

(1999) 10 CAL CK 0044
In the Calcutta High Court

Case No : Civil Appellate Jurisdiction W.P. No. 1896 of 1995

Birendra Nath Manna and Another

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 246, 248, 43

Registration Act, 1908 — Section 60, 61

Stamp Act, 1899 — Section 2, 2(14), 27, 28, 3, 3

Citation : (2000) 2 CALLT 105 : (2000) 1 CHN 173 : 104 CWN 166

Hon'ble Judges : Satyabrata Sinha, Acting C.J.; Mahemmad Habeeb Shams Ansari, J; Barin Ghosh, J

Bench : Full Bench

Advocate : Mr. P.K. Ray, for the Appellant; Mr. Anindya Mitra, for the Respondent

Judgement

S.B. Sinha, J.—In this appeal the vires of section 47A of Indian Stamp Act, 1899 as amended by the State of West Bengal is in question.

2. The petitioners are landholders. They intended to convey same properties which required registration, the consideration wherefor was fixed at Rs. 1,80,000/-. However, In view of the provisions of section 47A of the Indian Stamp Act and the Rules framed thereunder, the market value of the property was fixed at Rs. 5,65,000/- and the Registering authority directed them to pay the deficit stamp duty calculated on the basis thereof.

3. Thereafter these writ applications have been filed.

4. Mr. P.K. Roy, the learned senior counsel appearing on behalf of the appellant, inter alia, has drawn this Court's attention to Entry 44 of List III, Entry 63 of List II and Entry 91 of List 1 of the 7th Schedule appended to the Constitution of India and submitted that keeping In view the aforementioned entries it is absolutely clear that whereas; Entry 91 List 1 and Entry 63 of List II refer to the rate of Stamp duty. Entry 44 of List III does not refer to the rate. The learned counsel, therefore, contends that the Constitution of India recognised the

distinction between the rates of stamp duty and mechanism of collection or management therefore. According to Mr. Roy, Stamp Duty by its nature is necessarily referable to and based on an Instrument and not a bare Incident or transaction. In support of the said contention strong reliance has been placed on IRC v. G. Angers & Co. reported in 1889 (23) QBD 579 and Minister of Stamps v. Townend reported in (1909) A.C. 633.

5. Mr. Roy would urge that in terms of Clause (2) of Article 248 of the Constitution of India, the Parliament is vested with an exclusive residuary power to make law including imposition of tax with respect to any matter and thus, such residuary power being referable to Entry 97 of List-1 of Constitution of India, the State had no legislative competence to make the aforementioned amendment.

6. It was further submitted that upon introduction of Chapter XX-C of the Income Tax Act, 1961 it must be held that as Union of India is competent to deal with the question of under valuation of an Instrument as has been held by the Apex Court in C.B. Gautam Vs. Union of India and Others, , the said subject matter cannot be said to be covered by Entry 44 of the concurrent list. It has further been submitted that in any event two parallel proceedings, one governed under the Income Tax Act, 1961 and another governed under the State amendment of the Indian Stamp Act as a result whereof the assessee may be rendered liable to pay enhanced stamp duty In respect of a transaction which had not taken effect is impermissible. The learned counsel submits that as even In relation to an agreement of sale or a settlement which would Include a family settlement, stamp duty has to be paid on the basis of a market value fixed by the State, the same Is arbitrary.

7. References have also been made to Rule 4 of the West Bengal Stamp (Provision of Under-valuation of Instruments) Rule 1994 hereinafter called and referred to for the sake of brevity as the said rules) as also the forms appended thereto and it was submitted that from a perusal thereof it would appear that no provision has been made for giving an opportunity of hearing to the person executing the Instrument at the first instance and evidence can be adduced by him only at the appellate stage and, thus, the person executing deed is deprived of the principles of natural Justice.

8. Mr. AnIndya Mitra, the learned senior counsel appearing on behalf of the respondents, on the other hand, submitted that the word "rate" employed in Entry 91 of List I, Entry 44 of List III. Entry 63 of List II refers only to measure of tax. Reliance in this connection has been placed on Federation of Hotel & Restaurant v. Union of India reported in and Goodricke Group Ltd. and Others Vs. State of W.B. and Others, It was submitted that stamp duly is not payable on a transaction or a negotiation but an execution of an instrument. It has been submitted that the legislature is free to adopt any method for assessment of rate as it chooses. Mr. Mitra would submit that similar State amendment brought in other State which are in pari material with section 47A of the said Act has been

held to be *intr vires*. Reliance in this connection has been placed on *The State of Tamil Nadu Vs. T.N. Chandrasekharan*, *Smt. Ramkishori Gupta Vs. The State of Madhya Pradesh and Others*, and *Champaklal J. Gadani Vs. State of Gujarat and Others*. The learned counsel submits that the Court should not approach an enactment with a view to dig holes or to search for defects. Strong reliance in this connection has been placed on *State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc.*. It has been submitted that the power conferred upon the State cannot be said to be an unguided and as the expression "market value" itself provides for adequate guidelines. Our attention has been drawn to their statements made in the Affidavit-in-opposition showing as to how absurd low valuations were being shown as apparent value thereof which necessitated enactment of the said Act.

9. Indian Stamp Act, 1899 was enacted with a view to consolidated and amend the law relating to stamps.

10. Entry 44 of List III of the 7th Schedule of the Constitution of India covers the field of legislation providing for "stamp duties other than the duty and fee collected by means of judicial stamp but not including the rate of stamp duties."

11. There cannot be any doubt whatsoever that the word "rate" connotes measure of tax. Tax has got two elements, viz. (1) subject matter of tax; and (2) rate thereof.

12. In *Federation of Hotel & Restaurant v. Union of India* reported in . It has been held:

"The subject of a tax is different from the measure of the levy. The measure of the tax is not determinative of its essential character or of the competence of the legislature. In *Sainik Motors v. State of Rajasthan*, the provisions of a State law levying a tax on passengers and goods under Entry 56 of List I were assailed on the ground that the State was. In the guise of taxing passengers and goods, in substance and reality taxing the Income of the stage carriage operators or, at any rate, was taxing the Tares and freights", both outside of Its powers. It was pointed out that the operators were required to pay the tax calculated at a rate related to the value of the fare and freight. Repelling the contention, Hidayatullah J. speaking for the court said :

"We do not agree that the Act, in its pith and substance, lays the tax upon Income and not upon passengers and goods. Section 3, In terms, speaks of the charge of the tax "in respect of all passengers carried and goods transported by motor vehicles, and though the measure of the tax is furnished by the amount of fare and freight, charged, it does not cease to be a tax on passengers and goods." Indeed, reference may be made to the following statement in *Encyclopedia Britannica* (vol. 14 page 459) on "Luxury Tax" :

"A different approach to luxury taxation, much less frequently found, seeks to single out the luxury component of spending on a given object rather than taxing

specified goods and services as luxuries. One example of this is the Massachusetts 5 per cent tax on restaurant meal of section 1 or more"

13. Yet again in *Goodricke Group Ltd. v. State of W.B.* reported in 1995 Suppl (2) SCC 707, the Apex Court held:

"It is thus clear from the aforesaid decision that merely because a tax on land or building is imposed with reference to its income or yield. It does not cease to be a tax on land or building. The Income or yield of the land/building is taken merely as a measure of the tax; it does not alter the nature or character of the levy. It still remains a tax on land or building. There is no set pattern of levy of tax on lands and building-indeed there can be no such standardisation. No one can say that a tax under a particular entry must be levied only in a particular manner, which may have been adopted hitherto. The legislature is free to adopt such method of levy as it chooses and so long as the character of levy remains the same i.e. within the four corners of the particular entry, no objection can be taken to the method adopted. In the cases before us, the cases is no doubt calculated on the basis of the yield-for every kilogram of tea leaves produced in a tea estate, a particular cess is levied, but that is a well-accepted mode of levy of tax on land. The tax is upon the land upon the "tea estate" which is classified as a separate category as a separate unit for the purpose of levy and assessment of the said cess quantified on the basis of the quantum of produce of the tea estate. It cannot be characterised as a tax on production for that reason. As pointed out in *Moopil Nair*-"A tax on land is assessed on the actual or potential productivity of the land sought to be taxed". There cannot be uniform levy unrelated to the quality, character or income/yield of the land. Any such levy has been held to be arbitrary and discriminatory."

14. The Apex Court proceeded. Strong reliance is placed by the learned counsel for the petitioners upon the following sentence in para (22) of *India Cement*. There is a clear distinction between tax directly on land and tax on income arising from the land"-to contend that levy of tax on Income of land is not tax on land. We are afraid, the learned counsel are tearing one sentence out of context and are seeking to construe it as a statute. That the tax on land and building can be levied with reference to, i.e., measured on the basis of their yield or income is the uniform view taken in the cases referred to hereinbefore. For instance, how is the property tax levied on a building in a municipality? It is only on the basis of its annual rental value i.e. on the basis of the rent it is fetching when let out on the rent it would fetch if let out. It is open to the legislature to say that rent of previous year or the average rent of previous two, three or more years shall be the basis, indeed, there is nothing to prevent the legislature from taking the rent of that very year as the basis for levying the tax. In the case of a new building, the tax for the first year would naturally be based upon the rental value for that year. And what is rent, if not the Income of the building--its yield? In *India Cement* the Court pointed out that the levy in that case being on royalty, it cannot be called a tax on land. The Court said : "but in the instant case, royalty,

being that which is payable on the extraction from the land and cess being an additional charge on that royalty, cannot, by the party of the same reasoning, be considered to be a tax on land." As pointed out hereinabove, tax on royalty is not tax on land with reference to income since royalty is not the Income of the land but an exaction payable by the lessee of the land to the lessor/owner. In India Cement the Court took the view that royalty is a tax and hence, a tax upon such royalty (tax) is not permissible in law. It is for this reason that the Court held agreeing with Shri Narlman that "royalty which is indirectly connected with land cannot be said to be a tax directly on land as a unit" (para 23). A tax imposed on land measured with reference to or on the basis of its yield, however, is certainly a tax directly on the land. Apart from income, yield or produce, there can perhaps be no other basis for levy. A uniform tax levied without reference to yield, quality and character was held to be bad in State of A.P. v. Nalla Raja Reddy.

15. Measure of charge has either to be fixed or ad valorem. The charging provision of the Act is on the instrument for execution as would appear from section 3 of the said Act. The amount of tax to be calculated on the basis of the document should not be mixed up or identified as a measure of duty which is clearly indicated in the two columns of the schedule appended thereto.

16. Section 28 of the Act provides for direction as to duty in case of certain conveyances. From a comparison of the said provision with section 47A of the Act it would appear that such conveyance shall be chargeable on ad-valorem basis or the market value thereof whichever is greater.

17. Entry 44 of List III, Entry 63 of List II and Entry 91 of List I of the VII Schedule read thus :-

"Entry 44 of List III--Stamp duties other than duties or fees collected by means of Judicial stamps, but not including rates of stamp duty.

Entry 63 of List II--Rates of Stamp duty in respect of documents other than those specified in the provisions of list 1 with regard to rates of stamp duty.

Entry 91 of List I--Rates of stamp duty in respect of bills of exchange, promissory notes, bills of lading, letters of Credit, policies of insurance, transfer of shares, debentures, proxies and receipts."

18. The submission of Mr. Roy is to the effect that stamp duty can be levied on the amount of consideration mentioned in the sale deed and not on the transaction and further such stamp duty is to be levied at the rate as applicable in the State where the deed is executed.

19. The Andhra Pradesh High Court in *Bharpet Mohammad Hussain Saheb and Another Vs. District Registrar, Kurnool*, held :-

"Another principle that is to be borne in mind in the context of this equity is that it is the instrument that is presented for registration that should be taxed. We can not read a number of documents to see if a particular transaction is spread

over all these instrument. We have to take Into account the nature of the document that is sought to be taxed.

20. Learned Judges also observed :

It Is plain from, this statement of law that it is only the instrument that Is presented for registration that should be charged with stamp duty. The authorities cannot look Into the various documents that are connected with It with a view to Judge the nature of the transaction that is covered by this document read in conjunction with several others. That being the legal position, there will be no warrant for taking into consideration several connected Instruments with a view to Judge the character of the transaction evidence not by one document but all of them put together."

21. In Nanak Chand v. Fattu, reported In AIR 1935 Lah 567, a Special Bench of Lahore High Court also followed the case of Minister of Stamps v. Annie Quayle Townnd (supra) and stated the law thus :-

"If therefore a document is so worded that it expressly, or by necessary Implication comes within a particular provision of the Act, it must be stamped accordingly. But the implication must arise from the phraseology used In the document, and not be a matter of legal inference of presumption. An Implication of law does not involve liability to duty, though it may give rise to certain legal obligation."

22. In Superintendent of Stamps Vs. Breul and Co., Stone C.O. white interpreting Article 43 of Schedule I of the said Act held that the instrument and not transaction attracts duty.

23. In New Central Jute Mills Co. Ltd. and Others Vs. The State of West Bengal and Others, , the Supreme Court was considering a matter as to whether a document was executed In Uttar Pradesh but registered In another province, the stamp duty would be payable as per the law of .former province or the latter province.

24. Entry 44 of List III covers a wide field. It is now a well settled principles of law that an entry made in any of the list should be construed liberally and only In a case where one entry comes in direct conflict with the other, the doctrine of pith and substance should be applied.

25. As by reason of the said entry both the Parliament as also the State Legislature have been conferred power to enact law relating to stamp duly, the same must be held to have wide import. The power to legislate on the stamp duty includes a power to make a provision to check evasion thereof and new process and procedural provisions may also be added for plugging the loopholes. By reason of the said provision only prohibition of evasion of stamp duty has been made.

26. It is profitable to note that in terms of section 2(14) of the said Act

"instrument" has been defined to mean every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.

27. As indicated hereinbefore, section 3 of the said Act provides for the taxable event being on the instrument a deed of sale or any other transfer or any other conveyance whereby and whereunder right or liability is Imposed would come within the definition of instrument.

28. In AIR 1971 1070 (SC) , the Supreme Court while considering the provisions of section 35 of the Stamp Act held :

"section 35 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of section 35. Instrument defined in section 2(14) as including every document by which any right of liability is, or purports to be created, transferred, limited, extended, extinguished or recorded."

29. It is now well known that the entries of a schedule have to be construed in the same manner as that of the provisions of the Constitution.

30. In Tata Iron and Steel Co. Ltd. Vs. The State of Bihar and Others . It has been held as follows :

"Further, now it is well known that Entry in the list of the 7th Schedule of the Constitution has to be given a broad meaning (See Ujagar Prints Vs. Union of India (UOI), wherein the law has been laid down in the following terms :

"Entries to the legislative Lists, are not sources of the legislative power but are merely topics of fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression "with respect to" in Article 246 brings in the doctrine of "pith and substance" in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the legislation, looked at as a whole, is substantially with respect to the particular topic of legislation. If the legislation has substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic."

31. The constitutionality of statute would depend upon the legislative power conferred in this regard by the Constitution. Entry 44 of List II of 7th Schedule of the Constitution of India refers to stamp duty other than the duty of fee collected by means of Judicial stamps but not Including rates of stamp duty. The power to legislate on stamp duty is, thus, a wide one and should be construed as such. The said words, in my opinion, not only carry with them all the powers to realise stamp duty on instrument as also the procedure therefore which would necessarily including the power to stop evasion of payment of stamp duty. The legislature, therefore, must be held to have power to make legislation covering the entire field of stamp duty. Several High Courts have also categorically held

that such provisions have been enacted in order to neutralise the effect of under valuation in an instrument. For the reasons aforementioned, in my opinion, it has to be held that section 47A of the Stamp Act as amended by the State of West Bengal is within its legislative competence.

32. It is not correct to contend that the Registering Authority has not been conferred with any power whatsoever. Section 47A provides for application of mind on the part of the Registering Authority as before directing the executant of the document to pay the deficit stamp duty only in the event he has reasons to believe that the consideration amount mentioned in the deed does not reflect the true market value of the property.

33. The words "reasons to believe" are significant. In a given case the higher authorities as also this Court may determine as to whether the registering authority had "reasons to believe" that instrument was under valued. In any event, the Collector as also the Appellate Authority may arrive at a different finding on the basis of the documents produced and/or evidence adduced before them.

34. In *Commissioners of Inland Revenue v. G. Angus & Co.* reported in 1989 LR 579, the Court of Appeal upon consideration of section 70 of the Stamp Act, 1878 held that the term "conveyance" or "sale deed" includes every instrument whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser,

35. In *Minister & Stamps v. Annie Quayle Townend* reported in 1909 appeal cases 633, the Privy Council at page 639 observed :-

"Learned Chief Justice puts it in most concise way when it says that the statute taxes Instrument and does not tax transactions.

In that case the Privy Council was dealing with a gift which was not made by an instrument in writing and as such It was held that as no transaction was effected by any document, no stamp duty was payable."

36. We may also refer to the decision in *Mutter & Co.'s Margarine, Limited v. Commissioners of Inland Revenue*, reported in 1900 (1) QBD 310, wherein Collins L.J. held :-

"Now, it is to be observed that what the Stamp Act deals with is not the bargain which arises out of the consent of the parties, but the instrument which records that bargain."

37. The aforementioned decisions have been considered by one of us (S.B. Sinha, J) In *Umesh Thakur Vs. State of Bihar and Others* .

38. As the subject matter of taxation is covered by Entry 44 of List III of the Seventh Schedule of the Constitution of India. Entry 97 of List I cannot be said to have any application whatsoever in the instant case.

39. Reference made by Mr. Roy to the case of C.B. Gautam Vs. Union of India and Others, is wholly misplaced. The provision of Chapter XX-C of the Indian Income Tax Act is not in parl material with section 47A of the said Act. Both Acts although seek to achieve the same purpose but the mode thereof is different. In terms of the provisions contained in Chapter XX-C the property purchased by reason of document, consideration whereof was below the market value, only a right of preemption can be exercised by the Union of India. Such a provision can be taken recourse to despite the fact that In terms of section 47A of the said Act the parties executing the document has to pay a higher rate of stamp duty.

40. In Gautam's case (supra), the Apex Court held that properties can be acquired in terms of Chapter XX-C upon payment of compensation. There does not exist any such provision in the Stamp Act.

41. Entry 63 of List II is subject to Entry 44 of List-I. The fact that the State has been empowered to prescribe ad valorem rate of duty is neither in doubt nor In dispute. Such a rate has to be calculated on some basis. It also stands admitted that the method of calculation of rate of stamp duly have all along been on ad-valorem basis, which had merely been substituted by a concept of market value. It Is now a well settled principles of law that in the matter of taxation the court takes more liberal altitude than any other case. Furthermore the Court should also lean in favour of validity of a statute. The approach of the Court would be to start with the presumption of constitutionality of the concerned statutes particularly in a case of this nature where validity of a similar provision has been upheld in The State of Tamil Nadu Vs. T.N. Chandrasekharan, , Kaka Singh Vs. The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another, and Collector of Nilgiris at Ootacamund Vs. Mahavir Plantations Pvt. Ltd., .

42. Section 47A of the Stamp Act as amended by the State of Tamil Nadu also fell for consideration before a Division Bench of this Court in Anglo American Direct Tea Trading Co. Ltd. and Another Vs. State of Madras and Others, . where the vires of the said provision was upheld. Reference may also be made to Smt. Ramkishori Gupta Vs. The State of Madhya Pradesh and Others, and Champaklal J. Gadani Vs. State of Gujarat and Others, .

43. It is also admitted that similar amendments have been made in the State of Kerala, Meghalaya, Himachal Pradesh, Rajasthan, Tamil Nadu, Bihar, Goa, Domon Dlu, Andaman Nicobar, Andhra Pradesh, Punjab & Haryana, Chandigarh, West Bengal, Orissa, Pandicheri, Uttar Pradesh.

44. In Champaklal J. Gadani Vs. State of Gujarat and Others, P.R. Gokulakrlnshnan, C.O. speaking for the Division Bench, interpreted section 32A of the Bombay Stamp Act which is in the following terms :--

"32-A(1)--If any officer registering under the Registration Act, 1908, an instrument of conveyance, exchange, gift, partition, partnership or settlement or power of attorney or any person referred to in section 33, before whom such

instrument is produced or comes in the performance of his functions, has reason to believe that the consideration set forth therein does not approximate to the market value of the property which is the subject matter of such instrument, or as the case may be, the market value of the property which is the subject matter of such instrument, has not been truly set forth therein, he may after registering the instrument, or as the case may be. performing his functions in respect of such instrument, refer the instrument to the Collector of such district in which either the whole or any part of the property is situated for determining of the true market value of such property and the property duty payable on the instrument under this section."

45. Upon considering the other provisions of the Bombay Registration Act, viz. sections 60 and 61 which provided for return of the document, it was held :--

"In our opinion, It is too much for a person presenting a document before the registering authority who has reason to believe that it is under valued to say that no action should be taken by the registering officer u/s 31-A and that he should immediately return the document after registration and take action in future on the basis of a copy of such an instrument. No person presenting a document is likely to suffer as a result of the registering officer exercising this power u/s 32-A.

46. In *Smt. Ramkishori Gupta Vs. The State of Madhya Pradesh and Others*, N.D. OJha (as His Lordship then was) speaking for a Division Bench held that the Entries in the list should be reconciled and the Court should make an attempt to bring a harmony between them. The Court relied upon the decision of the Madras High Court in *The State of Tamil Nadu Vs. T.N. Chandrasekharan*, and upheld the vires of section 74A of the Act as amended by the M.P. High Court.

47. The question as to whether the provisions of the Act and the Rules in determining the market value formed a guideline or not came up for consideration before the Apex Court, in *State of Punjab and Others Vs. Mohabir Singh etc. etc.*, wherein upon taking consideration, in a similar situation held ;

"5. The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be predetermined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated: It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued . or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under-sub-section (4) of section 47A.

6. It would thus be seen that the aforesaid guidelines would inhabit the Registering Authority to exercise his quasi-Judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him

for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the sub-Registrar is required to satisfy himself, before registering "the document, whether the true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under sub-section (1) of section 47-A, he registers the document. Thereafter, he should make a reference to the Collector for action under sub-sections (2) and (3) of section 47A. Accordingly, we held that the offending instructions are not consistent with sub-section (1) of section 47-A. It would, therefore, be open to the State Government to revise its guidelines and issue proper directions consistent with the law."

48. The said question has recently been considered again by the Apex Court in *Ramesh Chand Bansal & Ors. v. District Magistrate/Collector Ghaztabad & Ors.* reported in 1999 (5) Supreme 443.

49. In *Prakashwati (Smt) Vs. Chief Controlling Revenue Authority, Board of Revenue, U.P. at Allahabad and Others*, upon which strong reliance had been placed by Mr. Roy, the Apex Court observed:

"Before the High Court as also here, it was urged on behalf of the appellant that since sufficient guidelines have not been provided in section 47A of the Act, the provision was unworkable. The High Court repelled the contention holding that a procedure was prescribed under sub-sections (3) and (4) of section 47-A which requires to be adopted for determining market value of the property which has not been truly set-forth in the document in question. The manner of the inquiry, as required to be held, is appropriately given therein. According to the High Court the procedure postulated was observed in the instant case and nothing further was required to be done. Rule 341 of the U.P. Stamp Rule 1942 providing for determination of the minimum market value, also subserving the purpose of section 47-A of the Act was explained to say that the minimum market value determinable was not the end of the matter and value could be determined at a figure higher than that if warranted."

50. The said decision in fact, runs counter to the submission on of Mr. Roy. The aforementioned decision clearly postulates that in a given case the High Court can exercise its power of judicial review and do justice to the parties and, thus, it cannot-be said that an arbitrary, uncanallised and naked power had been conferred upon the authorities concerned.

51. In the aforementioned backdrop the provision of the West Bengal Amendment Act and the Rules may be considered.

52. Sub-section (1) of section 47A of the said Act postulate that when the registering authority has reasons to believe that the market value of the property which is the subject matter of instrument has not been truly set forth in the instrument he may register such instrument provisionally subject to

determination of the market value under sub-section (2) and after registering such instrument refer to such authority as may be prescribed for determination of the market value of such property and the proper duty payable thereupon.

53. Sub-section (2) postulates that the authority to whom the matter is referred to is required to give an opportunity to the party of making their representation and after holding an enquiry as prescribed under the rules, determine the market value of the property.

54. Sub-section (3) of section 47A of the said Act postulates the authority referred to in sub-section (2) and also exercise its suo motu power within two years from the date of registration of such instrument although the same had not been referred to him.

55. Sub-section (4) of section 47A provides for an appeal by a person who may be aggrieved by an order of the authority under sub-sections (2) and (3).

56. Market value has been defined in Clause (16B) of section 2 of the said Act in the following terms :--

"Market value means, in relation to any property which is the subject matter of an instrument, the price which such property would have fetched or would fetch if sold in open market on the date of execution of such instrument as determined in such manner and by such authority as may be prescribed by rules made under this Act or the consideration stated in the instrument, whichever is higher."

57. In exercise of the said power as also the power conferred upon it under sections 27, 47A and 75 of the Indian Stamp Act, the State made the rules known as West Bengal Stamp (Prevention of Under-valuation of Instruments) Rules, 1994 (hereinafter referred to as the "said Rules").

58. Rule 3 of the said Rules provides for the manner of determination of market value and furnishing of particulars relating to any property. Sub-rule (1) of Rule 3 reads thus :-

"The market value within the meaning of clause (16B) of section 2 in relation to any land or any land with building shall, after taking into consideration the particulars referred to in sub-rule (2), be determined on the basis of the highest price for which sale of any land, or any land with building, of similar nature and area, in a comparable locality, has been negotiated and settled during the five consecutive years immediately preceding the date of execution of any instrument setting forth such market value, or on the basis of any Court decision, information, report on record that may be available from any Court or any officer or authority of the Central Government or the State Government or any local authority or local body, or on the basis of consideration stated in such instrument for the sale of such land or land with building, whichever is greater."

59. Sub-rule (2) of Rule 3 of the said Rules imposes an obligation upon any person executing an instrument shall furnish to the Registering Officer, in

addition to the particulars referred to therein.

60. Sub-rules (7), (8) of Rule 3 of the said Rules provide for that the registering authority may if he has reason to believe on the basis of the statements to be made in Form-I Form-II, Form-111 or Form-FV may make an inquiry and take into account a court decision, information, report or record for determining the market value of the property from the like nature and situated in a comparable locality in the manner he deemes fit and if on the basis of such inquiry he finds that the market value of the property is more than what has been set forth in the instrument of conveyance, exchange, gift, partition or settlement, he shall communicate in writing to the person by whom the Stamp Duty is payable u/s 29 or to his authorised agent or authorised advocate what he believes to be the market value of such property.

61. Sub-rule (12) of Rule 3 postulates for a person by whom the stamp duty is payable u/s 29 may register the document in the event the Stamp Duty payable by a person does not offer to pay the deficit amount of Stamp Duty referred the matter to the collector for determination of market value of property in terms of Rule 4.

62. Sub-rule (2) of Rule 4 of the said Rule envisages that the Registering Officer while making such reference shall clearly state in writing the facts and circumstances which led the registering officer to believe that the market value of the property in respect of which the instrument has been registered by him has not been truly set forth in such instrument and is also under an obligation to send the extracts of report or record on the basis whereof such belief was formed.

63. Rule 5 provides for the determination of the market value of property by the collector on reference.

64. Sub-rule (2) of Rule 5 empowers the collector to call for any information, report or record from the authorities mentioned therein, examine the same as also finding of registering officer and the information, report or record sent by him and inspect the property which is the subject matter of the instrument.

65. Sub-rule (3) of Rule 5 postulates granting an opportunity of hearing the person to whom a notice has been issued under sub-rule (1) and consider his objection.

66. There cannot be any doubt whatsoever that the collector at this stage while complying with the principles of natural Justice, cannot consider any document at the back of the person to whom a notice has been issued and thus, such person, would be entitled to examine all such documents.

67. The said rules provide for the guidelines as to in what manner the market value has to be arrived at. Such guidelines are flexible in nature and cannot be said to be a "grasp of steel".

68. Rule 6 of the said Rules also provides for appearance of the party through

Advocate or authorised agent.

69. Rule 9 of the said Rules provides for an appeal from the order of Collector, and Rule 11 provides for hearing of appeal.

70. The appellate authority apart from the evidences which might have been brought on records by the Parties may allow the Parties to adduce further evidence. The rules, thus, clearly prescribe that the person concerned first gets an opportunity before the registering authority to prove that the valuation put by him in the document bears the correct market value and if he cannot satisfy the registering authority, he may bring on records evidences to show that the opinion of the Registering Authority is not correct. Thus, enough guidelines have been provided in the Rules 2 to 12 of the said Rules apart from the definition of "market value" in section 2(16B). It is, thus, not a case where unguided discretion power has been conferred upon the executive and in any event, as indicated hereinbefore if any order is perverse the same can be corrected by way of judicial review.

71. So far as the submission of Mr. Roy to the effect that any value which is the highest one during the last five years may be taken into consideration, and thus, the same is bad in law, is concerned we are of the opinion. Hint for the purpose of computation of market value the comparable land and/ or execution of a document near about the time as provided for the Land Acquisition Act are relevant criterias. In any event. it will open to the person concerned that before the appellate authorities the parties get a chance to show as to what would be the correct market value. In fine, it must be held that the subjective satisfaction on the part of the buyer and the seller cannot be said to be the only factor for determining a market value and an objective criteria can always be laid down by the legislature.

72. The State in its affidavit-in-opposition has clearly shown as to how a nominal sum used to be shown as consideration even in respect of the transactions relating to the land and building situate in the prime areas of the town.

For the reasons aforementioned we are of the opinion that the provision of section 47A of the Act and the Rules are intra vires. The writ petitions are consequently dismissed but without any order as to costs.

M.H.S. Ansari, J.

73. I agree.

Barin Ghosh, J.

74. I agree.

75. Petitions dismissed