(1997) 11 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13527 of 1997

Bharatia Pulverisers Private Limited, Kommuguda, Asifabad Mandal, Adilabad Dist. — APPELLANT

Vs

Sub-Registrar of Assurances, Asifabad, Adilabad and Another — RESPONDENT

Date of Decision : 10-11-1997

Acts Referred:
Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 47

Citation : (1998) 1 ALD 186 : (1997) 6 ALT 801

Hon'ble Judges : Motiala B. Naik, J

Bench : Single Bench

Advocate : Mr. Ravi S, for the Appellant; Government Pleader for Revenue (General), for the Respondent

Judgement

1. In this writ petition a mandamus is sought questioning the action, of the respondents in demanding deficit stamp duty of Rs.2,30,000/- by fixing the fair market value of Rs.20,00,000/- for the property purchased under public auction from the Andhra Pradesh State Financial Corporation (APSFC) for a sum of Rs.5,00,000/- as arbitrary and illegal and seeks such other directions deemed fit and proper in the circumstances of the case.

2. Before adverting to the main controversy raised in this writ petition on the question as to whether initiation of proceedings u/s 47A of the Indian Stamp Act, 1899 (for short ''the Act'') by the respondents is proper, it would be appropriate to appraise the facts of the present case.

3. The petitioner is a private limited company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing cement. One M/s Sri Satyanarayana Swamy Cements and Chemicals Private Limited had taken term loans of Rs,30.00 lakhs, Rs.16.30 lakhs and Rs.7.00 lakhs from the Andhra Pradesh State Financial Corporation by mortgaging title deeds of the immovable properties owned and possessed by it, particularly the

land bearing Sy.Nos.3/A and 4/A, admeasuring Ac.7.43 cents situated at Kumuguda village, Asifabad Mandal, Adilabad District. The said property was registered with Sub-Registrar, Asifabad, Adilabad District, as document No.144/1984 dated 4-4-1984.

4. The said M/s Sri Satyanarayana Swamy Cements and Chemicals Pvt. Ltd., had defaulted in payment of amounts due to the APSFC according to the agreement, and therefore, the APSFC invoked the powers u/s 29 of APSFC Act by putting the properties to public auction by Public-,-Notice dated 22-1-1996 published in "The Hindu'' newspaper. The petitioner also participated in the auction and was successful in getting the unit, being the highest bidder for a sum of Rs.5.00 lakhs. The land admeasuring Ac.7.43 cents was transferred in favour of the petitioner free from all encumbrances, liabilities, charges or arrears by way of sale deed dated 21-3-1997.

5. The petitioner, no doubt, purchased the plant and machinery also along with the land and building for a consideration of Rs.20.00 lakhs. Thus, the items of auction land and building'' and ''plant and machinery'' were purchased by him for an amount of Rs.25.00 lakhs. The petitioner, however, obtained sale deed only in respect of the land and building admeasuring an area of Ac.7.43 cents by a sale deed dated 21-3-1997 which was presented to the Sub-Registrar of Assurances, Asifabad, by paying stamp duty of Rs.55,000/- on the basis of the value at which the land and building was purchased. The petitioner also paid registration fee of Rs.2776/- under receipt No.319376 dated 21-3-1997.

6. According to the petitioner, to his shock and surprise, the first respondent issued notice dated 24-4-1997 calling upon the petitioner to pay a sum of Rs.2.30 lakhs towards deficit stamp duty on the difference of value of Rs.20.00 lakhs, within a period of seven days from the date of receipt of the notice. The petitioner states that though a detailed reply was sent on 7-5-1997 opposing the demand of additional stamp duty of Rs.2.30 lakhs on Rs.20.00 lakhs over and above the value of Rs.5.00 lakhs paid by him for the land and building and requested the first respondent to release the document presented for registration without any hindrance, the first respondent has now proposed to refer the matter to the Collector, Adifabad u/s 47A of the Act, which action is assailed in this writ petition.

7. According to the petitioner, despite the first respondent receiving the reply, the first respondent filed to release the document No.Pl/97 dated 21-3-1997 and, therefore, he has approached this Court seeking an appropriate direction declaring the action of the first respondent in insisting payment of additional'' stamp duty of Rs.2.30 lakhs as arbitrary and further seeks a direction to the first respondent to release flic document No.Pl/97 dated. 21-3-1997 without demanding further amount and to declare the action of the respondent in initiating proceedings u/s 47A of the Act as illegal:

8. The first respondent has filed two counters on different dates to the Writ

Petition averments. In the first counter-affidavit, the first respondent has taken the stand that the petitioner had purchased not only the land and building but also plant and machinery in the auction held by the APSFC for a consideration at Rs.25.00 lakhs, Rs.5.00 lakhs being the value of the land and building and Rs.20.00 lakhs being the value of the plant and machinery. The respondents have also stated in the counter that though the petitioner has purchased the above said items of property for total consideration of Rs.25.00 lakhs, he suppressed the facts in the safe deed presented to the first respondent in sale deed No.Pl/97 seeking to register only the land and building which was purchased for Rs.5.00 lakhs and therefore, the first respondent issued notice to get plant and machinery also registered for which Rs.20.00 lakhs have been paid by the petitioner. According to the respondents, suppression of facts by the petitioner attracts penal action u/s 64 of the Act.

9. In the second counter-affidavit filed by the first respondent on 16-10-1997, during the course of hearing of the writ petition, the first respondent had re-assessed the value of the land and building at Rs. 10,97,899-30 ps. and stated that the petitioner has deliberately undervalued the property which is presented for registration and thus justified initiation of the proceedings u/s 47A of the Act.

10. In the wake of these rival contentions, this Court is called upon to examine whether the respondents are justified in seeking to demand additional stamp duty of Rs.2,30,000/-from the petitioner and whether initiation of the proceedings u/s 47A of the Act is justified ?

As seen from the rival contentions, it would be appropriate to examine the provisions u/s 47 A of the Act, which are as under:

47A. Instruments of Conveyance etc.. Undervalued - How to be dealt with :

"where the registering officer appointed under the Registration Act, 1908 while registering any instrument of conveyance, exchange, gift, partition, settlement or release, 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 keep pending such instrument and refer the matter to the Collector for determination of market value of such property and proper duty payable thereon.''"

11. By referring to the above provisions, Sri Ravi, S., senior learned Counsel for the petitioner contended that a reading of the provisions makes it clear that if a party fails to truly set forth the value of the property in the instrument, it would always open to the Registrar concerned to keep the instrument pending, while referring to the Collector for determination of the true market value of such property. The learned Counsel stated that admittedly, the petitioner has purchased the land and building for a sum of Rs.5.00 lakhs in the open auction which was held on 26-3-1996. It is further contended that though the petitioner purchased the plant and machinery in the said auction for another sum of Rs.20.00 lakhs, the petitioner subjected only the land and building for

registration under the document No.Pl/97, dated 21-3-1997. According to the learned Counsel, there is no effort on the petitioner''s part to undervalue of the property purchased in the auction and, therefore, contends the provisions contemplated u/s 47A of the Act cannot be made applicable in the present set of circumstances. Counsel further contended that the effort of the first respondent to keep the document PI/97 pending while initiating proceedings u/s 47A of the Act and referring the matter to the Collector is illegal. Counsel submitted that the value paid by the petitioner during the auction purchase for the land and building is to be taken as true and proper value of the property for the purpose of registration. In support of his contentions, learned Counsel for the petitioner has referred to the decision of this Court in K. Sivaramaiah v. Special Deputy Collector, Urban, Cuddapah 1989(1) ALT 546 wherein this Court has held that the value paid at the time of public auction to a particular property has to be treated as correct value, for the purpose of registration. It is further contended that the petitioner has not subjected the plant and machinery for registration though he purchased the same in the auction for a sum of Rs.20.00 lakhs and as such the first respondent cannot insist payment of additional stamp duty of Rs.2.30 lakhs for the value of the plant and machinery purchased by him for Rs.20 lakhs.

12. The learned Government Pleader for Revenue (General) on the contrary submits that when the petitioner has purchased the land and building along with plant and machinery by paying Rs.25.00 lakhs, he has to necessarily register both land and building and also plant and machinery, as the plant and machinery is appurtenent to land and building, which were purchased in the auction on 26-3 -1996, and it shall be taken as a Unit for the purpose of registration of the document. It is further contended that the petitioner having failed to value the property correctly at Rs.25.00 lakhs, the provisions u/s 47A of the Act have rightly been applied by the first respondent, while insisting payment of Rs.2.30 lakhs as additional stamp duty. The learned Government Pleader justified the action of the first respondent in initiating the proceedings u/s 47A of the Act referring the matter to the Collector while keeping the document PI/97 dated 21-3-1997 with him. Even otherwise, it is contended by the learned Government Pleader that the petitioner has an alternative effective remedy to carry the matter in appeal against the order of the Collector Iff the Civil Court and, therefore, contended that the writ petition has to be dismissed on this ground alone.

13. As discussed above, the petitioner has no doubt purchased the''land and building'' and ''plant and machinery'' in the public auction on 26-3-1996 for a consideration of Rs.5.00 lakhs and Rs.20.00 lakhs respectively. The petitioner has opted to register only the land and building which he purchased for Rs.5.00 lakhs in the public auction and presented to the first respondent under document No.P 1/9 dated 21-3-1997, by paying necessary stamp duty and registration fees. The purpose of registering the land and building by the petitioner is for obtaining necessary loans by pledging the land and building to the bank, which would enable the petitioner to run the cement Unit.

14. The expression used in Section 47A of the Act is that the Registrar'' ''for any reason to believe that the market value of the property which is subject matter of such instrument has not been properly and truly set-forth in the instrument, he may keep pending such instrument and refer the matter to the Collector for determination of the market value. A plain reading of these words used u/s 47 A of the Act, no doubt gives an impression to this Court that as long as the property is undervalued and the Registrar has reason to believe that the property is undervalued, is entitled to refer the matter to the Collector. The law is, when efforts are made to defraud the Government, the competent authority is entitled to prosecute such persons u/s 64 of the Act. That being so, if in the opinion of the first respondent, the petitioner has tried to defraud the Government by not paying necessary stamp duty on purchasing the plant and machinery in public auction, if law permits, the first or second respondent could take recourse u/s 64 of the Act.

15. As indicated, the facts are different in this case. Petitioner has chosen to subject the land and building for registration, purchased by him for a sum of Rs.5.00 lakhs during the auction. In my view, the petitioner has truly disclosed the value of the land and building in the sale document No.P 1/97 which is presented before the* first respondent.

16. This Court in the decision referred to above (1989 (1) ALT 546 supra), while examining the provisions u/s 47A of the Act, with regard to the property sold in public auction, held that the true value of the property for the purpose of registration shall be that of the price paid by the party in the public auction. I am entirely in agreement with the above view taken by the learned Judge of this Court. The land and building were purchased by the petitioner in the public auction held on 26-3-1996 for a sum of Rs.5.00 lakhs. The petitioner has subjected only the land and building for registration before the first respondent by paying necessary stamp duty for the value of Rs.5.00 lakhs, which value he paid during the auction. Therefore, it cannot be said that the petitioner has undervalued the property as the property is purchased in public auction. The respondent has not placed any record before this Court to show that the petitioner has paid higher value during the auction purchase and has shown lesser value for the purpose of registration. In this view of the matter, I am inclined to hold that the value shown by the petitioner, basing on the auction purchase, for registration, is correctly indicated and thus, the first respondent cannot refer the matter to the Collector u/s 47A of the Act only to satisfy his whims and fancies.

17. Yet another effort is made by the learned Government Pleader to throw the petitioner out of this Court by contending that when the petitioner has effective and alternative remedy, he shall not approach this Court invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. According to the learned Government Pleader, since the first respondent has referred the case of the petitioner u/s 47 A of the Act to the Collector for

determining the market value, if the petitioner is aggrieved by the order passed by the Collector, he can as well challenge the order of the Collector by way of an appeal before the competent Civil Court. According to the learned Government Pleader, when an effective alternative remedy is provided under the Statute, the petitoner has failed to avail the same and has approached this Court under Article 226 of the Constitution of India, and therefore, this Writ Petition cannot be maintained. In support of his contention, the learned Government Pleader has cited a decision of the Division Bench of this Court reported in Sub-Registrar, Hyderabad v, M, Damodar Reddy 1997 (3) ALD 325 (DB). I am afraid, this submission of the learned Government Pleader can be accepted in the set of circumstances of the case. Availability of an alternative effective remedy is not a lone ground for the Courts to throw the party out of the Courts, when approached under Article 226 of the Constitution of India. What has to be seen in these cases is whether the petitioner has made out a reasonable case before this Court seeking a mandamus under Article 226 of the Constitution of India. If the petitioner is able to make out a substantial case before this Court, then this Court can issue a mandamus or any other prerogative writ notwithstanding the availability of the effective alternative remedy to the parties. This position has been clarified by the decision of the Supreme Court reported in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, . At Para 9 of the said decision, the Supreme Court has held thus :

"... the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which Courts have laid down for the exercise of their discretion."

The Supreme Court has thus held that each case has to be tested on its own merits and that the availability of alternative remedy to a party cannot be a ground for the Courts to deny granting of prerogative writ to a party.

18. In this case, the petitioner has purchased the land and building in public auction oti"26-3-96 and having opted to get the sale deed registered, presented the sale deed before the first respondent for registration after paying necessary stamp duty and registration fees on 21-3-1997 under the document PI/97. Petitioner has stated in his affidavit that he desired to obtain loan from financial institutions/banks by pledging the property purchased through the document No.PI/97 to run the unit. However, the first respondent referred the matter to the Collector u/s 47A of the Act as if the petitioner has shown the value of the property lesser and has not disclosed the true value of the property. If the petitioner has to approach the Collector and if the Collector passes an adverse order, the petitioner has to take the matter in appeal before the competent Civil Court, I am of the view, it will be an unending litigation, with the result, the petitioner would not be in a position to secure loan to run his unit. Law, in my view, shall assist a party who bona fidely believed the value to be true and

presented the document for registration, but cannot create problems and hurdles. It is in this context, I am inclined to hold that the petitioner has rightly approached this Court under Article 226 of the Constitution of India assailing the steps taken by the first respondent seeking to refer the matter to the Collector u/s 47A of the Act though such contingency has not arisen in the facts and circumstances of the case. I am, therefore, inclined to hold that the parties cannot be driven from pillar to post only to satisfy the whims and fancies of the authorities and the authorities cannot go scot-free with their fanciful actions. Though the learned Government Pleader has supported his contentions by referred to the decision (1997 (3) ALD 325 (DB) supra), I am afraid, the said decision cannot come in the way of this Court to grant appropriate relief to the petitioner in the light of the proposition laid down by the five-Judges of the Supreme Court way back in the year 1961 in the decision cited above A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, .

19. Having regard to the facts and circumstances of the case, I am inclined to hold that the action of the respondents in demanding the deficit stamp duty of Rs.2.30 lakhs from the petitioner by fixing the fair market value of Rs.20.00 lakhs to the property purchased by the petitioner, is unjustifiable and cannot be sustained. Accordingly, I hold that the respondents are not entitled to demand the deficit stamp duty of Rs.2,30,000/- from the petitioner. Further, I am inclined to hold that initiation of proceedings by the first respondent u/s 47A of the Act and referring the matter to the Collector for determining the fair market value is unwarranted, unreasonable and uncalled for as in my considered view, there is no reason to disbelieve the value shown by the petitioner in respect of the land and building purchased by him in the public auction for a sum of Rs.5.00 lakhs.

20. Accordingly, a writ of mandamus shall issue to the first respondent directing him to release the document No,Pl/97 dated 21-3-1997 forthwith, presented by the petitioner.

21. In the result, the writ petition is allowed but, in the circumstances, without costs.

