

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**



DATED THIS THE 15TH DAY OF DECEMBER 2022

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

WRIT PETITION No.112448/2017 (GM-CPC)

BETWEEN:

Shri Anil S/o. Ramachandra mashalkar,
Age 40 years, Occ: Private Service,
R/o.: Navanagar, Bagalkot.

... Petitioner

(By Shri Srinand A.Pachhapure, Advocate)

AND:

1. Shri Babu S/o. Hasansab Kadakol,
Age 65 years, Occ: Business,
R/o.: Plot No.309, Sector No.18, Near
Telephone Tower, Navanagar, Bagalkot.
2. Shri Ashok S/o. Venkanna Narayani,
Age 55 years, Occ: Business,
R/o.: Plot No.69, Sector No.55,
Navanagar, Bagalkot.

... Respondents

(By Shri Rajashekhar Burji, Advocate for R2;
Respondent No.1 – served)

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India, praying to quash the order dated 27.11.2017, passed by the Court of Prl. Senior Civil Judge, Bagalkot on I.A. No.XIV in O.S. No.131/2012, marked at Annexure-A.

This Writ Petition, having been heard and reserved for orders, coming on for pronouncement, this day, the Court made the following:

ORDER

1. An order of the Trial Court directing the Office to impound a document, which was admitted in evidence as Ex.P1, for collection of stamp duty and penalty, is assailed in this writ petition.

2. On 03.04.2008, an agreement of sale was executed between the petitioner and the first respondent, whereby the first respondent agreed to sell the suit property for a sum of Rs.6,00,000/- (Rupees Six lakhs only). The entire sale consideration was stated to be paid on the date of execution of the sale deed. It was also stated that the possession of the property was required to be delivered at the time of registration of the sale deed, but, the petitioner had come into possession of the property under an irrevocable Special Power of Attorney executed by

the first respondent on the same day. The agreement also contained a clause that the first respondent would execute the registered sale deed at the convenience of the parties and as demanded by the petitioner.

3. On 12.12.2012, the petitioner instituted a suit seeking for specific performance of the agreement of the sale deed dated 03.04.2008. During the pendency of this suit, the suit property was conveyed to the second respondent on 01.07.2013 and as a consequence, the second respondent was impleaded as the second defendant on 03.02.2014.

4. The second respondent herein filed his written statement on 01.04.2014. Thereafter, a trial was conducted and during the course of the trial, the agreement of sale was admitted into evidence and marked as Ex.P1. During the production of the said agreement of sale, no objections

were raised by either of the defendants for the admission of the agreement of sale into evidence.

5. However, after about 10 months, on 09.02.2015, the second defendant filed an application under Section 34 of the Karnataka Stamp Act, 1957 (for short "the Act, 1957") requesting the Court to pass an order to the effect that the agreement of sale dated 03.04.2008 (Ex.P1) should not be acted upon.

6. In the affidavit accompanying the application, it was stated that the agreement had been admitted in evidence as Ex.P1, though it had been executed on an insufficiently stamped paper, which violated Section 33(1) of the Act, 1957 and also the ruling of this Court reported in 2011 (6) KLJ 353.

7. The Trial Court, however, did not pass any order on the said application, as a result of which, the second

respondent, proceeded to file a revision petition before the District Court invoking Section 58 of the Act, 1957.

8. The District Court, after hearing the parties, took the view that when the admissibility of a document on the ground that it was insufficiently stamped was raised, the Trial Court was under an obligation to record its findings on the admissibility of the document and it accordingly allowed the revision and directed the Trial Court to decide I.A.No.14, which had been filed by the second defendant challenging the admissibility of Ex.P1.

9. The Trial Court, pursuant to the order of the District Court, has passed the impugned order holding that the Trial Court had ample power to impound a document for the purpose of collection of stamp duty and penalty, even if the document had already been admitted into evidence. The petitioner is therefore, before this Court questioning the legality of the said order.

10. Shri Srinand A. Pachhapure, learned counsel appearing for the petitioner contended that the Trial Court could not have called into question the admission of the document after it had been admitted into evidence. He contended that the power to impound the document was available to the Court only before it was admitted into evidence and if the Trial Court despite the bar to admit insufficiently stamped instrument, had admitted any instrument, for whatever reason, the same could not be questioned at any stage in the suit on the ground that the document could not have been admitted into evidence.

11. He also contended that the District Court did not have the power under Section 58 of the Act to entertain a revision at the instance of the second defendant and it could not have proceeded to direct the Trial Court to consider the application filed by the second defendant regarding the admissibility of the document. He submitted that exercise of the power of revision under Section 58 of

the Act by the District Court was wholly without jurisdiction and the said order could not confer jurisdiction on the Trial Court to examine the insufficiency of stamp on a document which had already been admitted into evidence.

12. He submitted that the power of revision contemplated under Section 58 of the Act, 1957 could be exercised by the District Court, either *suo moto* or on an application made by the Deputy Commissioner, if and only if, the Trial Court had passed an order:

- (a) admitting any instrument in evidence as either being duly stamped or as not requiring any stamp;
- (b) or upon payment of duty and penalty.

13. He contended that, as a matter of fact, at the time of admission no objection was raised regarding its admissibility on the ground of insufficiency of duty and as a consequence, since neither of the prerequisite conditions prescribed under Section 58 was available to the District Court to invoke its revisional power. He also contended that

District Court had no power to direct the Trial Court to consider the admissibility of Ex.P-1 after the same had been admitted in evidence.

14. He also submitted that this revisional power could be invoked only by the Court, and that too on its own or by the Deputy Commissioner who had been entrusted with the task of safeguarding the State's revenue. He submitted that a party to a *lis* had not been granted the right to invoke the revisional power, which had been reserved only to the Court and the Deputy Commissioner and he therefore submitted that the entertaining of the revision by the District Court at the instance of the 2nd defendant was wholly illegal and totally without jurisdiction.

15. Shri Rajashekhar Burji, learned counsel appearing for respondent No.2, on the other hand, contended that the admissibility of a document and the impounding of a document were two completely different

and unconnected events. He submitted that even if a document had been admitted into evidence, the power to impound it, being independent and distinct, would remain with the Court by virtue of Section 58 of the Act. He submitted that the power of revision could be invoked by the defendant and the District Court had rightly exercised its revisional power under Section 58 of the Act, 1957 and directed the Trial Court to consider the question of impounding Ex.P1.

16. Shri Rajashekhar Burji learned counsel placed reliance on the judgment rendered by this Court reported in ILR 2018 KAR 3029; ILR 2015 KARNATAKA 4185; & W.P. No.26078/2012, disposed off on 9th March 2015

17. A brief overview of the statutory framework in relation to the impounding of instruments under the Karnataka Stamp Act (for short, 'the Act') would be

necessary for the adjudication of the issues involved in this petition.

18. The Karnataka Stamp Act, 1957 is a statute enacted to consolidate and amend the laws relating to the Stamps.

19. Chapter III of the Act deals with "*Adjudication as to Stamps*" and contains 2 sections.

20. Section 31¹ of the Act, 1957 provides for any person to bring to the Deputy Commissioner, any instrument, whether it is executed or not or whether it is stamped or not and call upon him to determine the duty, which in his judgment, is chargeable by paying a sum of Rs.100/-.

21. The Deputy Commissioner is empowered to call upon that person to furnish an abstract of the instrument or

¹ Section 31 of the Act is extracted at the end of the judgment at page Nos.52 & 53.

an affidavit or evidence to prove that all the facts and circumstances affecting the chargeability of the instrument with duty are fully and truly set forth.

22. Section 32² of the Act, 1957 provides for the Deputy Commissioner, to form an opinion that the description of the instrument is chargeable to duty. The Deputy Commissioner may determine whether the instrument is fully stamped or that the duty determined by him is paid and thereafter certify by way of an endorsement on the instrument that the instrument is duly stamped. If the Deputy Commissioner is of the opinion that the instrument is not chargeable to duty, he is also required to certify on the instrument as to why it is not so chargeable.

23. On such certification being made on the instrument, the instrument is deemed to be duly stamped or not chargeable to duty and is receivable as evidence and

² Section 32 is extracted at the end of the judgment in page Nos.53 & 54.

may be acted upon and registered as if it has been originally duly stamped.

24. Thus, the authority to adjudicate as to stamps under the Act is the Deputy Commissioner and on his determination, payment of duty would have to be paid and by his certification by way of making an endorsement on the instrument, the document is deemed to be duly and originally stamped.

25. Chapter-IV of the Act, 1957 deals with "*Instruments not duly Stamped*" and contains 18 sections. Section 33 to 41 deal with the examination and impounding of documents and the manner in which the impounded documents are to be dealt with. Section 42 to 44 provides for prosecution for offence under stamp law, for persons paying duty and penalty to recover the same and power to refund penalty in certain cases. Section 46 to 46B provides

for recovery of duties and penalties, stamp duty not levied or short levied and for duty and penalties to be certified.

26. Section 33³ of the Act, 1957 states that whenever an instrument is produced before the impounding officer (i.e., every person having by law or consent of parties authority to receive evidence or a person in charge of a public officer), an obligation is cast on him to examine whether the instrument produced before him was duly stamped or not. If the impounding officer is of the view that the instrument produced before him, is not duly stamped, he is obliged to impound the same. The impounding officer is required to ascertain whether the instrument is stamped with a stamp of the value and description, as required by law, in Karnataka.

27. To put it differently, though normally, only the authorities empowered under the Stamp Act are permitted

³ Section 33 of the Act is extracted at the end of the judgment at page No.54.

to examine whether an instrument is sufficiently stamped or not, by way of an exception, Section 33 confers the power on the impounding officer to ascertain and form an opinion as to whether the instrument produced before him is duly stamped. If, in the opinion of the impounding officer, the instrument is not duly stamped, he is bound to impound it.

28. Thus, the moment the instrument is produced before the impounding officer and he examines the instrument and forms an opinion that the instrument is insufficiently stamped, he is bound to impound the instrument. It is to be borne in mind Section 33 operates whenever the instrument is produced before the impounding officer.

29. Section 34⁴ of the Act, 1957 deals with a situation when an instrument is not duly stamped instrument is tendered for admission in evidence, or is

⁴ Section 34 of the Act is extracted at the end of the judgment at page Nos.54 & 55.

sought to be acted upon or registered or authenticated by any person. The section expressly creates an embargo on admitting an instrument, which is not duly stamped in evidence. It also creates an embargo on every person to act upon or register or authenticate an instrument, which is not duly stamped. Thus, Section 34 prohibits not only the admission of the instrument in evidence but also prohibits it from being acted upon or registered or authenticated, if it is not duly stamped.

30. There are however four exceptions provided to this embargo under the Proviso. For this case, only the first exception to the Proviso which deals with the admission of an instrument which is not duly stamped in evidence would be relevant and hence only that exception is considered.

31. It is to be noticed here that the embargo is relaxed only for admission of the instrument in evidence and the embargo would operate for the instrument to be

registered or to be acted upon or to be authenticated by any person.

32. Proviso (a) provides for two exceptions for the admission of an instrument, which is not duly stamped in evidence. The 1st exception provides, on payment of duty, for the admission of the following two kinds of instruments in evidence, on payment of duty with which they are chargeable and they are:

- (a) if it's an instrument which is chargeable with a duty of less than fifteen paise
- (b) if it's an instrument pertaining to a mortgage of a crop as provided under Art 35 chargeable with a duty of twenty-five paise

33. The 2nd exception under Proviso (a) provides for admission of an instrument which is insufficiently stamped. It states that such an instrument can be admitted in evidence on payment of the amount required to make up the duty together with a penalty of five rupees. If, however,

the penalty payable exceeds five rupees, the instrument can be admitted into evidence, if a duty of ten times the duty or portion of duty which was deficient is paid.

34. Thus, despite the embargo to admit instruments not duly stamped in evidence, if the person seeking for admission of an insufficiently stamped instrument, offers to pay the duty or penalty, the instrument can be admitted into evidence after collecting the duty and penalty.

35. If, however, the person seeking for admission of an insufficiently stamped instrument in evidence does not offer to pay the duty and penalty as ascertained by the impounding officer, the instrument will have to be impounded by virtue of Section 33.

36. Section 34 does not empower the impounding officer to demand and collect the duty and penalty to be paid on the instrument for admitting the instrument in evidence. It only enables the admission of the insufficiently

stamped instrument in evidence, if the person offers to pay the duty and penalty.

37. Thus, the impounding of an instrument which is not duly stamped is an inevitable event if the instrument is produced before the impounding officer and the impounding officer forms an opinion that the instrument is not duly stamped.

38. However, the impounding of an instrument can be avoided in cases of two kinds of instruments stated in proviso (a) of Section 34 and in cases of an insufficiently stamped instrument, if the person producing the instrument before the impounding officer offers to pay the duty and penalty as provided under Section 34 (a) of the Act.

39. If, however, an instrument is admitted in evidence, the admission of the instrument, by virtue of the

mandate of Section 35⁵ is final and cannot be questioned at any stage of the suit or proceeding on the ground that it has not been duly stamped. Section 35 of the Act reads as under:

40. It is to be noticed here that the power to examine and impound the instrument is only when it is produced before the impounding officer and before the instrument is admitted in evidence. The power to impound the instrument is thereafter unavailable and this is clear from the wording of Section 35, which states the admission of the document cannot be questioned, except as provided under Section 58⁶ of the Act.

41. Section 58 of the Act, provides for the revision of certain decisions regarding the sufficiency of stamps. It states that if a Court, whether it acts in its Civil or revenue jurisdiction or a Criminal Court in any proceeding under

⁵ Section 35 of the Act is extracted at the end of the judgment at page No.55.

⁶ Section 58 of the Act is extracted at the end of the judgment at page No.55 & 56.

ChapXXVI, has admitted any instrument as duly stamped or as not requiring a stamp or on payment of duty and penalty under Section 34, the Court to which an appeal lies from the said decision or to which references are made, then that Court on its own motion or an application of the Deputy Commissioner can consider that order.

42. If that Appellate Court, on consideration of a decision taken by the subordinate court pertaining to the admission of an instrument, forms an opinion that

(a) the instrument should not have been admitted into evidence without the payment of duty and penalty under Section 34 or

(b) the instrument should have been admitted with payment of a higher duty and penalty than that paid

the Court is empowered to record a declaration to that effect and thereafter determine the amount of duty with

which such instrument is chargeable. The Appellate Court is also empowered to require the person in whose possession or power the instrument is to produce it and, on its production, to impound it.

43. Thus, the power to impound an instrument conferred under the Act on a person, other than the officer, is only on four occasions.

44. The first occasion is when an instrument is produced or comes before the impounding officer under Section 33.

45. The second occasion is when the instrument is sought to be tendered in evidence and the person refuses to pay the duty and penalty as provided in Section 34 (a).

46. The third occasion is when the Appellate Court, in the exercise of its revisional power under Section 58 of the Act, is revising a decision made by the subordinate

court regarding the sufficiency of the stamp while admitting the instrument in evidence or

47. The fourth occasion is when the Appellate Court, in the exercise of its revisional power under Section 58 of the Act, is considering an application filed by the Deputy Commissioner seeking for revision of the decision made by the subordinate court regarding the insufficiency of stamp duty while admitting the instrument in evidence.

48. To put it simply, the power to impound an instrument is available once before it is admitted in evidence by the impounding officer and once after it is admitted in evidence by the appellate court, when it is considering a decision rendered by the subordinate court regarding the sufficiency of stamp duty and penalty while admitting the instrument in evidence.

49. The intent behind empowering an impounding officer to impound an instrument not duly stamped,

whenever it is produced before him or is tendered for evidence, is to ensure that the State exchequer is not deprived of its lawfully entitled revenue.

50. The impounding officer, i.e., a person entitled by law or by consent to receive evidence or a person holding a public office, though is not the authority prescribed under the Act to adjudicate as to stamps under the Act, is nevertheless empowered to examine whether the instrument is duly stamped and if it is not duly stamped, an obligation is casted on him to impound it. The impounding officer, in that sense, is acting as an enforcing agent of the State to ensure there is no loss of revenue to the State.

51. It is to be noticed here that the issue of the determination of duty and penalty paid does not come to an end even if the impounding officer impounds the instrument under Section 33 or the impounding officer or admits the instrument in evidence after collecting the duty and penalty

under Section 34. In fact, this is only the first step in the process of determination of duty and penalty.

52. This is because the impounding officer on impounding the instrument is statutorily required to send the impounded instrument to the Deputy Commissioner for determination of the duty and penalty payable under Section 37(1)⁷ of the Act.

53. Even if the impounding officer admits the insufficiently stamped instrument after collecting the duty and penalty as ascertained by him, he is still required to send an authenticated copy of the instrument and along with it, he is also required to send a certificate in writing stating the amount of duty and penalty levied along with the amount collected under Section 37(2).

54. The Deputy Commissioner, in fact, on receipt of an authenticated copy sent to him by the impounding

⁷ Section 37 of the Act is extracted at the end of the judgment at page No.56.

officer under Section 37(1) has been conferred the power under Section 38 to refund any portion of penalty in excess of five rupees which has been paid in respect of such instrument.

55. Thus, in case the impounding officer, which also includes a Court of law, has levied a penalty in excess of five rupees, the Deputy Commissioner, if he thinks it fit, order refund of the penalty in excess of five rupees. This power conferred on the Deputy Commissioner, thereby establishes that the ascertainment of duty and penalty by the impounding officer, which includes a Court of law which can judicially determine the rights of citizens, is only a tentative order, which is capable of modification by the Deputy Commissioner. In that sense, by virtue of Section 38 (1), the decision of a Court is made subject to the orders that may be passed by the Deputy Commissioner who is the prescribed statutory authority to adjudicate as to stamps under Section 31 & 32 of the Act.

56. In cases where the instrument is impounded and sent in original, as required under Section 37(2) to the Deputy Commissioner, Section 39(1)⁸ of the Act prescribes the manner in which it is to be dealt with.

57. Firstly, Section 39 (1) (a) states that if the Deputy Commissioner is of the opinion that the instrument is duly stamped or that it is not chargeable to duty, he is required to certify by making an endorsement on the instrument that it is duly stamped or is not chargeable to duty, as the case may be.

58. Thus, though the impounding officer had formed an opinion under Section 33 that the instrument was not duly stamped and had impounded the document, the Deputy Commissioner is authorized to disagree with the opinion and certify that the instrument is duly stamped or that the instrument is not chargeable to duty.

⁸ Section 39 of the Act is extracted at the end of the judgment at page No.57.

59. Secondly, Section 39 (1) (b) states that if the Deputy Commissioner is of the opinion that the instrument is chargeable to duty and is not duly stamped, he is required to ensure that the required duty or the deficit amount of duty is collected, together with a penalty of five rupees or if he thinks fit, an amount not exceeding ten times the required duty or ten times the deficit duty, irrespective of whether the said sum exceeds five rupees or falls short of five rupees.

60. Thus, in respect of impounded instruments, the Deputy Commissioner must determine whether the instrument is chargeable to duty and if so, whether the instrument is duly stamped or not.

61. If the instrument is duly stamped, he is required to certify that it is duly stamped by making an endorsement on the instrument. If the instrument is not chargeable to

duty, even then, he is required to so certify by making an endorsement on the instrument.

62. If the instrument is found to be not duly stamped, he is required to determine the duty payable, collect the amount of duty payable together a sum of five rupees or with ten times the duty and thereafter make an endorsement on the instrument that the proper duty and penalty (*to be specified separately*) has been paid on the instrument and also the name and address of the person paying the same as contemplated under Section 41(1)⁹ of the Act.

63. Thus, even in respect of instruments impounded, the authority conferred with the power to determine the duty and penalty payable is the Deputy Commissioner, just as in Section 31 of the Act.

⁹ Section 41 of the Act is extracted at the end of the judgment at page Nos.57 & 58.

64. The procedure for determination of duty, even in respect of impounded instruments, is virtually the same as prescribed under Section 31 of the Act, that is when a person is can voluntarily approach the Deputy Commissioner for adjudication of the stamp and get a certificate as to whether it duly stamped or that the duty as determined by the Deputy Commissioner on examination of the instrument him is duly paid.

65. If it is borne in mind that the Act ultimately casts the duty on the Deputy Commissioner, who is the prescribed authority to adjudicate on stamps, whether the instrument is voluntarily furnished to him or if it is impounded and sent to him, it is clear that the opinion formed by the impounding officer regarding payment of duty and penalty can only be a tentative opinion subject to the ultimate determination by the Deputy Commissioner.

66. The fact that the Deputy Commissioner, the prescribed statutory authority for adjudication as to stamps under the Act, determines the duty and penalty payable for impounded instruments and also scrutinizes the decision of the impounding officer regarding the duty and penalty levied and has been authorized to reverse the decision of the impounding officer regarding payment of penalty passed under Section 34 and refund the penalty as provided under Section 38 (1), truly indicates that it is only the Deputy Commissioner who is the definitive authority to decide on the sufficiency or insufficiency of the stamp duty on an instrument.

67. It is also to be noticed here that a certification is also required to be made by the Deputy Commissioner under Section 41 on the instrument after the determination of duty and penalty as provided under Section 39 and 40.

68. Section 41(2) of the Act declares that the instrument which is endorsed by the Deputy Commissioner under Section 41 (1) would be admissible in evidence and could be registered, acted upon or authenticated by any person, as if it is duly stamped. The provision also permits the endorsed instrument could be delivered to the person from whose possession the instrument came into the hands of the impounding officer, on an application made by him.

69. The proviso to Section 41(2) states that the instrument which has been admitted under Section 34 on payment of duty and penalty should not be delivered before the expiration of one month from the date of impounding or until certified by the Deputy Commissioner, that its further detention is necessary.

70. Thus, the impounding officer, even after collecting the duty and penalty and sending it to the Deputy Commissioner cannot deliver possession of the original

instrument for 30 days or till such time that the Deputy Commissioner certifies. This proviso also confirms the fact that the issue of determination of duty and penalty and the possession of the instrument till then, would only be within the power of the Deputy Commissioner.

71. It cannot be therefore in doubt, that the ultimate authority to determine whether an instrument is duly stamped or not, rests only on the Deputy Commissioner and the two acts of impounding officer i.e., forming an opinion that the instrument is not duly stamped and impounding the instrument under Section 33 or the sending of an authenticated copy of the instrument on which duty and penalty is collected as ascertained by the impounding officer under proviso (a) to Section 34, are merely acts in aid of facilitating the exercise of power by Deputy Commissioner in the matter of determination of duty.

72. This conclusion can be fortified by considering the consequences that may emerge in some scenarios relating to an instrument which is not duly stamped.

73. It is quite possible that the person producing an instrument in evidence is not in agreement with the ascertainment of duty and penalty by the impounding officer and may hold the view that no duty is chargeable to the instrument or the duty paid on the instrument is proper. In such a case, he would be entitled to refuse to offer payment of duty and penalty to facilitate the instrument to be admitted in evidence. The said person would probably want the issue regarding proper duty chargeable on the instrument resolved by the adjudicating authority prescribed under the Act, i.e., the Deputy Commissioner.

74. In such cases, the impounding officer would have no option but to impound the instrument and send it to the Deputy Commissioner. This procedure to be followed

would, in fact, entitle a person to seek for determination of duty payable by the prescribed authority and as against such a determination also avail further remedies provided under the Act.

75. If, however, it is to be held that the decision of the impounding officer is final, that would amount to providing no remedy against a probable improper ascertainment of duty that the instrument is chargeable and that would be an incongruous situation.

76. In a scenario of this kind, if the Deputy Commissioner on receipt of the impounded instrument under Section 37 (2) and as empowered under Section 39 (1) (a), proceeds to determine that the instrument is not chargeable to duty or determines that it is duly stamped or that the duty and penalty collected was correct or was incorrect and a higher sum was required to be paid and collects the deficit, it would ultimately ensure that the

prescribed authority under the Act ensures that the revenue of the State is safeguarded and at the same time also ensure that the citizen is not prejudiced by a wrongful determination of the duty payable.

77. Chapter VI of the Act which provides for Reference and Revision does not provide for any provision which enables the person producing the instrument for being admitted in evidence to challenge the decision taken by the impounding officer against the determination of the duty and penalty. This situation cannot obviously be lawfully acceptable, especially when a person is forced to pay duty and penalty.

78. Section 53A of the Act provides for filing a revision against the order of a Deputy Commissioner passed under any of the provisions of the Act. Thus, if the impounded instrument or an authenticated copy of the impounded instrument is sent to the Deputy Commissioner

for determination of duty and penalty, then, such a decision would be amenable to a remedy of revision and this would be in consonance with settled legal principles of providing a remedy for rectifying a wrong.

79. Yet another factor to be considered is the possible misuse of the power by the impounding officer while determining the duty and penalty. If, for instance, an impounding officer, which could also be a person holding a public office, either by design or by ignorance, levies a lesser duty and penalty prescribed under law and allows the instrument to be acted upon, registered or authenticated, that would basically amount to a deprivation of revenue that the State was lawfully entitled to and would amount to facilitating the perpetuation of illegality.

80. It is also equally possible that a impounding officer may misuse the situation to cause harm to a person seeking to produce the instrument in evidence by

demanding a higher duty and penalty than the State is entitled solely to harass the citizen, that person would be put to severe prejudice.

81. It is for this reason that the duty chargeable on an instrument is to be ultimately determined by the Deputy Commissioner as provided under Act and the decision taken by the impounding officer would always be a tentative decision capable of correction by the Deputy Commissioner.

82. Another important factor which would establish that the ultimate duty to determine the duty with which the instrument is chargeable is on the Deputy Commissioner is the certification that is required under the statute on an instrument. An impounding officer collecting the duty and penalty is not empowered to endorse on the instrument that the instrument is duly stamped by virtue of the duty and penalty collected by him. Under the Act only on a certification made by the Deputy Commissioner can the

instrument be acted upon, registered or authenticated and be admissible in evidence. Thus, this mandatory certification by the Deputy Commissioner under Section 41 of the Act, results in curing the defect of insufficiency of stamp, and establishes that the definitive authority to adjudicate as to the stamps on an instrument is the Deputy Commissioner.

83. In this case, admittedly, the instrument was admitted in evidence by the Court without any objection raised by the defendant and the Court has also not appeared to have examined the document and ascertained whether the instrument Ex P1 was duly stamped.

84. By virtue of Section 35 of the Act, since the instrument has been admitted in evidence, no question can be raised regarding its admissibility again at any stage of the suit or a proceeding on the ground that it had been duly

stamped. This legal position is well settled and reference to only two decisions of the Apex Court would suffice.

85. In the case of **Javer Chand and others Vs. Pukhraj Surana**, reported in **AIR 1961 SC 1655**, a five-judge bench of the Apex Court has held as follows in respect of a provision which is *pari materia* with Section 35:

"Section 36 is in these terms:-tili

Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not duly stamped."

86. In the case of **Shyamlal Kumar Roy Vs. Sushil Kumar Agarwal** reported in **(2006) 11 SCC 331**, it has been held in paragraphs 14, 16, 17, 22 & 23 as follows:

"14. Section 36, however, provides for a 'stand alone' clause. It categorically prohibits a court of law from reopening a matter in regard to the sufficiency or otherwise of the stamp duty paid on an instrument in the event the same has been admitted in evidence. Only one exception has been made in this behalf, viz.,

the provisions contained in Section 61 providing for reference and revision. In a case where Section 33 of the Act, as amended by West Bengal Act would be applicable, the proviso appended to Sub-Section (5) carves out an exception that if no action would be taken after a period of four years from the date of execution of the instrument (sic).

16. The said decision, therefore, is an authority for the proposition that Section 36 would operate even if a document has been improperly admitted in evidence. It is of little or no consequence as to whether a document has been admitted in evidence on determination of a question as regards admissibility thereof or upon dispensation of formal proof therefor. If a party to the lis intends that an instrument produced by the other party being insufficiently stamped should not be admitted in evidence, he must raise an objection thereto at the appropriate stage. He may not do so only at his peril.

17. Objection as regards admissibility of a document, thus, specifically required to be taken that it was not duly stamped. On such objection only the question is required to be determined judicially.

22. What was necessary was that the document should be marked in presence of the parties and they had an opportunity to object to the marking of the document. The question of judicial determination of the matter would arise provided an objection is taken what document is tendered in evidence and before it is marked as an exhibit in the case. Before the learned Trial Judge, reliance was placed on a decision of a learned Single Judge of the Andhra Pradesh High Court in Vemi Reddy Kota Reddy vs. Vemi Reddy Prabhakar Reddy [(2004) 3 ICC 832 (AP)]. In that case there was nothing on record to show that the document was marked as an exhibit after an objection has been raised. The said case, therefore, has also no application to the facts of the present case.

23. It may be true that the object of Indian Stamp Act is to collect revenue and the amendments carried out by the State of West Bengal provides for more stringent steps in that behalf. It may also be true that by reason of Sub-Section (4) of Section 33 of the West Bengal Act, a duty has been cast upon the court to apply its mind when an instrument having insufficient stamp duty is brought to its notice, but, only thereby Section 36 of the Indian Stamp Act cannot be made inapplicable. Section 36, as indicated hereinbefore, applies on its own force."

87. In light of these authoritative pronouncements, it is clear that once an instrument is admitted in evidence, even by inadvertence, the admissibility of the document on the ground it was insufficiently stamped cannot be questioned thereafter.

88. However, in this case, the 2nd defendant, after filing an application before the Trial Court requesting the Court not to act upon the instrument and on the ground that the application was not considered has invoked Section 58 of the Act and filed a revision to the District Court. The District Court has exercised its revisional power and directed the Trial Court to consider the application and the

Trial Court has thereafter proceeded to pass the impugned order holding that the document was liable to be impounded for collection of duty and penalty.

89. This procedure adopted of filing a Revision by the 2nd defendant is completely erroneous. As already stated above, the power available under Section 58 to the Appellate Court is only to consider the correctness of a decision actually taken by the Trial Court determining the duty and penalty payable while admitting the instrument in evidence. If there is no decision taken at all by the Trial Court regarding the duty and penalty payable, while admitting the instrument in evidence, the question of invoking the revisional power under Section 58 would not arise. Simply put, there can be no question of considering the correctness of a non-existent order. Thus, the District Court had no jurisdiction to direct the Trial Court to examine the admissibility of a document after it had been

admitted in evidence in exercise of its power under Section 58 of the Act.

90. Consequently, the Trial Court could not have examined the question of admissibility of a document after the document had been admitted in evidence.

91. The argument that the even if a document is admitted in evidence, the Court possesses the power to impound it on the ground it is insufficiently stamped cannot be accepted because the issue of admissibility and the issue of impounding the instruments are two completely difference and independent acts, cannot also be accepted.

92. As stated above, the power to impound a document is available under the statute on three occasions.

93. Firstly, when it is produced for being admitted in evidence or when it is produced before a person holding a public office for it being registered, acted upon or to be authenticated. If, on this first occasion, the instrument is

not impounded, the impounding officer is not empowered to impound it thereafter.

94. Secondly, by the Appellate Court, when a decision is taken by the impounding officer regarding the sufficiency or otherwise of duty and penalty paid or payable and the correctness of the same is examined by the Appellate Court on its own motion.

95. Thirdly, when the Deputy Commissioner makes an application to the District Court against any decision taken by the Trial Court regarding the decision taken by the impounding officer regarding sufficiency of duty and penalty payable or paid while admitting the instrument in evidence.

96. Since none of the three occasions were available in the instant case, the Trial Court could not have passed the impugned order and impounded the instrument.

97. There is yet another important factor to be noticed regarding the exercise of power under Section 58 of the Act.

98. As already stated above, the Appellate Court has the power to examine the decision taken by the Trial Court and make a declaration that the instrument could not have been admitted in evidence without payment of duty and penalty under Section 34 or without the payment of a higher duty and penalty. The Appellate Court is thereafter required to determine the amount of duty to which the instrument is chargeable and also direct the production of the instrument and on it being produced to impound it.

99. It is pertinent to note here that after making a declaration as contemplated under Section 58 (2), the Appellate Court is required to send a copy of the declaration to the Deputy Commissioner. If the instrument is impounded or is in possession of the Court, the Appellate

Court is also required to send the instrument to the Deputy Commissioner.

100. The Deputy Commissioner, thereafter, is empowered to prosecute any person for any offence against the stamp law, which he considers to have been committed. Thus, the ultimate outcome of the exercise of revisional power by the Appellate Court is that a declaration can be recorded that the instrument ought not have been admitted in evidence and order its production and impounding and thereafter the Deputy Commissioner can only prosecute the wrongdoer. The order passed in exercise of the revisional power under Section 58 would not enable the collection of duty and penalty payable on an instrument but it only facilitates the prosecution of a wrongdoer by the Deputy Commissioner.

101. If, however, the wrongdoer, pays to the Deputy Commissioner, the amount payable under Section 34

according to the determination of the Appellate Court, the Deputy Commissioner cannot prosecute the wrongdoer as per the proviso (a) to Section 58.

102. It is also to be noticed that the declaration made by the Appellate Court under Section 58 would not affect the validity of any order admitting any instrument in evidence or the validity of any certificate granted under Section 41 of the Act and the declaration would only be for the purpose of launching a prosecution as per proviso (b) to Section 58.

103. What is important to be noticed in this proviso is that notwithstanding a declaration being given by the Appellate Court that the instrument should not have been admitted without payment of a duty and penalty or a higher duty and penalty, the certificate that had been issued by the Deputy Commissioner that the instrument had been duly stamped under Section 41 would not be annulled and

would still be valid, thereby, meaning that the instrument would be considered as duly stamped and could thus be admitted in evidence or be registered, acted upon or authenticated.

104. Thus, the entire exercise undertaken under Section 58 would only enable the wrong doer to be prosecuted for an offence under the stamp law by the Deputy Commissioner and would not render the instrument invalid on the ground of insufficiency of duty.

105. In short, the exercise of revisional power by the Appellate Court would not enable the collection of duty and penalty by the Deputy Commissioner and thus, an order passed by the Appellate Court cannot be the basis for collection of duty and penalty in respect of an instrument which has been admitted on payment of duty or penalty and which is also certified to be duly stamped by the Deputy Commissioner.

106. It is to be stated here that the Stamp Act is a fiscal statute and a literal and strict interpretation of the provisions would have to be adopted. As a consequence, since the power to invoke Section 58 is only by the Court on its own at the behest of the Deputy Commissioner, no other person, such as a defendant to a suit, can be permitted to invoke the power of revision under Section 58 of the Act.

107. A reference to Section 46A¹⁰ of the Act would also be necessary in this regard, which states that in respect of instruments which are chargeable to duty and which are not duly stamped, the Chief Controlling Authority (on any person authorized by the State Government) is empowered to serve a notice on the person by whom the duty is payable asking him to show cause as to why the proper duty or the amount required to make up the same

¹⁰ Section 46 of the Act is extracted at the end of the judgment at page Nos.58 & 59.

should not be collected from him. However, this power can be exercised only within five years.

108. In cases of fraud, collusion, willful misstatement or suppression of facts or with intent to evade payment of duty, the Chief Controlling Authority is empowered to exercise this power within 10 years. Representation.

109. Thus, the statute itself prescribes a time limit of five years (ten years in case of fraud, etc.,) for the State to recover stamp duty which is not levied or short levied. It would therefore follow as a natural consequence, that an instrument which was insufficiently stamped five years before it was produced before the impounding officer cannot be impounded and consequently duty and penalty cannot also be collected.

110. If the right of the State to recover stamp duty which is not levied or short levied is itself lost due to lapse of time, the impounding officer cannot be conferred with

the power to impound the document so as to facilitate the recovery of the stamp duty, after the prescribed period of five years.

111. In this case, the instrument was executed on 03.04.2008 and thus the State could recover the stamp duty short levied only before 02.04.2013. However, the instrument was admitted into evidence on 16.07.2014 i.e., after years and the application by the 2nd defendant raising the objection was filed on 09.02.2015 and in this application no allegation of fraud, etc. was made. it is thus clear as on the date the instrument was produced, which was nearly seven years after the instrument was executed, even the State had lost its right to recover the stamp duty. As a natural consequence, it will also have to be held that the impounding officer had also the right to impound the document.

112. It is therefore clear that both the impugned order of the Trial Court and the order of the District Court are without jurisdiction and are accordingly quashed.

113. The Trial Court shall consider Exp-1 as an instrument admissible in evidence and consider the same on its merits while deciding the suit.

Writ Petition is accordingly allowed.

**SD/-
JUDGE**

Vnp*

¹ **31. Adjudication as to proper stamp.-** (1) When any instrument, whether executed or not and whether previously stamped or not is brought to the [Deputy Commissioner], and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of [one hundred rupees], the [Deputy Commissioner] shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the [Deputy Commissioner] may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application, until such abstract and evidence have been furnished accordingly:

Provided that.-

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding except in any enquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid."

² **32. Certificate by [Deputy Commissioner].-** (1) When an instrument brought to the [Deputy Commissioner] under section 31, is in his opinion, one of a description chargeable with duty, and

(a) the [Deputy Commissioner] determines that it is already fully stamped, or

(b) the duty determined by the [Deputy Commissioner] under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the [Deputy Commissioner] shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the [Deputy Commissioner] shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Subject to any orders made under Chapter VI, any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the [Deputy Commissioner] to endorse,—

(a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution, or first execution, as the case may be;

(b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in the State of Karnataka; or

(c) any instrument chargeable [with a duty not exceeding fifteen paise] or a mortgage of crop [Article [35](a) of the Schedule] chargeable under clause (a) or (b) of section 3 with a duty of twenty-five paise, when brought to him, after the execution thereof, on paper not duly stamped."

³ **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 offices; and

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

⁴ **34. 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 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 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 and 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) nothing 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] as provided by section 32 or any other provision of this Act²[and such certificate has not been revised in exercise of the powers conferred by the provisions of Chapter VI].”

⁵ 35. Admission of instrument where not to be questioned.- Where an instrument has been admitted in evidence such admission shall not, except as provided in section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.”

⁶ 58. Revision of certain decisions of Courts regarding the sufficiency of stamps.- (1) When any Court in the exercise of its Civil or Revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 34, the Court to which appeals lie from, or references are made by, such first mentioned Court may, of its

own motion or on the application of the [Deputy Commissioner], take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 34, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the [Deputy Commissioner] and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The [Deputy Commissioner] may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 41, or in section 42, prosecute any person for any offence against the stamp-law which the [Deputy Commissioner] considers him to have committed in respect of such instrument.

Provided that,--

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 34, is paid to the [Deputy Commissioner] unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purpose of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 41."

⁷ 37. Instruments impounded how dealt with.- (1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34 or of duty as provided by section 36, he shall send to the [Deputy Commissioner] an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the [Deputy Commissioner] or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the [Deputy Commissioner]."

⁸ "39. [Deputy Commissioner]'s power to stamp instruments impounded.- (1) When the 1[Deputy Commissioner]1 impounds any instrument under section 33, or receives any instrument sent to him under sub-section (2) of section 37, not being an instrument chargeable 1[with a duty not exceeding fifteen naye paise]1 only or a mortgage of crop [Article [35](a) of the Schedule] chargeable under clause (a) or (b) of section 3 with a duty of twenty-five naye paise, he shall adopt the following procedure:--

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount 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:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the [Deputy Commissioner] may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) [Subject to any orders made under Chapter VI, every certificate] under clause (a) of sub-section (1) shall, for the purposes of this Act be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the [Deputy Commissioner] under sub-section (2) of section 37, the [Deputy Commissioner] shall, when he has dealt with it as provided by this section, return it to the impounding officer."

⁹ "41. Endorsement of instruments on which duty has been paid under section 34, 39 or 40.- (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 34, section 39 or section 40, the person admitting such instrument in evidence or the 1[Deputy Commissioner]1, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty

(stating the amount of each) have been levied in respect thereof and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that,—

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 34,

shall be so delivered before the expiration of one month from the date of such impounding, or if the [Deputy Commissioner] has certified that its further detention is necessary and has not cancelled such certificate;

(b) nothing in this section shall affect order XIII, rule 9 of the First Schedule to the Code of Civil Procedure, 1908.”

¹⁰ "46A. Recovery of stamp duty not levied or short levied.- (1) Where any instrument chargeable with duty has not been duly stamped, the Chief Controlling Revenue Authority or any other officer authorised by the State Government (hereinafter referred to as the authorised officer) may, within 2[five years]2 from the date of commencement of the Karnataka Stamp (Amendment) Act, 1980 or the date on which the duty became payable whichever is later, serve notice on the person by whom the duty was payable requiring him to show cause why the proper duty or the amount required to make up the same should not be collected from him:

Provided that where the non-payment was by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the provisions of this sub-section shall have effect, as if for the words [five years] the words [ten years] were substituted:

Provided further that nothing in this sub-section shall apply to instruments executed prior to first day of April, 1972.

Explanation.— Where the service of a notice, under this sub-section is stayed by an order of a court, the period of such stay shall be excluded in

computing the aforesaid period of [five years] or [ten years], as the case may be.

(2) The Chief Controlling Revenue Authority or the authorised officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of duty due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) Any person aggrieved by an order under sub-section (2), may prefer an appeal before the Karnataka Appellate Tribunal within three months from the date of such order.

(4) All duties payable under this section shall be recovered in accordance with provisions of section 46."

Vnp*

**SD/-
JUDGE**