**(2018) 07 RAJ CK 0207**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 6794 of 2014

**Mahesh Dangayach @APPELLANT@Hash State of Rajasthan & Ors**

**Date of Decision :** 19-07-2018

**Acts Referred:**

Rajasthan Stamp Act, 1998 — Section 51
Rajasthan Stamp Rules, 2004 — Rule 58

**Citation :** (2018) 07 RAJ CK 0207

**Hon'ble Judges :** Munishwar Nath Bhandari, J;Banwari Lal Sharma, J

**Bench :** Division Bench

**Advocate :** Achintya Kaushik, NM Lodha, Kunal Jaiman

**Final Decision :** Allowed

## Judgement

By this writ petition, a challenge is made to the Notification dated 8th May, 2012 issued by the State Government under Rule 58 of the Rajasthan

Stamp Rules, 2004 (for short â??the Rules of 2004â?).Â A further challenge is made to the order passed by the Collector (Stamps) and subsequent

order passed by the Rajasthan Tax Board on a revision petition preferred by the petitioner.

It is a case where the petitioner produced an instrument for its registration. It was after disclosing the value of the land to be Rs.67,11,000/- and,

accordingly, stamps were affixed. The Collector (Stamps) served a notice on the petitioner showing insufficiency of stamps. After hearing the

petitioner, the Collector (Stamps) took DLC rate of the residential land of the area concerned to determine the value of the land and directed to pay

additional stamp-fee. The petitioner challenged the order of the Collector but it was not interfered upto the Rajasthan Tax Board. A challenge to the

orders passed by the Rajasthan Tax Board and the Collector (Stamps) has been made.

 

The only argument of the learned counsel for petitioner is that value of the land should have been determined on the basis of use of the land at the

time of presentation of the instrument. It could not have been after considering the use of the land in future. The land in question was agricultural,

hence, stamp duty affixed by the petitioner was after taking DLC rate of agriculture land of the area concerned. The Collector (Stamps) and the Tax

Board have grossly erred in relying on Notification dated 8th May, 2012 for determination of the value of the land. It is based on the land use given in

the Master Plan or actual use, whichever is higher. The determination of stamp duty should have been after taking market value of the land.

Accordingly, challenge to the Notification dated 8th May, 2012 has also been made though it remained operational only for two months or so because

subsequently, it was withdrawn and superseded by another Notification dated 12th July, 2012.

It is further stated that if matter is remanded to the Collector (Stamps) for determination of the value of land, that too, in consonance with Section 51

of the Rajasthan Stamp Act, 1998 (for short â??the Act of 1988â?), petitioner is not required to press the challenge to the Notification dated 8th May,

2012 but then it should be with the observation that determination of the market value of the land should not be based on the Notification dated 8th

May, 2012. A prayer is, accordingly, to dispose of the writ petition.

Learned Advocate General, Mr. NM Lodha assisted by Mr.Kunal Jaiman, has contested the writ petition. It is submitted that challenge to the

Notification dated 8th May, 2012 has been made after exhausting the remedies on a notice by the Collector (Stamps) showing insufficiency of the

stamps on the instrument presented for its registration. After petitioner remained unsuccessful, he has now taken up the matter for challenge to the

Notification dated 8th May, 2012. The aforesaid is not permissible.

Coming to the merit of the case, it is stated that value of the land is to be assessed after taking into consideration various factors. It is to find out the

market rate. It cannot depend solely on the use of land. The development of the neighbouring area is also a relevant factor. Taking into consideration

the aforesaid, the Notification dated 8th May, 2012 was issued and it may otherwise not required to be disturbed because determination of the value of

the land is on market rate, may be by taking DLC rate of the residential land in the area concerned. In any case, if without quashing the Notification

dated 8th May, 2012, the matter is remanded to the Collector (Stamps) then it should be with the clarity that determination of market rate is to be

without influencing only by use of the land. The prayer is either to dismiss the writ petition or to dispose of with remand of the case but with the

observation referred to above.

We have considered rival submissions made by learned counsel for the parties and perused the record.

An instrument was presented by the petitioner for its registration. The Collector (Stamps) gave notice finding it to be undervalue. After hearing the

petitioner, an order was passed and value of the land was determined by taking DLC rate of residential land of the area concerned. It was knowing it

well that land in dispute is agricultural and is being used for that purpose.

In the light of the aforesaid, the Notification dated 8th May, 2012 has also been challenged. It is, however, stated by the learned counsel for petitioner

that if matter is remanded back to the Collector (Stamps) to determine value of the land as per Section 51 of the Act of 1998, the petitioner need not

to press for challenge to the Notification dated 8th May, 2012.

We find that as per Section 51 of the Act of 1998, the determination of the value of the land should be on market rate. The District Level Committee

has provided rates of the land in different areas, however, if we go strictly by Section 51 of theÂ Act of 1998 then it should be on the market rate.

Accordingly, we are inclined to remand the case to the Collector (Stamps) for the reason that value of the land has not been determined on the market

rate but is on DLC rate of residential land of the area concerned. In view of the above, we are not required to strike down Notification dated 8th May,

2012 which, otherwise, remained operational nearly for two months only as new Notification was issued on 12th July, 2012 itself. For the purpose of

remand, we need to refer Section 51 of the Act of 1998 thus it is quoted hereunder:

â??51. Instrument undervalued, how to be valued.(1) Notwithstanding anything contained in the Registration Act, 1908 (Act No. 16 of 1908) and the

rules made there under as in force in Rajasthan where, in the case of any instrument relating to an immovable property chargeable with an ad valorem

duty on the market value of the property as set forth in the instrument, the registering officer has, while registering the instrument, reasons to believe

that the market value of the property has not been truly set forth in the instrument, he may either before or after registering the instrument, send it in

original to the Collector for taking action under sub-section (3).

(2) When through mistake or otherwise anyinstrument which is undervalued and net duly stamped is registered under the Registration Act, 1908, the

registering officer may call for the original instrument from the party and, after giving the party liable to pay stamp duty an opportunity of being heard

and recording the reasons in writing and furnishing a copy thereof to the party, impound it and on failure to produce such original instrument by the

party, a true copy of such instrument taken out from the registration record shall, for the purposes of this section, be deemed to be the original of such

instrument and send it to the Collector for taking action under sub-section (3).

(3) On receipt of the instrument under sub-section (1) or (2) the Collector shall, after giving the parties a reasonable opportunity of being heard and

after holding an enquiry in the prescribed manner, determing the market value and duty including the penalty not exceeding ten times ofÂ deficient

stamp duty chargeable and surcharge, if any, payable thereon if the amount of duty including penalty and surcharge if any, so determined exceeds the

amount of duty including penalty and surcharge, if already paid, the deficient amount shall be payable by the person liable to pay theÂ duty including

penalty and surcharge, if any.

(4) Where it appears to a person having by law orconsent of parties authority to receive evidence or a person incharge of a public office, during the

course of inspection or otherwise, except an officer of a police, that an instrument is undervalued such person shall forthwith make a reference to the

Collector in that matter.

(5) The Collector may, sou moto or on a reference madunder sub-section (4) call for and examine any instrument not referred to him under sub-

section (1) or (2), from any person referred to in sub-section (4) or the executant or any other person for the purpose of satisfying himself as to

correctness of the market value of the property, and if after such examination, he has reason to believe that the market value of such property has not

been true set forth in the instrument, he may determine in accordance with the procedure provided in sub-section (3) the market value and the amount of stamp duty together with a penalty not exceeding ten times the deficient stamp duty chargeable on it, which shall be payable by the person liable to

pay the stamp duty, and penalty.

(6) Where for any reason the original document calledfor by the Collector under sub-section (5) is not produced or cannot be produced, the Collectors

may, after recording the reasons for its not production, call for a certified copy of the entries of the document from the registering officer concerned

and exercise the power conferred on him under sub-section (5).

(7) For the purpose of inquiries under this section, theCollector shall have power to summon and enforce the attendance of witnesses, including the

parties to the instrument or any of them, and to compel the production of documents by the same means, and so far as may be in the same manner, as

is provided in the case of civil court under Code of Civil Procedure, 1908 (Act 5 of 1908).

The perusal of the provision quoted above shows that instrument should disclose true value of land and it should be on market rate. In this case, the

Collector (Stamps) failed to take market value of the land thus we cause interference in the impugned orders and they are set aside with remand of

the case to the Collector (Stamps) with a direction to undertake the exercise in consonance to Section 51 of the Act of 1998. He is directed to

determine market value of the property in question, that too, in the year 2012. It would obviously be after taking into consideration various factors

contributing for determination of the market value of the property and, therefore, it would not be influenced by the Notification dated 8th May, 2012. It

would not further be influenced by the actual use of the land but would be after taking into consideration various factors for finding out market rate of

the land in question at the time of presentation of the instrument for its registration.

The required assessment would be made within a period of three months from the date of receipt of copy of this order and whatever market rate of

the land is assessed, the stamp duty would be chargeable on it. It would be paid by the petitioner within a period of 15 days from the date of order of

the Collector (Stamps).

The writ petition is allowed with the aforesaid.

 