**(1998) 03 AP CK 0027**

**In the Andhra Pradesh High Court**

**Case No :** C.R.P. No. 513 of 1996

Kasarla Narayana Reddy APPELLANT

Vs

District. Revenue Officer, Nalgonda RESPONDENT

**Date of Decision :** 10-03-1998

**Acts Referred:**

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 50
Constitution of India, 1950 — Article 141
Stamp Act, 1899 — Section 47

**Citation :** (1998) 2 ALD 793 : (1998) 2 ALT 641

**Hon'ble Judges :** B. Sudershan Reddy, J

**Bench :** Single Bench

**Advocate :** Mr. Satyam Reddy, for the Appellant; Government Pleader for Arbitration, for the Respondent

# Judgement

1. This civil revision petition is directed against the order passed by the Learned Subordinate Judge, Nalgonda, dismissing C.M.ANo.2 of 1993 on 30-11-1995. The C.M.A. itself is directed against the order passed by the District Revenue Officer, Nalgonda, dated : 7-8-1992.

2. The facts requiring for the disposal of the C.R.P. may briefly be noted:

The petitioner herein purchased house bearing No.6-4-55/J/D together with land measuring 311 sq. yrds., situated at Ravindranagar Colony, Nalgonda town from the original owner thereof under a Registered sale-deed dated 27-9-1984 for a consideration of Rs. 75,000,00. The market value of the property is mentioned in the said document is the same as that of the consideration paid by the petitioner herein to the owner. The sale-deed was not only registered by the registering authority, but the same was released in his favour after duly registering the instrument. It appears that the Joint Sub-Registrar-I sent the record pertaining to the said sale-deed dated 27-9-1984 of the petitioner for determining the market value to the Collector. According to the registering authority, the market value as shown in the Basic Register would be Rs. 1,72,800/- and the stamp duty liable to be paid thereon is Rs. 17,200/-; but only Rs.9.625.95 was paid as stamp duty.

3. The District Revenue Officer, Nalgonda (for short ''DRO'') issued notices to the petitioner herein under Rule 4 of the A.P.Stamp (Prevention of Under-valuation of Instruments) Rules, 1975 (for short ''the Rules''. The record would disclose that the notices were sent to the petitioner from 1989 and finally on 17-6-1992 directing the petitioner to attend the inquiry on 24.6.1992. The petitioner did not appear before the DRO and the DRO accordingly passed orders directing the petitioner herein to deposit the stamp duty of Rs.7,664.05 fixing the market value of the property at Rs. 1,72,800,00.

4. The petitioner thereafter preferred appeal - C.M.A.2/93 and the learned Subordinate Judge, Nalgonda, confirmed the order passed by the DRO. Hence this civil revision-petition.

5. In this civil revision-petition, learned Counsel for the petitioner, Sri S. Satyam Reddy, submits that no notice whatsoever was served upon the petitioner at any time by the DRO and the proceedings are liable to be declared void on this simple ground alone. It is further urged that the reference of the sale-deed by the registering authority for determination of market value of the property is hopelessly time barred and the DRO ought not to have accepted the reference. It is urged that under sub-section (3) of Section 47-A of the India Stamp Act, 1899 (for short ''the Act'') even the Collector suo mom could have exercised the power to call for the instrument for the purposes of satisfying himself as to the correctness of the market value of the property mentioned in the instrument within two years from the date of registration. Under those circumstances, the registering authority cannot refer the document beyond the period of two years.

6. The learned Assistant Government Pleader for Arbitration appearing on behalf of the respondents submits that there is no limitation whatsoever provided under subsection (1) of section 47-A of the Act and limitation of two years applies in case where the Collector proposes to exercise suo motu power under sub-section (1) of Section 47-A of the Act. The Registering Authority can exercise power under sub-section (1) of Section 47-A and refer the document at any time for fixing the correct market value.

7. Having regard to the importance of the question, the Court requested Sri M.S. Ramachandra Rao, learned Advocate to assist the Court as amicus curiae.

8. The question as to whether the action of the registering authority referring the matter under sub-section (1) of Section 47-A of the Act is barred by limitation is not res integra. The Supreme Court in State of Punjab and others Vs. M/s. Mahajan Sabha, Gurdaspur and others, while interpreting the very same provision held :

"The limitation of two years prescribed in sub-section (3) would apply only in a case where the Collector takes action either suo motu or on receipt of reference from the Inspector-General of Registration or the Registrar of the District appointed under the Registration Act, 1908, in whose jurisdiction the property or any portion thereof, which is the subject-matter of the instrument is situated. In case of initiation of the action by the aforesaid officers, the limitation of two years from the date of registration of any instrument would arise. In other words, the limitation prescribed in sub-section (3) of Section 47-A has no application to the case when a reference was made by the Registering Authority viz., the primary authority under subsection (1) of Section 47-A If all the three sub-sections are conjointly read, the inevitable conclusion would be that the action of the Collector taken under subsections (2) and (3) on reference under sub-section (1) is not controlled by the limitation of two years prescribed under sub-section (3)."

9. It is the final word on the subject. However, the learned amicus curiae submits that sub-section (1) of Section 47 provides reference to the Collector for determination of market value on entertaining a reasonable belief that the market value of the property has not been truly set forth in the instrument. It is submitted by the learned amicus curiae that the Registering Officer is entitled to entertain such a reasonable belief while registering any instrument of conveyance. According to the learned amicus curiae the expression ''while registering the instrument of conveyance'' is of utmost significance. According to him, the Registering Authority is precluded from scrutinizing any instrument of conveyance after its registration and return of the document to the party, if any such instrument escapes the scrutiny and attention of the Registering Authority, the Collector may suo motu call for and examine the instrument for the purposes of satisfying himself as to the correctness of the market value. But, such power can be exercised only within the period of two years from the date of registration.

10. According to the learned amicus curiae, if any instrument is under-valued and escaped the attention of the Registering Authority the same can be remedied by the Collector in exercise of the power under subsection (3) of Section 47-A of the Act and even such power could be exercised only within the period of two years. A fair consideration of all the three sections of Section 47-A would show that the Registering Authority cannot refer any instrument of conveyance to the Collector, at any rate, beyond the period of two years. Whatever may be the merit of the submissions, it is not open to this Court to express any opinion whatsoever other than what is held by the Apex Court in the case of State of Punjab (supra).

11. The learned amicus curiae referred to sub-rule (4) of Rule 3 of the Rules, which reads as follows:

"If the Registering Officer is of the opinion that the market value of the property affected by the instrument is not correctly furnished, he shall keep the document pending and without delay refer the matter to the Collector with details of his assessment of the market value arrived at by him in the Form-I. No copy to such document shall be granted notwithstanding anything contained in any of the provisions of any Act or Rules."

''The said Rule has come into operation with effect from 16-8-1986. This Rule, according to the learned amicus curiae will throw light on the true meaning and purport of subsection (1) of Section 47-A of the Act, even before the amendment of Section 47-A by A.P. Amendment Act 17 of 1986 which had come into force with effect from 16-8-1986. Of course, after the amendment the Registering Authority is bound to keep the instrument pending if he has reason to believe that the market value of the property in such instrument has not been truly set forth in the instrument and refer the matter to the Collector for determination of the market value and the duty payable thereon. Even before the amendment, the Registering Authority is duty bound to refer the matter to the Collector without any delay. The Rule provides that the Registering Officer while reaching the opinion that the market value of the property affected by the instrument is not correctly furnished, has to keep the document pending and has to refer the matter to the Collector without delay. The expression used in sub-section (1) of Section 47-A of the Act ''While registering the instrument'' and the duty of the Registering Officer to keep the document pending and refer the matter to the Collector without delay would undoubtedly show that the Registering Authority can exercise power only at the time of registering the document and thereafter the Registering Officer has no power whatsoever to refer any instrument to the Collector for adjudication as to the market value of the property stated in the said document. The learned Counsel referred to the principle that an amendment which is by way of clarification of an earlier ambiguous decision can be useful aid in construing the earlier provision. It is one of the known principles of interpretation of statute that subsequent legislation may be looked at in order to see the proper construction to be put upon an earlier Act, where the earlier Act is ambiguous.

12. In my considered opinion, this Court cannot have resort and invoke any principle of interpretation of statutes whatsoever which may run counter to the authoritative pronouncement of the Apex Court. It is presumed that the Apex Court had in mind all the principles of interpretation of statutes and accordingly rendered the Judgment All Courts in India are bound to follow the decision of the Supreme Court The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects warranting consideration or the relevant provisions were not brought to the notice of the Supreme Court That is the law declared by the Supreme Court and binding nature of the judgments of the Supreme Court as provided by Article 141 of the Constitution of India.

13. It is under those circumstances, this Court has no other option except to hold that the reference by the Registering Authority in the instant case is not barred by limitation. But the crucial question would be as to whether the Registering Authority can choose to exercise the power to refer the matter to the Collector for determination of the market value under sub-section (1) of Section 47 of the

 

Act, at any time? Does it depend upon his sweet will and pleasure? Does it mean that the document can be referred even after lapse of years?

14. These questions obviously did not come up for consideration before the Supreme Court in the State of Punjab case (supra). The sale-deed in that case was registered on 4-9-1987 and the notice was issued by the Collector, on receipt of the reference, on 9-10-1989. Thus, it was a case where the notice was issued within few days after the expiry of two years period of limitation.

15. The limitation of two years within which the Collector may exercise suo motu power to call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value will not apply for reference of such instrument to determine the market value by the Registering Authority. But that power should have been exercised within a reasonable time.

16. It is settled law that in the absence of any period of limitation every authority has to exercise its power within a reasonable period. What would be the reasonable period would depend upon the facts of each case. No authority can choose to exercise the power at any time merely because there is no limitation prescribed. (See Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, ).

17. A Division Bench of this Court is S.B. Dharma Reddy v. Director of Settlements, 1989(1) APLJ 598 held that :

"Where the statute itself omits to mention the period of limitation for exercise of such power, it would indeed be inadvisable to lay down any such hard and fast rule. But, as pointed out by the Supreme Court, it does not also mean that the power can be exercised after an unreasonable long period. The power must be exercised reasonably, which means it must be exercised within a reasonable period as well. Now, what is a reasonable period has to be determined with reference to facts of each case, and also having regard to the nature of the order sought to be revised, the nature of the right of the applicant, and all other attendant circumstances.''

18. While construing sub-section (4) of Section 50-B of the A.P.(Telangana Area) Tenancy and Agricultural Lands Act, 1950, which authorises the Collector to suo moto call for and examine the record relating to any certificate issued or proceedings taken by the Tahsildar, a Division Bench of this Court in P. Narasimha Reddy v. State of A.P., 1989(2) ALT 700 observed:

"The expression ''at any time'' used in sub-section (4) of Section50-B of the Act must be construed reasonably and therefore even though that expression is used in the section, still we have to hold that the power must be exercised within a reasonable time and the expression does not clothe the authorities to exercise the power at any time they like even after the expiry of along period. It will lead to a lot of hardships, if such an interpretation is given. If the power is exercised after the lapse of a long time, the persons may not find evidence to support their contentions and settled rights may get unsettled An absolute discretion to exercise the power at any point of lime cannot therefore be sustained merely on the ground that the section contains the words ''at any time''. Even, with this expression in the section, it must be held that the power u/s 50-B sub-section (4) must be exercised within a reasonable time and the ratio of decision referred to above would equally hold good even with reference to subsection (4) of Section 50B. But, however, it must be pointed out that what is a reasonable time is a question of fact which has to be decided in the circumstances of each case."

19. In the instant case, the sale-deed was registered as earlier as on 27-9-1984. The Notice, for the first time, was issued by the DRO in RT.No.35/JRD/28/88 on 5-1-1989 that is to say after a period of more than four years and three months. There is no material on record to show that even that notice was served upon the petitioner. Final order was passed by the DRO on 7-8-1992 and a certified copy of it was made available to the petitioner on 11-8-1993. The order determining the market value of the properly, which is the subject-mailer of the sale-deed dated 27-9-1984 is made under sub-section (2) of Section 47 of the Act on 7-8-1992 that is to say after a period of eight years, from the date of registration of the document. In a given case, even the property could have changed hands during the interrugnum of eight years. I have no hesitation to hold that the Registering Authority failed to exercise its power under sub-section(1) of Section 47-A of the Act within a reasonable time. I accordingly hold that the reference made by the Registering Authority to the Collector, itself, is bad. Subsequently, the order of the District Revenue Officer, Nalgonda dated: 7-8-1992 is declared as void. The civil miscellaneous appeal was disposed of by the learned Subordinate Judge, Nalgonda, merely confirms the order of the DRO and, therefore, the same is accordingly set aside.

20. There is no finding whatsoever by any of the authorities on the issue, service of notice on the petitioner. No doubt the appellate authority observed that notices dated 5-1-1989; 11-5-1989; 3-4-1990; 26-3-1992; 4-2-1992 and 17-6-1992 were sent to the petitioner through the Mandal Revenue Officer. But, there is no finding whatsoever about the service of notice on the petitioner. But, in the view I have taken, this aspect may not have any bearing on the result of the case. Thus, the impugned order of the District Revenue Officer, Nalgonda in Case No.B4/DRA/26/88 dated 7-8-1992, as well as the Judgment and decree passed by the learned Subordinate Judge, Nalgonda, in CMA.No.2/93 on 30-11-1995 are accordingly set aside.

21. The Civil Revision petition is allowed. No costs.

 