(1988) 07 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11457 of 1983

Milap Chandra Jain APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 11-07-1988

Acts Referred:

Stamp Act, 1899 — Section 47A, 47A(1), 47A(2), 47A(4), 76A
Uttar Pradesh Stamp Rules, 1942 — Rule 341

Citation : (1988) 2 AWC 1053

Hon'ble Judges : B.N. Misra, J;A.N. Varma, J

Bench : Division Bench

Advocate : Murlidhar and Pradeep Kumar, for the Appellant;

Final Decision : Allowed

Judgement

A.N. Varma, J.—The petition was initially directed against the order dated 13-9-83 passed by the Additional District Magistrate (Finance and Revenue), Agra, (ADM for short) cancelling an earlier order dated 28-2-83 passed by his predecessor upon a reference made by the Sub-Registrar, Agra, u/s 47-A of the Stamp Act in respect of a sale deed presented by the Petitioner for registration. By the said order dated 13-9-83 the ADM had also directed the Tahsildar, Agra, to make a spot inspection and submit a report with regard to the valuation of the building covered by the sale deed.

2. Subsequently during the pendency of this petition the ADM passed another order on 27-4-84 (stated to be exparte against the Petitioner) imposing additional stamp duty and penalty amounting respectively to Rs. 32,550/- and Rs. 1,62,750/- on the ground that the consideration of Rs. 1,50,000/- set forth in the sale deed was less than the market value of the building in question. By means of an amendment application the Petitioner has brought this order also under challenge.

3. As the petition is succeeding on a short ground, we do not propose to set out

the facts in detail. The essential facts, however, material for the disposal of the petition are these. On the basis of a registered agreement for sale dated 6-6-80 in respect of building No. 6/3 Galibpura (Rakabganj Ward), Agra, a sale deed on general stamp of Rs. 15,750/- was executed by the owners Mrs. Lila Phillips on 8-12-82 in favour of the Petitioner, a retired Judge of the Rajasthan High Court. The same day it was presented for registration before the Sub-Registrar, Agra, who admitted the sale deed and made the necessary endorsements thereon, fixing 31-12-82 for the return of the sale deed. So far it was plain sailing for the Petitioner. The trouble started just before he was to receive back the sale deed after registration, with Sri Hardwar Dube the tenant in occupation, filing what has been described as a complaint before the Sub-Registrar on 8-12-82 alleging that the property had been undervalued. Upon this complaint a notice was issued to the Petitioner stating that a reference No. 12 dated 8-12-82 had been made by the Sub-Registrar u/s 47-A of the Stamp Act through the District Registrar to the Additional Collector (Stamp and Registration) Agra. The Petitioner appeared in response to this notice and contested the claim of Sri Hardwar Dube. Thereupon by the order dated 28-2-83 the ADM exercising the powers of the Collector u/s 47-A of the Stamp Act, answered the reference in favour of the Petitioner holding that the complainant could not furnish any solid material in support of his allegation that the consideration shown in the sale deed did not represent the true valuation of the property. He further observed in the order that the monthly rent payable in respect of the building was Rs. 70/- and that the same rent was also shown in the municipal assessment. Consequently the minimum market value of the property forming the subject matter of the sale deed calculated according to Rule 341(iii) of the U.P. Stamp Rules, 1942 worked out to Rs. 21,000/- whereas the amount shown in the sale deed was Rs. 1,50,000/-. With these findings, the ADM directed that the document be sent to the Sub-Registrar for being registered. Thereupon the Sub-Registrar started completing the formalities for the return of the document. However, before the document could be returned to the Petitioner, another lawyer, namely, Sri Nathulal Tanwar, Advocate appeared on the scene with the objection that the property had been undervalued and that he was himself prepared to offer Rs. 2,50,000/- for the same. Upon this objection, the ADM issued a notice to the Petitioner in April, 1983 asking him to appear before him on the date mentioned therein. The Petitioner put in appearance and filed an interim objection on 18-4-83 questioning the jurisdiction of the A.D.M. to reopen the proceedings, the matter having already been adjudicated and the valuation determined u/s 47-A by the predecessor of the present incumbent acting as the ADM by the order dated 28-2-83.

4. The ADM ignored the Petitioner''s objection and passed the order dated 13-9-83 cancelling the previous order dated 28-2-83 and calling for a report from the Tahsildur, Agra, regarding the valuation of the disputed building. No reasons have been disclosed in this order why the ADM was canceling/recalling the order dated 28-2-83. Nor has any provision been cited in the order acting

under which the earlier order was being reviewed.

5. Having heard Sri Murlidhar, learned Counsel for the Petitioner and the learned Standing Counsel for the Respondents, we have not the slightest doubt that the order dated 13-9-83 is entirely without any jurisdiction. As mentioned above, the Sub-Registrar had made a reference upon the objection of Sri Hardwar Dube through the District Registrar who made the following endorsement upon the order passed by the Sub-Registrar making the reference-

Forwarded to Collector, Agra. Sd. Illegible. District Registrar. 28-2-83.

6. The reference is expressly headed as "determination of market value and levy and its utilization u/s 47-A of the Act". It is addressed to the Collector, Agra, through the District Registrar, Agra. u/s 47-A of the Stamp Act the Collector has been authorised either upon a reference to determine the market value of a property covered by an instrument of conveyance where the market value of the property as set forth in such instrument is found to be less than the minimum value determined in accordance with the rules made under the Act or where the Collector has reason to believe that the market value of the property has not been truly set forth in the instrument. By means of a notification issued by the State Government on 15-2-79 every Additional District Magistrate (Finance and Revenue) has been appointed to be the Collector for purposes of the Stamp Act. That is how the matter came before the ADM upon the reference made by the Sub Registrar u/s 47-A. It was in exercise of this power that the ADM had determined the valuation of the property and come to the conclusion that the consideration set forth in the sale deed was not less than the market value of the property even according to the rules framed under the Stamp Act. The ADM has observed in his order dated 28-2-83 that Sri Hardwar Dube has failed to substantiate his claim that the market value of the property was Rs. 2,00,000/-. This determination by the ADM fell squarely within the purview of Section 47-A(2) which provides:

47-A. Instruments of conveyance, etc. if undervalued, how to be dealt-with-

(1) ... ...

(2) Without prejudice to the provisions of Sub-section (1), if such registering officer while registering any instrument of conveyance, exchange, gift, settlement, award or trust, has reason to believe that the market value of the property which is the subject of conveyance, exchange, gift, settlement, award or trust, 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) ... ...

(4) ... ...

7. We have not the slightest doubt that the market value of the property having

been adjudicated and determined by the Collector in the exercise of powers expressly conferred upon him u/s 47-A and in accordance with the procedure laid down therein, the same could not be reopened and reviewed except in accordance with law. The powers exercisable by the Collector u/s 47-A are unarguably quasi-judicial in nature. There is a procedure laid down for the determination of the valuation which clearly affects the rights of the person who is called upon to pay additional stamp duty in case the adjudication goes against him. That being so, an adjudication made by the Collector u/s 47-A of the Stamp Act could not be disturbed or reopened unless there is an express provision in the enactment Conferring power of review by the authority making that order. It is settled law that the power of review on merits is not an inherent power. Such a power must flow from some specific provision in the enactment under which rights of the patties are determined. We are amply fortified here with several decisions of the Supreme Court on this aspect of the controversy. Thus in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, their Lordships of the Supreme Court observed as follows:

It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it would be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.

Again in Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another, their Lordships reiterated the same view as follows:

These orders passed by the Collector in the exercise of his revisional powers were quasi-judicial, and were final. The Act does not empower the Collector to review an order passed by him u/s 76-A. In the absence of any power of review, the Collector could not subsequently reconsider his previous decisions and hold that there were grounds for annulling or reversing the Mahalkar"s order. The subsequent order dated February 17, 1959 reopening the matter was illegal, ultra vires and without jurisdiction.

It is unnecessary to encumber this decision with other authorities as it is now too late in the day to contest the settled legal position that in the absence of a provision for review an authority or even a tribunal for that matter cannot review orders passed in the exercise of quasi-judicial functions. It cannot be seriously challenged that proceedings u/s 47-A of the Stamp Act are quasi-judicial in nature.

8. With this legal premise we examine the facts of the present case. As mentioned above, the order dated 28-2-83 was passed upon a reference expressly made u/s 47-A by the Sub-Registrar. It was the result of a quasi-judicial determination achieved after hearing both the parties in accordance with the procedure laid down u/s 47-A. The order dated 13-9-83 cancelling the order

dated 28-2-83 does not disclose any reasons whatsoever in support thereof. It does not state that the earlier order was obtained by fraud or misrepresentation and the like. It was not suggested that the order was passed under any misapprehension. The mere fact, therefore, that Sri Nathulal Tan war Advocate came forward with a rather offer of Rs. 2,50,000/- could not authorise the ADM to reopen the matter. If this procedure is countenanced, no finality would ever attach to the determination made by the Collector u/s 47-A as someone or the other could always be trusted to come forward with a higher offer, the prices of the real properties spiraling the way they have been these days. It would be setting up a dangerous precedent if orders passed u/s 47-A are re-opened on the ground on which they have been done in the present case.

9. The learned Standing Counsel was unable to point out any provision whether in the Stamp Act or even in the Registration Act which could disclose the existence of such a power of review upon the Collector. The learned Standing Counsel, however, pointed out Sub-section (4) of Section 47-A as conferring such a power of review upon the Collector.

10. The submission cannot be accepted as Sub-section (4) comes into play only if the matter had not already been referred to the Collector under Sub-section (1) or Sub-section (2) of Section 47-A. In the present case, the dispute had already been specifically referred to and answered by the Collector u/s 47-A of the Stamp Act.

11. The learned Standing Counsel finally made a feeble attempt to urge that the earlier order dated 28-2-83 had been passed by the ADM exercising the powers of District Registrar as he was also invested with the powers of District Registrar under the Registration Act. He submitted that when passing the order dated 28-2-83 the ADM described himself also as the District Registrar. That being so, he must be deemed to have exercised the powers as District Registrar.

12. The contention is devoid of any substance. As mentioned above, the endorsement made upon the reference submitted by the Sub-Registrar to the Collector quoted above, leaves no manner of doubt that the ADM had been expressly invited to exercise his powers as Collector under the Stamp Act. The subject mentioned in the latter of reference, namely, ''Determination of the market value and leavy of duty and its realization u/s 47-A(1) of the Act'' unmistakably points to the same conclusion. Further, the District Registrar does not enjoy any power either of review or appeal or revision against the orders passed by the Collector u/s 47-A of the Stamp Act.

13. The result of the foregoing discussion, therefore, is that the order dated 13-9-83 (Annexure XV to the petition) cancelling the order dated 28-2-83 was completely without jurisdiction. The further proceedings initiated consequent thereto including the order dated 27-4-84 (Annexure VII to the affidavit dated 17-5-84) passed by the Respondent No. 2 imposing stamp duty and penalty on the Petitioner and directing the recovery thereof, are also completely null and

void.

14. As the petition is succeeding on the ground that there was no power of review in the Respondent No. 2, it is unnecessary to examine the other contentions raised in the petition.

15. In the premise, the petition succeeds and is allowed. The impugned orders dated 13-9-83 (Annexure XV to the petition) as well as that dated 27-4-84 (Annexure VII to the affidavit filed by the Petitioner on 17-5 84) passed by the second Respondent are quashed. The Petitioner shall be entitled to his costs from the Respondents.