchase money. That being so, the certificate of sale cannot be treated for the purpose of stamp duty as conveyance failing under Article 20 of the Schedule to the Act.

5. For the reasons stated above, this Writ Petition is allowed in part. A direction shall issue to the 4thRespondent to issue a certificate of sale to the petitioner in respect of the site bearing No. 336, measuring 35' x 50' situated in M.C.C. 'A' Block, Davangere Town, pursuant to the auction held on 26-10-1977 and confirmed by the State Government by the order dated 22-8-1978 bearing No. HUD 285 TMD 78 as intimated to the petitioner by the endorsement dated 19-9-1978 issued by the Commissioner of City Municipal Council, Davangere, produced as Annexure-A. If such certificate of sale is presented before the 3rd Respondent, he shall register the same in accordance with law onpayment of stamp duty on the amount mentioned in the certificate of sale and on complying with other requirements of law, if any.