
(2000) 08 P&H CK 0220
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5406 of 1999

Mulakh Raj

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Constitution of India, 1950 — Article 14
Stamp Act, 1899 — Section 47

Citation : AIR 2001 P&H 61 : (2001) 1 ILR (P&H) 270 : (2001) 1 RCR(Civil) 581

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Mr. Ashish Aggarwal, for the Appellant; Mr. Jaswant Singh, D.A.G.,
for the Respondent

Judgement

G.S. Singhvi, J.—These petitions have been filed for quashing of the action of the Sub-Registrar, Nilokheri (respondent No. 3) to impound the sale deeds of the petitioners and to make reference u/s 47-A(1) of the Indian Stamp Act, 1899 (as inserted by Haryana Act No. 37 of 1973) (for short, the 1899 Act).

2. The facts relevant to the determination of the issues raised in these cases are that petitioners-Mulakh Raj and Deepak Kumar purchased four different parcels of land situated in Village Nilokheri from different parties. The particulars of these purchases are as under :-

Petitioner

Area

Price

1.

mulakh Raj

13 Kanals

Rs. 3,00,000/-

4 Marias

2.

Deepak Kumar

12 Kanals

Rs.3,00,000/-

3.

Deepak Kumar

04 Kanals

Rs.1,00,000/-

4.

Deepak Kumar

04 Kanals

Rs.1,22,500/-

18 Marlas

3. The sale deeds presented by the petitioners were registered by respondent No. 3 but, at the same time, he impounded the documents and made reference to the Collector, Karnal (respondent No. 2) u/s 47-A(1) of the 1899 Act for determination of the correct value of the property on the premise that the prevailing rate of the land in the area was more than the value stipulated in the sale deeds.

4. The petitioners have challenged the impounding of sale deeds and the orders of reference on the grounds of violation of the principles of natural justice and arbitrariness. They have averred that before making reference to respondent No. 2 for determination of the correct value of the property, respondent No. 3 did not give them notice and opportunity of hearing. They have further averred that instead of independently examining the issue relating to the valuation of the land, respondent No. 3 has mechanically adopted the price fixed by respondent No. 2 and the latter does not have the power to issue instructions or guide-lines for determination of the market value of the land.

5. The respondents have contested the prayer made by the petitioners by stating that the value of the land mentioned in the sale deeds is far below the market rate prevailing in the area. They have averred that respondent No. 3 had impounded the sale deeds and made reference to respondent No. 2 after making a detailed enquiry about the correct price of the land in the area. According to them, the scheme of Section 47-A of the 1899 Act does not contemplate hearing

at the stage of reference and, therefore, the action taken by respondent No. 3 cannot be nullified on the ground of violation of the rule of audi alteram partem. The respondents have also objected to the maintainability of the writ petitions on the premise that the issue relating to correct determination of the value is pending before respondent No. 2 and the petitioners can produce evidence to prove that the value mentioned in the sale deeds is the real market value of the land.

6. Shri Ashish Aggarwal relied on the decision of this Court in Chamkaur Singh and another v. State of Punjab 1991 PLJ 249 and of the Supreme Court in State of Punjab v. Maliabir Singh etc. 1996(1) RRR 588 and argued that the action taken by respondent No. 3 to impound the documents and to make reference u/s 47-A(I) of the 1899 Act should be declared void because before doing that, he did not comply with the rule of audi al-teram partem. Learned counsel submitted that while exercising power u/s 47-A(I), the Registering Officer acts in a quasi-judicial capacity and, therefore, he is under an obligation to comply with the basic rule of natural justice. Shri Aggarwal further argued that the orders of reference should be declared arbitrary and quashed because while doubting the correctness of the value of the properties mentioned in the sale deeds, respondent No. 3 has depended solely on the guide-lines issued by respondent No. 2 and thereby abdicated his discretion.

7. The learned Deputy Advocate General argued that the decision of Chamkaur Singh's case (supra) cannot be made basis for granting relief to the petitioner because the language of Section 47-A inserted by the Punjab amendment is different from the language of the said section inserted by the Haryana amendment. He also referred to the difference between the language of sub-sections (1) and (2) of Section 47-A (as applicable to the State of Haryana) and argued that the express incorporation of the requirement of reasonable opportunity of hearing in sub-section (2) and absence thereof in sub-section (1) of Section 47-A is indicative of the intention of the Legislature to exclude the rules of natural justice at the stage of reference. He also defended the reference made by respondent No. 3 by arguing that this had been done after making enquiries about the market value of the land.

8. We have thoughtfully considered the respective submissions. Section 47-A of the 1899 Act, as applicable to the States of Haryana and Punjab, reads as under :-

"FOR HARYANA

47-A. Instruments under-valued how to be dealt with. - (1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property, has reason to believe that the value of the property or the consideration, as the case may be, 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 value or consideration, as the case may be,

and (he property duty payable thereon.

(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the value of consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, or on receipt of reference from the Inspector General of Registration or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject-matter of the instrument is situate, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reasons to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value of consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty :

Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of the order, prefer an appeal before the Commissioner of Division and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.

FOR PUNJAB

47-A. Instruments under-valued how to be dealt with.

(1) If the Registering Officer appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), while registering any instrument relating to the transfer of any property, has reason to believe that the value of the property or consideration, as the case may be, 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 value of the property or the consideration, as the case may be, and the proper duty payable thereon.

(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of

duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, or on receipt of reference from the Inspector-General of Registration or the Registrar of a district, appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), in whose jurisdiction the property or any portion thereof which is the subject-matter of the instrument is situate, shall, within two years from the date of registration of any instrument not already referred to him under sub-section (1) call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reason to believe that the value of consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with procedure provided for in sub-section (2) and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of the order, prefer an appeal before the Commissioner of Division and all such appeals shall be heard and disposed of in Such manner as may be prescribed by rules made under this Act.

Explanation: For the purpose of this section, value of any property shall be estimated to be the price which, in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched, if sold in the open market on the date of execution of the instrument relating to the transfer of such property."

9. The question as to whether the Collector has the power to fix the minimum price of the land and the same could be relied upon for the purpose of registration of the documents was considered by a Division Bench of this Court in Chamkaur Singh and another v. State of Punjab (supra) in the context of Section 47-A, as applicable to the State of Punjab. After making reference to sub-sections (1) and (2) of Section 47-A along with the Explanation and the guidelines issued by the State Government in the context of the Explanation, the Division Bench held as under:

"A combined reading of the above noted provisions makes it manifestly clear that the Registering Officer as well as the Collector have to perform, if not a judicial, at least a quasi-judicial function in determining or in estimating the price of the properties, subject-matter of a particular transaction as if the property is being sold in "open market" on the date of the execution of the instrument relating to such transfer. As per sub-section (1), it is only while registering the instrument of transfer that the Registering Officer has to take his independent decision which essentially is a quasi-judicial decision as it is to be founded on "reason to believe" that the property has been under-valued or the ostensible consideration is not the real or genuine consideration. It is only after reaching this conclusion

that he may refer the matter to the Collector for the determination of the value of the property or the genuineness of the consideration, as the case may be. As per the so-called guidelines, the relevant part of which has already been reproduced above, what is left open to the Registering Officer (Sub-Registrar) is that he would refer the matter to the Collector only if he finds that the value of the property in a particular transaction "is higher than the prescribed rate". It is thus implicit that he would not register the document if the value of the property in question is stated to be lower than the prescribed rate. In other words, he would not accept a rate lower than the one prescribed in the guidelines as the true or genuine consideration or value of the property as envisaged by sub-section (1) of Section 47-A. According to the guidelines he would refer the matter to the Collector only if he forms the opinion that the property should be rated at a rate still higher than the one mentioned in these guidelines. These guidelines, therefore, completely take away the jurisdiction of the Sub-Registrar to reach any quasi-judicial decision with regard to the valuation or the consideration for the transfer of a particular property falling within his jurisdiction. Further, vide these instructions the onus of proving that the real or genuine price of the property sold or transferred is less than the rate prescribed is shifted on to the parties to the transaction. In such a situation, it is made incumbent on any party to the transaction to get the document impounded and to refer the matter to the Collector for his decision. Besides this being contrary to the language and content of Section 47-A of the Stamp Act, it is not clear as to how the party has "to get the document impounded" or how is it enjoined upon the Sub-Registrar to impound the document. Similarly, the jurisdiction of the Collector under sub-section (2) of Section 47-A is jeopardised. As per the same, he, on a reference, has to hold an enquiry in such manner as may be prescribed by the rules under the Act for determining the true value or consideration on which the stamp duty has to be paid. This enquiry and determination of the value has essentially to be an independent, fair and quasi-judicial decision of the Collector in the light of the facts established before him. He cannot possibly record any stereo-typed or mechanical conclusions in this regard. The natural effect of the instructions which are sought to be mellowed down as guidelines is that the same would bind the Collector even more than the Sub-Registrar or the Registering Officer appointed under the Registration Act, he being author of the same. It is, therefore, abundantly clear that these guidelines completely run contrary to the plain language and intent of sub-sections (1) and (2) of Section 47-A.

.....

Further, these run counter to the mandate of law contained in the last lines of the explanation, "If sold in the open market on the date of execution of the instrument relating to the transfer of such property."

....."

10. The appeals filed by the State Government against the decision of the

Division Bench were disposed of by the Supreme Court on 21.11.1995 with the title case of State of Punjab v. Mahabir Singh etc. (supra). Some of the observations made in the decision of the Supreme Court, which have direct bearing on the plea raised by the petitioners are as under:

"Sub-Section (1) of Section 47-A empowers the Registering Officer, while registering any instrument relating to the transfer of any property, if he has reasons to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, after registering such instrument, to refer the same to the Collector for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon. It would, therefore, be clear that the Registering Authority has to satisfy himself that value of the property or the consideration for it has not been truly set forth in the instrument. He may make a reference to the Collector in accordance with the provisions of sub-sections (2) of Section 47-A. Before making reference, he is required to register the document and he is not empowered to withhold the registration. Such a registration, of course, will be subject to the determination of the true market value prevailing in the locality though the value mentioned in the instrument for such registration under sub-section (1) of Section 47-A was not conclusive.

The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the someplace. No absolute higher or minimum value can be pre-determined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated. It will be only an objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Section 47-A.

It would, thus, be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself before registering the document, whether true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under sub-section (1) of Section 47-A, he registers the documents. Thereafter, he should make a reference to the Collector for action under sub-sections (2) and (3) of Section 47-A. Accordingly, we hold that the offending instructions are not consistent with sub-section (1) of Section 47-A. It would, therefore, be open to

the State Government to revise its guidelines and issue proper directions consistent with law."

11. A perusal of Section 47-A, as inserted by the amendments made by the Legislatures of two States, shows that sub-sections (1) and (2) and first part of sub-section (3) thereof are identical. However, proviso appearing below sub-section (3) of Section 47-A, as applicable to the State of Haryana, is not incorporated in the Punjab amendment and Explanation appearing below sub-section (4) of Section 47-A (as applicable to the State of Punjab) is not embodied in the provision applicable to the State of Haryana and as the decision of the Division Bench in Chamkaur Singh's case (supra) is based on the interpretation of the Explanation appearing below sub-section (1) of Section 47-A (as applicable to the State of Punjab), the same cannot be relied upon for granting a declaration that any reference to or reliance upon the market value determined by the Collector would ipso facto invalidate the order of reference made by the Sub-Registrar u/s 47-A(1) of the 1899 Act (as applicable to the State of Haryana).

12. We are farther of the view that in the absence of a provision like the one contained in the Explanation appended to Section 47-A(4) (as applicable to the State of Punjab), the guide-lines issued by the District Collector for determination of the market value of the properties situated in the concerned district in the State of Haryana cannot be regarded as per se violative of the main section. Moreover, in view of the observations made by the Supreme Court in Mahabir Singh's case (supra) that the guide-lines provided by the State Government could serve as a prima facie material available before the Registering Authority to alert him regarding the value of the land are sufficient to negate the argument that a mere mention of the market value determined by the Collector would invalidate the order of reference.

13. The question as to whether the Registering Authority has abdicated its discretion or has acted under the dictates" of the guide-lines issued by the Collector would depend on the facts of each case and no hard and fast rule or strait-jacket formula can be laid down in this regard. So far as these cases are concerned, we are convinced that the reference made by respondent No. 3 cannot be held as vitiated on the ground that he had acted under the dictates of the guide-lines issued by respondent No. 2 because the impugned orders do not contain any reference to those guide-lines.

14. The next argument of Shri Aggarwal is that the decision of respondent No. 3 to impound the documents and to make reference u/s 47-A(1) should be nullified on the ground of violation of the principles of natural justice. In support of this argument, he relied on the decision of the Division Bench in Chamkaur Singh's case (supra). We have considered the submission of the learned counsel but have not felt impressed. A reading of the language of sub-sections (1) and (2) of Section 47-A of the 1899 Act not only brings out the contrast between the nature of the powers exercisable by the Sub-Registrar and the Collector, but also gives

an indication of the legislative intendment to exclude the principles of natural justice at the stage of reference. The use of the expression "has reason to believe" in sub-sections (1) and the use of the expression "reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by the rules under this Act" in sub-section (2) respectively clearly show that before making reference under subsection (1) of Section 47-A, the Registering Officer is not required to afford opportunity of hearing to the party and it is sufficient that he should, on a consideration of the material available before him, feel satisfied that the value of the property or the consideration has not been truly set forth in the instrument. As against this, in sub-section (2) of Section 47-A, the Collector can make determination of the value or consideration only after giving the parties a reasonable opportunity of being heard and after holding an appropriate enquiry in accordance with the rules framed under the 1899 Act. This means that keeping in view the nature of power exercisable by the Registering Officer at the stage of tentative determination of the price u/s 47-A(1), the Legislature has deliberately avoided the necessity of an enquiry similar to the one required to be made by the Collector before making final determination of the value of the property u/s 47-A(2). This, in our opinion, is sufficient to draw an inference that the applicability of the principles of natural justice like the rule of audi alteram partem is excluded at the stage of reference and order made u/s 47-A(1) cannot be quashed on the ground of denial of opportunity of hearing. The observation made by the Division Bench in Chamkaur Singh's case (supra) suggesting that the decision of the Registering Officer to make reference is quasi-judicial in nature, in our opinion, be treated as per incuriam because the Division Bench had failed to notice the stark difference in the language of sub-sections (1) and (2) of Section 47-A. Moreover, in Mahabir Singh's case (supra), their Lordships of the Supreme Court have not approved the observations of the Division Bench and have used the expression "quasi-judicial function." Therefore, we are unable to agree with the learned counsel for the petitioners that the orders of reference should be quashed on the ground of violation of the rule of audi alteram partem.

15. The question which remains to be considered is whether the orders of reference deserve to be quashed on the ground of non-application of mind and non-compliance of the conditions embodied in Section 47-A(I). A look at one of such orders (which has been placed as Annexure P.6 on the record of C.W.P. No. 5406 of 1999) shows that after registering the document, respondent No. 3 made reference to respondent No. 2 by making the following observations :

"The prevailing rate of this area is not less than Rs. 4,00,000/- per acre and according to this, the price of the land comes to Rs. 6,60,000/- and according to which the above sale deed has been registered with a less value of Rs. 3,30,000/-."

On the face of it, the above quoted observations do not give any indication of the material which was considered by respondent No. 3 for forming an opinion that

the sale deeds had been under-valued. The respondents have tried to supply this omission by making a statement in the counter affidavit that respondent No. 3 had made enquiries regarding the market value of the land in the area. If it could be proved that respondent No. 3 did make enquiries about the market value of the land in the area, we may have upheld the orders of reference notwithstanding the fact that mention of such enquiries has not been made therein. However, as the respondents have not produced any document to substantiate the assertion made in the written statements, we are inclined to agree with the learned counsel for the petitioners that the orders of reference were passed without application of mind and they are liable to be quashed being ultra vires to Section 47-A(1) of the 1899 Act (as applicable to the State of Haryana).

16. For the reasons mentioned above, the writ petitions are allowed. Orders of reference passed by respondent No. 3 are declared illegal with the direction that within 2 months of the receipt of copy of this order, he shall pass fresh order after considering the material relevant for forming an opinion that the price mentioned in the sale deeds is less than the market value of such land. However, it is made clear that any observation made in this order shall not be construed as an impediment in one making of fresh order of reference. We further direct that the sale deeds shall not be released till the passing of fresh order by respondent No. 3 and if he decides to make reference u/s 47-A(1) of the 1899 Act, then the instruments shall not be released till the final determination is made by respondent No. 2.

17. Petitions allowed.