(2000) 07 CAL CK 0027

In the Calcutta High Court

Case No : Writ Petition No. 21780 of 1999 with CAN No. 5667 of 2000

Nitya Hari Kundu and Others — APPELLANT

Vs

State of W.B. and Others — RESPONDENT

Date of Decision : 27-07-2000

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : AIR 2001 Cal 76 : 105 CWN 1061

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Maharaj Sinha, Shyamal Sarka and Ramanand Agarwalla, for the Appellant;Amal Kumar Das and Wash Ali Mondal, for the Respondent

Judgement

Amitava Lala, J.—This writ petition is arising out of an order passed by the Collector of Calcutta on 31st August, 1999 making a valuation of the property to the tune of Rs. 18,47,200/-. Such order was passed in respect of the Adj Case No. 14 (Under Section 47A) of 1999-2000.

It is apparent that the property relates to a Trust Estate and valuation of the Trust Estate is made by the High Court itself. Such order making valuation by the Court dated 22nd June, 1998 is incorporated hereunder :

"Present The Hon''ble Mr. Justice M.H.S. Ansari, June 2, 1998.

The petitioner herein are the plaintiff Nos. 1, 2 and 3 represented by their next friend and sebait defendant No. 3. The petitioners seek leave to execute the deed of conveyance in respect of the rear portion of the premises being 24 Bethune row, Calcutta trust estate for Rs. 6,84,375/- in favour of the tenants Nityananda Kundu and Nitya Hari Kundu. It is stated that the property in question is situated in the rear portion and is in occupation of several tenants. Each of them is paying small monthly rentals total of which comes to about Rs. 2123/- per month. In view of the same no outsider are inclined to purchase the property unless they are offered vacant possession which according to the petitioners is not possible.

In the circumstances leave is granted to the petitioners to accept the offer of the tenants, Shri Nityananda Kundu and Shri Nitya Hari Kundu and to execute deed of conveyance in respect of the rear portion of 24 Bethune Row, Calcutta trust estate for the sum of Rs. 6,84,375/- and the sale proceeds be applied in terms of the objects of the Trust and in accordance with the provisions of the Trust Deed for the purpose of the seva puja of the Deities. The petitioners will be entitled to reimburse the costs of the application from out of the sale consideration.

All parties will act on a xeroxed singed copy of this dictated order on the usual undertaking."

2. In spite of the same the Registrar refused to value the property on the basis of Court valuation. A writ petition was moved before this Court on the earlier occasion being W.P. No. 2120 (W) of 1998 whereunder the authority filed an affidavit affirmed on 27th October, 1998 stating thereunder as follows :

"It is well known that in cases of granting permission in sale under the Trust Act, the Hon''ble Court takes various factors into consideration, before passing an order. Therefore, it is correct to say that Court decision permitting a Trust Estate to sale a Trust property for a particular consideration, must necessarily be accepted as a determination of market value of the property under the Stamp Rules."

3. Therefore, it is an admitted position that the authority accepted the decision of the Court. In deciding the question a single Bench of this Court, by an order dated 23rd March, 1999 directed the Collector of Calcutta to adjudicate upon the question of valuation of the property after giving hearing to the petitioner and by passing a reasoned order thereon. It was made clear by the single Bench that it had not gone into the merits of the case. All the points taken by the petitioner and the respondents are kept open which are to be adjudicated upon by the Collector of Calcutta.

4. Surprisingly the Collector of Calcutta only referred the order of the Court as passed by the single Bench in which direction was made for adjudication but made the value in its own way without giving any credence what so ever in respect of the valuation as already made by this Court under an order dated 22nd June, 1998. It is also surprising that such valuation was made admittedly u/s 47A of the Indian Stamp Act, 1899 with its upto date amendment.

5. It appears from the relevant portion of the Section 47A of the Indian Stamp Act, 1899 that whether the registering officer appointed under the Registration Act, of 1908, have, while registering any instrument of conveyance, exchange, gift, partition or settlement, reason to believe, that the market value of the property which is subject matter of such instrument has not been truly set forth in the instrument, he may, notwithstanding the contrary provision in Section 35 in so far as it relates to registration, register such instrument provisionally subject to determination of market value under Sub-section (2), and, after registering such instrument, refer the matter to such authority as may be

prescribed for determination of the market value of such property and the proper duty payable thereon.

6. Therefore, two aspect are to be clarified hereunder "reason to believe" and "truly set forth". Therefore, unless and until there is any reason to believe which is not truly set forth, the authority concerned cannot take appropriate steps u/s 47A about registering the instrument of conveyance etc.

7. It is crystal clear that there is no reason to believe that an under-valuation was made which is not truly set forth because such valuation is part and parcel of the order of the Court. Therefore, Section 47A of the Act is inapplicable herein. In this respect, when the adjudication is to be made by the Collector pursuant to an order of the Court, he has to make it in the light of the valuation so made by the Court. It appears that the adjudication was, in effect, made u/s 47A, but not under the true prospective of the order of the Court. As such adjudication order impugned herein in respect of the property or properties cannot be held sustainable.

8. Both the parties relied upon two important judgments of this Court while one is Special Bench judgment the other is single Bench judgment. In a Special Bench Judgment reported in (2000) 1 C W.N. 166 (Birendra Nath Manna v. State of West Bengal) it was held that the Registering Authority, u/s 47A, has to apply his mind before directing to pay ''deficit stamp duty'' only if he has reasons to believe that the consideration amount does not reflect the true value of the property.

9. Therefore can it said that after Court''s valuation there is a reason to disbelieve the same; It is apparent from the order of the Court making valuation that every nook and corner was taken into consideration to come to a particular figure. Therefore the ratio of Special Bench judgment in this respect has a supportive value in favour of the petitioners.

10. The single Bench judgment as reported in Anglo American Direct Tea Trading Co. Ltd. and Another Vs. State of Madras and Others, as referred in the earlier judgment speak that the scheme of Section 47A of the Act is to deal with those cases where private parties by arrangement deliberately undervalue the property which is the subject matter of transfer with a view to defraud the Government of legitimate revenue by way of stamp duty.

11. Can it be said even thereafter that the Section 47A was invoked herein properly ? My answer is ''No''.

12. The other part is to be considered in this respect which is about West Bengal Stamp (Prevention of Under-valuation of Instruments) Rules, 1994. Under the Rule 3 of the same the manner of determination of market value and furnish all particulars relating to any property has been described. It appears therefrom that the same is to be determined on the basis of the highest price for which sale of any land, or any land with building, of similar nature and area, in a

comparable locality, has been negotiated and settled during the five consecutive years immediately preceding the date of execution of any instrument set forth such market value or on the basis of any Court decision information, report or record that may be available from any Court or any officer or authority or local body, or on the basis of consideration stated in such instrument for the sale of such land or land with building whichever is greater.

13. Therefore, in interpreting the statutes if I make harmonious construction of Section 47A read with the Rules made thereunder, it will be read that valuation made by the Court cannot be said to be done not truly set forth and there is any reason to disbelieve, otherwise. If any authority does so it will tantamount to exceeding the jurisdiction made under the law. The authority concerned cannot sit on appeal over a Court decision unless appeal is preferred from such order which is absent herein.

14. Court may not have its own machinery but Court has its own mechanism to apply in every sphere of life to come to an appropriate conclusion which is well accepted. It is also admitted by the respondents by filing affidavit-in-opposition on earlier occasion that it is correct to say that a Court decision permitting a trust estate to sell a trust property for a particular consideration, most necessarily be accepted as a determination of the market value of the property in the stamp rules.

15. This being the position I do not think that the impugned order as passed by the Collector is sustainable at all and, therefore, the same is set aside. I hold that the valuation as made under the order of the Court dated 2nd June, 1988 in accepted as appropriate market value and registering authority is directed to complete the formalities of registering the deed of conveyance finally on the basis of such valuation as made by the Court within two weeks from the date of communication of this order.

16. Thus, this writ petition is disposed of. There will be no order as to costs.

17. In view of the disposal of such writ petition, no further order is needed to be passed in respect of the connected interlocutory application being CAN No. 5667 of 2000 and the same is treated as disposed of in view of the order.

18. Prayer for stay of operation of this order is made, considered and refused.

19. Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocates for the parties within 7 days from the date of filing the requisites.