(1998) 10 AHC CK 0068

In the Allahabad High Court

Case No : C.M.W.P. No. 119 of 1995

Maya Foods and Vanaspati Ltd., Allahabad — APPELLANT

Vs

Chief Controlling Revenue Authority (BR), Allahabad and others — RESPONDENT

Date of Decision : 26-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 17, 18, 30(1), 30(2), 30(3)
Stamp Act, 1899 — Section 19A, 2, 2(9), 33(4), 47A
Transfer of Property Act, 1882 — Section 3
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (1998) 4 AWC 636 : (1998) AWC 636

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : Sankatha Rai, for the Appellant; Sanjiv Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M.C. Agarwal, J.—By this petition under Article 226 of the Constitution of India, the petitioner challenges an order dated 14.11.94 passed by the respondent No. 1. I.e.. the Chief Controlling Revenue Authority, U. P., whereby it partly allowed the Stamp Revision No. 294 of 1994-95 and remanded the proceedings to the District Stamp Officer for redetermination of the market value of the land.

2. 1 have heard Sri Sankatha Rai. learned counsel for the petitioner and Sri Sanjlv Slngh, learned standing counsel for the respondents.

3. The petitioner M/s. Maya Foods and Vanaspatl Limited purchased land situate in Fatehpur in the State of Uttar Pradesh by three sale deeds dated 8.1.93, 11.1.93 and 13.1.93. The sale deeds were registered at Delhi as the Registration at Delhi was permitted by virtue of Section 30(2) of the Registration Act, The Registrar, Delhi in compliance with the provisions contained in Section 167 of the

Registration Act, forwarded the copies of the sale deeds to the Registrar at Fatehpur, who was of the opinion that the market value of the property purchased has been under-stated and he made a reference in terms of Section 47A of the Indian Stamp Act. 1899 as inserted by U. P. Act No. 11 of 1969 to the Collector. The Collector, after hearing the petitioner, made an order dated 13th of May, 1994, a copy of which is Annexure-2 to the writ petition. By this order, the Collector determined the market value of the three sets of property at various rates and held that the stamp duty paid was deficient and ordered the same be realized. It may be mentioned that the copy of the Collector''s order Annexure-2 is only in respect of the sale deed dated 8.1.1993 in respect of which additional stamp duty of Rs. 9,64,687 was demanded. The copies of the orders passed by the Collector in respect of the other two sale deeds have not been filed.

4. The petitioner preferred three Revisions Petition bearing Nos. 294, 295 and 296 of 1994-9 5/Fatehpur before the Chief Controlling Revenue Authority and by the impugned order dated 14.11.1994. the said Revisions have been allowed and the orders passed by the Collector on 13.5.1994 have been set aside and the case has been remanded to the District Collector Stamp for specific compliance and re-determination of the market value. In para 5 of his order, the learned Commissioner observed as under :

"5. The third point of the learned counsel regarding the potential of the land, is also not tenable. It is not necessary for the Collector, while evaluating the market value, to be restricted by the order u/s 143. U. P. Z. A. and L. R. Act. The potential of the land is self evident. The Intention is undisputed. It has been brought for industrial purpose. Therefore, the Collector is not being arbitrary in deciding the price of the land on the basis of the proposed usage. The likely potential in a reasonable time frame of the land has to be considered in any evaluation of the market price. The District Collector has been more than concessional in his attitude by making two sets of prices i.e., half area situated closer to the road side having been valued at higher price than the remaining half, which is slightly away from the road side. This is not a very rational exercise of value determination. After having come to the conclusion that the land is to be used for Industrial purpose. The Collector is expected to put a value of the land on the basis non-agricultural and commercial features."

5. In this petition, the petitioner challenged the orders as passed by the Collector as well as by the Chief Controlling Revenue Authority.

6. The first point that was quite seriously agitated is whether the Sub-Registrar. Fatehpur could make a reference in terms of Section 47A of the Indian Stamp Act. The said section is reproduced as below :

"47A. Instruments of conveyance etc., if undervalued, how to be dealt with.--(1) if the market value of any property which is the subject of any instrument (on which duty is chargeable on the market value of the property), as set forth in such instrument (is less than even the minimum value determined in accordance with any rules made under this Act) the registering officer appointed under the Indian Registration Act, 1908, shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) Without prejudice to the provisions of sub-section (1), if such registering officer while registering any instrument (on which duty is chargeable on the market value of the property) has reason to believe that the market value of the property which is the subject (of such instrument), has not been truly set forth in the instrument, he may. after registering " such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(3) On receipt of a reference under sub-section (1) of sub-section (2) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject (of the instrument) and the duty as aforesaid. The difference, if any. In the amount of duty shall be payable by the person liable to pay the duty.

(4) The Collector may, suo motu, (or on a reference from any Court or from the (Commissioner of Stamps or an Additional Commissioner of Stamps of a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the Board of Revenue in that behalf) Inspector of Stamps, Uttar Pradesh, within (four years) from the date of registration of any Instrument (on which duty is chargeable on the market value of the property) not already referred to him under sub-section (1) of sub-section (2), call for and examine the Instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject (of such Instrument) and duty payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty payable thereon in accordance with the procedure provided for in sub-section (3). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty."

7. The power to make a reference has to be exercised by the Registering Officer and the contention of Sri Sankatha Rat, learned counsel for the petitioner, is that the sale deeds having been registered al Delhi, the Registrar Delhi only is the Registering Officer and the Sub-Registrar. Fatehpur. Is merely a depository of the copy of the document forwarded to him by the Registrar Delhi and cannot be deemed to be a Registering Officer.

8. The term "Registering Officer" has not been defined either in the Registration Act or in the Stamp Act. The documents in question were registered at Delhi in terms of sub-section (2) of Section 30 which permitted documents to be registered in the District in which a Presidency-town is included and the Registrar

of the Delhi district to register any document without regard to the situation in any part of India of the property to which the document relates. Thus, the Registrar, Delhi is no doubt the Registering Officer. Section 67 of the Registration Act requires that on any document being registered u/s 30, sub-section (2), a copy of such document and the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in Section 66, sub-section (1). It is under this legal obligation that the Registrar, Delhi sent the copies of the documents to the Registrar, Fatehpur. Sub-section (1) of Section 66 then requires the Registrar to forward a memorandum of such document to each Sub-Registrar subordinate to him in whose sub-district any part of the property is situate. Sub-sections (3) and (4(of Section 66 require the Registrar and Sub-Registrar to file such document and memorandum respectively in Book No. 1. Section 51 of the Registration Act prescribes the Books which have to be maintained in the offices of the Registrar and Book No. 1 is the register of non-testamentary documents relating to immovable property and all documents or memoranda registered under Sections 17, 18 and 89 which relates to Immovable property and are not wills have to be entered or filed in Book No. 1. Section 57 of the Act. relates to the duties of the Registering Officer to allow inspection of certain books and indexes and to give certified copies of entries. While the Registration Act deals with the registration of documents, the Indian Stamp Act deals with the realization of stamp duty on various documents. Stamp duty is a State subject and. therefore, every State is entitled to stamp duties on documents executed or filed within that State and for that purpose, powers have been conferred on the Officers and Courts before whom documents required to be stamped may come. Sub-section (4) of Section 33 provides that where deficiency in stamp duty paid is noticed from the copy of any instrument, the Collector may suo motu or on a reference from any Court or from the Commissioner of Stamps..... or any officer authorised by the Board of Revenue, call for the original instrument for the purpose of satisfying himself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector shall be deemed to have been produced or come before him in the performance of his functions. Section 47A as reproduced above deals with those cases of deficiency in stamp duty, in which the property, i.e., subject-matter of conveyance is found to be undervalued. These provisions thus take care of the attempts to evade stamp duty and authorise the Collector to take requisite action. In cases of undervaluation of property it is difficult for the Collector of the District where the document is actually registered to take any action. A document relating to any Immovable property situate in Uttar Pradesh may be registered at Chennai in deep south or at Bombay and the Officer of those places cannot have any idea of the market value of the property to which the document relates. Therefore, they cannot be expected to take any action in relation to suspected evasion of stamp duty.

9. Learned counsel for the petitioner placed reliance on a judgment of Hon''ble

Supreme Court in New Central Jute Mills Co. Ltd. and Others Vs. The State of West Bengal and Others, , which relates to stamp duty payable in terms of Section 19A of the Stamp Act as enacted by U. P. Legislature on a deed of mortgage that was executed in U. P. but related to property situate in West Bengal and the question was whether the document was duly stamped according to the rates of the stamp duty in Uttar Pradesh. The Hon''ble Supreme Court held that there are two dutiable events, the first was the execution which took place in U. P. and the second dutiable event was the receipt of the document in West Bengal. This authority thus supports the contention of the Revenue that the receipt of the copy of the document in terms of Section 67 is a second dutiable event and the respective officer in U. P. acquires the necessary Jurisdiction to initiate action for the realization of proper stamp duty, etc. All persons are deemed to have notice of a registered document. Section 3 of the Transfer of Property Act defines "a person is said to have notice" and the Explanation 1 to this definition is as under :

"Explanation I.--Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such Instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of Section 30 of the Indian Registration Act, 1908 (XVI of 1908) from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share of interest is being acquired, is situated :"

10. The Explanation makes it clear that after the registered document is filed by any Sub-Registrar within whose sub-district any part of the property is situate, the legal consequence follows as if the document has been registered with such Sub-Registrar. It is because a person is legally deemed to have notice of a registered document that any person can inspect and have a copy of a document in terms of Section 57 of the Act. The rights conferred. u/s 57 can be reasonably exercised only after the document is deemed to be registered with the Sub-Registrar, Fatehpur and it is unreasonable and impractical to expect that a person should be required to go to Delhi to Inspect a document or obtain a copy thereof from the Sub-Registrar, Delhi, although the property is situate at Fatehpur and the documents have been filed with the Sub-Registrar, Fatehpur. In accordance with the provisions of the Act.

11. In view of the above discussion, I am of the opinion that the Registrar and Sub-Registrar, Fatehpur. become the Registering Officer for certain purpose after the document is received by them in accordance with the provisions of the Act and is entered in Book No. 1. The learned Chief Controlling Revenue Authority was right in holding so and the contention of the petitioner in this regard is

hereby negatived.

12. Learned counsel for the petitioner further contended that in terms of Section 6A(1A) of the Stamp Act. the Collector has no jurisdiction to disturb the value of the property. Section 6A (1A) stands as under :

"6A (IA) Where any Instrument is registered in any part of India other than Uttar Pradesh and Instrument relates, wholly or partly to any property situate in Uttar Pradesh, the copy of such Instrument shall, when received in Uttar Pradeah, be liable to be charged with the difference of stamp duty as on original u/s 19A to the extent of and in proportion to the consideration or value of property situated in Uttar Pradeah, and the party liable to pay stamp duty on the original instrument shall upon receipt of notice from registering officer pay the difference in the duty within the time allowed."

13. Section 6A, in my view, has no application to the present case and the Collector has not proceeded under this provision of law. Section 6A refers to the difference of stamp duty in terms of Section 19A of the Act which comes into play with a higher rate of duty is payable in Uttar Pradesh. In the present case, the dispute is not about the rate of difference. The dispute is about the difference in the duty due to valuation of the property and Collector has proceeded in terms of Section 47A (4) which unequivocally authorised the Collector to enquire into the market value of the property.

14. It was also contended that the Collector. Fatehpur, is not the Collector authorised to act and it is the Collector, Delhi, who could do so. The word ''Collector'' has been defined in sub-clause (9) of Section 2 of the Stamp Act as under :

''(9) "Collector".--"Collector" :

(a) means, within the limits of the towns of Calcutta. Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and without those limits, the Collector of a district ; and

(b) Includes a Deputy Commissioner and any officer whom (the State Government) may, by notification in the Official Gazette, appoint , in this behalf ;"

15. The contention does not show that the Collector means the Collector of the district where the document was first registered. For the reasons discussed above, the word Collector includes the Collector within whose jurisdiction the property is situate and the documents have been registered u/s 66 read with 67 of the Act. The contention of the petitioner, that the Collector, Fatehpur, had no jurisdiction to pass the Impugned orders also falls.

16. The next contention of the learned counsel for the petitioner was that while remanding the matter, the Chief Judicial Revenue Authority has recorded findings on several points which it should not have done. One such point related to the jurisdiction of the Sub-Registrar and Collector. Fatehpur. which has already been

discussed above. The next point was that the three references were not consolidated by the Collector but he has pronounced a common decision in respect of all the three cases and learned Chief Controlling Revenue Authority has disposed of the matter saying that the plea was merely technical. The copy of the order passed by the District Stamp Officer/Collector, Fatehpur, is annexed as Annexure-2 to the writ petition. Since the order of District Stamp Officer has been set aside, this point becomes redundant and if there is anything worth making a grievance, the petitioner can raise it before the District Stamp Officer, who has to decide the matter again.

17. The next point raised is that the petitioner had contended before the respondent No. 1 that the District Stamp Officer has based his finding on the basis of the record of the case decided by Sub-Divisional Officer u/s 143 of the U. P. Zamindarl Abolition and Land Reforms Act without giving the petitioner any opportunity to adduce evidence in rebuttal and that the respondent No. 1 has misunderstood the point and has observed that it was not necessary for the Collector to restrict the value to the amount determined u/s 143. Because of the remand of the matter, this point too is of no consequence now.

18. The next objection of the learned counsel for the petitioner is that the respondent No. 1 has not given any specific finding about the petitioner''s plea that it was not given any opportunity to file objection against the alleged local inspection. Because of the remand of the case, this point can again be agitated before the District Stamp Officer.

19. The next point raised is that the Chief Controlling Revenue Authority has not given any finding on the plea raised by the petitioner that in a similar proceedings u/s 47A of the Indian Stamp Act, another land of the same village situates in the vicinity of the land in question was valued at the rate of Rs. 8,000 per bigha. This point too is now open for discussion before the District Stamp Officer and no prejudice is caused to the petitioner by the respondent No. 1 not discussing this plea.

20. I have reproduced paragraph 5 of the impugned order dated 14.11.94 for a certain purpose. Learned Chief Controlling Revenue authority has observed that the land was purchased for an industrial purpose and the Collector is not arbitrary in deciding the price of the land on the basis of the proposed usage. This proposition is legally incorrect. The market Value of the land cannot be determined with reference to the use of the land to which buyer intends to put it. One buyer may Intend to establish an industrial undertaking thereon, another may intend to use it for agricultural purpose and . a third person may intend to dedicate it for charitable purposes like leaving it open as pasture ground or a cremation ground or a playground. These different Intentions may affect the price that each of them may be willing to pay for the property and such prices have wide variations but the market value is not what each such individual may offer for the property. The market value is what a general buyer may offer and what the owner may reasonably expect. In determining the market value., the

potential of the land as on the date of sale alone can be taken into account and not what potential it may have in the distant future.

21. The aforesaid observations of the respondent No. 1. is, therefore, legally incorrect and it is ordered that the same would not be binding on the District Stamp Officer.

22. With the above observations, the writ petition is dismissed. The parties will, however, bear their own costs.

