**(1996) 08 MP CK 0043**

**In the Madhya Pradesh High Court**

**Case No :** M.P. No. 1887 of 1994

Bala Prasad and Another — APPELLANT

Vs

The State of Madhya Pradesh and Others — RESPONDENT

**Date of Decision :** 27-08-1996

**Acts Referred:**
Stamp Act, 1899 — Section 47A, 47A(1)

**Citation :** AIR 1997 MP 218 : (1997) 1 JLJ 138 : (1997) 2 MPLJ 636

**Hon'ble Judges :** A.K. Mathur, C.J;S.K. Kulshreshtha, J

**Bench :** Division Bench

**Advocate :** L.N. Namdeo, for the Appellant; Sanjay Seth, Government Advocate, for the Respondent

**Final Decision :** Allowed

# Judgement

S.K. Kulshrestha, J.

This petition challenges the validity of Rule 3-A of the M.P. Prevention of under Valuation of Instruments Rules, 1975 and the guidelines (Annexure P/2) issued thereunder and the consequent order (Annexure p/1) issued by the respondent No. 3.

A sale deed was executed in favour of the petitioners by Shri Sunder Lal Yadau and Balbhogi Yadav of Satna on 4-4-1994 for consideration of Rs. 1,75,000/- and was presented to Sub-Registrar, Satna, appointed under the Registration Act, for registration. The sub-Registrar, on finding that value of the property sought to be transferred under the instrument was below the average value laid down in the guidelines for the area in question, referred the document for determination of the value and the deficit stamp duty of Rs. 90,186/-and registrtion charges of Rs. 5,600/- were claimed on its valuation at Rs. 8,75,000/-.

The Stamp Act, 1899, was amended by M. P. Act No. 8 of 1975 with effect from 15-5-1975 and Section 47A was inserted in the following form :--

 

"47-A. Instruments under-valued how to be dealt with.-- (1) If the registering officer appointing under the Registration Act, 1908 (No. 16 of 1908) while registering any instrument has reason to believe that the market value of the property which is the subject matter of such instrument, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for datermination of market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under Sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner, as may be prescribed, determine the market value of the property which is the subject matter of such instrument and the duty as aforesaid. The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, within five years from the date of registration of any instrument not already referred to him under subsection (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of any such instrument and the duty payable thereon and if after such examination, he has reason to believe that the market value of such properly has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in Sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty;

Provided that nothing in this sub-section shall apply to any instrument registered prior to the date of the commencement of the Indian Stamp (Madhya Pradesh Amendment) Act, 1975.

(4) Any person aggrieved by an order of the Collector under Sub-section (2) or Sub-section (3) may, in the prescribed manner, appeal against such order to the Commissioner who may either himself decide the appeal or transfer it to the Additional Commissioner of the Division.

(5) Any person aggrieved by an order passed in appeal under Sub-section (4) may in the prescribed manner appeal against such order to the Chief Controlling Revenue Authority, Madhya Pradesh.

(6) Every first and second appeal shall be filed within thirty days from the date of the communication of the order against which the appeal is filed, along with a certified copy of the order to which objection is made and shall be presented and verified and in such manner as may be prescribed:

Provided that in computing the period aforesaid, the time requisite for obtaining a copy of the order appealed against shall be exclused.

(7) The appellate authority shall follow such procedure as may be prescribed ;

Provided that no order shall be passed without affording opportunity of being heard to the appellant.

(8) The order passed in second appeal or, where no second appeal is preferred the order passed in first appeal shall be final and subject to orders passed in first or second appeal, as the case may be, the order passed by the Collector under Sub-section (2) or Sub-section (3) shall be fnal and shall not be called into question in any civil court or before any other authority whatsoever."

Similar provisions had also been inserted by amending the Stamp Act in various other States such as Andhra Pradesh, Haryana, Orissa, Pondicharry, Tamil Nadu and Uttar Pradesh. Later, similar provisions were also inserted in the States of Meghalaya, Rajasthan and Goa, Daman and Diu. The applicability of Section 47-A was considered by this Court in Sitaram and Others Vs. The State of Madhya Pradesh, and a special Bench of this Court held that every Statute which takes away or impairs vested rights acquired under the existing laws, or -- creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have retrespective effect and accordingly, their Lordships decided that Section47-A as inserted by M.P. Act No. 8 of 1975 had no retrospective application. This view was reiterated yet in another decision in Jeinabi v. State of M. P. 1988 MPLJ 795.

With a view to implement the provision u/s 47-A, Rules were framed entitled -- "M.P. Prevention of undervaluation of Instruments Rules, 1975" (hereafter referred as the ''Rules'') and procedure on receipt of reference of a proposal to take action suo motu u/s 47-A was laid down. The principles for determination of the market value were laid down in Rule 5 of the said Rules.

Guidelines in the form of basic valuation register, valuation guidelines etc. were issued by various States containing the average prices of land/property in various localities and for determining the market value of the property conveyed under any Instrument. The scope of the guidelines with reference to the exercise of power under the statutory provisions such as Section 47-A was considered by various High Courts. In Collector of Nilgiris at Ootacamund Vs. Mahavir Plantations Pvt. Ltd., , in a case where after registralion of the conveyance for determination of the true market value, valuation was made on the basis of the valuation guidelines prepared by the Revenue officials. His Lordship held that to do so would be to surrender the statutory obligation to determine market value on the basis of evidence, which is a judicial or a quasi-judicial function which the Collector has to perform. It was further observed that to adopt figures in the guidelines would be dangerous because they sought no guarantee of truth or correctness of the date. In somewhat similar situation, in Kaka Singh Vs. The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another, , considering the impact of Rule 341, their Lordships in their order in paragraph 14 observed :--

"14. Section 47-A fills in the lacuna which was found by the Supreme Court in

 

Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority, , it empowers the Collector to deal with these cases where the parties by arrangement deliberately undervalue the property with a view to defraud the Government of the legitimate revenue by way of stamp duty. It is not correct that the Collector is not empowered to determine on a case being referred to him by the Sub-Registrar u/s 47-A (1), that the market value is in fact less than the minimum value to be determined by Rule 341 and to find on that basis whether the transaction sets forth the market value truly or not. Similarly, the hands and powers of the Collector are not confined to the minimum value given in Rule 341. It can hold it to be more if it is satisfied on the materials brought before him to that effect. Rule 341 had been framed by the legislature only for the limited purpose of providing a guideline, it is not canclusive. That being so, under Sub-section (1) of Section 47-A, if the Registering Officer is satisfied that the market value is less than even the minimum value, he may refer the document to the Collector for determination of the value of such properly. This is the only function of Rs. 341. It is neither binding on the person who produces the instrument for registrtion nor on the State Government."

In another case, in Chamkaur Singh v. State of Punjab AIR 1991 P &H 28, where the guidelines laying down the minimum prices were challenged, their Lordships held that such guidelines laying down prices of different kinds of qualities of land on the basis of their situation or location for the purpose of registration of instruments relating to transferring of any property, were violalivc of Section 47-A as the guidelines had no legislative sanction and could not have been issued for controlling the quasi-judicial decision of a functionary oraulhority under a particular statute. The decision of the Andhra Pradesh High Court reported in Birbal v. Director Consolidation Buland Shahar, 1989 ALJ 673, laying down that the Basic Violation Register for levy of stamp duty for registration of an instrument could not form any basis to determine the market value was quoted with approval by the Supreme Court in Jawajee Naguatham v. The Revenue Divisional Officer, Adidabad 1994 (2) JT (SC) 604 : (1994 AIR SCW 2852). The petitioner had also appended a copy of the order dt. 30-7-1992 of this Court in M. P. No. 1918 of 1992 prohibiting taking into account the guidelines while exercising powers under the Stamp Act and the Registration Act.

It is, thus, manifest that the guidelines containing the average market value of land in a locality or area prepared purely as an administrative measure for determination of the market value of the property for the purpose of the stamp duty and registration charges, did not receive approval of the Courts. It appears that with a view to overcome the difficulty, the State of M.P., in order to clothe the guidelines with statutory recognition, amended the Rules in exercise of the powers conferred by Section 47-A read with Section 75 of the Stamp Act and inserted Rule 3-A after Rule 3 in the M. P. Prevantion of under valuation of Instrument Rules, 1975, in the following form :--

"3-A. Annual statement of rates of immovable property to be issued by the

 

Collector.--

Every District Collector shall annually supply to the Sub-Registrar, a copy of the statement showing average rates of lands and buildings situated in every Tahsil, Corporation or Local body of his district.

Every Registering Officer shall cause a copy of the above statement to be affixed outside the Registration Office.

Every Registering Officer shall, when the instrument is produced before him for registrtion, verify in each case the market value of land and buildings etc. as the case may be, from the above statement and if he finds that the market value as stated in the instrument is less than the minimum value, prescribed by the statement, he shall refer the same to the Collector for determination of the actual market value of the property which is the subject matter of the instrument and the proper duly payable thereon.

Provided that where the market value has been stated in accordance with or more than that prescribed in the statement issued by the Collector but the registering officer has reason to believe that the correct valuation of the immovable property cannot be arrived at without having recourse to local enquiry or extrancous evidence, he may after registering such instrument, refer the same to the Collector for determination of the market value for the instrument and the proper duty payable thereon."

Learned counsel for the petitioners has submitted that the said Rule 3-A abrogates the power of the registering authority and takes away the discretion granted to it by Section 47-A (1) and ordains to refer the instrument to the Collector for determination of the actual market value of the property which is subject matter of the instrument and the duty payable thereon when the instrument produced before the Registering Officer indicates the marked value less than the minimum value prescribed in the statement prepared under Rule 3-A. The learned counsel has assailed the validity on the ground that the rule has the effect of rendering futile the procedure prescribed in Rule 4 and the principles for determination of market value enumerated in Rule 5 as the Collector in exercise of his power for determination of the market value of the property will be influenced by the statement issued by him under Rule 3-A and will, thus, not be able to exercise his quasi-judicial function enjoined by Section 47-A, rendering the whole exercise quite meaningless.

While it is true that Rule 3-A does require the Collector of every district to annually supply to the sub-Registrar a copy of the statement showing average rates of lands and buildings in every Tehsil, Corporation or Local body, of his district, the said statement being only a statement of average rates of lands and buildings postulates taking into account the highest and the lowest rates prevailing in the areas or locality. It is, thus, clear that the rates relating to specific property are still required to be determined in accordance with the principles stated in Rule 5. It is, thus, manifest that the statement prepared under Rule 3-A indicating the average rates cannot influence the decision of the Collector in determining the market value of the property which is the subject matter of the instrument as the specific value will have to be determined in accordance with the procedure prescribed in Rule 4 and the principles indicated in Rule 5. The contention of the learned counsel that preparation of statement by the Collector for its circulation to the Sub-Registrar indicating the average rates of lands and buildings would influence the exercise of the quasi-judicial powers of determination of the market value appears to be fallacious.

9. As regards the contention of the learned counsel that the said Rule acts in derogation of the power of the Registering Authority appointed under the Registration Act, 1908 in so far its exercise in accordance with Sub-section (1) of Section 47A is concerned, we find that the source of power for enacting the Rule is stated to be Section 47-A and Section 75 of the Stamp Act.

Section 75 of the Stamp Act grants power to the State Government to make rules to carry out the purposes of the said Act. The purpose for which the Rule 3-A appears to have been framed, is to further the purpose and object of Section 47-A and, thus, we have to see whether Rule 3-A harmonises with the purpose of Section 47-A to further its object or it impedes or curtails or abridges the power granted by the said Section to the registering authority. A perusal of Sub-section (1) of Section 47-A leaves us in no manner of doubt that the registering officer appointed under the Registration Act, 1908, while registering any instrument has himself to have reason to believe that the market value of the property which is the subject-matter of such instrument has not been duly acted forth in the Instrument. It is, thus, his assessment which should lead him to the belief about under-valuation. Rule 3-A, however, circumscribes this discretion and leaves no choice with the Registering Officer except to refer the Instrument to the Collector for determination of the actual market value, if the value stated in the Instrument is less than the minimum value prescribed and prepared under Rule 3-A of the said Rules, even though in his better judgment he may, otherwise, find it to have been properly valued.

It is, therefore, manifest that the Rule has the effect of abrogating the power of Registering Officer under sub-section (1) of Section 47-A to draw his own conclusions and bere of this power, he is required to refer the document for determination of the market value even though, in a given case, he, in his own discretion, may not find it undervalued. It is clear that instead of supplementing the provisions of Section 47-A, the Rule curtails the powers; indeed abrogates it. The Rule therefore, is ultra vires the power granted by Section 75 of the Stamp Act and cannot stand together with Section 47-A thereof. The Registering Officer is a statutory functionary under the Act and his function cannot be taken away, abrogated or curtailed by a subordinate legislation.

We, therefore, strike down Rule 3-A of the Rules as ultra vires the power granted by Section 75 of the Stamp Act and as a corollary, the notice (Annexure P-1) issued on the ground that the Instrument presented for registration indicated the value lower than the minimum value prescribed in the statement issued under Rule 3-A, is also quashed.

The respondent No. 4 is directed to examine the Instrument in accordance with the provisions of Section 47-A and to take further steps in accordance with law. It is also made clear that if the respondent No. 1, in exercise of his power u/s 47-A of the Act harbours a belief that the market value of the property indicated in the Instrument has not been truly set forth, he would be at liberty to proceed in accordance with law.

The petition is, thus, allowed but without any order as to costs.