

(2007) 09 AP CK 0102

In the Andhra Pradesh High Court

Case No : CRP No"s. 2211 and 2212 of 2006

C. Bharathi

APPELLANT

Vs

District Registrar and Collector and Another

RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

Constitution of India, 1950 — Article 227
Stamp Act, 1899 — Section 47A, 47A(2), 47A(6)

Citation : (2008) 1 ALD 735

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : B. Venkat Rama Rao, for the Appellant; Government Pleader for Arbitration, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Since common questions of fact and law arise in both these revisions, they are being disposed of by this common order.

2. Revision petitioners in these revisions are the donees of the property under the two gift deeds dated 24.5.2004 executed by one Guthi Pedda Papaiah in respect of an immovable property covered by sheds. The property covered by the two gift deeds was valued at Rs. 6,00,000/- and Rs. 8,00,000/- respectively and those gift deeds were presented for registration. The Registering Officer, having felt that the valuation of the property covered by the two gift deeds is not the real market value, referred the case to the Collector u/s 47A of the Indian Stamp Act, 1899 (the Act) for determination of the market value of the property covered by the gift deeds and kept the registration of those documents pending, and had after issuing notice in Form - II to the donees and donor, and after inspecting the property covered by the gift deeds fixed the market value of the property and directed payment of the balance stamp duty payable, as per the market value determined by him. Aggrieved thereby, revision petitioners preferred appeals to the Additional Senior Civil Judge, Nandyal, who, by the

orders impugned in these revisions, dismissed those appeals. Hence, these revisions.

3. The main contention of the learned Counsel for petitioners is that since the petitioners, who, as a condition precedent ought to deposit the entire stamp duty, payable on the gift deeds as determined by the Collector for preferring of the appeals, did not make such deposits - those appeals are non-est in law, and so the appellate authority ought to have rejected them and should not have entertained the appeals and passed orders dismissing them on merits, and for that reason only the orders under revision are unsustainable, and since the revision petitioners are ready to deposit the amount due to be deposited by them, they may be permitted to deposit those amounts and the cases may be remitted to the appellate authority for fresh disposal according to law. His next contention is that in any event inasmuch as the Collector did not follow the procedure prescribed u/s 47-A of the Act and Rules 5 and 7 of the Andhra Pradesh Stamp (Prevention of Under-Valuation of Instruments) Rules, 1975 (the Rules), and had based his decision solely on the basic value register, which is not admissible in evidence, the orders under revision are unsustainable and for that reason also the cases have to be remitted to the primary authority with a direction to fix the market value by following the procedure prescribed by Rules 5 and 7 of the Rules, and relied on *Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another*, *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, *Mohd. Abdul Azeem Zakee and Others Vs. Government of Andhra Pradesh and Others*, *Alladi Venkateswarlu Vs. Warangal Municipal Corporation, Warangal*, *Ponnavolu Sasidar Vs. Sub-Registrar Hayatnagar, and others*, and the meaning of the word "prefer" in the Law Lexicon, in support of the contentions raised by him.

4. The contention of the learned Assistant Government Pleader is that since the petitioners failed to avail the opportunity of appearing before the Collector and did not produce any material before him with regard to the value of the property covered by the gift deeds, and as they do not dispute the Collector inspecting the property covered by the gift deeds and the registers maintained as per the Andhra Pradesh Revision of Market Value Guidelines Rules, 1998 (1998 Rules), the contention that the Collector did not follow the procedure prescribed by Rules 5 and 7 of the Rules is not correct, and in any event inasmuch as an appeal preferred without depositing the difference in the stamp duty would be an invalid appeal, as revision petitioners who did not make such deposit even in this Court also, they cannot in a revision preferred by them under Article 227 of the Constitution question the order of the appellate authority and cannot seek a fresh hearing either before the Collector or the appellate authority, by making their own lapse a ground for seeking such relief.

5. The proviso to Section 47-A(2) of the Act contemplates the appellant depositing the difference, if any, in the amount of duty payable, after deducting

the amount already paid by him, as a condition precedent for his "preferring" the appeal questioning the order of the Collector determining the stamp duty payable on the instrument. The validity of the proviso to Section 47-A(2) of the Act was upheld in R. Srikant's case (supra) and Mohd. Abdul Azeem Zakee's case (supra).

6. The contention of the learned Counsel for petitioners is since "prefer" as per the Law Lexicon, means:

to lay a matter before anyone formally for consideration, approval, or sanction, to bring forward, present, submit a statement, bill, indictment, information, prayer etc., to put, place, or set something before anyone for acceptance.

and since a learned Judge of this Court while considering the provisions relating to preferring of appeals under the Hyderabad Municipal Corporation Act, 1955, which are almost similar to that of proviso to Section 47-A(2) of the Act, in Alladi Venkateswarlu's case (supra), held that the deposit of the difference in tax can be made at any time during the pendency of the appeal before its final hearing, and since a learned Judge of this Court in Tahera Begum's case (supra), following the ratio in M/s Lakshmiratan Engineering Works Ltd's case (supra), held that the bar contained in the Hyderabad Municipal Corporation Act, 1955 with regard to preferring of appeals would operate with regard to "hearing of the appeal" only but not "preferring" of the appeals, proviso to Sub-section (2) of Section 47-A of the Act can only be a bar for hearing of the appeal, but not for entertaining of the appeals, and since the apex Court in Shyam Kishore's case (supra), clearly held that the appeal, in cases where the deposit of amount mandated is not deposited, cannot be heard and since the revision petitioners admittedly did not deposit the difference amount of tax, the appellate authority ought not to have passed orders on merits on the appeals preferred by the revision petitioners.

7. In view of the language employed in proviso to Sub-section (2) of Section 47-A of the Act, there can be no doubt that the appellate authority cannot either entertain or hear an appeal, if the difference in the amount of the tax payable is not deposited by the appellant. But I am unable to agree with the contention of the learned Counsel for the revision petitioners that inasmuch as the revision petitioners failed to deposit the difference in the amount of tax payable on the two gift deeds, the orders under revision have to be set aside and the cases have to be remitted for fresh disposal to the appellate Court for fresh hearing, as it amounts to permitting the revision petitioners taking advantage of their own wrong. It is well known that nobody can be permitted to take advantage of their own wrongs or mistakes and make it a ground for obtaining a relief from the Court. When even according to the revision petitioners the appeals preferred by them are non-est, inasmuch as they did not deposit the difference in the stamp duty payable by them as per the order of the Collector and so the orders under revision should be treated as non-est, I fail to understand as to how there can be a revision against a non-est order in a non-est appeal. The said argument would

have held good, had the appellate Court allowed the appeals of the revision petitioners and had the State preferred these revisions, because in such an event, the State can be said to be aggrieved by the appellate Court entertaining the appeal disregarding the mandate in the proviso to Section 47-A(2) of the Act.

8. In Lakshmiratan Engineering Works Ltd.'s case (supra), the apex Court while considering Section 9 of the U.P. Sales Tax Act, 1948, which inter alia lays down that "no appeal against an assessment shall be entertained which is not accompanied by satisfactory proof of the amount of tax" observed as follows in Para 10:

In our opinion these cases have taken a correct view of the word "entertain" which according to dictionary also means "admit to consideration". It would therefore, appear that the direction to the Court in the proviso to Section 9 is that the Court shall not proceed to admit to consideration an appeal, which is not accompanied by satisfactory proof of the payment of the admitted tax. This will be when the case is taken up by the Court for the first time.

Shyam Kishore's case (supra), arose in respect of appeal against tax preferred under Delhi Municipal Corporation Act, 1957, which reads:

No appeal shall be heard or determined u/s 169 unless...

(underlining mine)

The said decisions do not help the revision petitioners because the language employed in those sections is different from the language employed in Section 47-A of the Act. Proviso to Sub-section (2) of the Section 47-A of the Act reads "no appeal shall be preferred unless and until the difference, if any, amount of duty is paid" (underlining mine). So, it is clear that even before preferring the appeal, the party, who wishes to prefer the appeal has to deposit the difference in amount of tax payable, to enable him to prefer the appeal.

8. In Shyam Kishore's case (supra), the assessee preferred an appeal to the District Judge questioning the assessment without depositing the amount in dispute, which was mandatory for hearing or determining the appeal. So the District Judge dismissed the appeal and that order was upheld by the High Court. On further appeal the apex Court held that the District Judge has no jurisdiction to waive the condition precedent of deposit or stay the collection of the tax pending disposal of the appeal before him, but has the power to adjourn the hearing of the appeal or pass interim order enabling the assessee to pay up the taxes before the appeal is actually heard and determined.

9. As stated above question of the validity of the orders under revision in these revisions would have been relevant had the appellate Court had granted some relief to the revision petitioners in the appeal entertained by it, and had these revisions been preferred by the State. Merely because the appellate Court dismissed the appeal on merits, but not on the ground of their failure to deposit the difference amount, revision petitioners cannot, by taking advantage of their

own lapse, seek a rehearing of the appeals, by offering to deposit the said amount at this stage, even without explaining the reasons for their failure to deposit the amounts payable within the time allowed.

10. In re the contention of the learned Counsel for the revision petitioners that the Collector did not follow the procedure prescribed, I see no force in that contention because what is contemplated by Rules 5 and 7 of the Rules is issuance of notices to the executant and the beneficiary of the documents. In these cases notices, admittedly, were issued to the parties. The record shows that the revision petitioners sent a letter to the Collector that they have received notices and the cases can be decided on merits and that the value of the site and building is most reasonable and so the value mentioned in the document may be taken into consideration as a correct value. They did not adduce any evidence in support of their contention. In my considered opinion, Ponnayolu Sasidar's case (supra), is of no help to the revision petitioners, because subsequent to the said decision, there is an amendment to the Act and Sub-section (6) to Section 47-A of the Act was introduced with effect from 1.5.1998, enabling preparation of valuation registers. Revision petitioners, who did not avail the opportunity of adducing evidence to show that the market value adopted is the correct value, cannot be heard to say that the Collector did not follow the procedure prescribed. The order of the Collector shows that the value of the property in that area is more than Rs. 1,760/- per square yard as per the valuation registers. So I find no merit in these revisions.

11. Since the appeals preferred by the appellants are non est in the eye of law, for their failure to deposit the amount as contemplated by the proviso to Sub-section (2) of Section 47-A of the Act question of this Court interfering in a proceeding under Article 227 of the Constitution in a revision preferred against such order dismissing the appeal does not arise.

12. Hence, the revision petitions are dismissed. Parties are directed to bear their own costs.