(2010) 02 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 2018 of 2009

Parshotam Das — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Stamp Act, 1899 — Section 47A, 47A(2)
Stamp Rules — Rule 3A

Citation : AIR 2010 P&H 189

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The Petitioner is in challenge against a determination of value by the Collector u/s 47-A of the Indian Stamp Act and the dismissal of the appeal filed by him. The Petitioner had obtained a property in public auction from the Improvement Trust at a sale held on 08.12.2001 for Rs. 3,19,000/- and the document had been presented for registration on 04.09.2003. The sale had been registered at the rate at which the property had been sold in public auction. The reference had been made by the Registering Officer subsequently on the ground that an audit objection had been taken that the value of the property was more and hence an adjudication u/s 47-A of the Indian Stamp Act.

2. The Collector has in his order dated 20.01.2008 has done no more than stating that the registration was sought after a lapse of two years and that, therefore, the Appellant was required to pay revenue at the "prevailing price of the property" at the time of registration and not on the auction amount as alleged. In a case where an adjudication is sought before the Collector, the Collector is bound to determine the market value and cannot merely reject the appeal by a sweeping statement that the valuation must be as what was at the time of registration. If the Rules would allow for such a consideration of having the Collector''s value or the circle value, it should be understood that it is

relevant for a Registering Officer to make a reference u/s 47-A if there is a disparity between the Collector''s valuation and the value as stated in the sale deed. What would be the basis for a reference to the Collector, cannot also be the basis for the Collector himself to conclude his enquiry. If the Collector''s value should be taken to be the end all for determination of value, the expression adjudication before the Collector u/s 47-A will itself become meaningless. An adjudication is a judicial process when evidence has to be collected to determine what a willing buyer is prepared to pay to a willing seller. It is a matching of these two conflicting interests that determines the market price. Indeed Section 47-A (2) itself sets out how the Collector shall determine the value. The explanation to Section 47-A of the Stamp Act states as follows:

For the purpose of this section, value of any property shall be estimated to be the price which in the opinion of the Collector 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.

The explanation, therefore, requires that the Collector''s opinion shall be rooted on his assessment of what the property would have fetched if sold in the open market. At a time when an adjudication was sought before him after a reference from the Registering Officer, it would not suffice if the Collector merely stated that value on the date of registration alone would prevail. If such a value was higher than what was stated at the public auction, which in this case had been held on 08.12.2001, the Collector ought to rely upon such proof which would show that the price, which the property would have fetched on the date of registration was higher and still a higher duty was liable to be paid. The mistake arises only by the fact that what is relevant for a Registering Officer to make a reference by virtue of Rule 3-A of the Punjab State amendment is also understood by the Collector as conclusive for his determination. In my view, there is a definite dichotomy between what has to be determined in an adjudication u/s 47-A(2) of the Indian Stamp Act and when a reference would be made by a Registering Officer for invoking Rule 3-A. This difference is missed and therefore, a wrong order has come to be passed.

3. The orders which are challenged in the writ petition have to be quashed and the writ petition is allowed. The valuation, which was stated in the document for which registration had also been made shall stand. There shall be no direction as to costs.

