IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY, THE TWENTY FIFTH DAY OF MARCH TWO THOUSAND AND FIFTEEN

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

<u>WRIT PETITION No.10345 of 2006</u>

Between:

Bingi Rajesh Goud,

S/o. Eshwar Goud,

Aged about 22 years & 2 others

.. Petitioners

AND

The District Registrar and Authorised Officer,

Municipal Complex, Nalgonda,

Nalgonda District & another

.. Respondents

<u>The Court made the following:</u>

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.10345 of 2006

ORDER:

The claim of the petitioners is that they have purchased land to an extent of Ac. 8.20 guntas in Survey No.428/1 of Gandlagudem Village, H/o. Alair Village, Alair Mandal, Nalgonda District, under registered Sale Deed bearing

Document No.394, dated 12.03.2003. The Sale Deed was presented and after scrutiny and the declaration made, it was registered and released. To their surprise, show cause notice, dated 03.05.2003, was issued by the District Registrar, Nalgonda District (1st respondent), holding that there was under-valuation of the property and the market value of the property works out to Rs.14,79,500/-, but the document was written on stamp paper of Rs.37,500/- only. In terms of the valuation of the property, the petitioners were liable to pay stamp duty for an amount of Rs.1,62,745/- and, therefore, there was a deficit stamp duty of Rs.1,25,245/-. In addition, penalty of Rs.3,75,735/- was also imposed and, thus, the petitioners were directed to pay an amount of Rs.5,06,680/-. The petitioners claim that the said notice was received by them on 16.05.2003. On 19.05.2003, the petitioners filed explanation. The petitioners disputed the valuation arrived at by the District Registrar, Nalgonda District, and contended that the valuation, as disclosed in the document, was valid and there is no justification for showing the higher value and imposing higher stamp duty. On 25.07.2003, the District Registrar, Nalgonda, passed orders holding that in spite of the demand made, the deficit stamp duty was not paid and failed to appear before the authorized officer within the stipulated time and, therefore, in accordance with the provisions contained in the Indian Stamp Act, 1899, prosecution is launched on the allegation of suppression of facts under Sections 27, 64 and 64A of the Indian Stamp Act, 1899, and Section 82 of the Registration Act, 1908. Aggrieved thereby, W.P.No.18691 of 2003 is filed. By order, dated 20.01.2004, W.P.No.18691 of 2003 was disposed of and the Court noticed the specific assertion of the petitioners that explanation was filed on 19.05.2003, which fact is not denied, as no counter affidavit is filed and, therefore, the said statement is deemed to have been accepted and there is a finding that the petitioners have not responded to the show cause notice and failed to appear before the Authorized Officer cannot be countenanced. Having recorded the said finding, the respondents were granted liberty to pass final orders pursuant to the show cause notice, dated 03.05.2003. In pursuant to the orders of this Court in the above writ petition, by notice, dated 04.05.2004, the 1st petitioner was informed that he may approach the Sub-Registrar, Yadagirigutta (2nd respondent), for re-conducting of spot inspection of the property on 17.05.2004.

2. The case of the petitioners is that they have not received the said notice, dated 04.05.2014, and, therefore, the petitioners have not appeared before the Sub-Registrar, Yadagirigutta, as directed in the said notice. According to the petitioners, the Sub-Registrar, Yadagirigutta, in his letter, dated 05.06.2004, addressed to the District Registrar, Nalgonda (1st respondent), informed the fact that the petitioners did not attend before him and as per the telephonic instructions of the District Registrar, Nalgonda, the Sub-Registrar, Yadagirigutta, has inspected the property and found that the particulars are same as shown in the earlier notice, dated 04.05.2003. Having regard to the same, the District Registrar, Nalgonda, issued final notice, dated 18.02.2005, directing the first petitioner to approach the Sub-Registrar, Yadagirigutta, for re-conducting of the spot inspection. But in spite of giving sufficient opportunity, the first petitioner has not availed and, therefore, petitioners were directed to deposit the deficit amount worked out to Rs.5,06,680/- before the Authorized Officer within (7) days from the date of receipt of the said memo. Aggrieved thereby, this writ petition is instituted.

3. On 19.05.2005, prosecution was also launched against the petitioners. Aggrieved by initiation of prosecution, the petitioners filed Crl.P.No.6584 of 2008.

4. Heard Sri K. Govind, learned counsel for the petitioners and the learned Government Pleader for Revenue for the respondents.

5. Learned counsel for the petitioners contends that after the remand order passed by this Court in W.P.No.18691 of 2003 on 20.01.2004, no notice was issued to the petitioners. The so-called notice, dated 04.05.2004, and the report submitted by the Sub-Registrar, dated 05.06.2004, was not within the knowledge of the petitioners and, therefore, the petitioners have no occasion to appear before the Sub-Registrar, Yadagirigutta. Learned counsel for the petitioners further contends that in accordance with the orders of this Court in W.P.No.18691 of 2003, liberty was granted to the District Registrar, Nalgonda, to pass orders on the show cause notice issued on 03.05.2003. Therefore, the District Registrar, Nalgonda, ought to have called the petitioners before him and ought to have undertaken the physical verification for assessment of the value of property

determined and he cannot delegate the issue of physical verification to the Sub-Registrar, Yadagirigutta, and the said action is *ex facie* illegal. Except issuing notices, no final determination was made and the notices are treated as the final orders, whereas according to the provisions contained in Section 41(A) of the Indian Stamp Act, 1899, after putting the persons on notice, the District Collector has to determine the amount of stamp duty and penalty due from such person and such person should pay the amount as determined. So far, no such orders are passed and notices are treated as an order.

6. Learned counsel for the petitioners further contends that even though book value of the property was only Rs.30,000/- per acre, the property was assessed at Rs.40,000/- per acre and, accordingly, stamp duty was determined and there were no structures existing and, therefore, only on the land the valuation was made and the stamp duty was paid and there was no illegality and only to harass and humiliate, wrong assessment is made. If proper physical verification is conducted by the District Registrar, Nalgonda, in the presence of the petitioners, the truth would have come out.

7. In addition to contentions on merits, the primary contention of the petitioners is that subsequent to the disposal of W.P.No.18691 of 2003, no notice was served on the petitioners and a specific averment is made in Para 6 of the affidavit filed in support of the writ petition. The said allegation is not controverted in the counter affidavit filed by the District Registrar, Nalgonda (1^{st} respondent).

8. Learned Assistant Government Pleader submits that having noticed that assessment of the property was wrongly disclosed by the petitioners for the purpose of payment of stamp duty and registration charges while registering the Deed of Conveyance, spot inspection was conducted wherein the property was valued at Rs.14,79,500/- and, therefore, the stamp duty of Rs.1,62,745/- is chargeable, whereas the petitioners paid only Rs.37,500/-. The registration fee payable was Rs.7,400/-, whereas the petitioners paid only Rs.1,700/-. Thus, there was a loss of stamp duty of Rs.1,25,245/- and registration fee of Rs.5,700/-. This loss of revenue caused due to suppression of true and correct facts by the petitioners. The petitioners have not disclosed

the existing RCC Structure and Madras Terrace and Mangalore Tiled Structure and 2600 running feet compound wall, bore wells, motors and trees. Learned Assistant Government Pleader, therefore, submits that such action of the petitioners attracts provisions of Sections 27, 64 & 64A of the Indian Stamp Act, 1899, and Section 82 of the Registration Act, 1908.

9. On the earlier occasion, against Memo, dated 25.07.2003, the first petitioner instituted W.P.No.18691 of 2003. The said writ petition was disposed of on 20.01.2004 directing the respondents to afford opportunity of hearing to the first petitioner. After the disposal of the said writ petition, though notice was issued to the first petitioner to appear before the Sub-Registrar, Yadagirigutta, the first petitioner did not appear. Since the first petitioner did not appear, the Sub-Registrar, Yadagirigutta, again assessed the property and submitted report to the District Registrar, Nalgonda. The first petitioner has not responded even to the final notice issued on 18.02.2005. Accordingly, as informed to the petitioners, criminal prosecution was also initiated against the petitioners. Three times of the amount liable to be paid to the State was also levied. The petitioners, thus, have to pay an amount of Rs.5,06,680/- towards deficit stamp duty and registration charges and penalty. In addition, the petitioners are also liable for prosecution.

10. Learned Assistant Government Pleader justified the impugned action of the respondent authorities. He submits that the respondent authorities had no option but to proceed since the first petitioner was not co-operating and did not pay the amount due and payable by him in spite of affording sufficient opportunity.

11. In notice, dated 25.07.2003, the first petitioner was informed that there was deficit stamp duty and registration fee and, therefore, he is liable to pay deficit stamp duty and penalty under Section 64 of the Indian Stamp Act, 1899, and it was also informed that prosecution being launched for the suppression of facts under Sections 27, 64 and 64A of the Indian Stamp Act, 1899, and Section 82 of the Registration Act, 1908. Aggrieved thereby, the first petitioner filed the

W.P.No.18691 of 2003. This Court disposed of the said writ petition by order, dated 20.01.2004. This Court upheld the contention of the first petitioner that he was denied of reasonable opportunity and without affording opportunity of hearing, penalty was levied and prosecution was launched. Accordingly, the order impugned was set aside granting liberty to pass final orders in pursuant to the show cause notice, dated 03.05.2003 and to proceed in accordance with law. In pursuant to the said orders of this Court, alleging that the first petitioner did not appear before the Sub-Registrar, Yadagirigutta, for re-conduct of spot inspection as per the notice issued on 04.05.2004, final notice was issued on 18.02.2005. In the final notice, impugned in this writ petition, it was stated that the first petitioner has not availed opportunity afforded to him and fixed the liability to pay the deficit stamp duty and registration fee and penalty, together amounting to Rs.5,06,680/- within a period of seven (7) days from the date of receipt of the said memo. Simultaneously, prosecution was also launched.

12. A specific contention of the first petitioner is that the notice, dated 04.05.2004, was not served on the first petitioner. The said averment is made in para 6 of the affidavit filed in support of this writ petition. The said contention of the first petitioner is not denied. Learned Assistant Government Pleader fairly submits, on verification of the original record, that the Stamps and Registration Department do not have any proof of service of the said notice. Admittedly, no further notice is issued. The letter, dated 05.06.2006, of the Sub-Registrar, Yadagirigutta, is the basis for final notice, dated 18.02.2005. The original records are called. There is no proof of the Sub-Registrar, Yadagirigutta, visiting the premises in issue and conducting spot inspection. According to the learned counsel for the petitioners, the petitioners are residing in the same premises and that no person has come for spot inspection. The record does not contain any report prepared by the Sub-Registrar after conducting spot inspection. If the Sub-Registrar has conducted spot inspection, he should have recorded the details of existence of the property, the details of persons, who were available when he conducted spot inspection and ought to have obtained signatures as evidence of their availability. Such inspection ought to have been conducted in the presence of independent witnesses.

Obviously, as per the record, no such inspection was conducted. This would clearly show negligence in performance of duties and responsibilities vested in him by the Sub-Registrar, Yadagirigutta. Without verifying further and without obtaining a written report of the spot inspection, the District Register summarily proceeded, believing whatever is stated by the Sub-Registrar, Yadagirigutta, as true in his letter, dated 05.06.2004, and issued the final notice, dated 18.02.2005. Simultaneously launched prosecution also. This clearly shows callusness of the authorities concerned in not observing due process of law and procedures envisaged in the Registration Act, 1908, and the Rules made thereunder before levying penalty and initiating prosecution. When liberty was granted by this Court to proceed further, it would mean that acting in accordance with law but not whimsically and to the pleasure and dictates of the authorities concerned.

14. Thus, the final notice, dated 18.02.2005, impugned in this writ petition, is unsustainable and is liable to be set aside and it is, accordingly, set aside. However, since the issue is at the stage of not affording an opportunity to the first petitioner and the liability of the first petitioner or otherwise is yet to be decided,

I deem it proper to remit back the matter to the District Registrar, Nalgonda (1st respondent) for assessing the value of the property and determining the stamp duty and registration fee payable after affording opportunity to the first petitioner.

15. Having regard to the fact that the issue relates to registration made in the year 2003 and the matter is being dragged on for more than 12 years, I deem it proper to direct the District Registrar, Nalgonda (1st respondent) to conduct spot inspection and assess the value of the property in the presence of the first petitioner and two independent witnesses on 20.04.2015. The first petitioner shall make himself available on that day in the subject premises and shall co-operate with the District Registrar, Nalgonda, in assessing the value of the property. After assessing the value of the property, the District Registrar shall furnish a copy of the assessment made and if, according to him, there was a

deficit of stamp duty and registration fee payable, the report should be furnished to the first petitioner with a show cause notice fixing a date for affording opportunity of personal hearing to the first petitioner and the first petitioner shall appear on that date. The first petitioner is at liberty to file his explanation and relevant documents in support of his claim. The District Registrar, Nalgonda, shall consider the documents furnished and the submissions made during the personal hearing of the first petitioner and pass a reasoned order and communicate the same to the first petitioner.

16. With the above observations, the Writ Petition is allowed accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 25th March, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.10345 of 2006

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Date: 25th March, 2015

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