

(1998) 08 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No. 6006 of 1998

A. Vijayaraghavan and 2 others

APPELLANT

Vs

The Member Secretary, Chennai Metropolitan Dev. Authority,
No: 8, Gandhi Irwin Road, Egmore, Chennai -600 008 and
The Commissioner, Corporation of Madras, EVR Salai,
Periamet, Chennai - 600 003

RESPONDENT

Date of Decision : 12-08-1998

Acts Referred:

Registration Act, 1908 — Section 23, 23(1)

Citation : (1998) 08 MAD CK 0001

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Zaffarullah Khan, for the Appellant; M.S. Govindarajan, for 1st Respondent and Mr. R. Ramanlal, for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.—This petitioner seeks for issue of a writ of certiorarified mandamus or any other appropriate writ order or direction in

the nature of writ, calling for the records of the first respondent herein in his letter No. B1/27790/96 dated 17.4.1998 and quash the same and

direct the first respondent to re-assess the market value of the property bearing Block No. 12, Arumbakkam Village, T.S. No.8/9, 10, 11, 16. 17,

20, 21 and 22 at door No: 12, Inner Ring Road, Arumbakkam, in accordance with law. The petitioners applied for planning permission for the

purpose of putting up a multi-storied building and they wanted to put up a hotel consisting of 96 rooms. Initially the petitioners agreed to surrender

the open space as per the plan which was also the subject matter of Writ Petition of this Court. Now the petitioners, on the basis of an advice of

their architect wanted to retain the open space and according to them, they wanted to retain the same but, are willing to pay the market value to the first respondent for considering the planning permission. They, therefore, made a request on 23.2.1998 to the first respondent that they are unable to hand-over the open space reservation as informed earlier and that they are prepared to pay the market value to the open space reservation. The first respondent vide his letter dated 30.2.1998 wrote to the Sub-Registrar, Kodambakkam, and enquired the market value of the land in T.S. Nos. 8/9, 10, 11, 16, 17, 20, 21, 8/22 of Block No: 12, Arumbakkam Village in Door No: 12. It is the further case of the petitioners that the Sub-Registrar was not in a position to inform the market value since there is no guideline value available for that area. But, at the same time, the Sub-Registrar has informed the first respondent that the guide line value for the land in Pulliyur Village is Rs.2,330/- per sq. ft. It is on that basis, the first respondent has communicated to the petitioners that they have to pay a sum of Rs37,85,000/- towards the open space reservation charges for 140 sq. mts. of land, i.e. 1506.40 sq. ft. According to the petitioners, the demand is not based on any data and the same is liable to be quashed. According to them, the value per sq. ft. can never be more than Rs.666/- per sq. ft. in that area taking into consideration various sale deeds / transactions that has taken place in that locality within a reasonable time. It is further contended by the petitioners that the guideline value cannot be made use of for the purpose of fixing the market value and the same will have to be decided on the basis of sale transactions between a willing purchaser and a willing seller. The guideline value is fixed for the purpose of fixing stamp duty and the same is also revised from time to time unilaterally by the Government, without notice to any person. It has no statutory force and is not binding even between parties. It is under these circumstances these petitioners have come to this Court to quash the impugned letter dated 17.4.1998.

2. At the time of admission, I directed the counsel for the petitioner to give notice to the standing counsels. The second respondent alone has filed a counter affidavit and the standing counsel for the first respondent argued the matter on instructions. In fact, as against the second respondent no relief has been sought for at this stage.

3. The impugned order has been passed by the first respondent without notice to the petitioners. When market value for a land is fixed making the petitioners liable to pay the amount, it is settled law that the person affected is entitled to be heard. This procedure was not adopted in this case.

Merely because the petitioners agreed to pay the market value in lieu of the open space reservation, authorities are not entitled to demand any amount as they please. They are entitled to demand only that value which represents the real market value corresponding to that area. That, by itself, is sufficient to quash the impugned order / letter.

4. Even on merits, the order cannot stand for a moment. The first respondent has made this demand on the basis of guideline value obtained from

the Sub-Registrar, who is the registering authority under the Indian Registration Act. What is the relevancy of such an act or demand has come

forward for consideration before the Hon'ble Supreme Court on various occasions. In *Jawajee Nagnatham Vs. Revenue Divisional Officer,*

Adilabad, A.P. and Others, this question has come for consideration and in paragraph

5 of the judgment His Lordship has given a detailed reasoning, why the basic value maintained by the authorities should not be accepted for

determining the market value. It is better to extract that portion of the judgment, which is as follows:

... Section 47-A conferred no express power to the Government to determine the market value of the lands prevailing in a particular area, village,

block, district or the region and to maintain Basic Valuation Register for levy of stamp duty for registration of an instrument, etc No other statutory

provision or rule having statutory force has been brought to our notice in support thereof. Whether an instrument is liable for higher stamp duty on

the basis of valuation maintained in the Basic Valuation Register, came up for consideration in *Sagar Cements Ltd. v. State of A.P. B.P. Jeevan*

Reddy, J., as he then was, considered the question and held that the Government has unilaterally fixed the valuation of the lands, the Basic

Valuation Register had no statutory foundation and therefore it does not bind the parties. Neither the Registrar nor the Vendor is bound by it. The

market value of the land for proper stamp duty has to be determined as per the law u/s 47-A itself. That view was followed by another learned

Single Judge in *P. Sasidar v. Sub-Registrar*. It is, therefore, clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration. Equally it would not be a basis to determine the market value u/s 23 of the Act, of the land acquired in that area of town or the locality or the taluk etc. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value. The Division Bench followed, in support of its view a decision of another Division Bench in *Land Acquisition Officer v. Venkateswara Prasad* which also decided that Basic Valuation Register cannot be relied on to determine the market value. It would appear that in *Govt. of A.P. v. Sohan Lal* a Division Bench of that High Court, without noticing these two binding decisions, held that the Basic Valuation Register would form foundation to determine the market value and directed to determine the compensation on that basis. The entire controversy was considered by yet another Division Bench in *Vasireddi Bharata Rao v. Revenue Divisional Officer*. The Division Bench after considering the case law disagreeing with *Sohan Lal* view as per incuriam, also reiterated that the Basic Valuation Register maintained by the registering authority has no statutory foundation to determine the market value and cannot form the base u/s 23 (1) to determine the market value. This Court in *Gulzara Singh v. State of Punjab* held that mutation entries of the land transactions in the revenue records are not evidence unless the parties to the transactions have been examined in proof of documents. In *Director of Survey-cum-LAO v. Mond. Ghouse* relied on by Mr. Ganguli, the Division Bench of Madras High Court, relying upon the instructions issued by the Government to determine the market value for the purpose of registration of the instrument u/s 47-A, held that it would form basis to determine the market value u/s 23 in an appropriate case, subject to proof of the market value. What were the instructions issued by the Government and whether they had any statutory foundation, have not been stated by the Division Bench. If the broad proposition of law that u/s 47-A. of Stamp Act such instructions could be issued, as contended for the appellant herein, as appears to be the view of the High Court, it is not

correct law. As we have already noted, Section 47-A being local amendment, made by each State Legislature did not find any such statutory

basis. Liche A.P. Act, Tamil Nadu Act is also referable to transactions intra vivos and not as general guidelines. If they are based on evidence inter

partes it would be consistent with Section 47-A. Accordingly we hold that the basic value of registration has no statutory base. It cannot form any

basis to determine the market value of the acquired lands u/s 23 of Act".

In K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, the same principle was reiterated. The

relevant portion in paragraph 5 reads thus,

From this, the question is what would be the reasonable market value that the lands would command in open market? The appellants themselves

have placed on record the sale deed of an extent of 133" x 99" under Ex.P. 18 dated 30.5.1974 which fetched consideration of Rs.41,000/- per

acre. The High Court was not inclined to accept in toto this sale deed. But it held that it provides guidance in determination of the market value.

Though the appellants have relied upon the government circular determining the value of the lands for the purpose of fixing the stamp duty and

registration fee and also the Commissioner's report regarding the valuation assessed by him, the High Court rightly has not accepted them. This

Court also had held that the circulars issued by the Government u/s 47-A of the Stamp Act for fixation of Stamp Duty and the registration fee

would not form basis to determine the compensation unless evidence is adduced as regards the prevailing market value of the land in the locality

possessed of similar advantageous features".

In U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, the declaration by

Supreme Court that, "the basic valuation is only for the purpose of collecting the stamp duty and that, therefore, it cannot form foundation to

determine the market value".

5. I have already extracted the relevant portion in Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others,) case. Their

Lordships in that case has approved the decision of the Andhra Pradesh High Court reported in 1989 (3) Andh L.T. 677, 1992 (1) Andh. L.T. 49

and 591. The first case arose when the Sub-Registrar refused to register the

document on the ground of under-valuation. The Hon"ble High Court held that reliance placed by the Sub-Registrar on the guidelines are not conclusive and the parties are not bound by the same. It has no statutory basis. In the later decision at page 591, in paragraph 11 of the Judgment, it was held as follows:-

The rulings that have been cited above amply support our view that the basic value register has no sanction in law and the entries therein are only instructions and they are not binding on the parties. They are only prepared unilaterally for the purpose of collection of stamp duty in a generalised manner by not duly taking into account the potential value of the land"".

6. From these decisions, it is clear that the procedure adopted by the first respondent in fixing the market value at nearly Rs.38 lakhs is without any basis. The petitioners have a case at the very same area, close to their property in question, sale transaction has taken place during the year 1996-

97. There was also dispute as to the real market value. After adjudication market value was fixed by the authority. The adjudicated value is not even 1/4th of the present market value as determined by the first respondent herein.

7. The counsel for the petitioners submitted that if only he was given notice before fixing the market value, he would have been in a position to substantiate the same. I find force in the said contention.

8. In the result, the impugned letter is quashed and I direct the first respondent to fix the market value of the land of 140 ssq. mts. taking into consideration the observation made above. I make it clear that the first respondent is not expected to rely on the guideline value that was placed before the Sub-Registrar. He has to take into consideration the value of the property that a willing purchaser may pay to a willing seller. The various sale transactions referred to by the petitioners also may be taken into consideration by the first respondent for fixing the same.

9. The application for planning permission in this case was submitted two years back and if the first respondent is to fix the market value for the open space reservation area and then to consider the planning permission, it will take a long time. In such circumstances the cost of construction is also likely to increase approximately. Under these circumstances, it is only proper on the part of the first respondent to take immediate steps to fix

the market value.

10. In the meanwhile, I direct the petitioner to furnish bank guarantee for Rs.10 lakhs and on furnishing such bank guarantee, I direct the first

respondent to pass orders on the planning permission within two weeks thereafter. The actual fixation of market value need not wait for passing

orders on the planning permission. If ultimately the first respondent after taking into consideration all the relevant materials, fixes the value above

Rs.10 lakhs, the petitioners should pay the same. Any decision regarding fixation of market value can be had only with notice to the petitioners,

and after giving them a reasonable opportunity to place relevant materials and evidence. The Writ Petition is allowed. Consequently, W.M.P. No.

9282 of 1998 for interim direction is closed. No costs.