
(2003) 09 MP CK 0047

In the Madhya Pradesh High Court

Case No : Writ Petition No. 597 of 2001 and W.P. No. 4683 of 99

Pradeep Chouksey and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 45
Stamp Act, 1899 — Section 2(10), 2(21), 3

Citation : (2004) 1 MPHT 131 : (2004) 3 MPLJ 204

Hon'ble Judges : Dipak Misra, J; A.K. Shrivastava, J

Bench : Division Bench

Advocate : Ravish Agrawal and J.P. Sanghi, Ajay Ojha and N.K. Upadhyay, for the Appellant; S.K. Yadan, Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Dipak Misra, J.

As in both the writ petitions challenge is to the constitutional validity of certain provisions of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act") they were heard analogously and are disposed of by this common order. For the sake of clarity and convenience we shall advert to the facts in W.P. No. 597/2001.

The petitioners, three in number, have put forth that the Act contains provisions making certain instruments chargeable to duty, the manner as to payment of duty, adjudication as to proper stamps, treatment of instruments not duly stamped controlled by different revenue authorities and the schedules including Schedule I-A appended to the Act describing the origin of stamp duty and rates on different instruments. A reference has been made to Section 2(10) of the Act which defines "conveyance" to include conveyance on sale and any instrument by which property whether movable or immovable is transferred inter vivos and which is not otherwise specifically provided for in the Schedule I or Schedule I-A. Section 19(a) has also been reproduced. It is urged in the petition that the State Legislature of the State of M.P. has amended Article 48 of the Schedule I-A with

effect from 1-54997 as a consequence of which Clause (f) has been substituted and Clause (f-i) has been introduced. The said provision deals with the instrument, namely, "the power of attorney". It is putforth that during the pendency of the petition there has been further amendment by M.P. Act No. 12 of 2002 published in Madhya Pradesh Rajpatra (Asadharan), dated 12-8-2002 whereby Schedule I-A of the Principal Act has been substituted, as Article 48 of Schedule I-A has been substituted and Article 45 has come into being which relates to power of attorney. It is putforth that the amendment which has been brought into existence by 2002 amendment is absolutely unconstitutional being arbitrary and irrational and inconsistent with the provisions of the basic statute.

According to the writ petitioners, if the provisions relating to power of attorney are allowed to stand, there will be impost of double stamp duty which is not permissible. It is also urged that Schedule I-A which has been brought by way of amendment defeats the conception of conveyance which has not yet been amended. It is the case of the petitioners that when an instrument is presented for registration all that the Sub-Registrar under the Indian Registration Act is entitled to see that the document is adequately valued and proper stamp duty is paid. He is bound to register the document so presented when the executant admits its execution and the Sub-Registrar finds that adequate stamp duty has been paid, but he had no jurisdiction to make any further inquiry before registering a document. The unreasonableness of the provision has been highlighted and in that backdrop prayer has been made for quashing of the provision. Quite apart from the same, it has been further prayed for quashing of the letter dated 23-10-2000 issued by the Commissioner, Revenue, Jabalpur vide Annexure P-1.

A return has been filed by the answering respondents wherein it has been mentioned that a detailed return has been filed in W.P. No. 4683/1999 and the same should be taken into consideration. In view of the aforesaid we are inclined to refer to the return filed in the other writ petition. What has been stated in the return is that after filing of the writ petition some amendments have been broughtforth and they are in consonance with the statute. It is setforth in the return that in the earlier provision there were defects and certain lacunae which were being misused by the executant of the power of attorney. It is pleaded, taking note of the increase of urban population and proportionate decline in the housing immovable property the practice of immovable property by constructing apartments, blocks has increased manifold. Developers and builders of immovable property adopted practising of carrying out development and construction purely on the basis of power of attorney and thereafter, execute a deed of conveyance in favour of their customers. A reference has been made to Section 2(1) which defines "conveyance" to highlight that power of attorney holders have been developing the property purely on the power of attorney basis and developers and builders were misusing the provisions of the Act and thereby depriving the State much needed Revenue, It is also urged that the provision of the Act has not been violated by bringing in the amendments and the stand

taken by the petitioners is sans substance.

We have heard Mr. Ravish Agrawal, learned Senior Counsel with Mr. Ajay Ojha, learned Counsel for the petitioners in W.P. No. 597/2001 and Mr. J.P. Sanghi, learned Senior Counsel and Mr. N.K. Upadhyay, learned Counsel for the petitioners in W.P. No. 4683/99 and Mr. S.K. Yadav, learned Government Advocate for the respondents/State in both the writ petitions.

We may at the outset state that when the writ petitions were filed the provisions were quite different but they have gone a sea change during the pendency of same. In view of this the learned Counsel for the petitioners amended the writ petitions assailing the impugned provisions. They have challenged it from many a spectrum but we shall be dealing with the contentions which we feel are necessitous to be dealt with. Before we proceed to address ourselves in regard to the constitutional validity of the amended provisions it is apposite to reproduce the same. Schedule I-A which has been brought into existence with effect from 1-8-2002 reads as under:--

SCHEDULE 1-A Stamp duty on instruments (See Section 3)

Description of instruments (1) Proper Stamp duty (2)

45. Power of attorney (as defined by Section 2(21) not being a proxy :

(a) When authorising one person or more to act in single transaction including a power of attorney executed for procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents;

Fifty rupees

(b) When authorising one person to act in more than one transaction of generally; or not more than ten persons to act jointly or severally in more than one transaction or generally;

One hundred rupees

(c) When given for consideration and authorising the agent to sell any immovable property.

The same duty as a conveyance (No. 22) on the market value of the property.

(d) When given without consideration to a person other than the father, mother, wife or husband, son or daughter, brother or sister in relation to the executant and authorising such person to sell immovable property situated in Madhya Pradesh.

Two per cent on the market value of the property which is the subject-matter of attorney.

(e) In any other case

Fifty per cent for each person authorised."

It is submitted by Mr. Ravish Agrawal, learned Senior Counsel for the petitioners that the provisions have been so couched so that they defeat of concept of conveyance and run counter to it. At this juncture it is apposite to refer to the definition contained in Section 2(10) which defines "conveyance". It reads as under :--

"2 (10). "conveyance" includes a conveyance on the sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I."

Section 2(21) defines "power of attorney". It reads as under :--

"2 (21). Power of Attorney.-- "Power of attorney" includes any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it."

The State of Madhya Pradesh has amended the Schedule I-A as has been indicated taking recourse to Section 3 of the Act. Section 3 of the Act deals with the "instruments chargeable with duty".

The question that falls for adjudication is whether the amended schedule runs counter to the aforesaid provisions. On a careful scrutiny of the same we are of the considered view, that the said amended provision really does not affect the marrows of the provision. In the name of power of attorney if a particular builder tries to take advantage of the situation, definitely he would be caught in the net of the term "conveyance". The power of attorney has a different conception and there is no disharmony if the power of the attorney is executed without consideration. As far as Clauses (a), (b) and (e) are concerned, they really can not be challenged. What actually creates botheration is Clauses (c) and (d). Clause (c) stipulates when a power of attorney as defined by Section 2(21) of the Act is given for consideration and authorising the agent to sell any immovable property the same duty as conveyance on the market value of the property shall be levied. As has been submitted by Mr. Yadav, learned Government Advocate for the State that the said clause was incorporated to avoid the mischief as the builders, after obtaining the power of attorney, were developing plots and selling the same or constructing the buildings and selling the same. The learned Counsel for the State has given immense emphasis on the term "consideration". The term "consideration" is of ample magnitude and immense significance. It operates in a different field. Denotatively as well as connotatively its importance can not be marginalised. In view of this, if the power of attorney is executed, on certain considerations, in our considered view, the same does not defeat the provisions of the Act nor does it become arbitrary and irrational inviting the wrath of the Article 14 of the Constitution.

As far as Clause (d) is concerned, it lays a postulate that when the power of

authority is given without consideration to a person other than the father, mother, wife or husband, son or daughter, brother or sister in relation to the executant and authorising such person to sell immovable property, 2% on the market value of the property is to be collected. Submission of Mr. Agrawal is that this clause is absolutely unreasonable and smacks of arbitrariness, as there is no rationale to include the category of persons who have been included and to leave out to all other persons. Mr. S.K. Yadav, learned Government Advocate submitted that near relatives can constitute a class by itself and all others can fit into a different category and, therefore, the said provision does not offend the concept of classification, as there is intelligible differentia. On a first flush the aforesaid submission of the learned Counsel for the State appears to be quite attractive, but on a deeper probe it is not what it is. In the guise of the classification something has been stated in the said provision. One can give certain examples. One may not have thick or thin and intact event that case to deprive him to execute the power of attorney for selling the property, unless 2% is paid on the market value is arbitrary. The provision may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonableness and irrationality. The State may have a laudable purpose but the laudable purpose alone can not sustain the provision. The matter would be different had it included a rider that if it is executed in favour of any other for consideration or some other purposes is not the situation. In view of the same, we are of the considered opinion, the aforesaid provision is defiant of Article 14 of the Constitution. Accordingly, we have no hesitation to declare the same as violative of Article 14 of the Constitution.

In the result, the writ petition is allowed in part. However, there shall be no order as to costs.