

*** THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR**

+ Writ Petition No.5918 of 2024

% 13.11.2024

Between:

Syed Tajuddin

Vs.

Petitioner

The Principal Secretary, Stamps and
Registration, Secretariat, Hyderabad
Telangana State & others.

Respondents

! Counsel for Petitioner : Mr.R.Gopi Mohan

^ Counsel for Respondents : Assistant Government Pleader
for Revenue.

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? Cases referred

1 2023 (3) ALD 70

HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR**WRIT PETITION No.5918 of 2024****ORDER:**

This writ petition is filed to declare the action of respondent No.3 in fixing the stamp duty of Rs.1,24,950/- and imposing three times penalty to Rs.3,74,850/- totalling to Rs.4,99,800/- on an unregistered agreement of sale dated 17.09.2020 under proceedings No.IMP/2202/2023 dated 15.02.2024 as illegal and arbitrary and also against the order in W.P.No.34006 of 2023 dated 20.12.2023 and consequently direct respondent No.2 to fix stamp duty on unregistered Agreement of sale dated 17.09.2020 as per Article 6 Schedule 1A of the Indian Stamp Act as amended by Telangana State.

2. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Stamps and Registration appearing on behalf of respondents. Perused the record.

3. The brief facts of the case are that the petitioner filed suit for specific performance *vide* O.S.No.28 of 2003 pending on the file of IV Additional District Judge, Mahabubnagar against one K.Chenna Reddy for specific performance. The Sub-Registrar, Mahabubnagar is defendant No.2 therein. It is submitted by learned counsel for the petitioner that the IV

Additional District Judge while issuing notice in I.A.339 of 2023 in said O.S.No.28 of 2023 granted an ad-interim exparte injunction restraining respondent No.1 not to create any 3rd party interest in respect of the suit schedule property therein. The said injunction order was extended from time to time.

4. While things stood thus, respondent No.3 herein fixed stamp duty at Rs.1,25,000/- on an unregistered Agreement of Sale dated 17.09.2020 *vide* proceedings Dis.No.417 of 2023 and after deducting Rs.50/- on which agreement of sale was executed, and fixed deficit stamp duty of Rs.1,24,950/- and a penalty up to 10 times was fixed *vide* Letter dated 24.11.2023. The said letter was sent to IV Addl. District Judge, Mahabubnagar. Aggrieved by the same, petitioner filed a writ petition in W.P.No.34006 of 2023, wherein this Court has passed the following order:

“Taking into consideration the facts and circumstances of the case and the decisions referred above, there is no dispute that the subject land as per agreement of sale is a open land and no constructions are existing and in view of the same the subject documents shall be impounded by applying Article 6(A) of Schedule 1(A) of the Indian Stamp Act and not Article 6(B) of Schedule 1(A) of Indian Stamp Act as claimed by respondent authorities.”

5. Learned counsel would further submit that in the above said order, the Court permitted the petitioner to make a representation to respondent No.3 and directed respondent No.3 to pass appropriate orders after giving a fair opportunity of hearing. In terms of orders passed in W.P.No.34006 of 2023 in the order dated 20.12.2023, petitioner has made a representation before respondent No.3. However, respondent No.3, without giving an opportunity of hearing has passed the impugned order dated 15.02.2024 and observed that the said document is an Agreement of Sale without possession and chargeable for stamp duty under Article 6(B) of Schedule I-A of Indian Stamp Act, 1899 for which 0.5% stamp duty is to be paid on above said consideration amount for the purchase of immovable property. In view of the same, petitioner was directed to pay deficit stamp duty of Rs.1,24,950 along with penalty of Rs.3,74,850/- totalling to Rs.4,99,800/-.

6. When the matter is taken up for hearing on 06.03.2024, this Court has suspended the impugned order dated 15.02.2024 for a period of two (2) weeks. Subsequently, the said interim suspension was extended from time to time.

7. A counter has been filed by respondent No.2 who would submit that subsequent to orders passed in W.P.No.34006 of

2023 dated 20.12.2023, the petitioner has made a representation on 27.01.2024 and after considering the recitals of the document in question, necessary orders were passed by respondent No.3 considering the wordings of Article 6(B) of Schedule I-A of Indian Stamp Act, 1899. It is further submitted that according to the provisions of Section 56 of Indian Stamp Act, 1899, if the petitioner is otherwise aggrieved by the orders passed by respondent No.3, the petitioner has alternative remedy to file an appeal before the Chief Controlling Revenue Authority for redressal of his grievance. It is therefore stated that instead of availing the said remedy, petitioner has filed the present writ petition.

8. Learned counsel for the petitioner draws attention of this Court to the provisions of Section 56 of the Indian Stamp Act, 1899, wherein it is stated as follows:

56. Control of, and statement of case to, Chief Controlling Revenue-authority. —

(1) The powers exercisable by a Collector under Chapter IV and Chapter V 1 [and under clause (a) of the first proviso to section 26] shall in all cases be subject to the control of the Chief Controlling Revenue Authority.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the

amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to asses and charge the duty (if any) in conformity with such decision.

9. Learned counsel for the petitioner submits that in terms of Section 56 of the 1899 Act, the powers exercisable by the Collector are subject to the control of Chief Controlling Revenue Authority and that if the Collector has any doubt with respect to the amount of duty with which any instrument is chargeable, he may draw up statement to Chief Controller of Revenue Authority. In view of the same, it is the District Collector, who can only refer the case to the Chief Controlling Revenue Authority for ascertaining the duty to be charged for his opinion. As such the petitioner cannot prefer an appeal under Section 56 of the 1899 Act. He would further draw attention of this Court to provisions of Section 41(A) of the 1899 Act and submits that provisions of 41(A) do not apply in the present case for the reason that the petitioner himself has paid the requisite stamp duty in terms of Article 6(A) of Schedule 1-

A, as such Section 41(A) is not applicable to the present case. Section 41(A) of 1899 Act is extracted herein for the facility of reference;

“41-A. Recovery of Stamp Duty not levied or short levied:- (1) *Where after the commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1986, any instrument chargeable with duty has not been duly stamped and registered by any Registering Officer by mistake and remarked as such by the Collector or any audit party, the Collector may, within five years from the date of registration serve a 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 misstatement or suppression of facts or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the Collector may, within ten years from the date of registration, serve a notice on such person to show cause why the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of deficit stamp duty.

(2) The Collector or any officer specially authorised by a him in this behalf shall, after considering the representation if any, made by the person on whom notice is served under sub-section (1), determine by an order, the amount of duty and

penalty due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount as determined. On payment of the amount the Collector shall add a certificate under Section 42.

(3) Any person aggrieved by an order under sub-section (2) may prefer an appeal before the Chief Controlling Revenue Authority, Telangana, Hyderabad within three months from the date of such order.

(4) Any amount payable under this section shall be recovered as an arrear of land revenue.

10. Learned counsel would therefore vehemently submit that since the issue is pertaining to the quantum of the stamp duty, it was left open to the District Collector to decide upon the stamp duty, instead of doing the same, directed the petitioner to make a representation. However, the District Registrar without properly ascertaining the position of law has passed the impugned order.

10. This Court in **W.P.No.34006 of 2023 dated 20.12.2023** extensively held the similar issues which fell for consideration at paragraph 13 which reads as follows:

“13. Taking into consideration the facts and circumstances of the case and the decisions referred above, there is no dispute that the subject land as per agreement of sale is a open land and no

constructions are existing and in view of the same the subject documents shall be impounded by applying Article 6(A) of Schedule 1(A) of the Indian Stamp Act and not Article 6(B) of Schedule 1(A) of Indian Stamp Act as claimed by respondent authorities.”

11. This Court in ***Shaik Jani Pasha v. The State of Telangana***¹, wherein similar issues fell for consideration, held at paragraphs 6 to 9 as follows:

*“6. In the case of **Saranam Peda Appaiah v. S.Narasimha Reddy**, a division Bench of this Court has considered the similar issue and held as under:-*

“[Article 6\(B\)](#) is very clear in its expression that in case of any transactions relating to construction of a house etc. as mentioned in descriptive column of the instrument, the stamp duty required is Rs. 5/- for every hundred or part thereof, of the market value or the estimated cost of proposed construction or development of such property as the case may be. Therefore, the question that calls for consideration is whether the said Article covers the agricultural land also. It is a cardinal principle of the interpretation that the provision interpreted with reference to the words contained in the provisions and by interpretative process, it is neither to be expanded nor constricted. When the Legislature has specifically referred to the document relating to construction of house, apartment, flat, portion of multi-storied building etc and the stamp duty is payable on the market value or the estimated cost of the said property, it has to be confined only to houses, multi unit houses or apartment etc. Even the valuation was sought to be arrived at on the basis of the rates prescribed by the

¹ 2023 (3) ALD 70

Public Works Department authorities. Further it is noticed that the transactions left over by [Article 6\(B\)](#) are covered by [Article 6\(C\)](#). Therefore, it cannot also be said that there was vacuum in the Article. In the instant case, the agreement is after 1-4-1995, but it relates to the agricultural land. Taking the clue from the last expression in the document namely "sale of any other immovable property" it was contended that it would embrace in its fold other immovable property including the agricultural property and therefore, the stamp duty has to be paid on that basis. But, that contention cannot be accepted, inasmuch as the expression the sale of any other immovable property has to be interpreted keeping in view the principles of ejusdem generis namely where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or classes as specifically mentioned. Otherwise, the other provisions become otiose."

7. Further, in the case of **Pechitti Ramakrishna v. Nekkanti Venkata Manohara Rao and others**, a learned Single Judge of this Court has considered the application under Article 6(B) of Schedule 1(A) of the Indian Stamp Act, 1899, but not under Article 6(A) of Schedule 1(A) of the Indian Stamp Act, 1899, which it reads as under:-

"A careful reading of [Article 6\(B\)](#) of Schedule 1-[A of the Act](#) goes to show that it is applicable if the agreement relates to construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi-storied building or for development/ sale of any other immovable property. A further reading of the stamp duty payable specified in column No. 2 also makes it clear that this provision was introduced in relation to the construction agreements or agreements of the like nature. No doubt, emphasis was laid on the language "sale of any other immovable property". These words "sale of any other immovable property"

in [Article 6\(B\)](#) of Schedule 1-A of the Act may have to be read along with the rest of the provision and also with column No. 2. As far as any other case specified in [Article 6\(C\)](#) of Schedule 1-A of the Act is concerned, it should be construed to be a case not falling under either A or B of Schedule 1-A of the Act. It is needless to say that [Article 6\(A\)](#) of Schedule 1-A of the Act is a general provision. It is no doubt true that in the present case, the sale consideration recited in the agreement of sale is Rs. 42,500/- and it is in relation to the sale of a vacant site. On a careful reading of the language employed in [Article 6\(A, B & C\)](#) of Schedule 1-A of the Act and also the stamp duty payable specified in column No. 2 and taking into consideration the object of introducing B by [A.P. Act 21](#) of 1995, I am of the considered opinion that [Article 6\(B\)](#) of Schedule 1-A of the Act would be applicable only in such specified cases and the same cannot override the general provision of [Article 6\(A\)](#) of Schedule 1-A of the Act and agreement in question would definitely fall under the general provision of [Article 6\(A\)\(iii\)](#) of Schedule 1-A of the Act and hence, the stamp duty already paid is sufficient. It is also clarified that in the light of the nature of the document [Article 6\(B\)](#) of Schedule 1-A of the Act is not applicable to the present case. Hence, the impugned order holding that the stamp duty and penalty relating to the document in question is liable to be paid under [Article 6\(B\)](#) of Schedule 1-A of the Act cannot be sustained.”

8. In the light of the above settled legal position and taking into consideration the fact that there is no dispute that the subject matter of the Agreements of sale in question is only open lands and no constructions are existing thereon, it is only Article 6(A) of Schedule 1(A) of the Indian Stamp Act, 1899, applies but not Article 6(B) of Schedule 1(A) of the Indian Stamp Act, 1899, as claimed by respondent No.2, the impugned notices are set aside.

9. *Accordingly the Writ Petition is allowed and respondent No.2 is directed to impound the subject documents by applying Article 6(A) of Schedule 1(A) of the Indian Stamp Act, 1899, instead of Article 6(B) of Schedule 1(A) of the Indian Stamp Act, 1899, and complete the process of impounding, as expeditiously as possible, at any rate, within a period of four (04) weeks from the date of receipt of a copy of this order.”*

12. On a perusal of the recitals of the subject document, it is evident that the subject land is open plot i.e., agriculture land and in the agreement, there is no recitals of construction.

13. In view of all the observations made above, this Court deems it appropriate that the applicable rate of stamp duty of the document would fall under Article 6(A) of Schedule I-A of Indian Stamp Act, 1899 and not under Article 6(B) of Schedule I-A as claimed by the respondent authorities, as such, the impugned order dated 15.02.2024 is hereby set aside and writ petition is accordingly allowed. Respondent No.3 *viz.*, District Registrar, Mahaboobnagar District is hereby directed to impound the subject document i.e., unregistered sale deed dated 17.09.2020 by applying Article 6(A) of Schedule I-A of Indian Stamp Act, 1899 and after completing the process of

impounding, pass appropriate orders within a period of three (3) weeks from the date of receipt of a copy of this order.

14. Accordingly, this writ petition is allowed.

As sequel to it, Miscellaneous Petitions, if any pending, shall stand dismissed.

N.V.SHRAVAN KUMAR, J

13.11.2024

Note: LR Copy to be marked.

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