(2007) 03 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3052 of 2007

Mula Rama Devi (Smt.) APPELLANT

Vs

Collector and District Registrar and Another RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Stamp Act, 1899 — Article 47A, 41A, 41A(1), 41A(2), 42

Citation : AIR 2007 AP 262 : (2007) 4 ALD 273 : (2007) 4 ALT 158 : (2007) 103 RD 420

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Govind, for the Appellant; G.P. for Revenue, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Petitioner purchased an extent of Ac.5-17 guntas of land in Sy.N.155/A of Nemaragomula village of Bibinagar Mandal, Nalgonda District, through a sale deed dated 18-12-2003. The value of the land was mentioned in the basic value register, maintained by the 2nd respondent, as Rs. 63,000/- per acre. The Department of Stamps and Registration itself furnished the details of valuation of the property as Rs. 3,41,775/-. The stamp duty and registration charges were specified at Rs. 20,520/- and Rs. 1,710/- respectively. Petitioner paid the said amounts, and the 2nd respondent registered the document.

2. The 1st respondent caused an inspection of the records of the 2nd respondent. He issued notice dated 15-5-2006 to the petitioner u/s 41-A of the Indian Stamp Act, 1899 (for short ''the Act''). According to him, the value of the property, covered by the document, works out to Rs. 19,69,275/-; stamp duty of Rs. 2,16,640/- and registration fee Rs. 9,850/- ought to have been paid. The petitioner was given an option to pay deficit stamp duty, or to submit explanation.

3. Petitioner submitted an explanation through her father. It was stated that the value of the property did not exceed the one, stipulated in the document, and

that it is supported by the records maintained by the Registration Department itself. It was further contended that the petitioner did not suppress any fact at the time of registration. The 1st respondent issued proceedings dated 22-1-2007, stating that the document is chargeable with stamp duty of Rs. 2,16,640/-and registration fee of Rs. 9,580/-; and required the petitioner to pay the balance. The same is challenged in this writ petition.

4. Sri K. Govind, learned Counsel for the petitioner, submits that the petitioner had secured the particulars of the value of the property, stamp duty and registration fee, payable thereon and it was only on that basis, that the requisite amount was paid, and the document was registered. He contends that the 1st respondent did not say a word, about the correctness or otherwise of the particulars furnished by his own department, and still, required the petitioner to pay huge amount, without any record, to the facts.

5. Learned Government Pleader for Revenue, on instructions, submits that at the relevant point of time, several documents came to be registered for the lands in the neighbourhood, and that in the very survey number, plots were sold at the rate of Rs. 75/- per sq. yard. He contends that the 1st respondent took the relevant facts into account, and passed the impugned order.

6. With a view to ensure transparency and objectivity, the Government introduced a system, known as Computer-Aided Administration of Registration Department (CARD). Under this system, the parties are provided with the necessary information relating to the value of the property, stamp duty, registration charges payable thereon. The petitioner availed this facility through her application. The information was furnished by the 2nd respondent, through the CARD system, on 9-12-2003. The total value of the property, purchased by the petitioner; was furnished, as Rs. 3,41,775/-. The stamp duty and registration were stipulated as Rs. 20,520/- and Rs. 1,710/-, respectively. The heading of the document reads "Market Value Assistance". In the note, appended at the bottom, it is stated that the values are valid till the next general revision.

7. The petitioner paid the stamp duty and registration fee, in accordance with this information, and the document was registered on 18-12-2003. Section 41-A of the Act empowers the Collector, to recover the deficit stamp duty, if a document was not duly stamped, on account of the mistake of the Registering Authority. The limitation, within which such an exercise can be undertaken; is stipulated. Where the non-payment of the stamp duty is tainted with fraud, the recovery can be effected beyond 10 years. The provision reads as under:

Section 41-A: Recovery of Stamp Duty not levied or short levied:

(1) Where after the commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1986, any instrument chargeable with duty has not been duly stamped and registered by any Registering Officer by mistake and remarked as such by the Collector or any audit party, the Collector may, within five years from the date of registration serve a notice on the person by whom the duty was

payable requiring him to show cause why [the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty.]

Provided that where the non-payment was by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the Collector may within ten years from the date of registration serve a notice on such person to show cause why [the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty.]

(2) The Collector or any officer specially authorized by him in this behalf shall, after considering the representation if any, made by the person on whom notice is served under Sub-section (1), determine by an order, [the amount of duty and the penalty] due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount as determined. On payment of the [amount] the Collector shall add a certificate u/s 42.

(3) Any person aggrieved by an order under Sub-section (2) may prefer an appeal before the [Chief Controlling Revenue Authority] Andhra Pradesh, Hyderabad within three months from the date of such order.

(4) Any [amount] payable under this section shall be recovered as an arrear of land revenue.

8. As a condition precedent, for invoking the power under this Section, the Collector must be satisfied that the document was not duly stamped and was registered by the Registering Officer by mistake. The particulars of mistakes must also be clearly stated. In the instant case, the notice issued by the 1st respondent does not refer to any mistake, attributable to the 2nd respondent, nor to the petitioner. The opinion of the Collector, that the value of the property ought to have been on the higher side, cannot clothe him, with the power u/s 41-A of the Act.

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 cases, where the value of the property mentioned in document, does not accord with the one, entered in the basic 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 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. In the final order

passed by him, the 1st respondent observed as under:

After careful examination of recitals of the said document and other connected material available on record and after considering the representation of the party the undersigned came to a conclusion that the document under reference is chargeable to a stamp duty of Rs. 2,16,640/- and registration fee Rs. 9,580/- under Article 47-A of Schedule 1-A to the Indian Stamp Act, 1899. As the document bears a stamp of Rs. 39,5207- and Registration fee Rs. 1,710/- only, the duty required to make up the deficit is, hereby determined as Rs. 1,85,260/- (deficit stamp duty Rs. 1,77,120/- and deficit fees Rs. 8,140/-).

Smt. Mula Ramadevi W/o Ravikiran Kasaram shall therefore, directed to pay Rs. 85.260/- towards the deficit duty in respect of the document under reference within a period of (30) days from the date of receipt of this order and produce the original document along with payment receipt for adding certificate, failing which the undersigned will be at liberty to recover the said amount even by coercive process like arrears of land revenue as provided for under the law, i.e. Section 48 of Indian Stamp Act.

10. From this, it is clear that he has subdued the maintenance of CARD system, basic value register, and explanation submitted by the petitioner, in response to a show Cause notice issued by him; to his subjective opinions, not guided by any criteria. The whims and fancies of an Authority, conferred with the power, u/s 41-A of the Act; cannot be countenanced in law, unless the conclusions are supported by verifiable material. Not a single reason, worth its name, finds place in the impugned order. It is a typical case, either of non-application of mind, or arbitrariness, in exercise of powers. On either count, it cannot be sustained.

11. The writ petition is accordingly allowed, and the impugned order is set aside. There shall be no order as to costs.