
(2003) 05 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 4978, 4386, 5025 and 5039 of 2003

K. Upender and Another

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Andhra Pradesh Stamp (Prevention of Under Valuation of Instruments) Rules, 1975 — Rule 4, 5
Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 47A, 47A(1), 47A(4), 47A(5), 6

Citation : AIR 2003 AP 403 : (2003) 4 ALD 1 : (2003) 4 ALT 735

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : B. Vijaysen Reddy, for the Appellant; G.P., for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—All these four writ petitions can be conveniently disposed of by a common order, as the question raised is the same. The writ petitions are filed questioning the common order of the Court of Chief Judge, City Civil Court dated 22-7-2002 in C.M.A. Nos. 126, 127, 128 and 129 of 2000. The appeals were filed before the learned Chief Judge under sub-sections (4) and (5) of Section 47-A of the Indian Stamp Act, 1899 ("the Act" for brevity) and the learned Chief Judge, by the said order, while affirming the order passed by the 2nd respondent u/s 47-A (1) of the Act, dismissed the appeals preferred by the petitioners.

2. All the petitioners are brothers and are sons of one Sugnani. They purchased under four individual sale deeds residential property bearing municipal No. 3-5-1141/2 consisting of ground plus two floors with built up area of 873 sq. feet each with an undivided share of land admeasuring 149 sq yards each out of the total area of 596 sq yards. The sale deeds were executed on 30-10-1998. The documents were presented for registration showing the land value at Rs.9,000/- per sq yard. The 3rd respondent before whom the sale deeds were presented for

registration, on coming to the conclusion that the land value for the purpose of stamp duty is Rs.15,000/- per sq yard directed the petitioners to pay deficit stamp duty. The 3rd respondent subsequently referred the matter, u/s 47-A of the Act, to the 2nd respondent who is the Collector u/s 47-A of the Act for determination of proper market value of the property.

3. The 2nd respondent, after issuing notice, by order dated 23-9-1999, determined the value of the land at Rs.15,000/- per sq yard as per A.P. Stamp (Prevention of under valuation of Instruments) Rules, 1975 ("the Rules" for brevity). Aggrieved by the orders of the 2nd respondent, the petitioners preferred separate appeals before the 4th respondent who, by impugned judgment, dismissed the appeals.

4. Initially, writ petition No. 4386 of 2003 came up for preliminary hearing before my learned brother Hon"ble Sri Justice A. Gopal Reddy on 13-3-2003. While ordering rule nisi to the respondents, by order of even date in W.P.M.P. No. 5788 of 2003 His Lordship directed to release the sale deed to the petitioner in writ petition No. 4386 of 2003 if the entire stamp duty as determined u/s 47-A of the Act is paid by the petitioner therein. The other writ petitions came up before me subsequently and as the controversy is in a narrow compass, the learned Government Pleader for Revenue was directed to get instructions in the matter. The learned Government Pleader, after getting instructions, has filed two sketch plans showing where the property was situated and also produced the sale deeds based on which the value of the land was determined as Rs.15,000/- per sq yard. The matter was heard at admission stage at length and is being disposed of at the admission stage itself with the consent of the parties.

5. Before appreciating the submissions made by the learned counsel for the petitioners and the learned Government Pleader for Revenue it is necessary to briefly notice the gist of the order passed by the 2nd respondent as well as the 4th respondent.

6. Before the 2nd respondent, petitioners submitted explanation after receipt of notice in form II as per rule 4 of the Rules. They justified the valuation at Rs.9,000/- per sq yard contending that the market value of the land is Rs.15,000/- per sq yard for the property situated on the main road which is in the commercial zone. The property is situated behind the main road in a lane at a distance of 100 ft which is residential area and, therefore, the same was valued at Rs.9,000/- and that the prevailing rates are far below in the interior area when compared with rates of the lands situated on the main road. They also contended that before computerization of the Department of Registration & Stamps, the value of the property in the lane behind the main road was Rs.9,000/- per sq yard and the value of the land on the main road was Rs.15,000/-. But, after computerization, the property in the lane at a distance from the main road as well as the property on the main road were treated alike and valued at Rs.15,000/-. Therefore, they contended that the property should be valued as a residential area at Rs.9,000/- per sq yard as it is situated at a distance of 100 ft

from the main road.

7. The 2nd respondent conducted local inspection and made enquiries. He found that it is a well developed posh area and surrounded by residential houses. He also found that the property is entirely surrounded by the commercial establishments with well constructed buildings consisting of civic amenities and it is nearer to Kachiguda and Nampally railway stations and Imliban bus station. It is nearer to hotels, cinema theatres and has facilities like transportation, markets and amusement centers. He also relied on sales tax receipts with reference to document No. 1294/98, dated 4-6-1998 and document No. 1293/98, dated 4-6-1998 where the value of the land was shown as Rs.15,000/- for the purpose of stamp duty. For these reasons, the 2nd respondent passed orders determining the value of the land at Rs.15,000/- per sq yard. Each of the petitioners was directed to remit the required amount towards deficit stamp duty by way of a challan.

8. In the appeals before the learned Chief Judge, the petitioners contended that the prevailing market rate of the land is Rs.9,000/- per sq yard prior to computerization of the Department of Registration & Stamps and that the property is not facing the main road nor it is surrounded by commercial complexes, educational institutions or hospitals. The property is in a narrow lane with 5 ft width and, therefore, adopting Rs.15,000/- as market value is not justified. The learned Chief Judge, after considering the rival contentions and also the order of the 2nd respondent, came to the following conclusion:

... The order of the Collector discloses that on inspection it is revealed that the residential premises bearing No. 3-5-1141 measuring 596 sq yard is situated in the lane of about 10 ft width on the main road leading from Ramkote to Kachiguda cross-roads opposite to Tarakarama, Parameshwari and Maheswari cinema theatres. The properties are situated at 105 ft from the main road leading to Ramakrishna cross-roads to Kachigua cross-roads and it was observed that the property is located in the midst of well developed posh locality surrounded by commercial establishments with well constructed building with all civic amenities and the property is very nearer to bus stops and near to Kachiguda and Nampally railway stations and Imblibun bus station and all facilities like shops, educational institutions, cinema theaters, etc., are in walking distance and the Collector has come to a conclusion that the minimum market rate is Rs.15,000/- per sq yard as it is a posh business locality and elite business people are residing. The Collector also has relied on two documents i.e., 1294/98 and 1293/98 and both the documents disclose that an amount of Rs.15,000/- per sq yard was collected. I do not find any abnormality or illegality in the order of the Collector. In fact the Collector has mentioned about the rates prevailing in the area i.e., from Rs.15,000/- to Rs.18,000/- per sq yard had fixed only Rs.15,000/- per sq yard taking the earlier documents into consideration and the locality.

9. After perusing the orders passed by the 2nd respondent and the 4th

respondent thoroughly, I fail to understand any illegality or infirmity in the orders impugned. In an application for judicial review the impugned action can be set aside if the same is illegal, irrational and improper. Illegality in administrative law means that an administrative decision is taken in contravention or in excess of the terms of the power and that administrative decision is as a result of the wrong application of law. In evaluating whether a decision is illegal, the Court is essentially concerned with the question whether the decision is arrived at within the four corners of law. In *Tata Cellular Vs. Union of India*, the Apex Court observed that, "if a decision maker incorrectly understands the law that regulates decision making and applies it to the facts, the decision is rendered illegal. If the decision maker determines the facts and applies law correctly, it cannot be said to be illegal or invalid".

10. The 2nd respondent inspected the area. This is not denied. After such inspection he came to the conclusion that the area is well developed, that it has infrastructural facilities like bus and railways stations, entertainment facilities, etc., and that there is no difference between the land facing the road or the land situated in a lane. He also relied on two sale deeds where the value was shown as Rs.15,000/- per sq yard for the purpose of registration and stamp duty. The two sale deeds are also placed before me by the learned Government Pleader which show the property bearing No. 3-5-33 was sold at Rs.15,000/- per sq yard. The site plan showing house No. 3-5-33 which is the property covered by document Nos. 1294/98 and 1293/98, dated 4-6-1998, shows that the said property is situate far away from the main road, but, still it was valued at Rs.15,000/- per sq yard. Indeed the 2nd respondent observed that the value of the property ranges from Rs.15,000/- to Rs.18,000/-. The 2nd respondent not only relied on his personal observations but also relied on documents i.e., previous sales tax receipts. It cannot, therefore, be said that the determination of facts suffers from any perversity.

11. It is now well settled that when statute entrusts the power of final adjudication of facts in an authority, ordinarily this Court shall not interfere with such finding of fact. See *Pennar Delta Ayacutdars Association and others Vs. Government of Andhra Pradesh and others*, wherein a Division Bench, to which I was also a party, held:

The exercise of power of judicial review by the High Court under Article 226 of Constitution has limitations. For the purpose of this case, we need to notice only two such limitations. First, if the issue presented for adjudication is not justiciable, the Court would not venture to scrutinize the decision. Secondly, when there are serious disputed questions of fact or by the very nature of controversy, the administrator's / decision maker's choice based on facts is to be respected, the Court would not tread into such area and would treat as final the decision of the administrator on facts.

12. To put it simply, all decisions are not justiciable. All the same in all the jurisdictions it is now well accepted that there is no and there cannot be any

unreviewable decision, be it the exercise of sovereign power, be it the exercise of prerogative power, be it the exercise of legislative powers or police powers or powers of taxation. All decisions are susceptible for judicial review subject to limitations. In the Indian context, having regard to the unique role assigned to the judiciary, and having regard to the Directive Principles of State Policy, no Court can shrug its shoulders and decline to scrutinize a decision, including a policy decision. A Constitutional Court, of course may not be inclined to enquire in a roving manner into the circumstances leading to a decision. What is the minimum and maximum extent of scrutiny would depend on circumstances of each case.

13. Therefore, on the question of fact this Court cannot interfere. The learned counsel for the petitioners Sri B. Vijayasen Reddy submits that the determination of the value of the land by the 2nd and 4th respondents is not in accordance with the Rules.

14. As noticed, the Rules were promulgated in exercise of powers conferred under Sections 47-A and 75 of the Act. Rule 5 of the Rules contains the provisions for determination of the market value of consideration. It contains four clauses. Clause (a) deals with principles for determination in the case of lands whereas clause (b) deals with principles for determination in the case of house sites and clause (c) deals with principles for determination in the case of buildings. Rule 5 of the Rules reads thus:

Principles for the determination of the market value or consideration:- The Collector shall, as far as possible, have also regard to the following points in determining the provisional market value or consideration, namely:-

(a) in the case of lands -

(b) in the case of house sites -

i) the general value of house-sites in the locality;

ii) nearness to roads, railway station, bus route;

iii) nearness to market, shops and the like;

iv) amenities available in the place like public offices, hospitals and educational institutions;

v) development activities, industrial improvements in the vicinity;

vi) land tax and valuation of sites with reference to taxation record of the local authorities concerned;

vii) any other features having a special bearing on the valuation of the site; and

viii) any special features of the case represented by the parties.

(c) in the case of buildings -

- i) type and structure;
- ii) locality in which constructed;
- iii) plinth area;
- iv) year of construction;
- v) kind of materials used;
- vi) rate of depreciation;
- vii) fluctuation in rates;
- viii) any other features having a bearing on the value;
- ix) property tax with reference to taxation records of the local authority concerned;
- x) the purpose for which the building is being used and the income, if any, by way of rent per annum secured on the building; and
- xi) any special feature of the case represented by the parties.

(d) in the case of properties other than the lands, house sites and buildings-.....

It is the submission of the learned counsel for the petitioner that as what was purchased under the sale deeds presented for registration is undivided share in the building, the property should be valued as a building and it is only clause (c) of Rule 5 of the Rules that is applicable to the area in question. Learned counsel makes a pointed reference to clause (b) (vi) of Rule 5 which stipulates land tax and valuation of sites with reference to taxation record as one of the factors for determination of market value of house site and clause (c) (ix) of Rule 5 which stipulates property tax as one of the factors for determination of market value. The learned counsel submits that as the property purchased does not attract any land tax and only property tax is payable to municipal corporation, the property must be valued as "building" and not as a "house site".

15. I am afraid, I cannot agree with the contention. Rule 5 of the Rules deals with principles for determination of the market value and treats house sites and buildings separately. It does not, however, mean that when the market value of the buildings is determined the registering authority should ignore totally the value of the house site itself. It may be mentioned that when the market value of the land on which the building stands, so to say, the appurtenant land is relevant factor for determination. If the submission of the learned counsel for the petitioner is accepted, it would result in absurdity of valuing only the building and excluding the appurtenant land for the purpose of stamp duty. The petitioners purchased old building along with land and they themselves also valued the land for the purpose of stamp duty. The property demised under sale deed is not only the building but it is building with land. Therefore, the submission of the learned counsel for the petitioner cannot be countenanced. Rule 5 only provides

guidelines and as per Section 6 of the Act, as amended by Act VIII of 1998, the market value of the property shall have to be determined based on the likely sale value of the property in the open market at the time of execution.

16. In the result, for the above reasons, it must be held that the impugned order passed by the learned Chief Judge confirming the order of the 2nd respondent, does not suffer from any grave error apparent on the face of the record requiring any interference under Article 226 of the Constitution of India. The writ petitions are devoid of merits and are accordingly dismissed without any order as to costs.