(1997) 03 PAT CK 0049

In the Patna High Court

Case No : C.W.J.C. No. 3484 of 1996 (R)

Chandrakant C. Adesara and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:
Constitution of India, 1950 — Article 14
Stamp Act, 1899 — Section 47A

Citation : AIR 1997 Patna 145 : (1997) 45 BLJR 1467 : (1997) 2 PLJR 16

Hon'ble Judges : Nagendra Rai, J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : N.K. Prasad, for the Appellant; S.K. Agrawal, for the Respondent

Final Decision : Partly Allowed

Judgement

M.Y. Eqbal, J.—In the instant writ application the petitioners have challenged Rule 6 of the Bihar Stamp (Prevention of Under-valuation of Instruments) Rules, 1995 as ultravires the provisions of Indian Stamp Act, 1899 and also ultra vires Article 14 of the Constitution of India. A further prayer has been made by the petitioner for quashing the order dated 5-10-1996 issued by the District Sub-Registrar, Jamshedpur whereby the petitioner was directed to pay stamp fee amounting to Rs. 1,86,538/- and Registration fee Rs. 46,734/- in respect of the sale deed executed on 22-6-1993 in favour of the petitioners.

2. The brief facts of the case which gave rise to filing of this writ application are as follows:

One M/s. Mithila Motors (Pvt.) Ltd. through its Director, Dinesh B. Parikh had purchased a building being Holding No. 20 at Contractor''s Area, Bistupur, Jamshedpur by sale deed dated 23-3-1975 for a consideration of Rs. 90,000/-. It is submitted that M/s. Mithila Motors (Pvt.) Ltd. got the valuation of the said structure from a registered valuer. the Managing Director of M/s. Mithila Motors applied for no objection certificate from the office of the Income Tax Department, ''Jamshedpur for selling the property. Income Tax Department gave no objection certificate on 3-6-1993 u/s 239(A)(1) of the Income Tax Act, 1961 and thereafter the said M/s. Mithila Motors in their meeting dated 29-5-1993 resolved to sell the said building to increase the capital of the petitioner. Accordingly a sale deed was executed on 22-6-1993 in favour of the petitioner in respect of the said holding for a consideration of Rs. 9,42,000. A copy of the sale deed is annexed as Annexure-4 to the writ application. The petitioner''s further case is that one Shri Nagin B. Parikh, Managing Director of Mithila Motors and elder brother of Shri Bipin B. Parikh by their letter dated 22-3-1994 said that valuation given in the sale deed dated 22-6-1993 is far below the prevailing market price and he is ready to purchase it at a price of 18 lakhs. According to the petitioner in respect of the same building, there was serious dispute between Bipin B. Parikh and Nagin B. Parikh and a proceeding u/s 107, Cr.P.C. was initiated at the instance of Nagin B. Parikh. It appears that on receipt of the said information a notice/ letter was issued by District Sub-Registrar on 23-8-1996 asking Bipin B. Parikh to deposit stamp fee amounting to Rs. 3,06,000/- and registration fee Rs. 75,600/-. On receipt of the said letter, Bipin B. Parikh informed the District Sub-Registrar that the building in question was constructed in the year 1938 and the market valuation of the building cannot and shall not be Rs. 1,80,000/-. The petitioner''s further case was that on receipt of the aforesaid letter, all of a sudden the petitioner received a letter from the office of the District Sub-Registrar, Jamshedpur vide letter dt. 23-9-1996 whereby the petitioner''s advocate was informed to remain present along with relevant documents on 24-9-1996. The petitioner''s contention is that no inquiry was ever made either by the Deputy Commissioner or by the Registrar inquestion of valuation of the building but a notice dated 5-10-1996 was served upon the petitioner directing him to deposit stamp fee amounting to Rs. 1,86,538/- and registration fee amounting to Rs. 46,734/- otherwise legal action would be taken against them. A copy of the said impugned notice is Annexure-9 to the writ application.

3-4. It appears that after filing of the writ petition, a notice dated 26-12-1996 was served on the petitioner by the Collector-cum-Deputy Commissioner intimating the petitioner that the document has been impounded u/s 33 of the Indian Stamp Act and he has been asked to file show cause as to why the valuation of the property should not be determined in exercise of power u/s 40 of the said Act. The petitioner has challenged this notice which is Annexure-10 to the writ petition.

5. A counter-affidavit has been filed on behalf of the respondents-State stating inter-alia that in the sale deed only cost of construction of building was shown and not the valuation of the land having an area of Order 142 acres. It is further stated that along with the building land was transferred but no value of the land has been calculated either by the valuer or by the transferor who executed the sale deed for which notice has been sent to the petitioner for valuation of the land also. The respondents further stated that the demand of deficit stamp duty on the sale of superstructure only which is calculated after due inquiry and

considering the documents filed by the petitioner before the District Sub-Registrar. It is further stated that the valuation has been done after consideration of all the facts and due notice to the petitioner who appeared on 24-9-1996 and stated in writing that valuation report is of 1992 which is with land and building and the total constructed area is 5,204 square feet. By a supplementary counter-affidavit, it is stated that the respondent No. 3 while examining the matter in a proceeding u/s 47A of the Act noticed that though the leasehold interest pertaining to the land has been transferred but no consideration for such transfer has been recorded in the sale deed. The registration of which is" yet to be completed u/s 60 of the Indian Registration Act.

6. Mr. N.K. Prasad, learned Sr. Counsel appearing on behalf of the petitioner firstly submitted that Rule 6 of the Bihar Stamp (Prevention of Under-valuation of Instruments) Rule, 1995 (here-in-after referred to as the Rules of 1995) is ultra vires the provisions of Indian Stamp Act and Article 14 of the Constitution of India. The learned counsel submitted that the sale deed was registered on 23-6-1996 and Rule 47-A was inserted under the Indian Stamp Act with effect from 31-3-1990. Learned counsel submitted that no reference was made by the registering authority at any point of time and the Collector passed the order beyond two years. The learned counsel submitted that no opportunity of hearing was afforded to the petitioner either by the registering authority or by the Collector before the impugned notices were issued asking the petitioner to deposit stamp fee and the registration fee. The learned counsel, therefore, submitted that the entire proceeding and the notices are vitiated in law.

On the other hand Mr. V. Shivnath, learned Govt. Pleader No. 1 submitted that when the documents on the face of it was under-valued by the parties then the respondents have authority under the law to impound the documents and asked the petitioner to deposit the deficit stamp. The learned counsel submitted that the respondent No. 3, the Deputy Commissioner while examining the matter u/s 47-A found that though the leasehold interest in respect of the land was transferred but no valuation was shown nor any stamp duty was paid. The learned counsel further submitted that since the registration of the document is yet to be completed u/s 60 of the Registration'' Act, the Collector has every jurisdiction to proceed u/s 47-A or u/s 33 of the Stamp Act.

7. Before considering the rival contention raised by the parties, it is necessary to look into the relevant provisions of the Act and the rules framed thereunder.

8. Section 47A of the Stamp Act was inserted by Bihar Act 15 of 1988 of the Indian Stamp (Amendment Act, 1988) which reads as under:

"47A. Instrument of conveyance: (1) Where the registering officer appointed under the Indian Registration Act, 1908 (XVI of 1908) while registering any instrument of conveyance, exchange, gift, partition or settlement, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been rightly set forth in the instrument, he may, after registering such instrument refer the matter to the Collector for determination of the 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 one month''s time to the parties for making their representation and after holding an enquiry 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:

Provided that no such person shall be required to pay any amount to make up the difference if the difference between the consideration of the market value as set forth in the instrument and the market value determined by the Collector does not exceed 10 percent of the market value so determined.

(3) The Collector may suo motu within two years from the date of registration of such instrument not already referred to him under Sub-Section (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 such instrument and the duty payable thereon and if after such examination he has reason to believe that the market value of such property, has not been rightly 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 before the date of commencement of the Indian Stamp (Bihar Amendment) Ordinance, 1986.

(4) Any person aggrieved by an order of the Collector under Sub-Section (2) or Sub-Section (3) may appeal to the Commissioner concerned of the administrative division, such appeal shall be preferred within sixty days of the order and shall be heard and disposed of by the Commissioner.

(5) For the purpose of this Act. market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority as the case may be, such property would nave fetched or would fetch, if sold, in the open market on the date of execution of the instrument of conveyance, exchange, gift, partition or settlement."

9. By the aforesaid amendment Act, 1988 necessary amendment were also made in the schedule of the Act. The said Act was further amended by Indian Stamp (Bihar Amendment Act, 1991) whereby some minor amendments were made u/s 47-A of the Act i.e. in Sub-Section (1) of Section 47-A after the words "that the market value of the property which is the subject-matter of such instrument has not been rightly set-forth in the instrument", the words "or which is less than the value calculated in terms of the rules framed under this Act" has been inserted.

10. From bare reading of the provisions of Section 47-A of the Act, it is clear that

the registering authority while registering any instrument of conveyance has reason to believe that the market value of the property which is the subject-matter of such instrument has not been rightly set-forth in the instrument then he may after registering such instrument referred the matter to the Collector for determination of the market value of such property and the proper duty payable thereon. Sub-Section (2) of Section 47-A empower is the Collector to hold an inquiry after giving one month''s notice to the parties and determine the market value of the property which is the subject-matter of such instrument. On such determination, the difference if any in the amount of duty shall be payable by the person liable to pay the duty. Sub- Section (3) empowers the Collector to proceed suo motu within two years from the date of registration of such instrument not only already referred but from under Sub-Section (1). The Collector may 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 such instrument. Any order passed by the Collector determining the market valuation and asking the person for payment of difference amount is made appealable under Sub-Section (4) of the said Act.

11. The vires of Section 47-A of the Act was challenged in the case of Umesh Thakur v. State of Bihar and a Division Bench of this Court, after going through all the provisions of law and the similar amendments made in different States, has held that the provisions of Section 47-A is constitutionally valid and it is not ultra vires Article 14 of the Constitution of India. This Court held as under :

"50. The constitutionality of statute would depend upon the legislative power conferred in this regard by the Constitution. Entry 44 of List III 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 include 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. As indicated hereinbefore several High Court''s decisions referred to hereinbefore 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 47-A of the Stamp Act as amended in the State of Bihar is within its legislative competence.

51. As noticed hereinbefore, the second contention of Mr. Shree Nath Singh is that Section 47-A of the Act is ultra vires Article 14 of the Constitution of India. It is true that by reason of the amendment carried out in the year 1991 the words "he shall register it" were deleted from the earlier provisions. But such a provision in my opinion, cannot be held to he wholly unreasonable so as to attract the wrath of Article 14 of the Constitution of India.

52. As noticed hereinbefore, the objects and reasons for enacting the aforementioned provisions is to check evasion of stamp duty. As held hereinbefore that Entry 44 of List III of the 7th Schedule of the Constitution of India has to be construed in widest possible terms and thus the same must be held to include a power of enacting a legislation covering the field of evasion of payment of stamp duty. Only because in some cases a deed of conveyance is executed for a specific purpose or has been executed as an emergent measure, it cannot be said that the provisions of Section 47-A of the Act whereby the registering authority has been empowered to send the instrument to the Collector before registering the same cannot be said to be wholly unreasonable inasmuch as the said action is taken only in a case where the Registering Authority has ''reason to believe I that the valuation shown in the instrument is far below the market value of the property.

12. The next question for consideration is as to whether Rule 6 of the Bihar Stamp (Provision of Under-valuation of Instrument) Rules, 1995 ultra vires the provisions of Indian Stamp Act, 1899 and Article 14 of the Constitution of India. For the purpose of deciding this question, it is necessary to look into necessary provisions of the said Rule of 1995. It is worth to mention here that before this Rule, 1995, the State of Bihar had framed Rules namely the Bihar Instrument Valuation Rules, 1991 for the purpose of giving effect to Section 47-A of the said Act. Rule 4 of the said Rule provided that the District Collector within the area of his district was to determine the minimum value of the land/property of different category on the basis of instrument relating to conveyance of highest value. Rule 5 provided for fixation of minimum valuation and Rule 7 empowered the Collector to send the list of minimum value to the registering officer so determined in respect of the different areas. However, the said rule was declared ultra vires on the ground, inter alia that the said rule was not in consonance with the provisions of the Indian Stamp Act and also on the ground that no notification, fixing appointed day from which the rule shall be enforced, was made.

13. The State of Bihar then came with another Rule namely Bihar Stamp (Provisions of Under-valuation of Instrument) Rules, 1995. Although in the instant case the petitioner has challenged the vires of only Rule 6 of the said Rules but for the sake of convenience it would be appropriate to reproduce relevant Rules.

14. Rule 5 provides the manner of preparation of guideline register of minimum value. Rule 6 provide the procedure for fixation of estimated minimum value. Rules 7 to 12 are also relevant. All these Rules are quoted here in below :

"(5) Guidelines Register of Minimum value :

For the purpose of assisting the registering officer in finding out actual market value of properties (as accurately as may be possible) the District Sub-Registrar, within the area of the district, shall after classifying the lands of rural or urban areas, prepare a register showing estimated minimum value of the land/

properties of that category as per procedure laid down in Rule 6.

(6) Procedure for the Fixation of Estimated Minimum value;

(1) The District Sub-Registrar shall obtain from the concerned Registering Office the figure relating to the five conveyances of highest value of each category of land, property situated within each Halka of every revenue circle and ward of notified area/ Municipality/ Corporation that have been registered/ presented for registration in the preceding financial year.

(2) The average value of conveyances of five highest value obtained under Sub-Rule (1) pertaining to each category of land, property shall be deemed to be the estimated minimum value of land/property of that category in that area and shall be so fixed; provided that if less than five conveyances or no conveyance of land/ property of that category of a particular area have been registered/presented for registration in the preceding financial year the District Sub-Registrar shall determine the estimated minimum value of that category at the same rate as that determined for the similar land/ property of an adjoining area."

Explanation

"The "Guidelines Register" supplied to the officer is intended merely to assist them to ascertain prima facie whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price, such entries will not foreclose the enquiry of the Collector u/s 47-A of the Act nor fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the document.

(7) After preparing the Guidelines Register of estimated minimum value of land/ property, the District Sub-Registrar shall without delay send the same to the registry or office concerned for needful.

(8) The District Sub-Registrar shall revise the Guidelines Register of estimated minimum value every two years, provided that any delay in such a revision shall not render current register invalid:

Provided further, that no register which is due for revision for more than a year shall be deemed valid without the prior written consent of the Inspector-General, Registration, Bihar.

(9)(1) Instruments in which the value set-forth is less than the estimated minimum value indicated in the Guidelines Register supplied by the District Sub-Registrar shall be referred by the Registering Officer to the Collector at the time of admission for determination of appropriate market value as per procedure laid down under Rules 11 and 12.

(2) The registering officer shall refer such instruments to the Collector along with Form I referred to in the appendix of the rules and maintain a copy of the form in his office as record and shall also maintain a register in Form VI.

(10)(1) If the value set forth in the instrument is according to the estimated minimum value indicated in the Guidelines Register supplied by the District Sub-Registrar but the registering officer has reason to believe that the market value is higher than the estimated minimum value he shall refer such instruments to the Collector at the time of admission after recording his reasons in writing for fixation of appropriate market value as per procedure laid down in Rules 10 and 12,

(2) The registering officer shall refer such instruments to the Collector along with Form I referred to in the appendix of the rules and maintain a copy of the same in his office as a record.

(11) Procedure to be followed u/s 47-A(l) and (3) of the Act on receipt of reference:

(a) In the matter of instruments, referred by the Registering Officer to the Collector u/s 47-A(1) of the Act for determination of the market value or the instruments called for by the Collector u/s 47-A(3) of the Act notice will be given to the following persons by the Collector in Form II or III (as the case may be) appended to the rules :--

(i) Every executant by whom the instrument is executed.

(ii) Every claimant in whose favour instrument is executed.

(b) Through the above notice the parties or the person concerned will be directed by the Collector to file their representation and adduce evidence regarding the value of the property:

(c) If the Collector considers it necessary he may record the statement of any person to whom the notice is given under Sub-Rule (a).

(d) For the purpose of enquiry the Collector;

(i) may call for information or record from any officer or a Government office or office of autonomous bodies.

(ii) may examine any Government official or authority and record their statements.

(iii) may inspect properties after giving notice to the parties concerned.

(12) Order of determination of Market Value:

(1) Considering the objections and representation received from the persons to whom the notice is given under Sub-Rule (a)(i)(ii) of Rule 11 and (i) after examining the records produced; and (ii) after carefully considering all factors and evidence adduced :--

The Collector shall pass an order in writing determining the market value of the properties and duties payable on the instrument, communicate the order to the parties and take steps to collect the difference in the duties payable. The basis on which the market value was arrived at shall be clearly indicated in the order.

(2) A copy of the order shall be communicated to the registering officer for his record.

Sub-Rule (4) of Rule 12 also provides as to what are the other factors to be taken into account by the Collector for arriving at the market value of the property. Rules 13 to 16 provide for appeals against the order of the Collector and the procedure for disposal of appeals."

15. From perusal of the different provisions of the aforementioned Rules of 1995, it appears to me that while framing the rules proper care has been taken to carry out object of Section 47-A of the Act. Rule 5 provides the manner of preparation of Guideline Register of minimum value. Under this rule, the District Sub-Registrar shall prepare a register of land of rural and urban area showing the minimum value of the land and properties. Rule 6 lays down the procedure for fixing estimated value. For this purpose the Sub-Registrar of the concerned registering office shall obtain five conveyance of highest value of each category of land/property situated within each Halka of every revenue circle and the average value of conveyance of five highest value shall be deemed to be the estimated value of land/property of that category. Under the explanation of Rule 6 it is made clear that the Guideline Register shall be prepared merely for the purpose of ascertaining the prima facie correctness of the market value of the land/ property set forth in the instrument. Rule 9 provides that if the Instrument in which the value set forth is less than the estimated minimum value indicated in the Guideline Register then the matter shall be referred to the Collector for the determination of the appropriate market value as per the procedure laid down under Rules 11 and 12. Similarly, under Rule 10 if the value set forth in the instrument is according to the estimated value indicated in the guideline register but the Registering Officer has reason to believe that the market value is higher than the estimated minimum value he shall refer such instrument to the Collector at the time of admission after recording his reason in writing for fixation of appropriate market value. Rule 11 lays down the procedure to be followed in a case when the matter comes to the Collector under the provisions of Sub-Sections (1) and (3) of Section 47-A of the Act. Rule 12 provides the procedure for determination of market value and under this Rule the Collector shall pass final order determining the market value of the property and the duty payable under the instrument.

16. In my view, therefore, the State Government while framing rules have provided complete safeguard against the arbitrariness and unreasonableness. The Collector while exercising power under Rule 12 before determining the market value shall not only take into consideration various documents and evidence but also give full opportunity of hearing to the objectors or the parties-aggrieved. Rules 13 to 16 provide a remedy of appeal against the order of the Collector and the procedure for disposal of appeal. Rule 6 or any of the rules,

therefore, cannot be said to be violative of Article 14 of the Constitution of India. It is neither unreasonable nor violative of principles of natural justice.

17. Coming back to the instant case. I find that Annexure-6 was passed by the District Sub-Registrar without giving proper hearing to the petitioner. It further appears that the Sub-Registrar before issuing Annexure-6 has not proceeded in accordance with the procedure provided under the rules.

18. Mr. N.K. Prasad, learned Senior Counsel, lastly submitted that the order passed by the Collector demanding deficit stamp beyond the period of two years is illegal and wholly without jurisdiction. According to the learned counsel Sub-Section (2) of Section 47-A of the Act confers power to the Collector to examine the instrument to satisfy its correctness with regard to the valuation and that power can be exercised only within two years from the date of registration of the instrument and not beyond that. The submission of the learned counsel is of no help to the petitioner as in the instant case the proceeding for determining the market value of the instrument was initiated at the instance of the Sub-Registrar and not by the Collector suo motu. The limitation of two years applies only in a case where the Collector takes action suo motu or on receipt of reference from the Inspector General of Registration or the Registrar of the District.

19. A similar question arose before the Apex Court in a case of State of Punjab and others Vs. M/s. Mahajan Sabha, Gurdaspur and others, and the Apex Court while interpreting Sub-Section (3) of Section 47-A of the Act held as under (at p. 2155 of AIR):--

"8. By operation of Sub-Section (3) which envisages that "the Collector may suo motu or...,." call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and after such examination, he has to believe that the value of consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with procedure provided in Sub-Section (2), and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty". The limitation of two years prescribed in Sub-Section (3) would apply only in a case where the Collector takes action either suo motu or on receipt of reference from the Inspector General of Registration or the Registrar of the District appointed under the Registration Act, 1908 (Central Act 16 of 1908) in whose jurisdiction the properly or any portion thereof, which is the subject-matter of the instrument, is situated. In case of initiation of the action by the aforesaid officers, the limitation of two years from the date of the registration of any instrument would arise. In other words, the limitation prescribed in Sub-Section (3) of Section 47A has no application to the case when a reference was made by the Registering Authority, namely the primary authority under Sub-Section (1) of Section 47A. If all the three sub-sections are conjointly read, the inevitable conclusion would be that the action of the Collector taken under Sub-Sections (2) and (3) on reference under Sub-Section(l) is not controlled by the limitation of two years prescribed under Sub-Section (3). Accordingly, we hold that the action initiated by the Collector was not barred by limitation."

20. However, Mr. V. Shivnath, learned Government Pleader No. 1, has very fairly submitted that the Collector has not yet passed final order, and therefore, necessary direction may be issued to the Collector to proceed with the matter afresh after giving notice and proper hearing to the petitioner. I appreciate the fair stand taken by the State Counsel.

21. In the facts and circumstances of the case. I allow this writ application in part and quash Annexures-6 and 9 by which the petitioner was directed to deposit deficit stamp. I further direct the Collector to pass fresh order in the proceeding after giving notice and full opportunity of hearing to the petitioner. The Collector shall be at liberty to proceed under other provisions of the Act in accordance with law. There shall be no order as to costs.

