

(1991) 10 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petitions No's. 10599, 10600 and 10602 to 10611 of 1991

Ponnavolu Sasidar

APPELLANT

Vs

Sub-Registrar Hayatnagar, and others

RESPONDENT

Date of Decision : 09-10-1991

Acts Referred:

Andhra Pradesh Stamp (Prevention of Under Valuation of Instruments) Rules, 1975 —
Rule 3, 3(3), 3(4), 4, 5
Criminal Procedure Code, 1973 (CrPC) — Section 464
Income Tax Act, 1961 — Section 147
Stamp Act, 1899 — Section 47A

Citation : AIR 1992 AP 198 : (1992) 1 ALT 49

Hon'ble Judges : P. Venkataramareddi, J

Bench : Single Bench

Advocate : Mr. E. Manohar, for the Appellant; Govt. Pleader for Revenue, for the Respondent

Judgement

1. The action of the Sub- Registrar, Hayatnagar, Rangareddy District the 1st respondent in not registering the sale-deeds dated 1-8-1991 executed in favour of the petitioners by the General Power of Attorney holders of the owners of the land and in keeping the registrations pending on the ground that the documents do not bear sufficient stamp duty, is being challenged in this batch of writ petitions.

2. The subject-matter of conveyance in the sale-deeds in these writ petitions is parcels of vacant land ranging between two and half acres and three acres situate in Survey Nos. 8 and 9 of Mansoorabad village, Saroornagar Mandal of Rangareddy District. In the documents the land sought to be transferred is described as agricultural land. The sale price mentioned in the document is Rs.65,000/- per acre. According to the petitioners, when the sale-deeds were presented for registration on 1-8-1991, the 1st respondent refused to register the same and informed the petitioners that as per the extant instructions, the sale-deeds can be registered only if the property is valued as house sites at Rs.

120/- per square yard. The documents were treated as pending documents. The petitioners have, therefore filed the writ petitions.

3. It is the case of the petitioners that in the revenue records, the land in question is classified as dry lands and dry crops and fodder grass are being grown on the lands. The petitioners say that there are two wells irrigating the lands. According to the petitioners, lands are quite far away from the village and there are no residential houses in and around S. Nos. 8 and 9. It is stated that the land has been reserved for "conservation use" by the Hyderabad Urban Development Authority.

4. By A. P. Act 22 of 1971, Section 47 was inserted in the Indian Stamp Act and this amendment was brought into effect from 16-8-1975. Section 47-A was further amended by A. P. Act 17 of 1986. Section 47-A provides that if the registering officer has reason to believe that the market value of the property which is the subject-matter of any instrument of conveyance, gift, partition, etc., 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. Though the vires of Section 47-A has also been challenged, the learned Counsel for the petitioners has stated that for the time being he does not propose to advance any argument on the question of vires and that the said question may be left open. His main contention is that the 1st respondent without applying his mind to the relevant facts and without exercising his independent discretion in the matter, is insisting upon the stamp duty to be paid by arbitrarily adopting the valuation of Rupees 120/- per square yard applicable to the house sites in the locality. The learned Counsel submits that the registering officer has not made any enquiry to satisfy himself about the nature and value of the land but he is presumably following administrative instructions issued by the superior authorities in this behalf.

5. I have given notice to the learned Government Pleader for Revenue and called for the record of the 1st respondent's office. A counter-affidavit has been filed by the 1st respondent.

6. The learned Government Pleader has drawn my attention to the judgment of Jeevan Reddy, J. in Sagar Cements Ltd. v. State of A. P. 1989 (3) ALT 677 and submitted that the 1st respondent sent the twelve pending documents to the District Registrar, Ranga-reddy District who is designated as Collector under the Indian Stamp Act for the purpose of determination of duty under S.47-A inasmuch as he felt that having regard to the value in the "basic value register", the documents are grossly under-valued. The learned Government Pleader submits that according to the judgment of this Court in the aforementioned case, the basic value register can be a relevant guide and the 1st respondent was independently satisfied on the basis of the entries in the basic value register that the value has not been truly set forth in the instrument. He has drawn my attention to the pro forma submitted to the District Registrar under Rule 3(4) of the A.P. Stamp (Prevention of Undervaluation of Instruments) Rules, 1975.

Column 8 says the "nature, market value or consideration and the stamp duty payable thereon in the opinion of the registering officer". In column 10, the registering officer has to submit his remarks as to how the details in Column 8 are arrived at. Under this Column, the registering officer has stated that "as per M.V. Rs. 120/- per sq. yard". The abbreviation "M.V." obviously denotes "Market Value". The learned Government Pleader then invited my attention to the averments in the counter. In the counter, it is stated that in the year 1989-90, the lands in S. Nos. 7 and 9 of Mansoorabad village were sold as house sites and the value mentioned in the sale-deeds was Rs. 80/- per sq. yard. It is stated that as per the basic value register, the lands in S. Nos. 8 and 9 were being treated as house sites from the year 1975 onwards. Between 1975 and 1980, the value of the lands was noted in the register as Rs. 2/- per sq. yard and thereafter up to 1987, the value was noted as Rs. 15/- per sq. yard. During the years 1988 to 1990, the value was increased to Rs.80/- per sq. yard and from 16-8-1990 onwards, the value of the lands in the said S. Nos. was further increased to Rs. 120/- per sq. yard. It "is then explained as to how the basic value register is prepared. The 1st respondent states that "after taking into ,consideration all the above material available in my office I was satisfied that the petitioners have not truly set forth the market value of the lands in the sale-deeds presented for registra-tion"and he therefore referred the documents u/s 47-A to the Collector without registering the documents. With reference to the enquiry under Rule 3(3), the 1st respondent states in the counter that it is only an enabling provision and he is not bound to conduct an enquiry in all cases. The learned Government Pleader submits that as the 1st respondent had enough material before him to form the belief that the documents were under-valued, he need not have conducted any enquiry before referring the documents to the Collector.

7. In Sagar Cements case, Jeevan Reddy, J. (as he then was) held that Section 47-A does not preclude the Government or head of the department from laying down a policy or from issuing guidelines for the guidance of the registering authorities, so long as such policy and/or guidelines do not run counter to the provisions of the statute. The learned Judge observed:

"Where the particular power or discretion is vested in an authority, and where the statute does not prescribe the manner in which, or the material on the basis of which, or the procedure in accordance with which the belief/ satisfaction is to be formed, the Government or the Head of the Department may, in the interest of ensuring uniformity of treatment and elimination of arbitrariness and undesir- abje practices, issue such guidelines, applying which the authority has to form the requisite belief."

The learned Judge then observed that the power conferred upon the registering authority is not judicial nor quasi-judicial in nature. The belief which ought to be a reasonable belief, is still to be formed by a process of subjective satisfaction. After making these observations, the learned Judge proceeded to say that the values stated in the basic value register lacks statutory sanction and cannot

therefore bind the registering officer. The learned Judge held that the instructions issued by the Government and the Inspector General of Stamps to the registering officers to abide by the values stated in the basic value register and not to register any document which does not accord with the value stated in the register have no sanction of law and cannot be justified on the principles referred to earlier. According to the learned Judge, these instructions are not mere guidelines issued to guide and help the registering officers in forming the requisite opinion but they are more in the nature of a command leaving no room for discretion. The learned Judge, therefore, held that the values stated in the register cannot be treated as binding upon the registering officers or upon the parties who present the documents. At the same time, the learned Judge observed that "at the most, it can be treated as a guideline, a relevant material, by the registering officers". The learned Judge also held that S. 47-A is meant to meet cases of "undervaluation" and as pointed out by the Division Bench of the Madras High Court in *The State of Tamil Nadu Vs. T.N. Chandrasekharan*, , normally, the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion. In other words, according to the learned Judge, it is not enough to show that the consideration stated in the instrument of sale is less than the prevailing market value but it must be further shown that it is a case of under-valuation. The learned Judge then observed that no machinery or procedure is prescribed for the purpose of determination of market value of the properties by the registering officer. The learned Judge pointed out that in contrast with the role played by the registering officer under S.47-A, the Income Tax Officer or Wealth-tax Officer has to make an enquiry of his own in accordance with the prescribed procedure for the purpose of arriving at the conclusion whether the true consideration has been set out in a deed. The learned Judge concluded :

"I hold that ordinarily the registering officer shall accept the consideration stated in the document as representing the true market value, unless there is clear material before him to hold that the parties to the document have deliberately under-stated the consideration with a view to avoid stamp duty. In this connection, he may also be entitled to look into the values stated in the Basic Value Register for that purpose. Having regard to the generalized nature of the Basic Value Register, he may, as a working rule, treat a document as under-valued if the consideration stated therein is less than 50% of the value stated in the Basic Value Register as in force on 30-6-1989. If the consideration stated in the document is equal to 50% of the value stated in the Basic Value Register (as on 30-6-1989), or more, he shall register the same forthwith. Similarly, where the Basic Value Register (as on 30-6-1989) states two or three different values depending upon the purpose for which the land is being purchased, as has happened in this case, he shall ignore the higher value and shall adopt the lowest value as the value prescribed in the Basic Value Register. This position shall obtain till a statutory basis is provided to the Basic Value Register."

It may at once be seen that the judgment of Jeevan Reddy, J. which has been relied upon by the learned Government Pleader do not support him in all respects. In fact, as pointed out hereinafter, even the directions contained in the concluding part of the judgment do not apply in all fours to the facts of the case on hand. It is also pertinent to notice that the attention of the learned Judge was not drawn to the rules framed under the Indian Stamp Act, namely, A. P. Stamp (Prevention of Under-valuation of Instruments) Rules, 1975. I am told that the judgment has been suspended by a Division Bench of this Court and the writ appeal filed by the State is pending. Having regard to these considerations, I would prefer to decide the issue posed for my decision independent of the said judgment, without basically differing from the principles laid down in the judgment.

8. It must be noted that the foundation for exercise of jurisdiction under S. 47-A of the Act is that the registering officer should have "reason to believe" that the market value of the property has not been truly set forth in the instrument presented for registration. He will then refer the matter to the Collector for determination of market value and proper duty payable. The crucial expression is "reason to believe" -- which is a well known legal expression used to limit or subdue the otherwise vast and extensive power or discretion confided to a statutory authority. It may perhaps be relevant to refer to a few decisions of the Supreme Court which have considered the import of this expression.

9. In *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, it was observed that the words "reason to believe" do not lead to the construction that the process of entertaining "reason to believe" is an altogether subjective process not leading itself even to a limited scrutiny by the Court that such "reason to believe" was not formed on relevant facts or within the limits of the statute -- (vide para 63). Referring to the Privy Council's decision in *Nakkuda Ali v. Nayaratna*, 1951 AC 66, wherein the expression "reasonable cause to believe" was construed by the Privy Council, the Supreme Court observed that though the belief on the part of the concerned authority was subjective, existence of reasonable grounds on which the belief could be founded was objective and a limitation on his power (vide para 62). The Privy Council in *Nakkuda Ali* case observed "after all, the words such as these are commonly found when a legislature or law making authority confers powers on a Minister or official. However, read, they must be intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power." In *Dr. Jai Shanker (Lunatic) through Vijay Shanker Brother Guardian Vs. State of Himachal Pradesh*, , the Supreme Court observed that the words "reason to believe" in S. 464 of Criminal Procedure Code mean a belief which a reasonable person would entertain on the facts before him. In *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, the Supreme Court was construing the expression "reason to believe" under S. 147 of the Income Tax Act. *Khanna, J.* observed thus (at page 1758 of AIR):

"The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The reason must be held in good faith, it cannot be merely a pretence. It is open to the Court to examine whether the reasons for the formation of belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a Court of law."

It was further observed as para 11:

"As stated earlier, the reasons for the formation of the belief must have a rational connection with relevant bearing on the formation of the belief. The rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the I.T.O. and the formation of his belief that there has been escapement of the income of the assessee.....

It is no doubt true that the Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the I.T.O..... At the same time, we have to bear in mind that it is not any and every material, howsoever vague and indefinite of distant, remote and far-fetched which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment."

The learned Judge then stressed that the words of Statute are "reason to believe" and not "reason to suspect."

10. Going by the principles enunciated above, whether we call the process of formation of belief as subjective or "not altogether subjective" as observed by the Supreme Court in Lakhmani's case, the objective element has been brought to bear upon this process by employing the word "reason". Existence of a reason and its relevancy and nexus to the formation of belief are the fundamental postulates for the exercise of power such as the one contained in S. 47-A of the Stamp Act. It connotes that there must be material before the concerned authority to form the requisite belief. If the belief is entertained not on the basis of material on record but on mere suspicion, gossip or according to the whim of the statutory authority, that is no reason at all in the eye of the law. So also the material which is in possession of the statutory authority must be relevant material having a direct bearing on the belief that has to be formed. As pointed out by P. A. Choudary, J. in R. Dharma Rao v. Joint Sub-Registrar, Warangal (1987) 2 LS 283, "arbitrary or fanciful belief cannot be said to be a belief that falls within the scope of the word "reasonable"." The expression "reason to believe" employed in S. 47-A has been advisedly used by the Legislature in order to prevent arbitrary reference to the Collector without any material before the registering authority. The employment of the words "reason to believe" serves as an important check or limitation on the exercise of the power by the registering authority -- whether the registering authority exercises administrative or quasi-

judicial function.

11. It is with the above background that we have to see the Rules framed under the Stamp Act entitled "Andhra Pradesh Stamp (Prevention of Under-Valuation of Instruments) Rules, 1975." The crucial provision is sub-rule (3) of R. 3 which reads as follows:

"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."

Sub-rule (4) says that if the registering officer is of the opinion that the market value of the property is not correctly furnished, he shall keep the, document pending and without delay refer the matter to the Collector with details of his assessment of the market value arrived at by him in Form No. 1. Rule 4 deals with the procedure to be followed by the Collector on receipt of a reference from the registering authority. Rule 5 lays down the principles for determination of the market value or consideration. The rule sets out various criteria to be applied as far as possible-- (a) in the case of lands, (b) in the case of house-sites and (c) in the case of buildings. The other rules are not relevant for our purpose,

12. Sub-rule (3) of Rule 3 is complementary to S. 47-A and is meant to be a step-in-aid for reaching the satisfaction whether the market value or consideration has been correctly furnished in the instrument. It provides for an enquiry to be made for this purpose. The registering officer is expressly empowered to call for any relevant information from the parties and he can also call for and examine any records kept with a public officer. Of course, such enquiry is, in the very nature of things, a summary enquiry. But the enquiry facilitates the Registering Officer to form the belief or to reach the satisfaction on the crucial question whether the value or consideration of the property sought to be registered has been correctly stated. Whenever the Registering Officer entertains a doubt about the correctness of the value or consideration stated in the document, it is incumbent on the part of the registering authority to make an enquiry either by examining the parties or by gathering information from other sources including the official or public record. Of course, if any material is gathered from official records or otherwise, it has to be put to the assessee in the course of enquiry. While making an enquiry and reaching the satisfaction under S. 47-A, the registering officer is expected to take into account the factors set out in Rule 5. As pointed out by Jeevan Reddy, J., it may be that the Registering Officer is also entitled to look into the basic value register which is an official record and which may serve as a relevant guideline to the registering officer. At the same time, the entries in the basic value register are not conclusive and binding on the Registering Officer and this legal position is recognised by Jeevan Reddy, J. also. In the course of enquiry, 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. The Registering Officer cannot take the stand that he would look into the basic value register and nothing more and form the belief on the basis of that register alone, more so when the basic value register has no statutory basis. The criteria laid down in R. 3, coupled with the material disclosed in the course of enquiry under sub-rule (3) serve as guiding factors to the Registering Officer acting under S. 47-A. The basic value register is another relevant material available to him, though the entries therein cannot fetter the independent discretion of the Registering Officer. On the basis of enquiry made under sub-rule (3) of R.3, there may be good reasons to deviate from the figures mentioned in the basic value register. That a Registering Officer has to make his own assessment of market value is also emphasised by sub-rule (4) of R.3.

13. As already noticed, the learned Government Pleader contends that the enquiry under R. 3(3) is not obligatory and the said rule is only an enabling provision. The Government Pleader relies on the expression "may" and contends that holding of the enquiry is left to the discretion of the Registering Officer. I am unable to agree with this submission. It is well settled that the expression "may" can be construed as "shall" and the mere fact that the word "may" is used does not always lead to the inference that the discretion is left to the authority concerned to act or not to act considering the purpose which the sub-rule is intended to achieve, the scheme of Rules 3,4 and 5 and the undesirable consequences that might follow by holding that the enquiry is not obligatory in case of a dispute, I am inclined to think that the expression "may" occurring in sub-rule (3) of R. 3 confers on the Registering Officer a power coupled with the duty. If it is construed as merely an enabling provision as contended by the learned Government Pleader, it is left to the sweet will and pleasure of the Registering Officer whether to conduct an enquiry or not. Moreover, such an interpretation will stultify the objective of the rule as noticed earlier. Accepting the argument of the learned Government Pleader would mean that wherever there is a basic value register, " the question of holding an enquiry under R. 3 will not arise and in a case of variation between the value noted in the register and the sale deed, the Registering Officer will have no option but to refer the document to the Collector under S.47-A. But that will be ignoring the purpose and scheme of the Rules and amounts to placing the basic value register on a higher pedestal than what it deserves. I therefore, reject the argument of the learned Government Pleader. In view of the foregoing discussion, I am of the view that an enquiry under sub-rule (3) of R. 3 of the A.P. Stamp (Prevention of Under-valuation of Instruments) Rules 1975 is not only mandatory but it also facilitates correct assessment of the value in consonance with the principles of natural justice.

14. Having noticed the legal position thus, let us now turn back to the facts of the present cases. There can be no denial of the fact that in the instant case, the 1st respondent adopted the market value at Rs. 120/- per square yard based

upon the entries in the basic value register. It is stated in the counter that the lands in S. Nos. 8 and 9 of Mansoorabad village were being treated as house-sites from the year 1975 onwards. However, this is not borne out by the actual entries in the register nor a mention is made about this fact in the pro forma submitted to the Collector under Rule 4. I called for the original registers. It is only in the latest register, the land in S. Nos. 8 and 9 is shown as house-sites. In the register of the previous year, the classification is made as dry land; however, the value per sq. yard is specified. It is only by implication we have to take it that from the year 1988-89 onwards, the land in question was treated by the officials of the Registration Department as house-sites. It may be that small extents of land were being registered even earlier as house sites on square yard basis. But such isolated transactions of small extents may not reflect the correct position. As already noticed, it is the case of the petitioners that the land in question is essentially an agricultural land being put to agricultural use, far away from the residential locality. It is stated that the land has been reserved for conservation use by the Hyderabad Urban Development Authority. The documents do not show that the land was purchased for the purpose of laying out house sites. There is also the further fact that the total extent of land conveyed under the various sale deeds comes to about Ac. 32-00. Even if a part of the said extent can be valued as house site having regard to its potentiality and location, it cannot be taken for granted that the entire extent has a similar characteristic and the entire block should be treated as house site. Thus, there is a scope for genuine doubt or controversy on the true nature of the land notwithstanding what has been mentioned in the basic value register. In such a situation, it is incumbent on the part of the registering authority to form a belief as envisaged by S.47-A of the Stamp Act only after holding an enquiry in whatever form it may be, under sub-rule (3) of R. 3. As this has not been done and the documents have been straightway referred to" the Collector, I declare the impugned action of the 1st respondent as illegal and contrary to law. Of course, I am not expressing any view on the merits of the petitioners" contention that the land in question shall be treated as agricultural land only and evaluated on that basis. It is for the Registering Officer to form the requisite opinion or belief after holding an enquiry in which the petitioners shall be given an opportunity to put forward their case. If after such enquiry the Registering Officer forms the reasonable belief that the consideration amount stated in the document is prima facie not in conformity with the market value of the land, then only a reference under S. 47-A can be made to the Collector.

15. The rough and ready working principle indicated by Jeevan Reddy, J. in Sagar Cements" case may not apply in all fours to a case like the present one where the nature and " classification of the land is very much in dispute.

16. The learned Government Pleader submits that the documents have already been referred to the Collector under S.47-A on 13-8-1991 i.e., a day prior to the filing of the writ petitions and that the petitioners will have an opportunity before the Collector to question the valuation arrived at by the 1st respondent and that

if they are aggrieved by the order of the Collector, they can seek reference to the Chief Controlling Revenue Authority under the provisions of Stamp Act. However, in view of my conclusion that the 1st respondent failed in his mandatory duty of holding an enquiry before forming a reasonable belief that the document has been undervalued - which is a condition precedent for making a reference under S.47-A to the Collector and the proceedings before the Collector have not yet been initiated, it is not fair and proper to relegate the petitioners in the entire gamut of proceedings under the Indian Stamp Act for the redressal of their grievance. To hold it otherwise, would amount to deprivation of a valuable opportunity to the petitioners to participate in the enquiry which the 1st respondent is obliged to hold. I therefore, have no hesitation in rejecting the argument of the-learned Government Pleader.

17. In view of the above discussion, I direct the 1st respondent to reconsider the question of valuation and form the necessary opinion afresh after holding an enquiry under Rule 3(3) keeping in view the observations in this judgment. It is only after such reconsideration, if the 1st respondent feels that the document shall be referred to the Collector under S.47-A of the Stamp Act, he shall make a reference afresh to the Collector. The reference made by his letter dated 13-8-1991 to the Collector is declared as illegal. The writ petitions are disposed of accordingly. No costs. Advocate's fee Rs. 100/- in each.

18. Order accordingly.