(1987) 08 GUJ CK 0007

In the Gujarat High Court

Case No : Spl. Civil Application No. 1892 of 1987

Champaklal J. Gadani APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 21-08-1987

Acts Referred:

Bombay Stamp Act, 1958 — Section 32
Registration Act, 1908 — Section 60, 61

Citation : AIR 1988 Guj 29 : (1987) 2 GLR 1141

Hon'ble Judges : P.R. Gokulakrishnan, C.J;G.T. Nanavati, J

Bench : Division Bench

Advocate : N.R. Thakkar, for the Appellant; P.S. Patel, K.S. Nanavati and H.M. Bhagat and Co., for the Respondent

Judgement

P.R. Gokulakrishnan, C.J.—As respondent No. 2 Sub-Registrar of Assurances. Ahmedabad is not returning the Sale Deed presented by the petitioner for registration, even though all formalities of registration are over, the petitioner has filed this petition for issuance of a writ of mandamus directing respondent No. 2 to return his document and further direct both the respondents to return all those documents which are retained by the registering officers after registration to their respective owners. Respondent No. 2 has withheld the document of the petitioner for the purpose of referring it to the Collector of the district for determination of the true market value of the property since he believes that the market value referred in the document is very much undervalued.

2. Mr. Thakkar, learned counsel for the petitioner contended that once the document is registered as per section 61(2) of the Registration Act 1908, the said document has to be returned to the person who, presented the same for registration. He further submitted that the registering officer has no authority after registration of the document, to refer the same to a Collector for de termination of true market value of the property, which is the subject matter of

the document. He submitted that the Registration Act is a Central Act while the Bombay Stamp Act i.e. Act No. LX of 1958 which authorises the Registering Officer to refer the document to the Collector of the District is State Legislation, and as there is a conflict between these two Acts the Central Act must prevail. He next contended that in Special Civil Application No. 6262 of 1984, wherein vires of section 32 of the Bombay Stamp Act has been challenged, a Bench of our High Court has issued rule and, granted ad interim relief staying operation of that section. Hence respondent No. 2 is not likely to return the document till that petition is decided. That would mean that the petitioner has to wait for an unreasonably long time and he will not be able to raise a loan from respondent No. 3 for constructing his house. He further submitted that if respondent No. 2 can retain a copy of his document and if it is ultimately found that the market value of the property has not been correctly stated in the document, the Collector can recover the duty as arrears of land revenue, and that the State will not be adversely affected if the document is returned to him now.

3. Mr. Thakkar is right in his contention that if there is a conflict between a Central Act and the said Legislation on that subject the Central Act must prevail, The question that arises for consideration is whether there is any conflict between the Registration Act and the Bombay Stamp Act as contended by Mr. Thakkar. In this case die Registering Officer has reason to believe that the document is under valued. Relying upon the provisions of Section 32A of the Bombay Stamp Act, the registering authority proposes to refer the document to the concerned Collector for determination of the true market value of the property. Section 32A reads as follows:

"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 proper duty payable on the instrument under this section."

Section 60 of the Registration Act to which the learned counsel referred is as follows:

"60. (1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered", together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, scaled and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned."

Section 61 of the Registration Act reads as follows:

61. (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register book, and the copy of the map or play (if any) mentioned in section 21 shall be filed in Block No. 1.

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52."

On a combined reading of Sections 60 & 61, it is clear that once the document is registered it has to be returned to the person who presented the same for registration, or to such person (if any) as he has nominated in writing in that behalf. As the document is presented before the registering officer only for the purpose of registration, obviously that document has to be returned to the person who presented the same after all the formalities of registration are over. It is also true that the registering officer has to register the document if all the formalities prescribed by the registration Act are complied with and it is not a condition precedent for the purpose of registering that the document should be properly stamped. The Bombay Stamp Act makes certain instruments chargeable with duty of the amount indicated in Schedule L It is expected that a person who executes a document and presents it for registration would state correctly the market value of the property and pay proper stamp duty thereon. Section 32A authorises the officer registering under the Registration Act an instrument mentioned therein to 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 proper duty payable on the instrument, if he 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. This enabling power does not run counter to the obligation of the registering officer to return the instrument after registration. Such an enabling provision cannot be said to be inconsistent with either section 60. or 61 of the Registration Act. Assuming that Section 32A of the Bombay Stamp Act and Sections 60 and 61 of the Registration Act occupy the same field, it is not possible to say that they cannot stand together. If for a legitimate reason the registering officer is authorised to refer the instrument presented before him for determination of correct market value of property and the amount of duty payable thereon for the purpose of another Act, it cannot be said that such a Power is inconsistent with his obligation to return the instrument after the process of registration is over. Sections 60 and 61 cannot be so interpreted asto impose an absolute obligation on the registering officer to return the document immediately after registration even though it becomes necessary for him either to retain the same or to deal with it in a similar manner if some other law requires that to be done. In our view, both the provisions are complimentary to each other and cannot be considered as contradictory in nature. So the first contention of the learned counsel cannot be accepted.

4. There is no substance in the second contention also. In Special Civil Application No. 6262 of 1984 this court has granted ad interim relief in the following terms:

"It is hereby accordingly ordered that, you, your servants and agents be and are hereby restrained from enforcing\\ and or implementing this circular instructions issued by the State Government Chief Controlling Revenue Authority, fixing the market value of the lands and buildings in the State of Gujarat and from levying stamp duty on the basis of the said market value in respect of Gujarat by registering authority pending further order or till the final disposal of the aforesaid Special Civil Application by this Court."

What is prohibited by this court is the implementation of the circular whereby instructions have been issued by the State Government/ Chief Controlling Revenue Authority fixing the market value of the land and building in the State of Gujarat and from levying, stamp duty on the basis of the said market value, Section 32A as a whole is not stayed. It is, therefore, open to the registering officer to refer the petitioner''s document to the concerned Collector for determination of the true market value and proper amount of stamp duty payable thereon. That process need not wait till Special Civil Application No. 6272/84 is disposed of. What the petitioner wants is to take advantage of the order passed in that petition and thus prevent the Collector from deciding whether the market value mentioned in the document is correct or not and what is the amount of proper duty payable thereon. The learned advocate for respondents Nos. I & 2 clearly stated before us that if this clarification is made with respect to the interim order passed by this court in the aforesaid petition, the registering authority is prepared to refer the document of the petitioner to the Collector as early as possible. In support of his contention, Mr. Thakkar, relied upon subsection (3) of Section 7 of the Bombay Stamp Act which provides that the provisions of the Bombay Stamp Act and the rules made thereunder in so far as they relate to the recovery of duties chargeable on instruments u/s 3, also, so far as may be, apply to the recovery of duties chargeable on a counter part, duplicate or copy of an instrument. Relying on this provision the government can, at any time, even on the strength of a duplicate copy of the instrument, recover the duty chargeable on the main document. The deficit amount of stamp duty can also be recovered as arrears of land revenue. 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 32A 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 32A. A xerox or certified copy of such a document can be given to the person who presents it for registration and such a copy can be used in evidence and also for other purposes, e.g. to show that such a document has been registered.

5. In our view, the action of respondent No. 2 who has registered the document is perfectly in keeping with the provisions of the Registration Act and the Bombay Stamp Act and as such there is no question of issuing any writ of mandamus as prayed for by the petitioner herein.

6. In view of the observations made by us above it will be open to the petitioner to submit to the Collector that the market value of the property in question should be decided without reference to the circular instructions issued by the State Government/ Chief Controlling Revenue Authority. We also make it clear that the petitioner is entitled to get a xerox copy or a certified copy of the document on proper application made in that behalf. As we do not find any substance in the two contentions raised by the petitioner this petition is rejected summarily. Notice is discharged with no order as to costs.

7. Mr. N. Thakkar, the learned counsel appearing for the petitioner, wants leave from this Court for the purpose of preferring an appeal to the Supreme Court. His main contention is that there is a conflict between State law and Central law and as such, it is required to be decided finally by the Supreme Court. We have carefully gone through the question of conflict raised by the learned counsel for the petitioner and we have come to the conclusion that both the provisions are complimentary to each other and cannot be considered contradictory in nature. In view of this observation made by us, we do not think that any substantial question of law of general importance which requires to be decided by the Supreme Court arises in this case. Hence the prayer for grant of leave to file an appeal to the Supreme Court is rejected.

8. Petition dismissed.

