
(2013) 12 OHC CK 0001

In the Orissa High Court

Case No : W.P. (C) Nos. 21320 of 2012 and 17155 of 2013

Inspector General of Registration-cum-Stamp Collector and
Others

APPELLANT

Vs

M/s. Bright Projects Pvt. Ltd.

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : AIR 2014 Ori 38 : (2014) 1 ILR (Ori) 221 : (2014) 1 OLR 496 : (2014) 123 RD 235

Hon'ble Judges : A.K. Goel, C.J.; Akshaya Kumar Rath, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

A.K. Goel, C.J.—Since both these petitions are between the same parties and involve same question of law, both are taken together. Question for consideration is whether the Collector can interfere with genuine valuation of a transaction only on the ground that the same was less than the market value calculated with reference to the "Bench Mark Valuation" fixed by the State. In W.P. (C) No. 21320 of 2012, filed by the IG of Registration, challenge has been made to the order dated 24.12.2011, Annexure-6, passed by the District Judge, Bhubaneswar in FAO No. 68 of 2011 quashing action of Collector demanding "deficit" stamp duty and registration fee. On the other hand, the petitioner in W.P. (C) No. 17155/2013 has challenged the proceedings, for realization of the dues towards deficit stamp duty and registration fee, initiated in violation of the order of the District Judge, which has been impugned in the first writ petition.

2. The Managing Committee of Shree Jagannath Temple sold the land in question in favour of M/s. Bright Projects Pvt. Ltd.-opposite party for a sum of Rs. 2,86,37,500/- by way of negotiation. The land was earlier sought to be sold by way of public auction, but in absence of sufficient bidders, the auction was not held and by way of negotiation the land was sold to the opposite party for amount higher than the reserve price. 50% of the amount was deposited on

08.10.2007 and the remaining amount on 18.12.2007. The sale deed was executed after approval of the competent authority, on 29.02.2008. Even though the stamp duty was paid with reference to the said consideration money, the registering authority took recourse to Section 47A of the Indian Stamp Act, 1899 (hereinafter called "the Act") on the ground that the said consideration was less than the market value with reference to the "Bench Mark Valuation" and the Collector determined the market value of the land at Rs. 4,58,20,000/- and asked the opposite party to deposit the deficit stamp duty with reference to the said valuation. The opposite party preferred an appeal before the District Judge, Bhubaneswar questioning the order of the Collector on the ground that the valuation has been duly approved by the Collector and the State Government while approving the transaction in question under the provisions of Shree Jagannath Temple Act, 1965. The transaction being genuine, the stamp duty will be attracted on the consideration money and not on the Bench Mark Valuation notified in accordance with the Orissa Stamp Rules, 1952. Mere fact that consideration was less than market value was no ground to invoke Section 47A in absence of under valuation. Upholding the said plea, the learned District Judge observed:

6. There is no dispute that the land sold belongs to Shri Jagannath -Mahaprabhu Bije, Puri and the sale has been effected by public auction. It has been conducted by the concerned Collector and the valuation has been approved by the State Government. The Bench Mark Valuation is also determined by the State Government with the help of a Committee headed by the Collector. Therefore, the valuation of the land fixed in this case by the Collector is deemed to be the valuation fixed by the State Government, after the two public auctions had failed due to unavailability of bidders. The sale deed has been executed on 29.2.2008. The Bench Mark Valuation followed in this case came into force on 28.2.2008. Had the sale deed been executed in time, the Bench Mark Valuation could not have affected the same. Therefore, it is due to the authorities that the execution of the sale deed has been delayed. As submitted by the appellant if the demand is accepted, the entire auction process and the sale of the land by public auction will be seriously disturbed and shall stand nullified. Since, the entire process of auction sale was allowed to take place without any objection, the learned Stamp Collector cannot do so at this stage.

3. We have heard the learned counsel for the parties. Learned Addl. Government Advocate, for the petitioner, submits that the order of the Collector was based on three different sale deeds in respect of adjacent land and the market value so arrived at could not be interfered with by the District Judge as the appellate authority. He submits that Bench Mark Valuation, which came into force prior to registration of the sale deed, was binding and the sale price mentioned in the sale deed being lesser than the said valuation, the deficit stamp duty was required to be paid.

4. We are unable to accept this submission. The basic fallacy in the submission is

to treat the Bench Mark Valuation as conclusive to assume that there was under valuation and further to assume that even a genuine transaction and consideration attracted invocation of Section 47A if the consideration was less than market value. Doing so is putting the cart before the horse. The submission is based on erroneous understanding of Section 47A of the Act. The said provision comes into operation only when the value of the property has not been genuinely set forth and was under valued and not merely when the said consideration was less than the value determined with reference to the Bench Mark Valuation. Once the genuine consideration has been set forth, as in the instant case, even if the same was less than the value determined as per the Bench Mark Valuation, Section 47A of the Act is not attracted. The stamp duty is to be paid, under the charging provision of Section 3, as per the value of instrument. Section 47A applies to the case of under valuation. The said provision is not attracted otherwise. The said statutory provision is as follows:

47-A. Instruments under-valued how to be dealt with--(1) Where the registering officer under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition or settlement has reasons 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 or is less than the minimum value determined in accordance with the rules made under this Act, he shall, before registering such instrument, refer the matter to the Collector, with an intimation in writing to the person concerned, 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 the parties an opportunity of making their representations and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject-matter of such instrument, and the duty as aforesaid and the deficient amount, if any, shall be payable by the person liable to pay the duty.....

(Underlining supplied)

5. The matter is no longer res integra. In Residents Welfare Association, Noida Vs. State of U.P. and Others, , it was observed:

19. From a bare perusal of sub-section (1) of Section 47A of the Act, it is clear that if the market value of any property, which is the subject-matter of an instrument on which stamp duty is chargeable, as set forth in the instrument, is less than even the minimum value determined in accordance with the Rules made under this Act, the registering officer shall request the person to pay the deficit stamp duty and present the instrument again for registration. At the same time, it should be kept in mind that it is not enough for the authorities for the purpose of invoking Section 47A that the consideration amount stated in the instrument of sale is less than the prevailing market value but they must be satisfied that there is an attempt of under-valuation.

(Emphasis added)

20. It is pertinent to mention that if the registering authority finds that the market value of the property presented for registration is higher than the one shown in the document, in that case, the registering authority after presentation of such instrument and before accepting the document for registration would ask the person liable to pay the required stamp duty, to pay the deficit amount as computed on the basis of the minimum value determined in accordance with the Rules and return the instrument for presenting the document again in accordance with Section 23 of the Registration Act.

44. A plain reading of Article 63 of Schedule 1-B to the Stamp Act would, however, show that the stamp duty chargeable to a document is not on the market value of the property but on consideration indicated in the same. It is only the rate of duty, which is to be taken from Article 23. Therefore, if Article 63 of the Stamp Act is to be applied, duty shall be paid on the consideration of the amount of consideration shown in the deed itself and not on the market value of the land or the construction thereon. Therefore, it is clear from a reading of Article 63 that it would apply in case of a transfer of lease by way of an assignment and Article 23 applies in case of a conveyance by way of sale.

6. In *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, , the question for consideration was whether Section 52(2) of the income tax Act, 1961 will be attracted only when there is understatement of consideration or where the market value exceeded the consideration declared by the assessee. The said provision authorized the I.T.O. to substitute value of transaction for the declared value for calculating capital gain, where value declared was less than the market value. Language of the said provision was as follows:

52. (1) xx xx xx.

(2) Without prejudice to the provisions of sub-section (1), if in the opinion of the Income Tax Officer the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than 15 per cent, of the value declared, the full value of the consideration for such capital asset shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be its fair market value on the date of the transfer.

Having regard to the scheme of the law, it was held that interference with the valuation was permissible only for the purpose of checking evasion of tax. The Income Tax Officer could determine the market value only if there was undervaluation. Mere fact that value mentioned in the document was less than the market value was not enough to invoke the power by the Income Tax Officer to determine the market value. In paragraph 13 of the judgment, the Court observed:

13. Thus it is not enough to attract the applicability of sub-section (2) that the fair market value of the capital asset transferred by the assessee as on the date of the transfer exceeds the full value of the consideration declared in respect of the transfer by not less than 15 per cent of the value so declared, but it is furthermore necessary that the full value of the consideration in respect of the transfer is understated or in other words, shown at a lesser figure than that actually received by the assessee. Sub-section (2) has no application in case of an honest and bona fide transaction where the consideration in respect of the transfer has been correctly declared or disclosed by the assessee, even if the condition of 15 per cent, difference between the fair market value of the capital asset as on the date of the transfer and the full value of the consideration declared by the assessee is satisfied. If therefore the Revenue seeks to bring a case within sub-section (2), it must show not only that the fair market value of the capital asset as on the date of the transfer exceeds the full value of the consideration declared by the assessee by not less than 15 per cent, of the value so declared, but also that the consideration has been understated and the assessee has actually received more than what is declared by him. There are two distinct conditions which have to be satisfied before sub-section (2) can be invoked by the Revenue and the burden of showing that these two conditions are satisfied rests on the Revenue. It is for the Revenue to show that each of these two conditions is satisfied and the Revenue cannot claim to have discharged this burden which lies upon it, by merely establishing that the fair market value of the capital asset as on the date of the transfer exceeds by 15 per cent, or more the full value of the consideration declared in respect of the transfer and the first condition is therefore satisfied. The Revenue must go further and prove that the second condition is also satisfied. Merely by showing that the first condition is satisfied, the Revenue cannot ask the court to presume that the second condition too is fulfilled, because even in a case where the first condition of 15 per cent, difference is satisfied, the transaction may be a perfectly honest and bona fide transaction and there may be no understatement of the consideration. The fulfilment of the second condition has therefore to be established independently of the first condition and merely because the first condition is satisfied, no inference can necessarily follow that the second condition is also fulfilled. Each condition has got to be viewed and established independently before sub-section (2) can be invoked and the burden of doing so is clearly on the Revenue. It is a well-settled rule of law that the onus of establishing that the conditions of taxability are fulfilled is always on the Revenue and the second condition being as much a condition of taxability as the first, the burden lies on the Revenue to show that there is understatement of the consideration and the second condition is fulfilled. Moreover, to throw the burden of showing that there is no understatement of the consideration, on the assessee would be to cast an almost impossible burden upon him to establish the negative, namely, that he did not receive any consideration beyond that declared by him.

7. The above reasoning fully applies to the interpretation of Section 47A of the

Act.

8. In *State of Punjab and Others Vs. Mohabir Singh etc. etc.*, it was held that Bench Mark Valuation was only to alert the registering authority regarding genuineness of the value. If the value has been otherwise truly set forth, mere fact that the value of the transaction was less than the Bench Mark Valuation was not enough to invoke Section 47A. The Court observed:

5. The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be predetermined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated. It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Sec. 47A.

6. It would thus be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself, before registering the document, whether the true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under sub-section (1) of Section 47A, he registers the document. Thereafter, he should make a reference to the Collector for action under sub-sections (2) and (3) of Sec. 47A. Accordingly, we hold that the offending instructions are not consistent with sub-section (1) of Section 47A. It would, therefore, be open to the State Government to revise its guidelines and issue proper directions consistent with the law.

9. Again in *Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others*, it was observed:

5. The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is a matter of common knowledge that in order to escape such duty by unfair practice, many a time undervaluation of a property or lower consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds is on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast on the authority to properly ascertain its true value for which he is not bound by the apparent tenor of the

instrument. He has to truly decide the real nature of the transaction and value of such property. For this, the Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village, from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is the likely value of such property in that area. In its absence it would be very difficult for such registering authority to assess the valuation of such instrument. It is to give such support to the registering authority that Rule 340-A is introduced. Under mis the Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area concerned. This is merely a guideline which helps the registering authority to assess the true valuation of a transaction in an instrument. This gives him material to test prima facie whether the description of valuation in an instrument is proper or not. u/s 47A introduced by the U.P. Act 11 of 1969 conveys how a registering authority is to deal in a case where there is a divergence in the valuation between what is described in an instrument and in the circle rate.

10. In the case of R. Sai Bharathi Vs. J. Jayalalitha and Others, , the Court observed:

22.... The authorities cannot regard the guideline valuation as the last word on the subject of market value....

24.... It is clear, therefore, that guideline value is not sacrosanct as urged on behalf of the appellants, but only a factor to be taken; note of, if at all available in respect of an area in which the property transferred lies.....

11. In the present case, the valuation had been duly approved by the State Authorities. As the Managing Committee of Shree Jagannath Temple itself is controlled by the State and valuation was also approved by the Revenue Divisional Commissioner (RDC), who is the Chief Administrator of Shree Jagannath Temple, there could be no question about the genuineness of the consideration. This excluded the scope of invocation of Section 47A of the Act.

In view of the above, there is no merit in the first writ petition i.e. W.P. (C) No. 21320 of 2012 filed by the IG Registration and accordingly the same is dismissed.

12. In W.P. (C) No. 17155 of 2013, the grievance of the petitioner, who is the opposite party in the first writ petition, is that in spite of judgment of the appellate authority i.e. District Judge, Bhubaneswar, recovery certificate was issued and property of the petitioner was attached for recovery of deficit stamp duty by order of the Collector even when the order of the Collector has been set aside in the appeal. Documents annexed to the writ petition clearly support the stands of the petitioner. It is rather surprising that the State authority has chosen to act in flagrant violation of law and taken steps to implement the order of the Collector which has been set aside in appeal. This action being clearly illegal and contemptuous has to be quashed. Since the order of the appellate

authority has already been upheld above in W.P. (C) No. 21320/2012, the second petition i.e. W.P. (C) No. 17155 of 2013 has to be allowed.

Both these petitions stand disposed of accordingly.