

(2004) 08 AP CK 0030

Andhra Pradesh High Court

Case No: Writ Petition No. 18416 of 2003

M. Srinivasa Charyulu and M.
Ramakrishna Charyulu

APPELLANT

Vs

District Registrar (Collector U/s
41-A of Indian Stamp Act, 1899)
and Sub Registrar

RESPONDENT

Date of Decision: Aug. 2, 2004

Acts Referred:

- Stamp Act, 1899 - Section 41A, 41A(1), 41A(3), 42

Citation: AIR 2005 AP 32 : (2004) 5 ALD 359 : (2004) 5 ALT 804 : (2004) 3 APLJ 37 : (2004) 97 RD 500

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: M. Venkat Ram Reddy, for the Appellant;

Judgement

V.V.S. Rao, J.

The petitioners herein have purchased the land admeasuring Acs.14-00 in Survey No.197 of Huzurnagar village and Mandal, Nalgonda District, from one Mr. Venkata Rangacharyulu and others for a consideration of Rs.3,332/-. They paid the stamp duty of Rs.380/- and the sale was registered under Document No.704/90, dated 19-6-1990 in Book No.1 at the office of the second respondent. By order in proceedings No.100/704/1990m dated 30-6-2003 the first respondent directed that the petitioners shall pay an amount of Rs.19,320/- towards the deficit stamp duty in respect of the said document on the ground that the market value shown in the document works out to Rs.1,69,400/- and that the stamp duty chargeable is Rs.18,640/- and the registration fee payable is Rs.1,100/-. This order is assailed in the present writ petition. This Court admitted the writ petition and passed orders of stay prohibiting further steps in the matter. The matter was finally heard on 30-7-2004 with the consent of the parties at interlocutory stage when W.V.M.P.No.3686 of 2003

filed by the respondents was listed before this Court and the learned Assistant Government Pleader for Revenue (General) was directed to produce the records.

2. The learned Assistant Government Pleader has produced the records connected with the proceedings impugned in the writ petition. A perusal of the same would support the averments in the counter affidavit that the action was initiated u/s 41A of the Indian Stamp Act, 1899 (for brevity "the Act") by issuing a notice to the petitioners on 25-11-1994, and therefore, the action initiated is valid.

3. The only submission made by the learned counsel for the petitioners is that u/s 41-A of the Act, any order for recovery of deficit stamp duty has to be initiated within a period of five years and as the impugned order is issued long thereafter on 30-6-2003, the action must be held to be illegal and unauthorized.

4. Section 41-A of the Indian Stamp Act, 1899 reads as under:

41-A. Recovery of Stamp Duty not levied or short levied:-

(1) Whereafter 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 amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty.)

Provided that where the non-payment was by reason of fraud, collusion or any willful mis-statement 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 the deficit stamp duty.)

(2) The Collector or any officer specially authorized by 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 the 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 u/s 42.

(3) Any person aggrieved by an order under sub-section (2) may prefer an appeal before the (Chief Controlling Revenue Authority) Andhra Pradesh, 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).

5. A plain reading of sub-section (1) of Section 41-A of the Act, reveals that when an instrument chargeable with stamp duty has not been duly stamped and registered by any registering officer, the Collector may within five years from the date of registration, serve a notice on the person by whom duty is payable, to show cause why proper duty should not be collected from him. The necessary requirement of law is to issue notice within five years and provision does not bar the Collector to pass an order after expiry of five years. Therefore, I do not see any infirmity in the order passed. Further, as rightly submitted by the learned Assistant Government Pleader, as the order passed by the Collector u/s 41-A (1) of the Act, an appeal would lie under sub-section (3) thereof to the Chief Controlling Revenue Officer, within a period of three months from the date of the order. The order was passed by the first respondent on 30-6-2003 and this writ petition was filed on 29-8-2003. Therefore, it would be in the interest of justice, to give liberty to the petitioners to file an appeal u/s 41-A (3) of the Indian Stamp Act, 1899, within a period of three weeks from the date of receipt of a copy of this order. The Appellate Authority may entertain the appeal and pass appropriate orders in the matter.

The writ petition, with the above observations and directions, is disposed of. No costs.