
(2004) 01 AHC CK 0197
In the Allahabad High Court
Case No : C.M.W.P. No. 26414 of 2003

Hajari Lal Sahu

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Constitution of India, 1950 — Article 14
Stamp Act, 1899 — Section 47A, 47A(2)
Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 — Rule 3, 4, 4(1), 5

Citation : (2004) 1 AWC 899 : (2004) 96 RD 368 : (2004) 1 RD 368

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : B.N. Yadav, for the Appellant;

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Petitioner has assailed the order dated 20th December, 1999 passed by Stamp authority Kaushambi and also the revisional order passed in revision preferred against the said order dated 3.6.2003.

2. Facts forming background to the challenge are that petitioner purchased plot No. 117 admeasuring 11 biswa 19/25 Dhoor situated in village Jodhlilwar Pargana and Tehsil Chail district Kaushambi and plot No. 330 admeasuring 3 biswas, 9, 1/10 Dhoor situated in village Faridpur Sulempur Pargana and Tahsil Chail district Kaushambi from one Kishan Lal resident of Sulempur. From a perusal of the record, it is clear that Kishan Lal sold off his entire share in the land in dispute and petitioner paid stamp duty after assessing valuation thereof in accordance with law.

3. From a perusal of the report of Lekhpal it is clear that the land in dispute are situated on the boundaries of two villages. It is also not disputed that one of the village, namely, Jodhlilwar is a non-residential village (Ger Chiragi) and further that the land in dispute is an agricultural plot and the same could not be utilised for purposes other than agricultural purposes. Proceedings u/s 47A were initiated

against the petitioner by the S.D.O. Chail district Kaushambi as a sequel to application dated 19.11.1998 made by one Kundan Lal Sahu and consequent direction made to the S.D.O. Chail by the Additional District Magistrate (F. and R.) Kaushambi which culminated in passing of the impugned order dated 20.12.1999. The impugned order has its grounding in the facts that the District Magistrate had already pegged valuation of the agricultural plots situated in the village as contained in the order dated 3.8.1997 made under the U.P. Stamp (Valuation of Property) Rules, 1997, (in short the "Stamp Rules, 1997) and that according to Note (2) of the order, in case agricultural land is not transferred in favour of a co-tenure holder or a person having adjoining agricultural plot shall be valued on the basis of per square meter in the same manner as is done as regards the land situated in Urban Area, semi-urban Area and the Rural Area. A direction was issued by the stamp authority to pay additional stamp duty of Rs. 18,000 in addition to what was already paid within 15 days. A recall application filed by the petitioner was rejected on the ground that both the plots did not adjoin each other and are situated at the distance of 16 Lathas. A revision preferred before the Additional Commissioner u/s 56 of the Indian Stamp Act was rejected.

4. Learned counsel for the petitioner urged that in the facts and circumstances of the case, where admittedly, one of the village being a non-residential village and plots in question being agricultural plots which could not be used for residential or any other purposes, the impugned order demanding additional stamp duty on the basis of Note No. (2) of the guidelines formulated by the District Magistrate determining the valuation of certain land and presuming agricultural land to be calculated on the basis of per square meter is highly arbitrary and that the District Magistrate has wrongly fixed the principles of valuation in arbitrary manner, which is contrary to Rules 3, 4 and 5 of the Rules, 1997, apart from being discriminatory and arbitrary. He further urged that Note (2) specifically makes it clear that in case sale deed is executed in favour of a co-tenure holder or a person whose plot adjoins the plot, the same shall be treated as agricultural plots but direction that in case sale deed is executed in favour of third person it shall be calculated on the basis of per square meter at par with urban, semi-urban or rural property is highly unreasonable and discriminatory. The learned counsel further submitted that acting on the complaint, the stamp authority hastened to issue notice demanding additional stamp duty without allowing the petitioner to have his say and without affording opportunity of hearing to him. Per contra, learned standing counsel, contended that the order passed by the District Magistrate dated 3.5.1997, determining valuation of different properties in districts for the purposes of transfer under the U.P. Stamp Rules, 1997 was rightly passed in accordance with the provisions of U.P. Stamp (Valuation of Property) Rules, 1997 and Note (2) of the said order was justified having been made in accordance with law. It was further contended that the impugned order of fixing valuation of the property in dispute and the demand of additional stamp duty on the basis of the same was rightly made in accordance with law and in

consequence, it was canvassed, the order is liable to be affirmed and writ petition deserves to be dismissed.

5. Before scanning the rival contentions made across the bar, it is essential to scan Note-2 of the guidelines prepared and furnished to Sub-Registrar as envisaged in Rule 3 (vii) of the Stamp Rules by the District Magistrate, Kaushambi. Note 2 as contained in the guidelines is excerpted below :

"Sahkhatedar ya chauhaddi ke khatedar se bhinna kisi ek byakti ke paksha me antarit hone wali krishi bhumi ki prati vargmeter daren nagartye, ardh nagariye va gamin kshetra mein 500 varg meter tak ki dar kramshe 700, 500 va 300 rupiye tatha 501 se 1500 varg meter tak kramshe 200, 125 va 100 rupiye hogi."

6. The learned counsel for the petitioner canvassed that there is nothing in Rules 3 and 4 which may be eloquent of the fact that the District Magistrate was invested with the power to fix different valuation of the one and the same property in case the property is not transferred in favour of a co-tenant or a person whose land adjoins the land transferred. Rule 3 (1) (a) (i) to (vii) being germane to the controversy are excerpted below for ready reference :

"3. Facts to be set forth in an instrument.--In case of an instrument relating to immovable property chargeable with an ad valorem duty, the following particulars shall also be fully and truly stated in the instrument in addition to the market value of the property :

(1) In case of land :

(a) included in the holding of a tenure holder, as defined in the law relating to land tenures :

(i) the khasra number and area of each plot forming part of the subject-matter of the instrument;

(ii) whether irrigated or un-irrigated and if irrigated, the source of irrigation ;

(iii) if under cultivation whether do fasali or otherwise ;

(iv) land revenue or rent whether exempted or not and payable by such tenure holder ;

(v) classification of soil, supported in case of instruments exceeding twenty thousand rupees in value, by the certified copies, or extracts from the relevant revenue records issued in accordance with law ;

(vi) location (whether lies in an urban area, semi-urban area, or country side) ; and

(vii) minimum value fixed by the Collector of the district."

7. Similarly, Rule 4 (1) (a) (i) to (iv) being rules in point are also quoted below for edification :

"4. Fixation of minimum rate for valuation of land, construction value of non-commercial building and minimum rate of rent and commercial building.--(1) The Collector of the district shall biennially, as far as possible in the month of August, fix the minimum value per acre/per square metre of land, the minimum value per square metre of construction of non-commercial building and the minimum monthly rent per square metre of commercial building, situated in different parts of the district taking into consideration the following facts :

(a) in case of land :

(i) classification of soil ;

(ii) availability of irrigation facility ;

(iii) proximity to road, market, bus-station, railway station, factories, educational institutions, hospitals and Government offices ; and

(iv) location with reference to its situation in urban area, semi-urban area or countryside."

8. It would transpire from a perusal of the above rules that only relevant consideration for fixing of valuation is the classification of soil, availability of irrigation facility, proximity to the road, market, bus station, railway station, factory, educational institution, hospital and Government Offices and location with reference to its situation in urban area, semi urban area or countryside. In the present case, it bears no dispute that the land in question lies on the boundaries of two villages, i.e., villages Jodhlilwar and Faridpur Sulempur Pargana and Tahsil Chail district Kaushambi out of which village Jodhlilwar is a non-residential (Ger Chiragi) village. It has not been refuted in the counter-affidavit that the land in dispute is being used or could be used for agricultural purposes only and not for residential or commercial purposes and that the land lies between the boundaries of the two villages far away from abadi. In the light of the above admitted position, Note-2 contained in the order dated 3.8.1997 postulating that in case an agricultural land is transferred in favour of a person other than co-tenant or to a person whose property adjoins the plot, the same shall be fixed on a higher valuation as per square metre at par with situation of property as in semi-urban area or the countryside cannot be said to be consistent with the provisions of the Stamp Rules. The logic behind Note-2 appears to be that in case the property is transferred by a person in favour of a co-tenant or in favour of a person whose property adjoins the plot, he can use the transferred property in a better way and for those transferees, the land may have higher valuation for better use but it does not visualize the position in relation to a person who has purchased the land and he happens to be neither a co-tenure holder nor is a person whose land adjoins the land in dispute cannot use in a better way. In the above conspectus, the order passed by the District Magistrate fixing valuation of such agricultural plots calculating it on the basis of per square meter valuation fixed in the said order suffers from patent arbitrariness particularly when the materials on record do not point to the factum

that the land was used for residential, commercial or for any other use but is being used for agricultural purposes. As stated supra, the relevant consideration contained in Rule 4 are the classification of soil, availability of irrigation facility, proximity to the road, market, bus station, railway station, factory, educational institution, hospital and Government offices and location with reference to its situation in urban area, semi urban area or countryside. It would appear that no such consideration was taken into reckoning while fixing the valuation of the agricultural land, which was not transferred in favour of a co-tenant or a person whose land adjoins the transferred land. The only reason assigned in the impugned order for fixing higher valuation of the land is that both the plots lie at a distance of 16 metres and as the same did not adjoin the property in favour of a co-tenant, the agricultural land was valued taking into reckoning the valuation per square metre and also considering it an urban or semi-urban property. This consideration, in my firm view, for transfer in favour of a co-tenant or a person whose land adjoins the sold off property is not a relevant factor within the meaning of Rule 3 or Rule 4 of the U.P. Stamp (Valuation of Property) Rules, 1997. Even otherwise on merits also, fixing higher valuation of a land which was not transferred in favour of a co-tenant or a person whose land adjoins the sold off property errs on the side of arbitrariness particularly when there is no material conspicuous on record to manifest that the land was used for residential, commercial or for any other use but is being used for agricultural purposes only and also that the land is situated on the boundaries of the two villages and one of the villages is non-residential village and that there is no residential area in and around the land in question and therefore, Note-2 added to the order is highly arbitrary and not attuned to the letter and spirit of the relevant rules and therefore, the order Impugned cannot be sustained in law. The distillate of what has been discussed above is that the land which was sold off in favour of a person who is not a co-tenant or whose land does not adjoin the property sold off, and if there is no material on record matching any of the consideration contained in Rule 4 is liable to be valued accordingly and not in terms of circle rate as contained in the Note-2 of the order dated 3.8.1997 and such person is liable to pay stamp duty on the basis of valuation not calculated per square metre, which was made in favour of any other person whether he is a co-tenant or owns an adjoining plot/property and a person liable to pay stamp duty on the basis of the same. Regard being had to the fact that petitioner has purchased the entire share of a co-tenant and not a single inch of land was left out in the share, the stamp duty paid by the petitioner is held to be sufficient being in consonance with the U.P. Stamp Rules, 1997.

9. Yet another aspect which the learned counsel forcefully argued is that the S.D.O. concerned did not afford fair opportunity of hearing nor conducted any enquiry in terms of phrase "reason to believe" as contained in Section 47A of the Stamp Act and merely acting on the complaint and direction of the Additional District Magistrate (F and R) passed the impugned order. He further submitted that the Stamp Act and the Rules prescribed due procedure for enquiry but the

S.D.O. passed the impugned order without material, direct, substantial and there being no intrinsic evidence which could be said to be the basis for his reasonable belief that there was any valid basis vis-a-vis Rules 3 and 4 of the Stamp Rules. In connection with this proposition, Section 47A may be quoted below :

"47A. Instruments of conveyance etc. if under-valued, how to be dealt with,--(1) If the market value of any property which is the subject of any instrument of conveyance, exchange, gift settlement, award, or trust, as set forth in such instrument is less than even the minimum value determined in accordance with any rules made under this Act, the Registering Officer appointed under the Indian Registration Act, 1908, shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) Without prejudice to the provisions of Sub-section (1), if such Registering Officer while registering any instrument of conveyance, exchange, gift, settlement award or trust, has reason to believe that the market value of the property which is the subject of conveyance, exchange, gift settlement, award or trust, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(3) On receipt of a reference under Sub-section (1) or Sub-section (2) the Collector shall after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of property which is the subject of conveyance, exchange, gift, settlement, award or trust 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."

10, Now the question arises whether S.D.O. Chail was justified in acting on order dated 3.8.1997 in which is contained Note-2 oblivious of requirements of Rules 3 and 4 and Section 47A of the Stamp Act. Section 47A (2) of the Stamp Act prescribes that if such Registering Officer has reason to believe that the market value of the property has not been truly set forth in the instrument, he may refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. Likewise, Section 47A (3) envisages that on reference, Collector shall after giving the parties reasonable opportunity of being heard and after holding enquiry in such manner as may be prescribed by the rules, determine the market value of property. In connection with the proposition that phrase "reason to believe" is a sine qua non for Section 47A (2), it is settled position that Sub-section (2) of Section 47A is the condition precedent of making of a reference to the Collector under Sub-section (2), The phrase "reason to believe" came up for judicial exposition in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, It was a case relating to a dispute under Income Tax Act. The Apex Court was considering Section 147(a) of the Income Tax Act, 1961 and it was held that the words in the statute are "reasons

to believe" and not "reason to suspect". It was also held that the expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the Court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and not extraneous or irrelevant for the purpose of the section. In *Duncans Industries Ltd., Kanpur v. State of U.P. and Ors.* 1997 (3) AWC 1928, Hon"ble S. R. Singh, J. (As he then was) explained the significance of the phrase "reason to believe" as under :

"The term "reason to believe" occurring in Sub-section (2) of Section 47A spells out that Registering Officer, must have some material direct, circumstantial or even intrinsic evidence on the basis of which, he may come to a reasonable belief that the market value of the property has not been truly set forth in the instrument. In other words, the belief must be that of the honest and reasonable person based upon reasonable grounds....."

11. The learned single Judge further observed in the self-same decision as under :

"Formulation of the requisite belief u/s 47A of the Stamp Act is not a matter of purely subjective satisfaction..... It is thus patent that it would be matter of objective satisfaction of the registering authority to reach a reasonable belief that the value or consideration of the property which is the subject matter of transfer, has not been truly set forth."

Rule 340A of the U.P. Stamp Rules, 1942 and also the U.P. Stamp (Valuation of Property) Rules, 1997 framed under the Stamp Act, 1899, the Collector is empowered to frame guidelines for land valuation and supply the same to the District Registrar for guidance. The guidelines so framed are prima facie opinion of the Collector based on certain factors but in case Registering Officer is of the opinion that valuation of the property is not the same or that it may be higher or lower qua the guidelines, it may refer the matter to the Stamp Collector to consider and decide the matter in accordance with law. The guidelines are not conclusive or binding but it is simply a tentative opinion based on certain consideration inasmuch as the valuation may differ from village to village, place to place and case to case due to various factors coming into consideration including situation of the locality, the market value of the locality prevailing on the date of registration etc. and by this reckoning, the guidelines supplied by the District Magistrate is not conclusive proof for the purpose of valuation of property. In *Collector of Nilgiris at Ootacamund Vs. Mahavir Plantations Pvt. Ltd.*, the Madras High Court while dealing with the valuation guidelines held as under :

"These guidelines were avowedly intended merely to assist the Sub-Registrars to find out, prima facie, whether the market value set out in the instruments had been set forth correctly, The guidelines were not intended as a substitute for market value or to foreclose the inquiry by the Collector which he is under a duty

to make u/s 47A of the Act when once a reference comes to him from the registering authority, The Collector, u/s 47A cannot shirk his responsibility of determining the market value by adopting the guidelines nor can he fix the market value without proper materials and evidence to support it. The very idea of an inquiry contemplated by Section 47A and the detailed procedure prescribed in the relevant rules goes to show that the Collector's finding must be verifiable by evidence. The valuation guidelines prepared by the Revenue Officials at the instance of the Board of Revenue were not prepared on the basis of any open hearing of the parties concerned, or of any documents with a view to eliciting the market value of the properties concerned. They were based on data gathered broadly with reference to classification of land, grouping of lands and the like. This being so, the Collector acting u/s 47A cannot regard the guidelines valuation as the last word on the subject of market value. To do so would be to surrender his statutory obligation to determining market value on the basis of evidence, which is a judicial or a quasi-judicial function which he has to perform. To adopt figures prepared at the instance of the Board of Revenue in the valuation guidelines which are merely a compilation of data by subordinate officials of an administrative authority on the basis of administrative action would be dangerous, because they offer no guarantee of truth or correctness of the data, not being susceptible to check or verification by a judicial or quasi-judicial process of evaluation of evidence."

12. The aforesaid view also receives countenance from the following observations rendered in *Ramesh Chand Bansal v. District Magistrate* 1999 (3) AWC 2431 : JT 1999 (9) SC 499 by the Apex Court. The observation of the Apex Court runs as under :

"Reading Section 47A with the aforesaid Rule 340A it is clear that the circle rate, fixed by the Collector is not final but is only a prima facie determination of rate of an area concerned only to give guidance to the Registering Authority to test prima facie whether the instrument has properly described the value of the property."

The Apex Court further observed :

"The circle rate does not take away the right of such person to show that the property in question is correctly valued as he gets an opportunity in case of undervaluation to prove it before the Collector after reference is made. This also marks the dividing line for the exercise of power between the Registering Authority and the Collector. In case the valuation in the instrument is same as recorded in the circle rate or is truly described it could be registered by Registering Authority but in case it is under-valued in terms of Sub-section (1) or Sub-section (2) it has to be referred and decided by the Collector. Thus, the circle rate, as aforesaid, is merely guideline and is also indicative of division of exercise of power between the Registering Authority and the Collector."

13. The guidelines value received focus of the Apex Court in *R. Sai Bharathi v. J.*

Jayalalitha 2003 AIR SCW 6349, as well and in para 23 of the decision, it was observed that guidelines value has relevance only in the context of Section 47A of the Indian Stamp Act. It was further quipped that the guideline value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty and in quintessence it was observed that "Thus, the guidelines value fixed is not final but only a prima facie rate prevailing in an area. It is not open to the registering authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guidelines valuation as the last word on the subject of market value." The aforestated stand point of the Apex Court also proves the point that the Stamp Authority in the instant case erred in law in giving religious reverence to the guidelines furnished by the District Magistrate, Kaushambi.

14. As urged by the learned counsel for the petitioner, no enquiry was held and no reasonable opportunity of hearing was afforded to the petitioner and further that the impugned order was passed without following the principles of natural justice. It was further canvassed that the orders of the Stamp Collector were passed on the only ground that in case, two sale deeds had been executed considering the area of both the villages, it would be calculated as residential and as such, the petitioner has purposely not registered sale deed separately with intention to avoid payment of correct stamp duty. From a perusal of the impugned order, it is clear that both the authorities have neither applied mind to the relevant factors as contained in Rule 405 of the relevant Rules, 1997 nor the documents filed by the petitioner to show that the property was actually being used other than for agricultural property. The Stamp Collector has erred in passing the impugned order on the ground that the property is straddling over the boundaries of two villages and area of agricultural plot is such and under the guidelines the assessment could be made on the basis of per square meter and not as agricultural land. It is settled position in law that at the time of registration, if registering authority is of the opinion that stamp duty was not properly paid and valuation was not made it may refer the same as required u/s 47A of the Stamp Act. As stated supra, the proceeding did not commence on the basis of any reference made by the Registering Officer but on the basis of complaint made by one Kishan Lal Sahu. It transpires that the Registering Officer did not find any deficiency in valuation or payment of stamp duty at the time of registration or even thereafter nor did he make any reference as envisaged in the rules. Besides, it has not been pointed out by the learned standing counsel that the registration of two plots situated in two different villages in one instrument by one owner is prohibited under law. My attention has not been drawn to any such law that in case registration was made by an owner for his property situated in two villages, it will lead to any illegality. Once it is not forbidden by any law, it is permissible and it cannot be called in question merely on the basis of Note-2 which itself has been held not consistent with the provisions of the Stamp Rules and the Act.

15. In the light of the above, I would revert to scan the impugned order again. From a bare perusal of the impugned order, it would transpire that the S.D.O. concerned proceeded to pass the impugned order merely on being so directed on the complaint of one Kishan Lal Sahu and on the basis of report dated 24.4.1999 submitted by the Deputy Registrar IInd and no proper enquiry was made nor it appears from the record that there was any material direct, circumstantial or even intrinsic evidence on the basis of which a reasonable belief could be formed that the instrument has been undervalued in observance of Rules 3 and 4 of the Stamp Rules and Section 47A of the Stamp Act. The authority concerned appears to have heavily relied upon Note-2 of the impugned order and on a punctilious reading of the Note-2, proceeded to pass the impugned order in utter disregard of the mandate contained in Rule 4 (1) (a) (i) to (iv) or 5 of the Stamp Rules, 1997 in which condition precedent was the proximity of land to road, market, bus station, railway station, factories, educational institutions, hospitals and Government offices, classification of soil and availability of irrigation facility, etc. It would also appear that the S.D.O. concerned proceeded on the report of Sub-Registrar without making enquiry and recording of finding based on any verifiable evidence. By this reckoning, the impugned order is liable to be quashed as it has been passed without affording fair opportunity of hearing to the petitioner and also that his opinion based on the report of Sub-Registrar without there being any other verifiable evidence, material direct, circumstantial or even intrinsic evidence to form a reasonable belief. In view of the above, Note-2 of the order dated 3.8.1997 is also held to be not consistent with the Act and the Rules and being in antagonism with the provisions of Rules 3 and 4 of the U.P. Stamp (Valuation of Property) Rules, 1997 besides being arbitrary and discriminatory, is unsustainable.

16. As a result of foregoing discussion, the petition succeeds and is allowed and the impugned orders dated 20.12.1999 and 3.6.2002 and the Note-2 contained in the order dated 3.8.1997 are, quashed. In consequence, it is held that stamp duty paid by the petitioner was sufficient. In the facts and circumstances of the case, there would be no order as to costs.