

(2011) 10 CHH CK 0006
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 4360 of 2009

Maresh Chandra Gupta

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 02-10-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Stamp Act, 1899 — Section 17

Citation : (2011) 2 CGBCLJ 492

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Advocate : H.B. Agrawal, with Mrs. Meera Jaiswal, for the Appellant; Vinod Tekam, Panel Lawyer for Respondents No. 1 and 2/State and Mr. M.D. Sharma, Counsel, for the Respondent

Final Decision : Allowed

Judgement

T.P. Sharma, J.—By this writ petition under Article 227 of the Constitution of India the petitioner has challenged the legality & propriety of the order dated 26.02.2009 (Annexure P/1) passed by the board of Revenue, Bilaspur, in Review Case No. R.W./02/S.A./B-105/74/08 filed against its order dated 07.10.2008 passed in Appeal Case No. 36/B-105/2003-04, whereby the order passed in appeal has been reviewed and the Board of Revenue has directed of payment of stamp duty leviable as on the date of execution of agreement to sell. Brief facts necessary for disposal of this writ petition are that the petitioner and respondent No. 3 entered into agreement to sell the property on 13.12.1980. Thereafter civil suit for specific performance of contract was filed and on 17.06.2003 after final adjudication sale deed was presented for registration before the Sub-Registrar. The matter was referred by the Sub-Registrar u/s 47A(1) of the Indian Stamp Act, 1899 (for short "the Act") to the Collector of Stamps. The Collector of Stamps after providing opportunity of hearing to the parties has valued the suit property for the purpose of stamp duty and registration as Rs. 54,46,200/- i.e. leviable from the date of registration of the documents. Same was challenged

before the Board of Revenue and the Board of Revenue has initially dismissed the appeal vide order dated 07.10.2008 in Appeal Case No. 339/B-105/-04. Again review petition was filed and by order impugned the Board of Revenue has reviewed its own order and directed the payment of stamp duty on the basis of market value from the date of execution of agreement to sell i.e. 13.12.19880.

2. I have heard learned counsel for the parties, perused the order impugned, order dated 07.10.2008 and documents filed on behalf of the parties.

3. Learned counsel for the petitioner submitted that crucial question for determination in this petition is the date of payment of stamp duty. Learned counsel further submitted that on 13.12.1980 the parties have entered into agreement to sell and on that day they have not executed any deed of sale, any document was not available for registration. After final adjudication when the parties were in position to execute the sale deed. Then sale deed was prepared for execution. As per law, stamp duty was leviable as on the date of registration of sale deed and not as on the date of agreement to sell.

4. Learned counsel placed reliance in the matter of State of Haryana and Others Vs. Manoj Kumar, , in which the Supreme Court has held that crucial date for levy of stamp duty is the date when document was tendered for registration and not the date when the parties entered into agreement to sell the property.

5. On the other hand, learned counsel for respondents No. 1 and 2/State opposed the petition and submitted that the parties are under obligation to value the property as applicable on the date of registration and not from the date of agreement to sell.

6. Learned counsel for respondent No. 3 also opposed the petition and submitted that document takes effect on date of its execution and not on the date of registration. Parties have agreed to sale the land in the year 1980. They have specifically shown their intention. Seller has received part consideration and rest consideration was payable at the time of registration. Registration is mere proof of sale and not contract of sale, therefore, crucial date for payment of stamp duty was the date when the parties entered into agreement to sell and not the date when they presented the document for execution. Learned counsel further submitted that for referring the matter u/s 47A(1) of the Act to the Collector of Stamps it is necessary for the Sub-Registrar that there must be arson to believe that the market value of the property has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the Revenue. The basis for exercise of power u/s 47A of the Stamp Act is wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

7. Learned counsel placed reliance in the matter of Thakur Kishan Singh (dead) Vs. Arvind Kumar,), in which the Supreme Court has held that lease deed takes effect from date its execution. Learned counsel further placed reliance in the matter of V.N. Devadoss Vs. Chief Revenue Control Officer-cum-Ins. and Others, in which the Supreme Court has held that before referring the matter the Sub-Registrar must be a reason to believe that the market value of the property has not been truly set out in the instrument.

8. Undisputed facts reveal that both the parties entered into agreement to sell on 13.12.1980. Rs. 69,542/- was payable as consideration, but the purchaser has paid part consideration of Rs. 6,000/- after agreement. Civil Suit was filed and decided between the parties and finally sale deed was presented for registration on 17.06.2003 after lapse of 23 years of such agreement to sell. The Board of Revenue in its order dated 07.10.2008 has held that stamp duty was payable on the basis of valuation of property at the time of registration of document and not at the time of agreement to sell, but by reviewing its own order the Board of Revenue has taken different view that stamp duty was payable from the date of agreement to sell of the property.

9. As held by the Supreme Court in the matter of Thakur Kishan Singh (supra), document takes effect from date of its execution and as held in the matter of V.N. Devadoss (supra), before referring the mater the Sub-Register must be a reason to believe that the market value of the property has not been truly set out in the instrument and the basis for exercise of power u/s 47-A of the Stamp Act is wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

10. While dealing with the question of payment of stamp duty and registration the Supreme Court in the matter of State of Rajasthan and Others Vs. Khandaka Jain Jewellers, has held that correct market value of the property for the purpose of stamp duty is a valuation at the time of execution of sale deed and not at the time of execution of agreement to sell. The Supreme Court has observed in para 10 of the aforesaid judgment as under:-

10.....The Expression "execution" read with Section 17 leaves no manner of doubt that the current valuation is to be seen when the instrument is sought to be registered. The Stamp Act is in the nature of a taxing statute, and a taxing statute is not dependent on any contingency. Since the word "execution" read with Section 17 clearly says that the instrument has to be seen at the time when it is sought to be registered and in that if it is found that the instrument has been undervalued then it is open for the registering authority to enquire into its correct market value. The learned single Judge as well as the Division Bench in the present case had taken into consideration that the agreement to sell was entered into but it was not executed. Therefore, the incumbent had to file a suit for seeking a decree for execution of the agreement and that took a long time. Therefore, the Courts below concluded that the valuation which was in the instrument should be taken into account in our opinion this is not a correct

approach. Even the valuation at the time of the decree is also not relevant. What is relevant in fact is the actual valuation of the property at the time of the sale. The crucial expression used in Section 17 is "at the time of execution". Therefore, the market value of the instrument has to be seen at the time of the execution of the sale deed, and not at the time when agreement to sale was entered into. An agreement to sell is not a sale. An agreement to sell becomes a sale after both the parties signed the sale deed. A taxing statute is not contingent on the inconvenience of the parties. It is needless to emphasize that a taxing statute has to be construed strictly and considerations of hardship or equity has no role to play in its construction. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words:

In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

11. While dealing with the same question, the Supreme Court in the matter of Manoj Kumar (supra) has taken same view.

12. As held by the Supreme Court in the matter of M/s. Khandaka Jain Jewellers (supra), the Board of Revenue was required to consider the valuation of the property on the date of execution of sale deed and not on the date of execution of agreement to sell. Even the Board of Revenue has initially taken same view vide order dated 07.10.2008, but by reviewing its own order the Board of Revenue has committed gross illegality which is not sustainable under the law. Consequently, the writ petition deserves to be allowed and it is hereby allowed. Order impugned dated 26.02.2009 passed by the Board of Revenue is hereby quashed and order dated 07.10.2008 passed by the Board of Revenue is hereby restored. Respondent No. 3 shall pay stamp duty of Rs. 54,46,200/-. No order as to costs.