(2005) 03 BOM CK 0157

In the Bombay High Court

Case No : Writ Petition No. 365 of 1990

Prasadnagar Co-operative Housing Society Ltd. APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 07-03-2005

Acts Referred:

Bombay Stamp Act, 1958 — Section 2, 31, 32A, 32B, 32C
Constitution of India, 1950 — Article 14, 15, 300A
Registration Act, 1908 — Section 68(2)
Stamp Act, 1899 — Section 47(2), 47A, 47A(1)

Citation : (2005) 3 ALLMR 430 : (2005) 3 BomCR 478 : (2005) 2 MhLj 310

Hon'ble Judges : J.N. Patel, J;A.H. Joshi, J

Bench : Division Bench

Advocate : R.S. Parsodkar, for the Appellant; A.B. Chaudhary, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

A.H. Joshi, J.—This is a writ petition by a Co-operative Housing Society. The challenge in the petition can be referred by quoting the prayer Clause (i) thereof.

"i) issue a writ of, writ order or direction in the nature of mandamus whereby quash and set aside the Ready Reckoner and the amendment thereto (Annexure-II and III respectively) in respect of the petitioner''s layout situated at Jaitala, Nagpur issued by the respondent No. 3 as being illegal and violative of Articles 14, 15 and 300A of the Constitution of India as well as the provisions of Bombay Stamp Act, 1958."

2. The grievance of the petitioner is that the Society has 122 members to whom one plot each has been allotted, out of which the sale deed of 64 plots has been executed in favour of the allottee members concerned. Sale deed in favour of remaining members is to be executed, however, due to the increased market value and stamp duty, as prescribed by the ready reckoner impugned, sale deed could not be executed.

3. All conveyances are to be governed by the Bombay Stamp Act, 1958 in entry No. 25 of Schedule-1, with reference to the conveyances as defined in Section 2(g) of Bombay Stamp Act, 1958. By the Maharashtra Act No. 16 of 1979, the duty is made payable on the market value of the property which is the subject matter of the Conveyances. Section 32-A, 32-B and 32-C have been enacted by the said amended Act No. 16/79 by which power has been invested with the Officer registering the instrument to deal with undervalued document and right of appeal and revision thereon by any aggrieved person. As the scheme of law exists, u/s 32-A, the registering office (in the present case, respondent No. 5) has to refer the instrument to the Collector of the District for determination of true market value if he has reasons to believe that the true and correct market value of the property has not been set forth in the instrument. The Collector is vested with the powers to determine the true market value upon following due procedure therein. Section 32-A also envisages suo motu power in the Collector to re-open the document for determination of duty if the duty already paid is considered to be insufficient within a period of two years from registration.

4. The State has framed Rules in exercise of powers u/s 70 of the Bombay Stamp Act, titling as Bombay Stamp (Determination of True Market Value and Property) Rules, 1981. Rules contemplate quasi-judicial inquiry by the Collector u/s 32-A.

5. In this background, under purported direction of the respondents No. 2 and 3, the respondent No. 3 has fixed the rates of land to be treated as a market value for lands in Nagpur District. The sale deeds could not be executed because the respondent No. 1 has framed the Ready Reckoner prescribing therein that the stamp duty at ad valorem rate at the market value of the property as assessed and notified by the State Government in the Ready Reckoner is required to be paid. The prices have been fixed Ward wise in the Nagpur City and in respect of mouza and villages in other areas. The prices have been fixed as with reference to the age of the building, type of construction etc. The petitioner has placed on record copy of Ready Reckoner. The respondents No. 4 and 5 have been directed to act on the basis of the valuation referred to therein while examining the adequacy of stamp duty while registering any document irrespective of value or consideration that may have been passed or represented in the said Conveyances. The Ready Reckoner so issued had undergone change by letter issued by the respondent No. 3 on 24-7-1989 in relation to the norms of assessment of market value in relation to some of the properties.

6. According to the petitioner, the power vested in the Collector u/s 32 which is quasi-judicial in nature is circumvented which is otherwise a quasi judicial power vested in the Collector. The petition also contains the challenges relating to the propriety of fixing the rates in various areas. The petitioner have also challenged the Ready Reckoner on the ground that it amounts to an encroachment on the rights of the parties to freely alienate and transfer the property. The challenge contained in the petition which seems to be crucial is based on the situation that has been generated due to framing of Ready Reckoner which thereby encroaches

upon the powers of the Collector u/s 32-A, as well as the scheme of appeal and revision u/s 32-B and Section 32-C respectively.

7. The petitioners has relied upon the judgment of Punjab and Haryana High Court reported in Chamkaur Singh and another Vs. The State of Punjab and another, . as a direct judgment on the point involved. Punjab and Haryana High Court was considering the effect of similar instruction as in present petition. Provision similar to Section 32A existed in P and H case namely Section 47A of 1899. Their Lordships have held as follows :

"Provisions of Section 47A make 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 guidelines in question what was left open to the Registering Officer (Sub-registrars) was that he would refer the matter to the Collector only if he found that the value of the property in a particular transaction "is higher than the prescribed rate." It was thus implicit that he would not register the document if the value of the property in question was 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 47A. According to the guidelines he would refer the matter to the Collector only if he formed the opinion that the property should be rated at a rate still higher than the one mentioned in the guidelines. These guidelines, therefore, completely took 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 was shifted on to the parties to the transactions. In such a situation it was 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 47A of the Stamp Act, it was not clear as to how the party had "to get the document impounded" or how was it enjoined upon the Sub-Registrar to impound the document. Similarly, the jurisdiction of the Collector under Sub-section (2) of Section 47A was jeopardised. As per the same, he, on a reference had to hold an enquiry in such manner as might be prescribed by the rules under the Act for determining the true value or consideration on which the stamp duty had 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 stereotyped or mechanical conclusions in this regard. The natural effect of the instructions which were sought to be mellowed down as guidelines was that the same bound the Collector even more than the Sub-Registrar or the Registering Officer appointed under the Registration Act, he being author of the same. It was, therefore, abundantly clear that the guidelines completely ran contrary to the plain language and intendment of Sub-sections (1) and (2) of Section 47A. The instructions clearly nullified and obliterated the explanation added to the section. The instructions hardly left anything open to the Registering Officer and the Collector to determine the estimated value or price of the property, the subject-matter of a particular transaction. Further, these guidelines ran 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.

It could not be contended that in view of Sub-section (2) of Section 68 of the Registration Act, the registrar is competent to issue any or general order to the Sub-Registrar, commanding the latter to perform his duties in accordance with the same as the functioning of the latter is under the superintendence and control of the registrar in whose district the office of the Sub-Registrar is situated."

Punjab and Haryana High Court, therefore, gave following directions :

"we conclude that the instructions Annexures P.1 and P.1/A in the instant case, and similar instructions/guidelines impugned in the connected cases as issued by different Collectors for their respective districts in the State of Punjab are totally without jurisdiction and void. The authorities under the Stamp Act are directed to perform their duties in accordance with those statutes by ignoring the guidelines/ instructions referred to above. The petitioners are also held entitled to costs at the rate of Rs. 1000/- in each case."

The Punjab and Haryana High Court, has thus, held that the instructions fixing the market value by overriding the jurisdiction of the competent Revenue Authorities had no legal sanction.

8. Learned Advocate for the petitioner then submitted that now this view of Punjab and Haryana High Court in Chamkaur Singh and another Vs. The State of Punjab and another, has received a seal of approval may be in a different language holding that the value attached to the Ready Reckoner is that of "prima facie market value" as can be seen in R. Sai Bharathi Vs. J. Jayalalitha and Others, . This judgment consists of an observation as to the "true market value" and in para 22 thereof, their Lordships of Supreme Court have observed that :

"The guideline value has relevance only in the context of Section 47-A of the Indian Stamp Act (as amended by T. N. Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus, the guideline value fixed is not final but only a prima facie rate prevailing in an area. It is open to the registering authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guideline valuation as the last word on the subject of market value. This position is made clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968." The above quotation from the judgment in R. Saibharti v. J. Jayalalitha puts a final seal of interpretation to the controversy including one in the present petition.

9. In this situation, it is seen that the State Government who on one hand initially directed the Registering authority by impugned communication to get governed by the Ready Reckoner has now come with a plea that the Ready Reckoner has a value of guidelines and averred that the powers available to the registering authority under the statute are unfettered. While doing so, the State has in very specific terms pleaded that it had every authority to issue such Ready Reckoner and to issue directions, though the State has accepted that the powers of Collector u/s 33-A were intact. It is in this background, the State was once again called to clarify its plea and the District Joint Registrar and Collector of Stamp Nagpur has filed on affidavit in this Court on 17-2-2005 stating that the Ready Reckoner has been prepared pursuant to the Government decision dated 29-9-1988 for the purpose of instantly evaluating the market value by the Registering Authority, however, if the value so represented in the Ready Reckoner is not acceptable to the person presenting document for registration, then in that event, procedure as contemplated under Sections 31 and 32 of the Bombay Stamp Act is always followed. He has further stated that such matters are entertained and in all 33,419 matters were referred u/s 32 of the Bombay Stamp Act. Apart from that such practice is stated to be in vogue.

10. The fact remains that the directions were issued to the Registering Authority to strictly follow the Ready Reckoner and it is, therefore, in the light of law as settled by the Apex Court, it has become necessary to render a Judgment and issue directions in present case.

11. The petitioner therefore, succeeds and by issue of writ of mandamus, the respondents are directed to treat the Ready Reckoner sheerly as guidelines and as a declaration of "prima facie" market value and further clarify by necessary amendments in the rules that those rules are subject to the powers of the Collector under Sections 31 and 32 of the Bombay Stamp Act, 1958. Since direction is issued as above in clear terms it shall not be necessary to quash the guidelines/ready reckoner, which shall now have the value of prima facie declaration of market value and nothing more.

12. Rule is made absolute in above terms.

13. The petitioner shall be entitled to costs which are quantified to Rs. 2500/- and be paid to the petitioner by the respondents within one month from the date of order.