HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.16699 OF 2009

ORDER:

Heard learned counsel for petitioner, learned Government Pleader for respondents 1 and 2 and learned counsel for third respondent.

This is yet another case where the precious time of this Court is consumed by the learned counsel for the petitioner for an academic exercise though there was no cause of action for considering the case and the alleged ground of existence of a point of law in the writ petition is not existing..

The facts of the case are that the petitioners entered into an agreement for the development of their property on 25.01.1995. The property is in an extent of 2,753 square yards bearing H.Nos.1-10-84/1 and 1-10-84/6 situated at Mayur Marg, Begumpet, Hyderabad. As per the said agreement, the third respondent has 55% rights and the petitioners have 45% rights in the land and constructed area. There are other terms and conditions in the agreement. The Municipal Corporation of Hyderabad sanctioned a plan for construction of multi-storied residential complex on 29.09.2001. During the process of construction, the petitioners tried to interfere with the same, which led to filing of a criminal complaint before the Station House Officer, P.S., Begumpet, on 10.01.2004. It appears that the petitioners obtained loan from M/s.Prudential Cooperative Bank Limited on 15.05.2000 and the third respondent stood as a guarantor to the said loan. A part of the schedule property was mortgaged to the said Bank. The Bank initiated proceedings for recovery of the amount. However, the entire loan was cleared by the petitioners and full satisfaction was recorded on 07.11.2007. Thereafter, the officials of the State Finance Corporation restrained the third respondent on the ground that the petitioners were due of huge amounts and they are proceeding for recovery by auctioning the property. The Development Agreement contained an arbitration clause and the third respondent initiated arbitration proceedings by appointing their Arbitrator, by letter, dated 13.01.2008. The third respondent filed O.P.No.39 of 2008 before the Court of the I Additional Chief Judge, City Civil Courts, Secunderabad, under Section 9 of the Arbitration and Conciliation Act. In the said proceedings, the third respondent herein filed a Memo on 02.04.2009 to send the Development Agreement dated 25.01.1995 for proper adjudication to the Office of the District Registrar, Red Hills, Hyderabad. Accordingly, the document was sent to the District Registrar on 06.04.2009. The District Registrar issued a letter on 08.04.2009 to the second petitioner herein asking to appear before him on any working day for recording his deposition. The second petitioner filed his objections on 12.05.2009 stating that if the instrument is adjudicated and treated as an instrument other than sale, he should be given a personal hearing with a notice of proposed levy of stamp duty so as to enable him to file detailed objections. It appears that the District Registrar addressed a letter on 15.06.2009 to the Commissioner and Inspector General of Registration and Stamps seeking clarification enclosing a copy of the representation of the petitioners with regard to the collection of stamp duty on the document. The Commissioner and Inspector General of Registration and Stamps, A.P., Hyderabad, issued a communication on 20.06.2009 to the District Registrar stating that no stamp duty is leviable on advance amount mentioned in the Development Agreement, which was executed on 25.01.1995. After receipt of the said clarification, the District Registrar sent the document to the learned I Additional Chief Judge, City Civil Courts, Secunderabad, stating that as per Article 6 of Schedule I-A of the Indian Stamp Act, 1899, the stamp duty of Rs.100/- as on the date of execution of document was sufficient and the document could be treated as duly stamped. Accordingly, he returned the document after adding the Certificate under Section 40(1)(a) of the Indian Stamp Act. The petitioners did not file any application before the said Court challenging the communication of the District Registrar nor did they file any Appeal before Chief Controlling Revenue Authority, but filed the present writ petition.

The petitioners obtained the copies of the Development Agreement, letter of District Registrar dated 15.06.2009, Memo of the Inspector General of Stamps dated 30.06.2009 and the letter dated 08.07.2009 of the District Registrar, under the Right to Information Act and filed the present writ petition on 12.08.2009.

It is represented by the learned counsel for the 3rd respondent that the Development Agreement was later on terminated and the construction was completed by another agency. He further submits that the proceedings in O.P.No.39 of 2008 ended in dismissal and now the Arbitration Application is pending before this Court for appointment of an Arbitrator with regard to the damages claimed by the third respondent. In such circumstances, nothing survives for consideration in the present writ petition, which was filed challenging the proceedings dated 08.07.2009 of the first respondent in sending the Development Agreement for examination of payment of proper stamp duty on the document when the proceedings were pending before the civil court. In spite of the same, learned counsel for the petitioners advanced his elaborate arguments. He raised the following contentions:

i. Whether the order made by the Collector under Section 40 of the Indian Stamp Act, 1899, on reference from Civil Court for determination of Stamp Duty is final and independent of the proceedings of the Civil Court and amenable to writ jurisdiction?

ii. Whether Section 40 of the Indian Stamp Act, 1899, imposes on the Collector a duty to act judicially, if so, is the said order violative of the principles of natural justice?

Learned counsel for the petitioners, in support of his contentions, relied on **Paladugu Ramesh vs. District Registrar**[1], **Chintalapudi Annapurnamma vs.Andukuri Punnayya Sastry**[2], **Y.Peda Venkayya vs. Revenue Divisional Officer**[3], **Smt Chandrawati Devi vs. Additional Commissioner**[4], **Board of Revenue vs. Appalanarasimhulu**[5]**,** **Y.Kripavatamma vs. Narasimha Reddy**[6], **Diwan Kalusha Ahmedsha vs. Mr.Vanikar, Collector**[7] and **Gade Jogi Reddy vs. Commissioner, Survey Settlement**[8]**.**

So far as point No.2 is concerned, it is authoritatively held by a Full Bench of this Court in **Board of Revenue (supra)** that the duty of a Collector is a judicial one and it implies compliance with principles of natural justice. The relevant observations of this Court are as follows:

> "…….The first question is whether Section 40 of the Indian Stamp Act imposes on the Collector a duty to act judicially. Under Section 40, when a Collector impounds any instrument, and if he is of opinion that such an instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty and the amounts required to make up the same together with a penalty of five rupees or if he thinks fit an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees. Before he requires the payment, the Collector must come to a conclusion that such instrument is not duly stamped. The power exercisable under Section 40 is subject to the control of the Chief Controlling Revenue Authority. Under Section 56(2), if the Collector feels doubt in ascertaining the amount of duty with which the instrument is chargeable, he is authorized to draw up a statement of the case and refer it

---
[1] AIR 2003 AP 315
[2] 2000 (3) ALD 649
[3] AIR 1981 AP 274
[4] 1999 AWC 2848
[5] AIR 1957 AP 237
[6] ILR 1968 AP 593
[7] (1970) 11 GLR 1009
[8] 2006 (5) ALD 126

with his own opinion thereon for the decision of the Chief Controlling Revenue Authority. On the receipt of the statement of the case and the opinion of the Collector, such authority shall consider the case and send a copy of the decision to the Collector, who shall thereupon proceed to assess and charge the duty in conformity with such decision. The Chief Controlling Revenue Authority may refer the case with its opinion, to the High Court. The question referred shall be decided by the High Court and under Section 59(2), the Revenue Authority shall on receiving the order of the High Court, dispose of the case conformably to such judgment. These sections are part of an integral scheme for ascertaining the quantum of stamp duty and penalty payable on a document which depends upon the interpretation of the document and the provisions of the Stamp Act and which sometimes raise complicated questions thereon. The duty of the Collector is, therefore, a judicial one and the fact that a hierarchy of tribunals is provided for emphasizing that fact. Though Section 40 does not in terms say that the opinion of the Collector should be expressed and implemented, after giving notice to parties, the principles of natural justice require that it should be done so."

Hence, this Court cannot take a different view. The next point that remains for consideration is regarding survival of cause of action in spite of termination of proceedings before the civil Court.

In the instant case, the third respondent itself filed a Memo for impounding the document and sending the document to the District Registrar for a decision on proper stamp duty. The District Registrar after obtaining clarification from the Inspector General of Stamps sent back the document stating that the stamp duty paid on the document was proper. In such circumstances, though the petitioners are parties to the document, they are not aggrieved parties. This is not a dispute between the petitioners and the third respondent, but it is a matter relating to collection of revenue by the Government on the document executed by them. When the Government felt that the stamp duty was proper, nobody is aggrieved. If the District Registrar thought it fit to collect additional stamp duty, then the aggrieved party can allege violation of principles of natural justice and prefer an Appeal to the competent Revenue authority. The Scheme of the

Act, as noticed by the Full Bench of this Court, makes it clear with regard to the hierarchy of the authorities. When the District Registrar sent back the document to the Civil Court, which sent the document and the document was taken back by the third respondent consequent to the termination of the proceedings, the challenge by the petitioners to the decision of the District Registrar in the present writ petition, in my view, is totally misconceived and not maintainable. The decisions relied on by the learned counsel for the petitioners do not lay down any law to the contrary holding that the proceedings of the District Registrar at the instance of the petitioners can be challenged in writ proceedings independent of the proceedings of the Civil Court.

The writ petition is accordingly dismissed with costs of Rs.10,000/- (Rupees ten thousand only) payable to the Telangana Legal Services Authority, Hyderabad within 30 days. Consequently, miscellaneous petitions pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

07.08.2017
pln