(2012) 04 AP CK 0113

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13426 of 2010

Mekala Raju and Another APPELLANT

Vs

Chief Controlling Revenue Authority and Commissioner and Inspector General of Registration of Stamps and Others RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Citation : (2013) 1 ALT 553

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Shafath Ahmed Khan, for the Appellant;

Judgement

L. Narasimha Reddy, J.—The petitioners purchased an extent of Ac. 5.00 of land in Survey No. 165/2 of Joharapuram Village, Kurnool District through a sale deed dated 17.04.2007 for a consideration of Rs. 38,000/- per acre. The document was registered with the Joint-Sub-Registrar, Kurnool, 3rd respondent. Two years after the sale deed was executed, the District Registrar for Assurances, Kurnool, 2nd respondent herein, issued a notice, dated 24.03.2009 to the petitioners u/s 41-A of the Indian Stamp Act (for short ''the Act''). It was mentioned that though the value of the land in Survey No. 165/2 according to the Market Value Guidelines Register was Rs. 270/- per square yard, the document was executed by adopting the market value at the rate of Rs. 38,000/- per acre. It was also mentioned that the total value of the property as per the Guidelines Register was Rs. 65,34,000/- and deficit stamp duty and registration charges of Rs. 6,02,680/- is to be paid. The petitioners were given the option either to pay the amount or to submit objections or representation. The petitioners submitted a representation, dated 07.04,2009 in reply to the show cause notice. They stated that the value of the property was furnished by the 3rd respondent himself before the document was registered and that it was fixed on the basis of the entries in the basic value register. They pleaded that the show cause notice is bereft of any reasons and that they are not liable to pay the demanded amount.

Not satisfied with that, the 2"d respondent passed an order dated 13.04.2009 requiring the petitioners to pay a sum of Rs. 6,02,680/- towards deficit stamp duty and registration fee. Hence, this writ petition.

2. The petitioners submit that the document was initially presented by paying stamp duty of Rs. 200/- and it is only thereafter, that the 3rd respondent assessed correct market value of the property and determined the stamp duty and registration charges. They contend that the show cause notice did not mention the very basis for demanding the alleged deficit amount.

3. On behalf of the respondents, a counter affidavit is filed. It is stated that due to inadvertent mistake, the 3rd respondent took the value of the property at the rate of Rs. 38,000/- per acre, though it ought to have been taken on the basis of cost per square yard. It is also stated that the prescribed procedure was followed and that the impugned order was passed in accordance with law.

4. Sri. Shafath Ahmed Khan, learned counsel for the petitioners submits that the very exercise undertaken by the 2nd respondent is contrary to the letter and spirit of Section 41-A of the Act. He contends that except stating that the market value ought to have been fixed on square yard basis, no reason worth its name is furnished by the respondents. He placed reliance upon the judgment of this Court in Mula Rama Devi (Smt.) Vs. Collector and District Registrar and Another,

5. Learned Government Pleader for Revenue on the other hand submits that the value of the property, as entered in the basic value register at the relevant point of time, was on square yard basis and that on noticing that the document was registered by reckoning the value on acre basis, the proceedings were initiated. He submits that the very purpose of enacting Section 41-A of the Act is to ensure that the mistakes if any committed in the matter of calculating the market value, stamp duty etc., are corrected.

6. Once the document is registered by the concerned registering authority, it assumes finality vis-a-vis the parties and the transaction becomes legal. Till the document is set aside by a Court of law, it constitutes the basis for the change of relations, which, it proposes to bring about.

7. Until the recent past, the parties were at liberty to state the value of the property dealt with under the document and pay stamp duty and registration charges according to it. To ensure objectivity, the Government has evolved mechanisms from time to time, in such a way, that the value of the property is already stipulated and irrespective of the consideration for the transaction, the stamp duty and registration charges must be paid as per the valuation so provided. One such step was the preparation of basic value register, that would reflect the market value of every item of property within the jurisdiction of the concerned Sub-Registrar. Later on, the computerized system was introduced, where human interference is reduced to the minimum.

8. It is not in dispute that the petitioners initially presented the document, which

was written on a stamp paper of Rs. 100/-. The market value of the property and the corresponding stamp duty and registration charges were calculated by the 3rd respondent. It was on payment of such amount through challan, that he admitted the document for registration. It is not the petitioners who determined the market value at Rs. 38,000/- pre acre. On the other hand, it was the 3rd respondent who arrived at that conclusion, obviously, by referring to relevant records and stipulated the amount of registration charges.

9. Section 41-A of the Act was introduced with an objective to correct the mistakes if any that occur in the course of determination of market value, stamp duty etc. A perusal of the Section discloses that it can be pressed into service, if only a "mistake" that occurred at the time of registration has been noticed at a later point of time. Even this can be done within five years from the date of registration of the document. The mere fact that a second opinion was possible cannot constitute the basis to reopen the registration.

10. For reopening the proceedings u/s 41-A of the Act, mistake that is said to have crept in must be clearly stated. In such an event, the party would be in a position to explain as to whether any mistake occurred at all, or whether every thing went according to law. In the absence of the narration the mistake, the show cause notice itself becomes incomplete, if not untenable.

11. In the instant case, except stating that the market value ought to have been at the rate of Rs. 275/- per square yard, the 2nd respondent did not state as to whether that figure was mentioned in the contemporaneous basic value register and as to how the 3rd respondent has mentioned the market value at the rate of Rs. 38,000/- per acre. The petitioners submitted a representation by raising certain objections. None of them were taken into account. Except stating that the explanation offered by the petitioners is not satisfactory, the 2nd respondent did not dealt with any of the aspects pleaded by them.

12. In Mula Rama Devi''s case (1 supra), this Court dealt with the identical matter. Except that the parties and properties are different, the reason stated in the show cause notice, the nature of consideration of the objections raised by the recipients of notice and the manner in which the District Registrar passed orders are identical in both the cases. It was held:

9. The value of a property, as entered in the basic value register, maintained by the Registration Department, provides an ample guidance to the Collector, to invoke his powers u/s 41-A. He can invoke his jurisdiction in case, where the value of the property mentioned in document, does not accord with the one, entered in the basis value register. There again, he has to keep the matter open, and can come to a conclusion only after considering the explanation, that may be offered by the parties to the document. The very purpose of maintaining the basic value register is, to avoid uncertainty, in the matter of payment of stamp duty and registration charges. It is not known as to whether the 1st respondent verified the register, before he issued the show cause notice. At least, when the

petitioner brought to his notice, the entries in the register as well as the information furnished to her, through CARD system, the 1st respondent was under obligation to refer to the same and express his view.

On finding that such an exercise was not undertaken, the writ petition was allowed and the order impugned therein was set aside. The ratio of the said judgment, squarely applies to the facts of this case.

13. Hence, this writ petition is allowed and the impugned order is set aside. The miscellaneous petition filed in this writ petition also stands disposed. There shall be no order as to costs.