(1985) 08 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No''s. 8110 of 1980 and 2766, 3490 and 13188 of 1981

Kaka Singh APPELLANT

Vs

The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another RESPONDENT

Date of Decision : 29-08-1985

Acts Referred:

Stamp Act, 1899 — Section 47A, 47A(1)
Uttar Pradesh Stamp Rules, 1942 — Rule 341

Citation : AIR 1986 All 107 : (1987) RD 286

Hon'ble Judges : Umesh Chandra, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : S.S. Bhatnagar and A.K. Sharma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.C. Agarwal, J.—These four connected writ petitions raise common questions of law, hence, they are being decided by a single judgment. For deciding the points, narration of facts of only one of them namely, Writ No. 8110 of 1980 would be sufficient.

2. On 26th June, 1979, the petitioner Kaka Singh, purchased land under two sale deeds one from Har Pawan Jit Singh, r/o Tugalpur in respect of one half share in Khata No. 371 measuring 10 bighas for Rs. 12,000/- and the other from Gurnam Singh and Gurjendra Singh in respect of 10 bighas 17 biswas 10 biswansis of land for Rs. 10500/- These sale deeds were presented for registration to the Sub-Registrar. Finding that the market value of the land which were the subject matter of the two sale deeds, as set forth, was less than even the minimum value, he referred the sale deeds u/s 47A of the Stamp Act to the Collector for determination of the market value of such property and the proper duty payable under the said Act. The petitioner filed an objection before the Additional

Collector District Stamp officer who issued notice to him. It was stated that the land purchased for the value shown in the sale deeds was proper. It was also asserted that prior to 5th Dec. 1977 the Government price (market value) for the land was Rs. 500/-per bigha. Consequently, Rule 341 of the Rules framed by the State of U.P. u/s 75 of the Stamp Act would not be applicable. Rule 341 provides that for the purpose of payment of stamp duty, the minimum market value of immovable property referred to in Section 47 A(1) of the Act shall be deemed to be not less than that as on the basis of the multiples given below :

(1) Where the subject is land --

(a) in case of bhumidhari-800 times the land revenue

(b) in case of sirdari land-400 times the land revenue.

3. Before the Additional Collector, the petitioner examined Kastoorilal, the Lekhpal and one Ranjitsingh. He also filed extracts of trinial Khataunis, showing the price at which the land of the same kind in the vicinity was sold. The Additional Collector repelled the objection of the petitioner by holding that the market value had to be determined at the rate of 800 times of the land revenue under Rule 341 of the Rules'' framed under the Act, as introduced in 1976, vide notification No. 1850/X-500 (1) 75 dt. 21st June, 1976. On the finding arrived at, the Additional Collector, found the following sale deed executed by Haf Pawan Jit Singh :

Sale deed executed for

Rs. 12,000-00

Value of the sale deed determined in accordance with Rule 341

Rs. 25,000-00

Stamp duty

Rs. 975-00

Penalty

Rs. 200-00

Registration Fees

Rs. 13000

Sale deed executed by Guranam Singh and Gurjendra Singh

Sale deed executed for Value of the sale deed

Rs. 26,500-00

determined in accordance with R. 341

Rs. 52,320-00

Stamp duty

Rs. 2,025-00

Penalty

Rs. 325-00

Registration Fee

Rs. 270-00

4. Against the judgment of the Additional Collector, the petitioner has come to this Court by means of the present writ.

5. To the maintainability of the writ petition a preliminary objection was raised. The same was that as the petitioner could move an application for reference to the Board of Revenue, the writ petition was liable to be rejected on the ground of availability of alternative remedy. We would have accepted the preliminary objection and dismissed the writ petition on that ground but as the petitioner has challenged the validity of Rule 341 of the Rules framed under the Stamp Act, we thought it advisable to decide the said question. Board of Revenue has no authority to adjudicate the validity of the rule. It is a creature of the Stamp Act and has only those powers which are conferred by it. It cannot examine the validity of the rule.

6. Section 47-A was inserted by means of an amendment. The scheme of Section 47-A of the Act is to deal with those cases where private parties by arrangement clandestinely or fraudulently undervalued the property which is the subject matter of transfer with a view to deprive the government of legitimate revenue by way of Stamp duty. Before addition of Section 47-A, there was no provision in the Stamp Act empowering the revenue authorities to make an enquiry of the value of the property conveyed for determining the duty chargeable. Section 27 of the Stamp Act laid down that the consideration if any and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. In case a person did not set forth true amount for which the transaction had taken place, the revenue authorities had no power to proceed with the defaulter, Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority, . The Supreme Court held that for the purpose of Article 23, the value of consideration must be taken to be one as set forth in the conveyance deed. The question whether the purpose of determining the value of the consideration to revenue must have regard to what the parties to the instrument have elected to state the consideration to be.

7. In order to meet such a difficulty and to empower the revenue authority to determine the market value of the property, which is the subject of the conveyance, exchange, gift, settlement, award, or trust, and the duty as payable by the person liable to pay the same that Section 47-A was inserted.

8. Sub-section (1) of Section 47-A provides that if the Registering officer finds that the market value of the property as set forth for such instrument was less than even the minimum value determined in accordance with the Rules framed under this Act, he shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. Under Sub-section (2), power has been conferred on the Registering officer to refer the case to the Collector if he finds that the market value has not been truly set forth in the instrument for determination of the market value of such property and proper duty payable thereon. Sub-section (3) of Section 47-A provides the procedure which is required to be followed in cases of Sub-sections (1) and (2) of Section 47-A.

9. From the above, we find that Sub-sections (1) and (2) of Section 47-A apply to two different situations. In the instant case, the Registering Officer was since of the opinion that the market value as set forth in the sale deed was less than even the minimum value determined in accordance with the rules, he referred the same to the Collector. Before the Collector, the petitioner had filed evidence but by applying the Rule 341, the Additional Collector found that the market value set forth in the conveyance was less and, thereafter, by applying the rule of calculation or computation of the market value stated in Rule 341, he determined the market value of the two sale deeds and found the stamp duty payable thereon.

10. We are of opinion that the Rule 341 which has been relied upon by the Additional Collector has only the limited object of providing guidelines. For invoking Sub-section (1) of Section 47-A, it is not conclusive of the determination of the market value. While determining the question whether the market value has been truly set forth in the instrument, the power of the Collector is not confined to Rule 341 of the Rules framed under the Act. It can, if evidence made available before it establishes, determine the market value of the property, which is the subject matter of the conveyance to be more than the minimum given in the rules. While determining this question, he will have to find that the market value of the property has not been truly set-forth in the instrument. He will be required to confine his consideration to the particular document which has been presented for registration before him and in that case the limited enquiry to be made by him would be whether the parties to the conveyance or instrument deliberately undervalued it for the purpose of deceitful gain. In a case where it is found that the value of the conveyance was fraudulently made although more has passed on it, Section 47-A would come into play and upon that determination, the difference, if any, in the amount of duty shall be payable by the person liable to pay the duty. Fraud comprises all acts and concealments involving a breach of legal duty resulting in damage to the revenue. In the case of undervaluation of a document, the intention of the parties is to mislead the revenue by false allegations and by concealment of that which should have been disclosed.

11. Section 75 of the Act empowers a State Government to make rules to carry out generally the purpose of the Act. The purpose of Section 47-A is only to avoid evasion of the stamp duty.

12. In Sub-section (2) of Section 47-A the words important for consideration of its scope are ''truly'' and ''set forth''. The word ''truly'' would empower the Collector to examine whether the market value stated in the document is not in conformity with the fact. If a party has agreed to pay more and mentions less in the conveyance of which one of the purposes could be evasion of stamp duty, the Collector would be entitled to find the real value for which the property had been sold in that case and after determining the correct value for which the property has been sold, to make a demand of the difference of the amount of duty payable as such.

13. In State of Tamil Nadu v. Chandrasekharan AIR 1974 Mad 117 while dealing with the object of Section 47-A, the Madras High Court held :

"We are inclined to think that the object of the Amending Act being to avoid large scale evasion of stamp duty, it is not meant to be applied in a matter of fact fashion and in a haphazard way. Market value itself as we already mentioned, is a changing factor and will depend on various circumstances and matters relevant to the consideration. No exactitude is in the nature of things possible. In working the Act, great caution should be taken in order that it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion."

14. Section 47-A fills in the lacuna which was found by the Supreme Court in Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority, , it empowers the Collector to deal with those cases where the parties by arrangement deliberately undervalue the property with a view to defraud the Government of the legitimate revenue by way of stamp duty. It is not correct that the Collector is not empowered to determine on a case being referred to him by the Sub-Registrar u/s 47-A(1), that the market value is in fact less than the minimum value to be determined by Rule 341 and to find on that basis whether the transaction sets forth the market value truly or not. Similarly, the hands and power of the Collector are not confined to the minimum, value given in Rule 341. It can hold it to be more if it is satisfied on the materials brought before him to that effect. Rule 341 had been framed by the legislature only for the limited purpose of providing a guideline. It is not conclusive. That being so, under Sub-section (1) of Section 47-A, if the Registering Officer is satisfied that the market value is less than even the minimum value, he may refer the document to the Collector for determination of the value of such property. This is the only function of Rule 341. It is neither binding on the person who produces the instrument for registration nor on the State Government.

15. u/s 47-A, the Collector has the power to determine whether a particular document which is presented for registration is undervalued with a view to evade payment of stamp duty. For this purpose, he would be entitled to take into account the minimum prescribed by Rule 341 as a circumstance. But the minimum laid down in the Rule is not conclusive or determinative of the controversy. However, as stated above, this can be a circumstance which can be considered along with others.

16. It is true that since there can be no direct evidence of clandestine dealings, a finding about evasion can be given by considering the circumstances. It may further be stated that determination of undervaluation has to be made with reference to the particular transaction presented for registration. If otherwise a document sets forth the amount or consideration truly, the Collector will have no power to hold it to have been undervalued on the prevalent market value. As there may be cases, the sale may take place for a lesser amount than what is the value of a similarly situated property. Selling a property at a price lower than the market value, is against human behaviour and can be considered as a ground for evasion. But this fact should not be made conclusive and should be judged along with others. No individual factor in such a matter is conclusive. The job of determination is difficult but not impossible of performance. Truth can be found despite these odds. It is not possible for us to lay down exhaustively as to in which cases evasion could be found and in which it could not be.

17. We find force also in the argument of the petitioner''s learned counsel that since Section 47A does not empower the Collector to impose penalty in the event of his finding that the market value was not truly set forth in the instrument, such an order imposing the same would be beyond Section 47-A. For imposing penalty in a case like the present, power was specifically to be conferred. In the absence of a specific provision made in that respect, it is not possible to uphold the contention of the Standing Counsel that penalty could be imposed whenever and wherever the Collector u/s 47-A finds that the value set forth was not true. Section 47-A as stated above, was brought in recently to cover a case of evasion. While enacting Section 47-A, the legislature although empowered the Collector to determine the market value of the property, which is the subject of conveyance and the duty payable thereon, it did not make any provision empowering the Collector to impose penalty.

18. For what we have said above, we find that Rule 341 is not ultra vires being only meant for a limited purpose of providing guideline. It carries out the purpose of Section 47-A of the Act. Market value by its nature is such which keeps on varying and changing. For the purpose of determining duty it is the date on which a document is executed that is to be taken into account. The market value has to be determined with reference to that date. In the instant case, we find that treating the method of calculation given in Rule 341 as conclusive and final, the Collector found the market value narrated in the sale deeds not to be truthful. This makes the order and judgment of the Collector to

be erroneous. It suffers from vice of mistake apparent on the face of the record. The Additional Collector also has committed the error of imposing penalty in the instant case. In these circumstances the order of the Collector is set aside and the case is sent back to him for a fresh determination of the controversy.

19. In the result, the writ petition succeeds and is allowed. The order of the Collector is quashed. As the question of registration of the document is pending since long, the present is a fit case for deciding it expeditiously. No order as to costs. Stay order is discharged.

