

KARNATAKA LOKAYUKTA

No. Compt/Uplok/BCD-2237/2016/ARLO-1 M.S. Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru, dated 23/08/2019.

**REPORT UNDER SECTION 12(1) OF
KARNATAKA LOKAYUKTA ACT, 1984**

Sub: Report u/s 12(1) of the Karnataka Lokayukta Act, 1984 for taking action as per Rule 170 of the Karnataka Registration Rules, to make good the loss caused to the Government due to the acceptance and registration of Deed of Revocation of GPA dated 17/02/2016, by the respondent, on which insufficient stamp duty has been paid - reg.

An investigation was taken up under Section 9 of the Karnataka Lokayukta Act, on the basis of complaint filed by Sri. Ramanlal M. Sha, Director of M/s Rajarajeshware Builddcon Pvt. Ltd., Office no. 67/1, Sri Ranga Nettakallappa Circle, Basavanagudi, Bengaluru (hereinafter referred to as 'complainant' for short) against Sri. S. Raghavendra, Senior Sub Registrar, Office of the Sub Registrar, Jayanagar, Bengaluru (hereinafter referred to as 'respondent' for short).

2. The substance of the complaint is that the complainant had entered into registered Joint Development Agreement dt. 7/8/2013 with one Mr. B.N. Vishwanatha. Subsequently GPA dt. 7/8/2013 was executed and registered before the Sub Registrar, Bommanahalli, by paying stamp duty of Rs. 7,58,000/- on the instrument of GPA. As per the notification dt.

24/10/2013 issued by Revenue Department, Stamp duty was paid at the rate of 1% on the market value of the property. Thereafter, the respondent has registered the Deed of Revocation of GPA presented by Mr. B.N. Vishwanath vide document no. JAY-4-01222-2015-16 by collecting meager stamp duty of Rs. 200 instead of Rs. 7,58,000/-. The earlier GPA was coupled with interest. The registration of Deed of Revocation of GPA is restricted and cannot be considered without consent of the interested party. The revocation of GPA unilaterally is prohibited without an order of Civil Court through a declaratory suit. The Respondent has caused huge loss to the State Exchequer by collecting less stamp duty. As per Article 48B, any revocation deed attracts stamp duty as per Article 20 as that of conveyance. Hence the complainant has requested to take action against the Respondent.

3. The Respondent has submitted his comments dt. 14/11/2016 & 02/03/2017 stating that if the document is in order and the execution is admitted by the purported executants, the Sub Registrar has to register the document. He cannot enquire into the validity of the document or legality of its contents or the question of title of property under the deed. In support of these contentions, the Respondent has relied upon Section 34 of the Registration Act, Rule 73 of the Karnataka Registration Rules, 1965 and also upon certain decisions of the Hon'ble High Court of Karnataka on that point. With respect to the present complaint, the Respondent has stated that the

executant of GPA dt. 07/08/2013 – Sri. B.N. Vishwanath had presented for registration the Deed of Revocation of GPA dt. 17/02/2016 in respect of GPA dt.07/08/2013. He has stated that the executant admitted his signature and he was identified by two witnesses as per Section 34 of the Registration Act. Accordingly keeping in view the provision in Section 86 of the Registration Act and revenue to the Government, he had registered the GPA. The Respondent has stated that the said revocation of GPA falls within the ambit of Article 14(c) of the Stamp Act and as per the said provision; Rs. 200 has been collected as stamp duty. It is stated that no loss has been caused to the State exchequer. Accordingly, he has denied the allegations made in the complaint and has requested for dropping him from the case.

4. The complainant has submitted rejoinder dt. 06/03/2017 by refuting the comments of the Respondent and virtually reiterating the allegations made in the complaint. He has stated that as per Article 48B any revocation attracts stamp duty as per Article 20 of the Stamp Act. Further that the GPA executed for a consideration or coupled with interest cannot be revoked unilaterally.
5. With respect to the allegations pertaining to registration of a Deed of Revocation of GPA executed unilaterally, under sections 34 and 35 of the Registration Act, the Registering Authority has to satisfy about the execution of the document by

purported executants and as to the identity of the persons appearing before him. He cannot refuse to register the documents except on the grounds mentioned in Section 35(3) i.e., denial of execution by the executors, if the executant appears to be a minor, idiot or lunatic and if the executant is dead and his representatives deny execution. As per Rule 73 of the Karnataka Registration Rules, it is not the duty of the Registering Officer to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document, provided execution is duly admitted. As per the above said statutory provisions, the Sub Registrar cannot enquire into the validity of the document nor enquire into the title of the property under the deed.

If the complainant is interested in questioning the validity of GPA on the ground of unilateral execution or on any other ground, he may raise such questions before the appropriate forum and seek appropriate relief as per law, as the genuineness or validity of a document executed by a private individual in respect of another private individual and the question of title of the property cannot be investigated by this authority as held in the case of *M. Parthasarthy v/s The Special Deputy Commissioner, Bengaluru and others* reported in 2009 (5) Kar.L.J.203.

6. With respect to the question that the respondent has registered the Deed of Revocation of GPA by collecting

stamp duty of only Rs.200/-, instead of Rs. 7,58,000/- paid on the earlier GPA, which was coupled with interest and sought to be revoked, it is noted that the respondent, being a public servant and person-in-charge of a public office within the meaning of section 33 of Karnataka Stamp Act, is duty bound to impound a document with deficient stamp duty when it was produced before him or it came before him in the performance of his functions. The existence of such duty is fortified by the provisions in Karnataka Registration Rules, 1965. Rule 24 (iii) (a) & 9 (c) of the said Rules, requires each Registration Office to maintain a register of impounded documents and a register of deficient fee and stamp duty. Rule 46 (ii) of the said Rules enjoins a duty on the Registering Officer to impound a document if it is chargeable with duty under the Indian Stamp Act or Karnataka Stamp Act and is not duly stamped.

7. In the present case, the Respondent has stated in his comments that the Deed of Revocation of GPA dt. 17/02/2016 falls within the ambit of Article 14(c) of the Karnataka Stamp Act and therefore Rs. 200/- has been collected. Article 14 of the Stamp Act deals with the stamp duty payable in respect of 'Cancellation of Instruments'. According to clause (a) of Article 14 in case of cancellation of any instrument previously executed on which stamp duty has been paid as per any article of the Schedule and not otherwise specifically provided for by the Schedule, same duty as on the original instrument shall be paid if such cancellation

has the effect of reconveyance of property already conveyed by the original instrument: Provided that, if the original instrument is a conveyance on sale, then the stamp duty payable on such cancellation instrument is, as per article 20(1), on the market value of the property as on the date of execution of such cancellation.

Section-2(d) of the Karnataka Stamp Act defines conveyance as including "(i) a conveyance on sale, (ii) every instrument, (iii) every decree or final order of any Civil Court, (iv) every order made by the High Court u/s 394 of the Companies Act, 1956 in respect of amalgamation of companies, by which property, whether movable or immovable or any estate is transferred to or vested in, any other person, and which is not otherwise specifically provided for by the schedule". Article 41 of the Karnataka Stamp Act deals with stamp duty payable in respect of Power of Attorney. As per clause (e) of the said Article 41, in case of power of attorney given for consideration and or coupled with interest and authorizing the attorney to sell any immoveable property, the same duty as Conveyance under Article 20 (1) on consideration or on market value of the property (which is the subject matter of such power of attorney), whichever is higher, shall be paid. As per clause (ea) if it relates to construction of immoveable property, including a multi unit or multi storied house or building or apartment or flat, or portion of it, executed by and between owner or lessee, as the case may be, and developer having a stipulation, whether

express or implied, that, in consideration of the owner or lessee conveying or transferring or disposing off, in any way, the undivided share or portion of land or immovable property; the developer agrees to convey or transfer or dispose of, in any way, the proportionate or agreed share or portion of the constructed or developed building or immovable property to the owner or lessee, as the case may be, the stamp duty payable is Two Rupees for every hundred rupees or part thereof, on the market value of such undivided share or portion of land or immovable property, consideration and money advanced, if any; or on the market value of such share or portion of the constructed or developed building or immovable property, consideration and money advanced, if any; whichever is higher.

8. On perusal of the original instrument i.e., the GPA dt. 07/08/2013, it is noted that a stamp duty of Rs. 7,58,000/- has been paid. The said GPA contains the following recitals;
- i. To enter into Agreement/s of sale, for sale of undivided share of right, title and interest in the Schedule property proportionate to Developer's share in the Schedule Property, with the intending purchaser/s intending to purchase flats in Developer's share in the Schedule Property.
 - ii. To receive advance of sale consideration, further advances sale consideration, balance sale consideration, earnest money deposits, part payments, statutory deposits, in the name of Developer in so far as Developer's share in the Schedule Property is concerned.
 - iii. To execute Deed/s of sale conveying individual flats in the Developer's share in the Schedule Property together with proportionate share of right, title and interest, in the Schedule property in favour of intending purchaser/s, intending to purchase flats in Developer's share in the

- Schedule Property, but only after I am placed in possession of my share of built up area, of the apartment building being owner's share of built up area as stated in the said JDA.
- iv. To deliver possession of the flats in the Developer's share in the Schedule Property pursuant to execution of sale deed as stated earlier but only after I am placed in possession of my share of building up area, of the apartment building being owner's share of built up area as stated in the said JDA.
 - v. To submit plans, modified plans, rectified plans of the apartment building to be constructed on the schedule property, in terms of the said JDA to BBMP and all other concerned Regulatory Authorities and secure approvals to the same, so also to secure necessary licenses to construct the apartment building.
 - vi. To secure, renewals of the plans modified plans, rectified plans and licenses, to ensure smooth and uninterrupted construction of the apartment building to be constructed on the schedule property.
 - vii. To secure necessary Commencement Certificate, such other Certificates, Clearances, Approvals, Consent, NOC etc., to commence continue and complete the construction of the Apartment building and procure occupancy certificate.
 - viii. To apply for and secure necessary connections from the Public service system, Public service providers including BESCOM, BWSSB, BBMP Department of Tele communications, etc., and also appear before the said authorities to secure such connections/services.

The above recitals of the GPA dt.07/08/2013 show that it is a GPA coupled with interest within the meaning of Article 41 of the Karnataka Stamp Act and has the effect of transferring or vesting of property in the holder of the GPA amounting to conveyance as defined under section 2 (d) of the said Act. On perusal of the Deed of Revocation of GPA dt. 17/02/2016, it is a cancelling instrument executed to revoke the powers granted to the holder/vested in the holder by virtue of the GPA dt. 07/08/2013 i.e., the original instrument.


Therefore as per Article 14 (a) of the Karnataka Stamp Act, the stamp duty that ought to have been collected in respect of Deed of Revocation of GPA dt. 17/02/2016 is the same duty i.e., Rs.7,58,000/- as paid on the original instrument i.e., GPA dt. 07/08/2013. However the Respondent has stated that he has collected Rs. 200/- as Stamp duty as per article 14(c) which is a residuary clause in Article 14 covering any other cases than those covered under clause (a) & (b) of the said Article. Thus it appears that instead of collecting the stamp duty of Rs. 7,58,000/-, the Respondent has stated that he has collected a stamp duty of Rs. 200/- only. Therefore there is prima-facie material to infer that the Respondent has collected stamp duty as per a residuary clause when there was a specific clause in the same provision prescribing the correct stamp duty and thereby he has caused loss to the State Exchequer.

9. Further it is noted that Rule 170 of the Karnataka Stamp Rules, 1965, provides that when owing to sheer carelessness or ignorance of the Stamp Act, a Sub-Registrar accepts and registers a deed on which insufficient duty has been paid, the loss to Government may be ordered to be made good by the Sub-Registrar, on the final orders of the Inspector General of Registration, after which, the deficit items shall be taken to the prescribed Demand Register. Under the circumstances, it would proper to send recommendation under section 12 (1) of the Karnataka Lokayukta Act, 1984 to the Competent Authority for taking action to make good the loss caused to

the Government due to the acceptance and registration of Deed of Revocation of GPA dated 17/02/2016, by the respondent, on which insufficient stamp duty has been paid.

10. Accordingly, recommendation u/s 12(1) of the Karnataka Lokayukta Act, 1984 is made to the Competent Authority for taking action as per Rule 170 of the Karnataka Registration Rules, to make good the loss caused to the Government due to the acceptance and registration of Deed of Revocation of GPA dated 17/02/2016, by the respondent, on which insufficient stamp duty has been paid.
11. Further, as per Section 12(2) of Karnataka Lokayukta Act, 1984, the Competent Authority is required to intimate this Authority within one month from the date of receipt of this report, the action taken or proposed to be taken on this report.

Connected records are enclosed.


(Justice N. Ananda)
Upalokayukta -1,
State of Karnataka.