IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 16248 OF 2025 (GM-CPC)

BETWEEN:

HASSAN DIST STATE GOVERNMENT EMPLOYEES HOUSING CONSTRUCTION CO OPERATIVE SOCIETY LIMITED, SITUATED IN FRONT OF GANDADA KOTI, R.C.ROAD, HASSAN, 573201, REP. BY ITS PRESIDENT B.J.BOREGOWDA SECRETARY SMT. PALLAVI.D

…PETITIONER

(BY SRI. GIRISH B BALADARE., ADVOCATE)

AND:

1. K M KUMUDINI
   W/O. M.N. PARAMASHIVAPPA,
   AGED ABOUT 68 YEARS,
   R/O HOUSING NO. 786,
   SAMPIGE ROAD,
   K.R. PURAM,
   HASSAN -573 201

2. ABHIJITH P MERVE,
   S/O M N PARAMASHIVAPPA,
   AGED ABOUT 42 YEARS,
   R/O HOUSING NO. 786,
   SAMPIGE ROAD, K.R. PURAM,
   HASSAN 573 201

3. AKSHATHA P MEREVE
   D/O M N PARAMASHIVAPPA,
   AGED ABOUT 34 YEARS,
   R/O G803, NCC MADOWS 2,
   DODDABALLAPURA ROAD,
   YALAHANKA, BENGALURU 560063.

…RESPONDENTS

(BY SRI. VIRUPAKSHAIAH P.H..,ADVOCATE FOR R1 TO R3)

Digitally signed by CHANDANA B M
Location: High Court of Karnataka

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO-QUASH THE ANNEXURE -F IE., ORDER DATED 11.04.2025 PASSED BY THE PRL. SENIOR CIVIL JUDGE AND CJM AT HASSAN IN O. S 191/2020.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

This petition by the plaintiff No.1 in O.S.No.191/2020 is directed against the impugned order dated 11.04.2025 passed by the Principal Senior Civil Judge and CJM, Hassan, whereby the trial Court directed the Agreement dated 12.03.2018 and Joint Development Agreement dated 14.06.2017 to be referred to the District Registrar to determine the deficit stamp duty and penalty.

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. A perusal of the material on record will indicate that the petitioner-plaintiff instituted the aforesaid suit against the respondents-defendants for specific performance and other reliefs in relation to the suit schedule immovable properties.

4. The said suit having been contested by the respondents-defendants, when the matter was set down for

evidence, in addition to other documents, the petitioner-plaintiff also produced Agreement dated 12.03.2018 and Development Agreement dated 14.06.2017, at which stage, the trial Court passed an order 08.11.2024 directing impounding of the Agreement dated 12.03.2018 and directed the petitioner-plaintiff to pay duty and penalty, in all a sum of Rs.5,71,615/-.

5. Aggrieved by the said order, the petitioner approached this Court in W.P.No.31603/2024, which was allowed and disposed of as hereunder:

> *"This petition is filed by the plaintiff under Article 227 of the Constitution of India, challenging the order dated 08.11.2024 passed by Prl.Senior Civil Judge and CJM, Hassan in O.S.No.191/2020, whereby the agreement dated 12.03.2018 is impounded under the Stamps Act, directing the office to collect the stamp duty and penalty totally in a sum of Rs.5,71,615/-. Aggrieved by that order, petitioner is before this Court.*
>
> 2. *The plaintiff has filed the suit for specific performance. The Court has taken suo-motu proceedings for impounding the agreement dated 12.03.2018 relied upon by the plaintiff and impounded the documents and calculated that the plaintiff has to pay stamp duty of Rs.52,475/- and penalty in total plaintiff has been ordered to pay a sum of Rs.5,71,615/-.*

3. *Learned counsel for the petitioner has contended that in view of judgment of Apex Court in* ***Shakeel Pasha and Ors. Vs. M/s City Max Hotels India Pvt. Ltd*** *in Civil Appeal No.2139-2040/2024 disposed on 12.01.2024 and judgment of this Court in W.P.No.102296/2022 disposed on 09.08.2024, the trial Court has no jurisdiction to calculate the stamp duty and collect the penalty of impounding documents. Under the Stamp Act, it is the District Registrar who has to determine the stamp duty. Further, the principles of law laid down by Apex Court in the above referred judgments has not been disputed by the respondents/defendants. In view of the above the following:*

ORDER

(i) *Writ petition is allowed.*

(ii) *The order dated 08.11.2024 passed by Prl.Senior Civil Judge and CJM, Hassan in O.S.No.191/2020 is set aside.*

(iii) *The trial Court is directed to send the agreement dated 12.03.2018 to the District Registrar to determine the deficit stamp duty and penalty payable, upon the receipt of compliance certificate from the District Registrar. The trial Court is directed to proceed with the matter.*

(iv) *Other than that, all objections available to the respondents is left open for consideration."*

6. In pursuance of the aforesaid order passed by this Court, the trial Court passed the impugned order directing the Agreement dated 12.03.2018 as well as the Joint Development Agreement dated 14.06.2017 to be sent to the District Registrar to determine deficit stamp duty and penalty by holding as under:

> *ORDERS ON PAYMENT OF STAMP DUTY AND PENALTY:*
>
> *The plaintiff has filed this suit seeking the relief of Specific Performance of Contract and the case is set down for evidence on behalf of the plaintiff and at this juncture, the plaintiff has produced Sale Agreement dated 18.06.2017, 12.03.2018 and an agreement with respect to development of schedule property dated 14.06.2017. The learned counsel for the defendant objected to mark the said documents as the plaintiff has not paid the proper stamp duty on those documents.*
>
> *2. This Court on 08.11.2024 ordered the plaintiff to pay necessary stamp duty and penalty of Rs.5,71,615-00 on the sale agreement dated 12.03.2018. Against the said order the plaintiff preferred writ petition before the Hon'ble High Court of Karnataka in W.P.No.31603/2024 and the Hon'ble High Court directed this Court to send the agreement dated 12.03.2018 to the District Registrar to determine the deficit stamp duty and penalty. The learned*

counsel for the defendant further argued that not only the sale agreement dated 12.03.2018, but the development agreement dated 14.06.2017 also needs to be sent to the District Registrar to determine the deficit stamp duty and penalty. It is specifically argued that, since the said agreement is a development agreement and, as per Article 5(f) of the Karnataka Stamp Act, the plaintiff has to pay necessary Stamp Duty and Penalty on the said develop agreement also.

3. On the other hand, the learned counsel for the plaintiff submitted that the said agreement need not to be sent to the District Registrar to collect the necessary duty and penalty and the Hon'ble High Court of Karnataka has directed only to send the Sale agreement dated 12.03.2018 and prays to send only the said agreement dated 12.03.2018 accordingly, to the District Registrar to determine the deficit stamp duty and penalty. On going through the order passed in W.P.No.31603/2024, Hon'ble High Court of Karnataka has directed this Court to send the agreement dated 12.03.2018 to the District Registrar to determine the deficit stamp duty and penalty. Further the Hon'ble High Court of Karnataka also has ordered that all objections available to the respondents are left open for consideration. Accordingly, the defendant has taken contention that the development agreement dated 14.06.2017, also needs to be sent to the District Registrar for determination of deficit stamp duty and penalty. As rightly argued by the learned counsel for the defendant, the plaintiff also relied upon the said development agreement

dated 14.06.2017. As per Article 5(f) of Karnataka Stamp Act, the plaintiff also has to pay necessary stamp duty and penalty since it is an unregistered document.

4. The provisions of Article 5(f) states that, if the description of instrument relating to giving authority or power to a developer by whatever name called, for construction or, development or sale or transfer (in any manner what so ever) of any immovable property, the stamp duty is to be paid on the market value of the property. As such, here in this case also the plaintiff is relying upon the said agreement dated 14.06.2017 and he has to pay necessary stamp duty and penalty along with sale agreement dated 12.03.2018. Hence, I proceed to pass the following:

ORDER

Office is hereby directed to send the agreement dated 12.03.2018 development agreement and dated 14.06.2017 to the District Registrar to determine the deficit stamp duty and penalty.

Further the District Registrar is requested to determine the necessary stamp duty and penalty on the above said agreement deeds within short period and submit the report as early as possible within next date of hearing.

Call on 03.05.2025."

7. Learned counsel for the petitioner submits that having regard to the earlier order passed in WP No.31603/2024, directing

the District Registrar to calculate/quantify the deficient stamp duty and penalty payable only on the agreement dated 12.03.2018, the trial Court committed an error in directing one more document i.e., the Joint Development Agreement dated 14.06.2017 also to the District Registrar, which is impermissible in law and contrary to the earlier order passed by this Court and as such, the impugned order insofar as it directs the Joint Development Agreement dated 14.06.2017 to be sent to the District Registrar for calculation of deficit stamp duty and penalty deserves to be set aside.

8. Per contra, learned counsel for the respondents would place reliance upon the provisions contained in Sections 33 and 34 of the Karnataka Stamp Act and the principles enunciated by the Division Bench of this Court in the case of ***Sandra Lesley Anna Bartels versus P. Gunavaty-ILR 2013 Kar 368,*** in order to point out that the petitioner having undisputedly produced the Joint Development Agreement dated 14.06.2017, the trial Court is fully justified in directing the said document also to be referred to the District Registrar for calculation of deficit stamp duty and penalty and the impugned order passed by the trial Court does not warrant interference by this Court in the present petition.

9. It is well settled law that the moment a document is produced before a Court or any Authority entitled/empowered in law to receive evidence, the said Court/Authority would be *suo motu* entitled to refer the matter to take necessary steps to impound the said documents for the purpose of calculating the deficit stamp duty and penalty in terms of Sections 33 and 34 of the Karnataka Stamp Act.

10. In ***Gunavathy's*** case supra, the Division Bench of this Court has categorically held that the said act of impounding and referring the document for calculation of duty and penalty would be exercisable irrespective of the fact as to whether the said document is sought to be relied upon by the party producing the document or not. In the said ***Gunavathy's*** case supra, the Division Bench held as under:

> *This writ petition is referred to the Bench pursuant to an order dated 11.10.2012 passed by a learned single Judge of this Court.*
>
> *2. The question that arose before the learned Judge in the writ petition is in respect of "impounding an insufficiently stamped document". According to the defendant, in view of Section 33*

of the Karnataka Stamp Act, 1957, the moment an insufficiently stamped document is produced before the Court, Court has to impound the same. It was contended by the plaintiff that, the question of impounding of an insufficiently stamped document would come into play only when a party intending to rely upon such document tenders in his evidence.

3. The learned City Civil Judge considering the rival contentions relying upon the judgment of this Court in Lakshminarayanachar –vs- Narayan and another reported in 1969 (2) MLJ 299 rejected the contention of the defendant holding that, Court can impound the document only when the same is tendered during the course of the evidence.

4. Aggrieved by the same, the defendant has filed the writ petition.

5. The learned single Judge having noticed that, in K.Dinesh –vs- Kumaraswamy another learned single Judge in W.P.No.10441/2008 dated 30.08.2010 has ruled that, a document can be impounded in terms of Section 33 of the Karnataka Stamp Act, the moment it comes to the attention of the Court and the Court need not wait till the document is tendered in evidence. Considering the conflict of decisions in Lakshminarayanachar and K.Dinesh,

he was of the opinion that the matter has to be considered by a larger Bench. Accordingly, the matter is listed before us.

6. We have heard the learned counsel appearing for the parties.

7. In order to appreciate the rival contentions and decisions relied upon by the respective parties, we feel it appropriate to consider the provisions of Sections 33 and 34 of the Karnataka Stamp Act, 1957 which reads as hereunder:

> *"Section 33: Examination and impounding of instruments – (1) Every person having by law or consent of parties authority to receive evidence, and every person in-charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*
>
> *(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State of Karnataka when such instrument was executed or first executed:*
>
> *Provided that, -*

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(b) in the case of a Judge of the High Court, the duty of examining and impounding any instrument under this Section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this Section, in cases of doubt, the government may determine:-

(a) what offices shall be deemed to be public office; and

(b) who shall be deemed to be persons in charge of public offices.

Instruments not duly stamped inadmissible in evidence, etc. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that, -

(a) any such instrument not being an instrument chargeable with a duty not exceeding fifteen naye paise) only, or a mortgage of crop (Article (35)(a) of the Schedule) chargeable under Clauses (a) and (b) of Section 3 with a duty of twenty- five naye paise shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(d) no thing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the (Deputy

Commissioner, or where it bears the certificate of the (Deputy Commissioner) as provided by Section 32 or any other provision of this Act (and such certificate has not been revised in exercise of the powers conferred by the provisions of Chapter VI).

8. This Court while considering the case of Lakshminarayanachar has considered the provisions of Sections 33 to 37 of the then Mysore Stamp Act. In Paragraph No.5 of the judgment, while considering sub-section (1) of Section 33 of the Stamp Act, his Lordship Narayana Pai, J., as he then was has ruled as hereunder:

"5. Under Sub-section (1) of Section 33

Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him, that such instrument is not duly stamped, impound the same".

There is no doubt that a Civil Court or the Presiding officer of a Civil Court will certainly answer the description of "a person having by law authority to receive evidence". The Munsiff in this case, therefore, will be entitled to, or more accurately, bound to impound the document if by looking into it, he entertains an opinion that it is liable to stamp duty but that it is either not

stamped at all or is insufficiently stamped".

9. In Dinesh case, the learned single Judge of this Court while considering the provisions of Sections 33 to 38 and 41 of the Karnataka Stamp Act and also other relevant provisions of the Registration Act came to the conclusion that, in view of Section 33 of the Karnataka Stamp Act, a Court can impound the document without waiting till such document is sought to be produced in evidence.

10. The respondent counsel has also relied upon another judgment of this Court reported in 2010 (6) Kar.L.J. 166 (S.Suresh –vs- L.Pothe Gowda and others) wherein the learned single Judge while dealing with Section 34 came to the conclusion, under what circumstances a document can be impounded when the same is tendered in the evidence. Considering all the three judgments relied upon by the respective parties and considering the provisions of Sections 33 and 34, we are of the view that this Court in Lakshminarayanachar case and Dinesh case while considering the provisions of Section 33 has clearly held that, a power is vested in the Court to impound the document if it is insufficiently stamped the moment it is produced before the Court. Under Section 34 of the Act, when such a document is to be received in evidence, the Court has got powers

to impound the document before admitting the document.

11. There are two different circumstances under the Stamp Act for impounding a document; (1) the Court has power to impound the document, moment it appears to the Court that such instrument is not duly stamped and (2) or to wait till such document is tendered in the evidence. A combined reading of Sections 33 and 34 clearly reveal that a discretion is granted to the Court either to impound the document under Section 33 before the same is tendered in evidence and even if a document is not impounded under Section 33, the Court is bound to impound the document when the same is tendered in the evidence under Section 34. In other words, the Court cannot say that it will wait till the document is tendered in the evidence. It is only an option given to Court to exercise the power under Section 33 & 34 but the difference between Sections 33 and 34 is that, Section 34 can be enforced by a Court when a document has to be received in the evidence but Section 33 can be invoked not only by the Court, but by every person invoked not only by the Court, but, by every person in-charge of a public office. A person in-charge of a public office has no power to exercise the power vested under Section 34 of the Act.

12. Court cannot say that it would impound the document only when the document is tendered in evidence for marking. There may be instances where duty and penalty payable may be very high and the party may not choose to rely upon such insufficiently stamped document in order to avoid stamp duty and penalty. In such circumstances, it would result in loss of revenue to the exchequer. The power of impounding a document is to collect stamp duty and penalty whenever there is an escape of duty. Therefore, when it is brought to the notice of the Court that a document is insufficiently stamped, the Court exercising its power under Section 33 of the Act has to pass an order at the first instance for impounding the document. Though there is a discretion vested in the Court to exercise powers under Sections 33 and 34 of the Act, no Court can hold that it would wait till the document is tendered in evidence. In such circumstances, there may be chances of loss of revenue to the exchequer.

13. In the circumstances, we answer the reference "holding that under Section 33 of the Stamp Act, the moment an insufficiently stamped instrument comes to the notice of the Court, the same has to be impounded in accordance with Section 33, whether the same would be relied

upon by the party under Section 34 or not".

14. We further clarify that, on careful reading of the judgment in Lakshminarayanachar's case also this Court has held that the Court has power to impound the document under Section 33. In this background, we are of the view that, there is no conflict of judgments in interpreting Section 33 but the question is when Sections 33 and 34 has to be exercised by the Court which have been answered in the preceding paragraphs.

15. Accordingly, the writ petition is allowed.

The order dated 07.07.2012 passed on I.A.No.9 in O.S.No. 27376/2009 by the City Civil Judge, Mayo Hall, Bangalore is set aside directing the City Civil Judge, Mayo Hall, Bangalore to impound the document in accordance with Section 33 of the Stamp Act and proceed with the matter in accordance with law."

11. In the instant case, it is an undisputed fact that the petitioner not only produced the sale agreement dated 12.03.2018, which was directed to be referred to the District Register by this Court in WP No.31603/2024, but the petitioner had also produced the Joint Development Agreement dated 14.06.2017, which was

also produced from his custody and possession. Under these circumstances, notwithstanding the fact that the petitioner would rely or not rely upon the said document, I am of the considered opinion that in the light of the provisions contained under Sections 33 and 34 of the Karnataka Stamp Act and the principles enunciated by the Division Bench in ***Gunavathy's*** case supra, the trial Court was fully justified in directing both documents i.e., the Agreement dated 12.03.2018 and Joint Development Agreement dated 14.06.2017 for calculation/determination of deficit stamp duty and penalty payable on both the documents.

12. In view of the aforesaid facts and circumstances, upon re-appreciation, re-evaluation and reconsideration of the entire material on record, I am of the considered opinion that the impugned order passed by the trial Court cannot be said to suffer from any illegality or infirmity nor can the same be said to be capricious or perverse or having occasioned failure of justice, warranting interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India as held by the Apex Court in the cases of ***Radhey Shyam Vs. Chhabi Nath –*** (***2015) 5***

SCC 423, K.P. Natarajan Vs. Muthalammal – AIR 2021 SC 3443 and Mohammed Ali Vs. Jaya – (2022) 10 SCC 477.

13. In the result, I pass the following:

ORDER

i) The petition is hereby dismissed.

ii) Liberty is reserved in favour of the petitioner to approach this Court once again in the event he is aggrieved by the calculation of stamp duty and penalty adjudicated upon by the authorities.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

MDS
List No.: 1 Sl No.: 40