(2005) 12 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3362 of 1994

Hajjin Salma Begum APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2006) ILR (MP) 318 : (2006) 2 MPLJ 61

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : K.N. Fakhruddin, for the Appellant; Sanjay Agrawal, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner is assailing the order Annexure-P-22 dated 16-4-1993 passed by Collector of Stamps, Shahdol.

Though against the impugned order statutory appeal is provided u/s 47-A(4) of the Indian Stamp Act, 1899 (for brevity hereinafter referred to as ''the Act'') and another appeal against the order of the appellate authority under sub-section (5), but that efficacious and alternative remedy was not availed by the petitioner. However, looking to the age of the case as it was filed in this Court on 14-9-1994 and was admitted for hearing, I am deciding this petition on its own merits.

The petitioner bought the property in question which according to her is dilapidated godown as well open land by registered sale-deed dated 27-1-1989 from Udhav Ji Shri Krishnadas situated at Jaisingh Nagar of District Shahdol. The property, description whereof has been mentioned in sale-deed Annexure-P-1, was bought for a consideration of Rs. 81,000/- .

On scrutiny made by the A.G. Office, Gwalior since the sold property was found to be undervalued the matter was taken into consideration by the Collector in suo motu under sub-section (3) of section 47-A of the Act. A case was registered and notice was issued to the petitioner. She submitted her reply. According to her reply the sold godown is in dilapidated condition and is not inhabitable. On account of falling of a wall of the godown one person also died. The spot inspection was also done and it was found that the sold property is situated on the main road of Rewa-Shahdol Highway. The sold property was found in the vicinity of a town and the same is encircled by the several constructed houses and there is a market. During the spot inspection it was found that except one eastern side wall other part of the godown was not in dilapidated condition. The Collector on the basis of the spot inspection and on the basis of the reply submitted by the petitioner came to hold that the constructed portion of the godown and the land on which it was constructed would fetch price of Rs. 15/- per sq.ft. and the vacant land would fetch Rs. 13/- per sq.ft. The constructed area was found in 30,000 sq.ft. and the vacant land was found to be 24,360 sq. ft. Thus, the Collector assessed the market value to be Rs. 4,50,000/- of the constructed area and Rs. 1,50,000/- for the vacant land. In total the market value of the sold property on the date of sale was assessed to be Rs. 6,00,000/- .

The contention of Shri K. N. Fakhruddin, Learned Counsel for the petitioner is that no notice was issued to the petitioner in terms of Form HI and it was pre-supposed to issue such notice since the matter was taken into consideration by exercising suo motu powers u/s 47-A(3) of the Act. In this regard Learned Counsel has invited my attention to Rule 4 of M.P. Prevention of Undervaluation of Instruments Rules, 1975 (for brevity, hereinafter referred to as ''the Rules''). By inviting my attention to section 47-A(3-A) of the Act it has been argued that before passing any order the evidence ought to have been recorded by the Collector. Since this has not been done, according to Learned Counsel, the impugned order (AnnEx. P-22) runs de hors to section 47-A(3-A) of the Act. It has also been canvassed by the Learned Counsel that the Collector was influenced by the guidelines fixed by him in regard to valuing the property for ascertaining the stamp value which is Annexure-P-2 dated 17-3-1988 and thus the action of the Collector runs contrary to the dictum laid down by the Division Bench of this Court in the case of Larson and Toubro Ltd. and Others v. State of M.P. and Others, 1994 R.N. 326 on the basis of which another order was passed by this Court in M.P. No. 2903/92, Lakhan Mandloi v. State of M.P. and Others on 2-12-1992 (Annexure-P-21). Thus according to the learned this petition be allowed and the impugned order be quashed.

Per contra, Shri Sanjay Agrawal, learned Govt. Advocate by inviting my attention to the provisions of section 47-A(3) of the Act as well as Rule 5 of the Rules has submitted that on the basis of the spot inspection the market value of the sold property was assessed and impugned order has been passed directing the petitioner to pay the deficit stamp duty. It has been submitted by the learned Govt. Advocate that the decision in the case of Larson and Toubro (supra) is tangentially off the point in the present factual scenario as in that case the stamp duty was assessed on the basis of the guidelines which were Annexures-C and D in that case. While in the present case in the impugned order there is no whisper in regard to the guidelines (AnnEx. P-2) dated 17-3-1988. In order to strengthen his argument, learned Govt. Advocate has submitted that if guidelines (AnnEx. P-2) would have been taken into consideration, the market rate fixed by the Collector was high and that was Rs. 20/- per sq. ft. and, therefore, it cannot be said that the Collector has adopted the guidelines and by basing them passed the impugned order.

After having heard Learned Counsel for the parties, I am of the view that this petition deserves to be dismissed.

On going through the impugned order (AnnEx. P-22) it is gathered that the Collector has passed the impugned order by exercising suo motu powers conferred to it u/s 47-A(3) of the Act. On going through this provision it is gathered that the statute has given power to the Collector to exercise suo motu power within five years from the date of registration of any instrument and not referred to under sub-section (1) of section 47-A of the Act. It be seen that sale-deed was registered on 27-1-1989 and the notice (AnnEx. P-7) was issued on 10-9-1992. Thus within statutory period of five years suo motu powers were exercised which cannot be said to be arbitrary in nature. There is no substance in the argument of Learned Counsel for the petitioner that the evidence ought to have been recorded in terms of sub-section (3-A) of section 47-A of the Act for the simple reason that sub-section (3-A) was added by amendment which came into force w.e.f. 1-8-2000 while the impugned order (AnnEx. P-22) was passed on 16-4-1993. On that date according to rule 4 a notice was required to be sent to the person against whom an action is proposed and the inquiry was to be made on the basis of Rule 5 of the rules. There is no substance in the submission of Learned Counsel for the petitioner that the notice was not sent in Form No. III. In that context I have seen notice (AnnEx. P-7) dated 10-9-1992 and I tallied it from Form No. III. By keeping Form No. Ill and Annexure-P-7 in juxtaposition it can safely be said that notice AnnEx. P-7 satisfies the requirement of Form No. III. In the notice it has been specifically mentioned that by exercising the powers u/s 47-A(3) the case has been registered. Apart from this, how and in what manner the petitioner is prejudiced and merely on the basis of sending a defective notice, how and in what manner the impugned order is liable to be set aside, Learned Counsel for the petitioner could not point out any provision in that regard. Thus, I hold that the notice (AnnEx. P-7) which was issued to the petitioner by exercising suo motu powers by the Collector, was rightly and validly issued.

Now coming to the merit of the case on going through the impugned order (AnnEx. P-22) it is revealed that the Collector has considered each and every minor detail of the property. It has been specifically mentioned in the order that the sold property is situated on the main road of Jaisingh Nagar and it is situated on the Rewa-Shahdol Highway. The sold property is surrounded by several houses. The Collector on para 4 of its order has mentioned that the sold property was being used for commercial purpose and there is market where the sold property is situated. Therefore, the authority has assessed the market value of the land to be Rs. 13/- per sq.ft. It has not been disputed that the sold property is not situated on Rewa-Shahdol Highway. The Collector has also taken into consideration that the structure of the godown would fetch price of Rs. 21- per sq. ft. and therefore, assessed the value of the constructed area of the godown to be Rs. 15/- per sq. ft. which includes cost of the land as well as constructed area.

The findings arrived at by the Collector are pure findings of fact and are not required to be interfered with while exercising writ jurisdiction.

The Division Bench decision of this Court in the case of Larson and Toubro (supra) is not at all applicable in the present case because in that case stamp duty was assessed on the basis of guidelines. However, in the present case the stamp duty is not assessed on the basis of guidelines. The emphasis which has been made by the Collector in assessing the value of the suit property is that the same is situated on the Rewa-Shahdol Highway and there is market area. The property is being used for commercial purpose. Looking to the totality of the facts and circumstances, I do not find any error or illegality in the order of the Collector (Annexure-P-22). The same is hereby affirmed.

Ab judicatio, this petition is found to be bereft of any substance and the same is hereby dismissed without any order as to costs.