

(1996) 03 AP CK 0055
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 176 of 1991

Mohd. Abbas Shafi

APPELLANT

Vs

Sub-Registrar

RESPONDENT

Date of Decision : 25-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 47A(1)

Citation : (1996) 3 ALT 976

Hon'ble Judges : Lingaraja Rath, J; D. Reddeppa Reddi, J

Bench : Division Bench

Advocate : G. Anjappa, for the Appellant; Govt. Pleader for Revenue, for the Respondent

Final Decision : Allowed

Judgement

Lingaraja Rath, J.—The appellant who came before this Court in W.P.No. 718 of 1991 seeking relief of direction to release the original registered sale deed bearing receipt No. 275 (P. 1253/90) dated 14-9-1990 executed in his favour having been rejected has preferred this appeal.

2. The appellant purchased the property in question through the executed deed for consideration of Rs. 5,00,000/- but at the time of the registration the Sub-Registrar, Khairtabad, Hyderabad, respondent herein (having) entertained the opinion of the property to be of much higher value initiated proceedings u/s 47A (1) of the Indian Stamp Act, 1899 as amended by A.P.Act 22 of 1971. In his view, the property was to have been valued at Rs. 11,41,500/- and stamp duty was paid thereon. As the stamp duty had been short-paid he referred the matter to the Collector.

3. The proceeding initiated by the respondent was assailed before this Court mainly upon the ground that mere were no material before the respondent to reasonably reach the conclusion of the property to have been under-valued. It is the submission mat the exercise u/s 47-A(1) is neither arbitrary nor whimsical

and must be relatable to materials on record.

4. Contesting the appeal, the Government Pleader for Revenue submits that the registering Officer had materials before him to reach the conclusion of the document having been not valued inasmuch as he conducted a spot inspection, and fixed valuation of the property as Rs. 11,41,500/-and the deficit stamp-duty and registration fees as being Rs. 86,605/-. Since the appellant refused to make good the deficit stamp-duty and registration fees, the document was referred u/s 47-A(1) of the Indian Stamp Act, 1899 to the Collector for determination of the market value.

5. Section 47-A(1) of the Act runs as follows:

"47-A. Instruments of conveyance, etc.. under-valued how to be dealt with:- (1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition "settlement or release" has reason to believe that the market value of the property which is the subject matter of such instrument has not been truly set forth in the instrument "he may keep pending such instrument and refer the matter to the Collector for determination of market value of such property and proper duty payable thereon".

Bereft of details the substance of the provision is that the registering Officer, so as to enable him to initiate action must have reason to believe that the market value of the property has not been set forth in the instrument presented for registration truly. In pursuance of the provision read with Section 75 of the Indian Stamp Act, 1899, the Andhra Pradesh Stamp (Prevention of Under valuation of Instruments) Rules, 1975 were framed in G.O.Ms.No. 1031, Revenue (U-2) dated 31st July, 1975, hereinafter referred as the Rules) in which Rules 3(3) and 3(4) which are relevant for the purpose of the present case are as follows:

"3. Furnishing of statement of market value: (3) The Registering Officer may, for the purpose of satisfying himself whether the market value or the consideration has been correctly furnished in the instrument or not, make such enquiries, as he may deem fit He may elicit from the parties concerned, any information having a bearing on the subject and call for and examine any records kept with any public officer or authority. (4) If the Registering Officer is of the opinion that the market value of the property affected by the instrument is not correctly furnished, he shall keep the document pending and with out delay refer the matter to the Collector with details of his assessment of the Market Value arrived at by him in the Form-1. No copy of such document shall be granted notwithstanding anything contained in any of the provisions of any other Act or Rules."

The requirement under Rule 3 supplements the substantive authority vested in the registering officer in Section-47-A(1) and stipulates that for the purpose of having materials as the reason to believe of under-valuation of the document the Officer is to make such enquiries as he may deem fit. The rules are in no way

inconsistent with the provisions of the Act and merely provide the guideline to the Registering Officer so that the power under the substantive provision is not exercised in vacuum but only after collection of materials which he would deem as sufficient to lead him to the conclusion of under-valuation of the document. Wherever an authority is vested with the power to confirm an opinion as to the existence of a state of affair as a prelude to taking some action stipulated under the statute, though the formation of the opinion is not available to be questioned, yet the existence or non-existence of any materials on which the opinion could be formed is a matter for judicial review though, of course, the adequacy or inadequacy of the materials to reach the conclusion is outside the scope of such review. In other words, if called upon, the authority which forms the opinion must be in a position to show that there were materials before it to reach the conclusion and the materials are not such on which the opinion could not have been formed by any reasonable process of inference.

6. A Constitutional Bench of the Supreme Court considered the words "if in the opinion of Central Government" in the decision in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, wherein Justice Shelat speaking for the majority said as under.

"Before the discretion conferred by Section 237(b) of the Companies Act, 1956, to order an investigation can be exercised, there must exist circumstances which in the opinion of the Authority suggest what has been set out in sub-Clauses. (1), (ii) or (iii). If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on the collateral grounds and was beyond the scope of the statute."

Considering the words "reason to believe" and placing reliance on the decision in (1951) AC 66 and (1964) AC 40 the learned Judge proceeded to say:

"Therefore, the words "reason to believe" or "in the opinion of" do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the Court that such "a reason to believe" or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative." Though there has been successive decision of the Supreme Court explaining the expression, yet the views having been reiterated, it is not necessary to refer them all here.

7. Since reason to believe can thus be not wholly arbitrary process and existence of materials is a pre-condition to the belief Rule 3(3) purports to provide the mechanism for collection of the materials for the purpose. The form and nature of the enquiry to be made for the purpose is left to the discretion of the officer as long as the materials collected are not extraneous or irrelevant but it is not open

to the authority not to make any enquiry at all and reach conclusions arbitrarily. Such a procedure would run counter to the concept of fairness of administrative actions. When once the conclusions are properly reached that the document is under-valued, the Registering Officer has the authority, while keeping the document pending for registration, to refer the matter to the Collector in Form-1 of the Rules. The exercise regarding formation of opinion was summed up by a learned single Judge of this Court in the decision in Ponnnavolu Sasidar Vs. Sub-Registrar Hayatnagar, and others, by observing that the word "reason to believe" has been used by the Legislature in Section 47-A advisedly to prevent arbitrary reference to the Collector without any material before the registering authority. The employment of the words "reason to believe" serves an important check or limitation on the exercise of the power by the registering authority irrespective of whether he exercises administrative or quasi-judicial function. The learned Judge observed "In such a situation, it is incumbent on the part of the registering authority to form a belief as envisaged by Section-47-A of the Stamp Act only after holding an enquiry in whatever form it may be, under Sub-rule (3) of Rule 3." The enquiry purported to have been made by the respondent has been pleaded before us to be the basis to form the opinion regarding under valuation of the document. The spot inspection report has been produced before us to show the registering officer having proceeded, to fix the valuation of the property, on the basis of the basic value register maintained in his office. There has been successive decisions of this Court laying down the basic value registers to have no statutory basis nor to have been any determinative role to play in fixing the valuation of the property. It is at best an administrative compilation of valuation of the property fixed unilaterally at the instance of the Government, though it is submitted that the Government guidelines for fixing the basic valuation are based upon enquiries relating to the land values by the Government.

8. In the decision in M/s. Sugar Cements Ltd. v. State of A.P. 1989 (3) ALT 677. Justice Jeevan Reddy as he then was observed that the instructions issued by the Government and the Inspector-General of Stamps and Registration requiring the registering authority not to register any document which does not accord with the value stated in the basic value Register as not binding upon the registering officer and correctly opined that the value stated in that register could only be, at the most be treated as a guideline, a relevant material, by the registering officer but never as the be all and end all of valuation of the property. The learned Judge devised, as a working principle that a document could be recorded as undervalued if the consideration mentioned therein is less than 50% of the value stated in the Basic Value Register as in force on 30-6-1989, but if the value mentioned in the document is equal to 50% of the value stated in the Basic Value Register of the same day, or more, the document should be registered forthwith. The judgment further directed that where the Basic Value Register shows two or three different values depending upon the purpose for which the land was being purchased, the registering officer shall ignore the higher value

and shall adopt the lowest value as the value prescribed in the Basic Value Register.

9. Justice P. Venkatarama Reddy also held in the decision in *P. Sasidhar v. Sub-Registrar* (2 supra) that the entries in the Basis Value Register are not conclusive and binding on the registering Officer, and that in the course of enquiry conducted under Sub-rule (3) of Rule 3 of the Rules the parties may be able to demonstrate that the value noted in the Basic Value Register does not cover the property in question or that there is a palpable error in the entries or that there is more relevant material which deserves to be preferred to the entries in the register.

10. Another single Judge of this Court, Justice S.R. Nayak also examined the question in the decision in *Vidya Nagar Housing Co-operative Society Ltd., Hyderabad Vs. State of Andhra Pradesh and others*, to hold, looking at the question from the opposite angle, "but the question is whether for the formation of an opinion and belief on the part of the registering officer, taking into account the rates shown in the Basic Value Register could be said to be totally irrelevant and extraneous." The learned Judge was of the view that for the limited purpose of satisfying himself and taking further action contemplated u/s 47-A of the Act the Sub-Registrar could take into account the rates shown in the Basic Value Register as it is only the beginning of an end and the dispute is necessarily to go before the District Collector for determination who is bound to determine that issue after compliance with the provisions of the rules framed under the Act and after giving an opportunity to the affected parties.

11. Considering both the views of the two learned single Judges the question which necessarily arises, as has also been urged by Sri G. Anjappa, learned counsel appearing for the appellant that at the stage when the registering officer forms the opinion to initiate action u/s 47-A(1) a right of hearing inheres in the party who has presented the document for registration as the opinion of the document being under-valued cannot be reached behind his back since it involves civil consequences against him of referring the matter to the Collector and at any rate such an opportunity to him at that stage is necessary in view of the provisions of Rule 3 (3) which directs an enquiry to be held by the registering officer. While the decision of Justice P. Venkatarama Reddy in the decision *P. Sasidhar v. Sub Registrar* (2 supra) would appear to support such submission, since the view was taken that in the enquiry it would be open for the party to place materials to show that the valuation in the Basic Value Register does not represent the true valuation, view on the other hand taken by Justice S.R. Nayak in the decision in *Vidyanagar Housing Co-Op. Society Ltd. v. State of A.P.* (4 supra) is that the exercise of the registering Officer is only the beginning of the process and mat the parties would have the opportunity to place materials as to the true valuation of the property before the Collector who has to finally determine the issue. Coupled with the question, the other fact which remains important is that if the parties are to agitate the matter properly before the

collector on reference made by the registering authority, whether he could exclusively act upon the Basic Value Register to determine the valuation and refer the parties to the Collector.

12. The instruction to follow the Basic Value Register is under instructions issued by the Inspector General of Stamps and Registration. The authority to issue such instructions has been upheld by a Division Bench of this Court in the decision in *D. Ratnasundari Devi and Others Vs. The Commissioner of Urban Land Ceiling and Others*, as flowing from the power of general superintendence conferred upon the Inspector General of Registration. But at the highest these are but executive -directions of an administrative superior and cannot either over-ride or substitute the statutory requirement of the rules which enjoins upon the registering officer to make an enquiry to reach the conclusion of mere being reason to believe of the document being under-valued. We must hence hold that in the fact of the rule the Basic Value Register would not empower the registering officer to blanketly hold that only because the document does not correspond to the valuation as per the Basic Value Register he must necessarily refuse to register the document. To hold the view he must do some more exercise to collect some other materials which has to be taken into account in addition to the Basic Value Register for him to properly take the view of the document as not representing the correct valuation. We must also hold that the working principle devised in the decision in *M/s. Sagar Cements Ltd. v. State of A.P.* (3 supra) cannot be a "made to order test" for registering or refusing to register documents. The very test, in many a case, may be divorced from realities and we feel that it would be a wholesome principle to leave to the discretion, to be properly exercised in each case, to the registering officer guided not only by the Basic Value Register which may form part of the consideration but also to be supplemented by such other materials as he may collect, even by a spot inspection if necessary, to reach a proper conclusion.

13. Next comes the question as to whether participative role to be played by the presenting parties of the document. The argument proceeds on the footing of *audi alteram partem*. That principle has been explained as not to be contained in a strait jacket formula and as having varying application from circumstances to circumstances. The essence of observance of the principles is of making known to the party the facts appearing against him, giving him an opportunity to place his side of the case and a duty cast upon the deciding authority to fairly take all facts into consideration and decide. There is no guarantee, in the rules of natural justice for successive opportunities to be given at different layers of decisional hearing. The exercise made by the registering authority is essentially of a recommendatory nature of his having entertained doubt as to the valuation. The character of the recommendation is not altered merely because the law enjoins the recommendations to be made on the basis of materials and not arbitrarily. The registering authority is not called upon to decide a *lis* between the parties. Since there are no parties before him and it is only a doubt entertained by him on the presentation of the document, he hence cannot be called upon to decide a

lis between himself and the presenting party. The conclusion reached by him is not objective but subjective one. It may of course be that in reaching the conclusion he may, if he feels it so necessary, ask the parties for further materials. If he decides upon a spot inspection he may also ask the parties to be present, but it has to be emphasized that there is nothing in law which requires him to comply with such procedure. Hence while it will be open for the affected parties to assail the reference on the basis of there having been no materials to make the reference or extraneous or irrelevant materials to have been taken into account in making the reference yet there is no compulsion or necessity on the part of the registering Officer to afford a participation to them in the "Opinion formation process" leading to the recommendation to be made. The opportunity to the parties, as the law contemplates is before the Collector who is the final adjudicating officer.

14. The principle underlying Section 47-A and the rules being thus properly grasped it is to be seen if any relief is available to the appellant. Rule 3(4) contemplates the reference to be made to the Collector in Form-1 of the rules. Serial number 8 of the form is "Nature, market value (or consideration) of the document as in the opinion of the registering officer together with the stamp duty with which it has to be charged". Serial number 10 is "Remarks (Explain how the details in Column 8 are arrived at)". Serial number 9 is "Deficit Stamp duty". The form is to be submitted under the signature of the registering officer. It is expected to state not only the stamp-duty which is properly chargeable on the document but also requires the officer to state in detail how the figure is arrived at. The learned Government Pleader for Revenue has produced before us a copy of the report purported to have been submitted in Form-1. The reference is purported to have been made on 26-12-1990. The reference is not the copy of any printed form but is a typed one. There are variations in the reference and the statutory form of the rules. In Serial No. 1 of the statutory form only the word "Year" appears whereas in the reference besides the word "year" "199" appears. As against the word "Book" in the statutory form the words "Book-I" appears in the typed reference. As against serial No. 6 in the statutory form which reads "Nature, market value (or consideration) as mentioned in the document", the words in the typed reference are "Nature, market value for consideration as mentioned in the Doct." Apart from these discrepancies serial No. 10 in the typed reference is completely different and reads "Deficit T.P. Tax + Deficit Regn.Fee" whereas in the statutory form, as has been seen earlier, the column relates to explaining the details as to how the details in column 8 are arrived at. Instead, in the typed reference the column 10 of the statutory form has become column 11. As against column 11 of the typed reference the only thing that is written is "All that eastern portion of H.No. 11-6-198/2,11-6-199 at Nampally area 300 Sq. Yds. "To say the least, the reference was not in accordance with the requirement of Rule 3 (4). It is not understood as to how a separate column like "Deficit T.P. Tax + Deficit Regn. Fee" was introduced in the form in the place of statutory column 10. No reasons are given also showing as

to how the market value of the property was arrived at. Column No. 8 also did not show the actual stamp duty chargeable. The deficit stamp duty was shown in column No. 9 as Rs. 91,320/- whereas it was stated in the counter-affidavit of the respondent, in paragraph 2 that the deficit stamp duty and registration fee was arrived at Rs. 86,605/-. It is on the basis of the statement in the counter affidavit that the writ petition was disposed of. Because of these glaring discrepancies we are constrained to hold that a reference as required under Rule 3(4) of the Rules was not made. The learned Government Pleader has also produced before us two more documents styled as Annexure-1 (B) supposed to be the basis of the registering officer holding the property to be valued at Rs. 11,41,500/-. On the one hand, we do not find anything in the rules as Annexure-1(B). It is explained by the learned Government Pleader that Annexure-1 (B) is as per the guidelines issued by the Inspector General of Registration and Stamps of Andhra Pradesh, Hyderabad. Blank forms of Annexure-1 (A) and Annexure-1 (B) have also been supplied, but it is seen that the document given to us as the report in Annexure-1(B) is different than the Form-1(B) prescribed by the Inspector General of Registration and Stamps in his Proceedings No. M.V./E.E./11/1975 dated 2-5-1975. Even the calculation made in the spot inspection report as per Annexure-1(B) submitted before us shows the value of the property to have been determined at Rs. 10,50,000/- exclusively upon the Basic Value Register only, and to it has been added a sum of Rs. 87,817-50 as the value of the building and Rs. 3,431-25 as the cost of the compound wall. That being so, the valuation fixed is not sustainable having been exclusively based upon the Basic Value Register. No other materials have been collected by the registering officer except making an attempt at the valuation of the compound wall and that of the building.

15. In view of such facts we hold that the reference u/s 47-A(1) by the respondent to the Collector was not correctly made since the reference was not as required in Form-1 of the rules, no reasons have been assigned as to how the valuation was arrived at, the form itself having been materially changed and even as per the document submitted by the learned Government Pleader it appears that the only material relied upon to assess the value of the property, I apart from the building and the compound wall, was the Basic Value Register alone. There is hence no other go than to quash the present Section 47-A(1) proceedings having (sic. leaving) it open to the authorities to proceed according to law.

16. In the result, the appeal is allowed with costs and the impugned order in the writ petition and Section 47-A (1) proceedings initiated by the respondent are quashed. The document having already been registered in pursuance of the interim directions of this Court in WAMP No. 304 of 1991 dated 26-2-1991 the undertaking given by the appellant stands nullified.