(2010) 05 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 6387 of 2009

Mohali Club APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Hindu Succession Act, 1956 — Section 15, 8
Stamp Act, 1899 — Section 47A

Citation : AIR 2011 P&H 23 : (2010) 4 RCR(Civil) 69

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.

I. Value on date of allotment or value on date of execution of registration -- That''s question.

The writ petition challenges the order determining the market valuation mentioned in a document which was a Transfer Deed of property allotted to the Petitioner by the Punjab Urban Development Authority. It is not in doubt that the entire amount as determined for the property was as per the market valuation at the time when the property was allotted to the Petitioner. The document was presented for registration on 11th September, 2008 when upon registration, the Registering Officer made a reference u/s 47-A for determination of valuation for the property on his reference that the property had been under-valued and did not reflect the value of the property on the date when the document was presented for registration.

2. The Collector rejected the Petitioner''s contention and the appeal confirmed the view of the Collector that the valuation for the property under the sale deed shall be the Collector''s valuation on the date of execution and registration and

not on the date when the property was offered to the Petitioner through allotment.

II. Petitioner''s reliance on Rules -- The basis shall be to take the price on allotment as "Collector''s rate"

3. The contention in challenge of the orders passed by the Collector and the Appellate Authority is that the price charged for sale by a public authority namely the Development Authority ought to be taken as the market valuation and the counsel brings in support to his contention the explanation to Rule 3-A of the Punjab Stamp (Dealing of Under-valued Instruments) Rules of 1983. The explanation reads as follows:

Explanation: The consideration amount at the time of allotment of immovable property by any Government/Semi-Government Organization shall be deemed to be Collector''s rate and the stamp duty shall be charged for registration of document upon the consideration amount fixed by the Government/Semi-Government Organization provided the document is got registered by the original allottee within three months from issue of this notification or within three months from payment of last regular installment as per schedule of payment of such allotment.

4. The time stipulated in the above explanation was a period of 3 months from the date of issue of notification or within 3 months from payment of last regular installment was paid. The notification was issued on 02.03.2009 and the document had been presented for registration even earlier before this explanation was brought into the Rules namely on 11th September, 2008. The contention on behalf of the Petitioner is that the explanation is invariably in the nature of clarification of existing rule and it ought to be always therefore understood as retrospective.

III. In the context of agreement to sell and sale -- Date of sale alone is relevant for purpose of valuation

(a) Supreme Court''s view

5. To the above contention of the Petitioner, the response on behalf of the State would be that for the purpose of stamps to be used for a conveyance, the valuation as on the date of execution of the sale and registration alone shall be the relevant criterion. The value of the property as on the date of allotment, would not be material. This issue has come about slightly in a different situation before the Hon''ble Supreme Court in State of Rajasthan and Others Vs. Khandaka Jain Jewellers, . where the Hon''ble Supreme Court was dealing with the valuation as mentioned in an agreement which was the subject of a suit for specific enforcement. By the time when the document was brought before a Registering Officer in execution of the decree, several years had passed and there the Hon''ble Supreme Court held that the valuation must be only with reference to value at the time when the sale deed was executed and presented

for registration. It reasoned that an agreement of sale and sale referred to two different situations and for registration of a document, a sale would be taken as complete in all respects only when both parties had signed for transfer of an immovable property Such a transfer would happen only through a proper sale deed and not through an agreement. When a Registrar makes reference to Collector on the ground that the property was under-valued with the sale agreement date as the basis, the market value of the instrument has to be seen, the Hon''ble Supreme Court held only at the time of execution of the sale deed.

(b) Collector''s valuation may offer the basis for valuation

6. In a recent judgment in State of Haryana and Others Vs. Manoj Kumar, delivered by the Hon''ble Supreme Court on 09.03.2010 in Civil Appeal No. 2226 of 2010, the case was with reference to registration of a sale deed pursuant to a decree obtained in a Civil Court when there was a mismatch between what was stated in the original agreement and the valuation that had increased over the period of years when the document was presented for registration. The circle rate or the Collector''s rate for sale of commercial plots at the time of registration alone was to be taken. The case was decided in the context of an extent of interference by the High Court in its jurisdiction under Article 227. Giving primacy to the circle rates or the Collector''s rate, the Hon''ble Supreme Court held,

...in order to ensure that there is no evasion of stamp duty, circle rates are fixed from time to time and the notification is issued to that effect. The issuance of said notification has become imperative to arise the tendency of evading the payment of actual stamp duty. It is a matter of common knowledge that usually the circle rate or the Collector''s rate is lower than the prevalent actual market rate. But to ensure registration of sale deed at least at the circle rate or the Collector''s rate, such notifications are issued from time to time by the Appellants, (para 39).

This decision must again be seen in the context of how when no explanation was offered between the date when contract was first entered into when the document is ultimately presented for registration after a long delay, the date of registration alone would be the determining fact for taking the value of the property.

(e) ''Punjab Rules'' prescribes primacy of consideration to Collector''s rate

7. The view of the Court is also the same, as reflected in two recent Division Bench decisions of this Court. In State of Punjab through Collector, Bathinda v. Merry Land Estates and Ors. 2009 (5) RCR 603 the Court held that Collector''s rate is always relevant to determine the market value on the basis of which stamp duty is payable. In K.S. Jhamb v. State of Punjab 2009 (2) RCR 341 this Court dealt a case of allotment by PUDA in the year 1987; the allottee applied for conveyance in 1999 and PUDA executed conveyance in 2005. The Division Bench said that valuation shall be on the rate prevalent at the time of registration but

not on the date of allotment. The Bench did not depart without granting the liberty to the allottee to have independent remedy for the loss occasioned due to late registration. Both these decisions were rendered in the context of application of Rules relating to under-valuation contained in Rule 3-A of Punjab Stamp (Dealing of Under-valued Instruments) Rules, 1983. The reproduction of the Rule would be instructive:

3-A. Procedure to be adopted for fixation of minimum value of land/property.

Section 47-A(1) -- The Collector of district shall in consultation with Committee of experts consisting of officers of the Department of Public Works (Building and Road), Department of Revenue and Rehabilitation, Punjab Urban Development Authority. Department of Local Government, Department of Rural Development and Panchayats, Department of Horticulture/Forest/Town Planning/Industries or any other department as may be found desirable, fix the minimum market value of land/properties, located in his district, locality-wise and category-wise and convey the same to the Registering Officer(s) for the purposes of levying of stamp duty on instruments of transfer of any property. The value of agricultural land will be fixed per acre/per bigha whereas for other lands/properties, it will be fixed per marla, per square yard/per square feet/per square metre keeping in view the following factors:

(a) In case of agricultural land,--

(i) Classification of land.

(ii) Source of irrigation.

(iii) Distance from Roads, Bazars, Bus Stand, Railway Station, Factories, Educational Institutions, Hospitals, Government Offices and Shopping Complexes.

(iv) Situation of land like urban/rural.

(v) Number of crops per year sown.

(vi) Any other special feature having bearing on valuation.

(b) In case of non-agricultural land,--

(i) Distance from Roads, Bazars, Bus Stand, Railway Station, Factories, Educational Institutions, Hospitals, Government Offices and Shopping Complexes.

(ii) Situation of land like urban/rural.

(iii) Purpose for which the land is being used presently.

(iv) Any other special feature having bearing on valuation.

(c) In case of building,--

(i) Type of construction, i.e. concrete, pucca bricks or other material.

(ii) Year of construction.

(d) In case of gardens,--

(i) Kind of land.

(ii) Source of irrigation.

(iii) Cost of trees, according to their kind, value, size and age.

(iv) Income being derived out of the garden.

(v) Whether situated in urban or rural area.

(vi) Any other special features having bearing on the valuation.

The Bench decision shows that the governing Rule 3-A prescribed the Collector''s rate as the basis and that concluded the matter. There may also be instances when the Collector''s valuation may be challenged in references u/s 47-A and it may be possible to show that even the Collector''s rate does not depict the market rate. That is not the controversy here and hence that situation is not discussed here.

IV. Offer for sale by public authority and delay in execution due to deferred payments -- Basis of valuation

(a) If special rules exist, that will govern the situation

8. In my view, the issue before us is not whether the valuation as found in an agreement or the valuation as found in the sale deed is to be taken. If that is the issue, the decision of the Hon''ble Supreme Court in the State of Rajasthan''s case (supra) would squarely answer the question. However, a property offered for sale by a State machinery either in an auction or through a process that has inbuilt mechanism to determine the market rate before offering it to a member of the public, it has to be seen in a different light. A State or its functionary cannot itself be a party to under-valuation. It is normally to be expected that the property is offered for sale only at the market rate. The reference to a Collector by a Registering Officer on the ground of under-valuation, is not a mechanical process. A Registering Officer shall have some basis for coming to a view that the valuation in the document is not reflective of the market price. The same principle could also apply to certain other situations where a property is offered for sale in an auction. The competitive bids themselves shall minor the market conditions. In such a situation, again a Registering Officer ought not to normally have a ground for suspicion regarding valuation. Extraordinary situation may be there when the bids are rigged by forming cartels. In such extreme situations, the Registering Officer may still have a ground to make a reference u/s 47-A of the Stamp Act.

(b) Competitive bids assure market price -- Reference to Collector in such a case cannot be a mechanical act

9. Referring to a normal situation of a price determined by competitive bids, the Hon''ble Supreme Court in V.N. Devadoss Vs. Chief Revenue Control Officer-cum-

Ins. and Others, held as under:

13. Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject-matter of the conveyance 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 under-value the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power u/s 47-A of the Act is willful under-valuation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

14. In the instant case, the factual scenario shows that the vendors of the Appellant i.e. M/s. Dunlop India Ltd. became a sick industry and was declared so under the provisions of the 1985 Act. Consequent upon such declaration, surplus properties and assets belonging to the said Company were disposed of on the basis of orders passed by BIFR and AAIFR by forming an Assets Sales Committee. The Appellant submitted that his tender along with others and his offer of Rs. 24.34 crores approximately was the highest, and the same was accepted by the Assets Sales Committee and also by the statutory authorities. The Company was granted permission to execute the sale deed in favour of the Appellant.

15. The stand of the State is that what has been disclosed is clearly a sale value and the same cannot be termed as market value. There is fallacy in this argument.

16. Market value is a changing concept. The Explanation to Sub-rule (5) makes the position clear that (sic market) value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale in the open market and bids were invited. That being so, there is no question of any intention to defraud the revenue or non-disclosure of the correct price. The factual scenario as indicated above goes to show that the properties were disposed of by the orders of BIFR and AAIFR and that too on the basis of value fixed by Assets Sales Committee. The view was expressed by the Assets Sales Committee which consisted of members such as representatives of IDBI, debenture-holders, Government of West Bengal and Special Director of BIFR. That being so, there is no possibility of any undervaluation, and therefore, Section 47-A of the Act has no application. It is not correct as observed by the High Court that BIFR was only a mediator.

17. ....

18. On the facts of the case it cannot be said that Section 47-A has any application because there is no scope for entertaining a doubt that there was any

under-valuation. That being so, the High Court''s order is clearly unsustainable and is set aside. The registration shall be done at the price disclosed in the document of conveyance. There is no scope for exercising power u/s 47-A of the Act as there is no basis for even entertaining a belief that the market value of the property which is the subject-matter of conveyance has not been truly set forth with a view to fraudulently evade payment of proper stamp duty.

(c) Sale by private individual and sale by State authorities -- As regards under-valuation, there ought to be no needless suspicion in the latter cases

10. We have to systematically differentiate between situations where deliberate under-valuation may be adopted by private individuals and deny to the State the revenue that is due and a situation when the sale is held in a public auction or the property sold by a public authority after putting in place a mechanism to determine the market price before offering it to public. A valuation fixed in an instrument on a transaction between private parties ought not to be seen in the same league as a transaction involving State as a party and particularly when the State is itself the vendor which determines valuation of the property. There cannot be in such cases normally an under-valuation of the instrument. The explanation brought under the Punjab Stamp Rules of 1983 to Rule 3-A (in para 3 above) is indeed a statement of a policy that in respect of sale of the immovable property by an allotment of a Government or a Semi-Government Organization, the Collector''s rate shall be charged for registration upon the consideration fixed by the Government. This incidentally addresses the concern expressed by the Division Bench in K. S. Jhamb v. State of Punjab (supra) and enables a party to take the benefit of explanation by a deeming fiction that the price fixed in Government allotment shall itself be treated as the Collector''s rate. The only limitation is that it shall be presented for registration within three months from the date of issue of notification, which, in this case was on 02.03.2009, or within three months from the last date of installment. The explanation therefore factors a delay that could be occasioned between the date of allotment and the date when the document is ultimately registered and states that consideration at the time of allotment shall be deemed to be the Collector''s rate. The explanation itself therefore provides a particular time limit when the benefit of such an explanation would be applied. The learned Counsel appearing on behalf of the State contends that this explanation itself must be taken only prospectively, for, there have been many transactions which have been registered at a valuation above the valuation of what was mentioned in the allotment by the only fact that prices had increased from the date when allotment was made to the date when registration was taking place. If this explanation must be given a retrospective effect, according to him, it might require reopening several transactions and parties asking for the benefit of refund or seeking for review of the decision already rendered.

(d) Rule of interpretation of "explanation"

11. As a normal rule of interpretation, an explanation is in the nature of a

clarification of existing state of things. Where it is declaratory it does not create new rights to operate only in future but it should also be made available to all transactions taking place even earlier to the date when an explanation is brought into statute. In this case, an executive declaration of policy through rules creates a fiction through what it describes as an explanation but it is really something more. On the other hand, it really creates a new right. An explanation may be added to include something or to exclude something from the ambit of the main enactment or the connotation of some word occurring in it (Principles of Statutory Interpretation, by Justice G.P. Singh, 12th Edn. 2010). A person that takes the benefit of explanation must come squarely within every parameter that the explanation provides for. It deems the valuation stated in the allotment to be also the Collector''s rate at the time of registration, although the date of allotment may be far removed from the date when the registration is made. If therefore the registration were to be made within the time which the notification specifies, the benefit of such notification would be possible. If, on the other hand, a document had been registered even earlier, then the claim of benefit under the explanation does not arise. This notification has been subsequently extended by a notification dated 11th November. 2009. It reads as follows:

1. These rules may be called the Punjab Stamp (Dealing with Under-valued Instruments) (Fourth Amendment) Rules, 2009.

2. In the Punjab Stamp (Dealing with Under-valued Instruments) Rules, 1983 in Rule 3-A for the existing explanation inserted. -- vide notification No. 16/1/2009-ST.II/3982, dated 28th May, 2009, the following explanation shall be substituted with immediate effect:

Explanation: The consideration amount at the time of allotment of immovable property by any Government/Semi-Government Organization shall be deemed to be Collector''s rate and the stamp duty shall be charged for registration of document upon the consideration amount fixed by the Government/Semi-Government Organization, provided that document is got registered upto 31st December, 2009 by the original allottee or to the persons whom such properly is transferred by the original allottee through Government/Semi-Government Organization who is yet to pay full and final installments or legal heirs of the original allottees, in case of death of original allottee who is yet to pay full and final installment or by legal heirs as prescribed in Section 8(a) and Section 15(a) of the Hindu Succession Act, 1956, if such heirs have been included by the Allotting Agency subsequently in the allotment letter: or on re-allotment after cancellation of allotment of original allottee by the Allotting Agency; or within three months from the payment of last regular installment as per schedule of payment of such allotment.

(e) "Explanation" omitted: New Rule added, effect of

12. The law has now undergone a further change. A afresh notification has also been issued on 31st March, 2010 that introduces after Rule 3-A, Rule 3-B, which

reads as follows:

3-B. Notwithstanding anything contained in Rule 3-A, the rate fixed for allotment or public auction of an immovable property by the Government or a public sector undertaking or a local body, shall be deemed to be the Collector''s rate (as fixed under Rule 3-A) of such property, and the stamp duty shall be charged for registration of the instruments of such property on the rate, so fixed, at the time of execution of the first conveyance deed; provided it is got registered up to the 30th day of June, 2010, if whole of the payment of such property has been made or within a period of three months from the date of payment of last installment, as per the schedule, fixed for payment of the allotment or auction price, as the case may be.

13. By this notification the Rules called the Punjab Stamp (Dealing with Under-valued Instruments) First Amendment, Rules of 2010 has been brought into effect. The explanation to Rule 3-A, which we have extracted above in para 3, has been omitted and Rule 3-B has been inserted. This Rule would apply notwithstanding anything contained in Rule 3-A. While the Petitioner could not have obtained the benefit of the explanation which required registration of a document between some specified dates, it becomes possible for the Petitioner to invoke the benefit of Rule 3-B which applies to all transactions of allotment or public auctions, provided it is registered upto 30th June, 2010. The other requirement in the above Rule is the whole payment should be made within a period of three months of the last date of installment as per the schedule fixed for the allotment or the auction price. While this amended Rule provides an outer limit for claiming the benefit which shall be upto 30th June, 2010, the other contingencies mentioned in the later part of the Rule viz. the payment of whole amount within the 3 months'' period or auction price, shall still be strictly followed to claim the benefit. The instrument that was got registered by the Petitioner was in relation to an immovable property obtained in an allotment from a public sector undertaking namely by the Punjab Urban Planning Development Authority and it has got registered before 30th June, 2010. The adjudication is still pending and it is not a case where as apprehended by the learned Counsel appearing on behalf of the State, there is any scope to a person to apply for refund. After the valuation had been made and revenue collected by the State, the benefit of the notification dated 31.03.2010 would avail to the Petitioner, to contend that the rate fixed at the allotment shall also be deemed to be the Collector''s rate for the purpose of registration. The language employed in the explanation to Rule 3-A which has been omitted and Rule 3-B as inserted by the notification are different. The legal formulations could be summarized as follows:

a) The Registering Officer, after registration may refer the documentation, for adjudication before the Collector, if he has reason to believe that there is deliberate undervaluation, (see Section 47-A of the Indian Stamp Act).

b) The reference is not a mechanical act but the Registering Officer shall have a basis for coming to a prima facie finding that there is an under-valuation. (V. N. Devadoss''s case).

c) The circle rate or the Collector''s rate (determined in the State of Punjab in the manner provided under Rule 3-A of the Punjab Stamps (Dealing of Under-valued Instruments) Rules shall afford such basis. (K.S. Jhamb''s case (DB); Manoj Kumar''s case (SC)).

d) The circle rate or the Collector''s rate shall normally be with reference to the date of execution of sale and registration and not the valuation on the date of agreement or the date of allotment (State of Rajasthan''s case).

e) The Registering Officer shall have no need, normally to suspect the valuation relating to the property valuation, when the State or its instrumentalities themselves have determined the market valuation or when the market valuation is best obtained through competitive bidding (V. N. Devadoss''s case (SC)).

f) If the date of auction/allotment and payment of installment are distanced by a long period to the date of execution of sale or registration, the issue of the valuation for the purpose of stamps could be controlled by specific Rules and the contingencies provided under the Rules will have to be strictly applied for taking the benefit under the Rules (See Rule 3-B and the contingencies mentioned therein).

14. Even while rejecting a particular interpretation made to the explanation as applicable also to anterior transactions as contended by the Petitioner, I extend the benefit to the Petitioner by applying Rule 3-B and accordingly, the demand for additional stamp made by the Registering Officer is found to be bad in terms of Rule 3-B and set aside the demand. The writ petition is allowed maintaining the valuation given in the document at the time of registration. No costs.

