

THE STATE OF KARNATAKA & ORS.

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v.

VIVEKANANDA M. HALLUR & ORS.  
(Civil Appeal Nos. 8803-8805 of 2012)

DECEMBER 07, 2012

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[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

*Karnataka Stamps Act, 1957.– Schedule, Article 5(e)(i) – Explanation (ii) – Stamp duty – Levy of – On Sale Deed – On the basis of market value of the property on the day of the execution – Writ petition seeking refund of the stamp duty – Single Judge of High Court allowing the petitions and directing refund – Writ appeal – Filed after delay of 449 days – Division bench of High Court dismissing the appeal on the ground of delay as well as on merit – On appeal, held: Delay in filing writ appeal ought to have been condoned – Since the Division Bench did not advert to the substantial ground urged by the State, matter remitted to High Court for consideration afresh on merit.*

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**A ‘Sangha’ regisstered under Karnataka Societies Registration Act, 1960 allotted residential sites to its members (respondents) by executing Lease-cum-sale Agreements. The lease period was for 10 years. The agreements were registered after payment of the required stamp duty. After completion of the lease period, Absolute Sale Deeds were executed and then presented for registration. While registering the sale deeds. Stamp duty was collected on the market value of the property on the day of execution of the deed and after adjusting the stamp duty paid on Lease-cum-Sale Agreements. Thereafter, respondent Nos. 1 to 3 filed writ petitions seeking refund of stamp duty paid on the Absolute Sale Deeds. Single Judge of High Court held that the respondents were not liable to pay the stamp duty on the amount shown as**

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A consideration in the Absolute Sale Deeds and were entitled to refund thereof. The writ appeal thereagainst was dismissed by the Division Bench of High Court on the ground of delay as well as on merits.

B In appeal to this Court, respondent Nos. 4 to 32 were impleaded. The question for consideration in the appeal were, whether the State had shown sufficient cause for condoning the delay in filing writ appeals; whether the Division Bench was correct in directing the State to repay the amount collected as stamp duty, when Article 5(e)(i)  
C Explanation (ii) of Karnataka Stamps Act, 1957 states that the amount collected on the sale or Lease-cum-Sale Deed shall be adjusted towards the total duty leviable on the conveyance?

D Allowing the appeals, the Court

HELD: 1. The reasons for the delay of 449 days in filing the appeals before the Division Bench of High Court show that how the delay occurred. In view of the reasons stated therein and in the light of the issues to be  
E considered by the Division Bench of High Court as well as the financial implication on the State Exchequer, the reasons stated for the delay cannot be rejected as unacceptable. The Division Bench of the High Court ought to have condoned the delay and gone into the  
F merits of the matter in the light of the provisions of the Karnataka Stamp Act, 1957. [Paras 7 and 8] [254-F-H; 255-A-B]

2. The Division Bench of High Court has not adverted  
G to any substantial grounds urged by the State, particularly with reference to the provisions of Article 5(e)(i) and Explanation (ii) of the Karnataka Stamp Act, 1957. Therefore, the order of the Division Bench is set aside and the matter is remitted to the High Court for fresh  
H consideration. The High Court is requested to restore

W.A. Nos. 1023, 1324 and 1325 on its file and dispose of the same on merits in accordance with law, after affording opportunity to all the parties including the newly impleaded respondent Nos. 4 to 32 as well as the connected writ petitions pending before the High Court. [Para 9] [255-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8803-8805 of 2012.

From the Judgment and Order dated 19.06.2009 of the High Court of Karnataka at Bangalore in WA No. 1023, 1324 and 1325 of 2009.

P.P. Rao, Basava Prabhu S. Patil, B.S. Prasad, Anirudh, V.N. Raghupathy, Purushottam Sharma Tripathi, Filza Moonis, Akshat Kulshrestha, Mohan Pandey, Chandra Sekhar and Anajana Chandrashekar for the appearing parties.

The Judgment of the Court was delivered by

**P. SATHASIVAM, J.** 1. Leave granted.

2. These appeals are directed against the final judgment and order dated 19.06.2009 passed by the High Court of Karnataka at Bangalore in Writ Appeal Nos. 1023, 1324 and 1325 of 2009 whereby the Division Bench of the High Court dismissed the appeals on the ground of delay as well as on merits.

### 3. Brief facts :

(a) Respondents herein are the members of Kendriya Upadhyayara Sangha (R) (in short 'the Sangha'), Bangalore South Taluk, registered under the Karnataka Societies Registration Act, 1960. The Sangha was granted certain land at Jakkasandra Village, South Taluk by the State of Karnataka in order to provide house sites to its members. The sole object of the Sangha is charitable and to protect the interest of its

A members and not to form the sites and allot to its members with a profit motive.

B (b) According to the appellant-State, the Sangha has allotted residential sites to its members including the respondents herein by executing Lease-cum-Sale Agreements in their favour after receiving the full sale consideration. The said agreements were registered in the office of sub-Registrar, Bangalore South after paying the required stamp duty.

C (c) Under the above said Lease-cum-Sale Agreements, the lease was for a period of 10 years and after completion of the said period, respondents herein approached the Sangha and requested them to execute the Absolute Sale Deeds in their favour in respect of their sites. The Sangha agreed to execute the same and the Absolute Sale Deeds were presented for D registration before the sub-Registrar, Bommanahalli. The sub-Registrar, while registering the sale deeds, has collected the stamp duty on the market value prevailing on that day of execution of the same after adjusting the stamp duty paid on E Lease-cum-Sale Agreements. After registration of the documents of sale, the respondents herein approached the High Court by filing writ petitions seeking refund of stamp duty paid on the absolute Sale Deeds.

F (d) Pursuant to the writ petitions filed by the respondents, the State Government filed a detailed statement of objections and contended that the Sangha is registered under the Registration Act, hence, the Sangha has no right to form the sites and allot the same to its members and, there is no exemption under the Karnataka Stamp Act, 1957 (hereinafter referred to as "the Act") for any Lease-cum-Sale Agreement G executed by the Sangha. Under the Act, only a site allotted by a House Building Co-operative Society can claim exemption. It is the claim of the State that the authorities have rightly collected the stamp duty on the sale deed treating it as a H principal document.

(e) Learned single Judge, by order dated 11.12.2007, in the writ petitions being Nos. 16777, 19358 and 19359 of 2005 filed by respondent Nos.1-3 herein held that the stamp duty collected by the authorities on Lease-cum-Sale Agreement falls under Article 5(e)(i) of the Schedule to the Act, therefore, it is a sale agreement with possession, hence, the stamp duty paid is as per the provisions of the Act. Therefore, when the documents are placed for registration as a sale deed, they have to pay the stamp duty of the property on the market value as on that day of execution of the sale deed but they are entitled to claim deduction of the amount which they have already paid on the Lease-cum-Sale Agreement. However, the learned single Judge further held that, (a) the petitioners therein are not liable to pay stamp duty on the amount shown as consideration in the absolute sale deeds; and (b) they are entitled to refund of the amount imposed and collected as stamp duty on the absolute sale deeds.

(f) Aggrieved by the said directions, the State filed appeals being W.A. Nos. 1023, 1324 & 1325 of 2009 before the Division Bench of the High Court. It was contended before the Division Bench that the finding given by the learned single Judge in the impugned order that in view of the provisions of Article 5(e)(i) of the Schedule to the Act, when the stamp duty and the registration fee had been collected on the Lease-cum-Sale instrument treating it as the possession of the property which has been handed over at the time of executing Lease-cum-Sale Deed, the question of collecting the stamp duty and registration charges on the absolute deeds after the expiry of the Lease-cum-Sale Agreement is only a supplement and could not arise.

(g) The Division Bench, by impugned order dated 19.06.2009, dismissed the writ appeals filed by the State both on the ground of delay as well as on merits.

(h) Against the said order, the State has filed the present appeals by way of special leave petitions.

A 4. This Court, after issuance of notice on the applications for impleadment (I.A.Nos. 4-6), by order dated 18.02.2011 impleaded respondent Nos. 4-32.

B 5. Heard Mr. Basava Prabhu S. Patil, learned senior counsel for the appellant-State, Mr. Chandra Sekhar, learned counsel for respondent Nos. 1 & 3 and Mr. P.P. Rao, learned senior counsel for newly impleaded respondent Nos. 4-32.

6. The following questions which arise for consideration in these appeals are:

C (i) Whether the State has shown sufficient cause for condoning the delay of 449 days in filing writ appeals against the order of the learned single Judge, who allowed the writ petitions?

D (ii) Whether the Division Bench was justified in simply affirming the order of the learned single Judge in directing the State to repay the amount collected as stamp duty when Article 5(e) Explanation (ii) has held that the amount collected on the sale or Lease-cum-Sale Deed shall be adjusted towards the total duty leviable on the conveyance? And

E (iii) Whether the order of the High Court is contrary to the provisions of Article 5(e)(i) and Explanation (ii) of the Karnataka Stamp Act, 1957?

F 7. First of all, we were taken through the reasons stated for the delay of 449 days in filing the appeals before the Division Bench against the order of the learned single Judge. The application for condonation of delay in filing appeals was supported by an affidavit of sub-Registrar, Peenya, Bangalore North Taluk. A perusal of the application and the reasons stated therein show that how the delay has occurred. But after going through the reasons stated therein and in the light of the issues to be considered by the Division Bench as well as the financial implication on the State Exchequer, we are of the view that the reasons stated for the delay cannot be rejected as unacceptable.

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8. the issues raised and the positive direction given by the learned single Judge, we are of the view that the Division Bench of the High Court ought to have condoned the delay and gone into the merits of the matter in the light of the provisions of the Karnataka Stamp Act, 1957. Though the High Court concentrated only on narrating the pleadings of the parties, reasoning of the learned single Judge and cause shown for condoning the delay, but has not considered the substantial grounds urged by the State. As rightly pointed out by learned senior counsel for the State that though in the last paragraph there is some reference about the reasoning of the learned single Judge, not much attention was given on the merits of the claim made by the State.

9. On these grounds, without expressing anything on merits of the claim of either party, we condone the delay in filing the writ appeals and in the light of our conclusion that the Division Bench has not adverted to any substantial grounds urged by the State, particularly with reference to the provisions of Article 5(e)(i) and Explanation (ii) of the Karnataka Stamp Act, 1957, we set aside the order of the Division Bench impugned in these appeals and remit the same to the High Court for fresh consideration. We request the High Court to restore W.A. Nos. 1023, 1324 and 1325 on its file and dispose of the same on merits in accordance with law, after affording opportunity to all the parties including the newly impleaded respondent Nos. 4-32 herein as well as the connected writ petitions pending before the High Court, preferably within a period of six months from the date of receipt of copy of this judgment. Once again, we make it clear that except adverted to the stand of the State, we have not expressed our views on any of the claims and it is for the Division Bench of the High Court to consider their respective claims in accordance with law as observed supra.

10. The appeals are allowed. There shall be no order as to costs.

K.K.T.

Appeals allowed.