

(2017) 01 JH CK 0215
In the Jharkhand High Court
Case No : 1130 of 2014

Priyanka Chourasia

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 15](#) - Court in which suits to be instituted
[Stamp Act, 1899](#), [Section 47-A](#)

Citation : (2017) 01 JH CK 0215

Hon'ble Judges : D.N. Patel, Ratnaker Bhengra

Bench : DIVISION BENCH

Advocate : Ashok Kr. Yadav, Jai Prakash, Rishi Pallav

Judgement

1. This Public Interest Litigation has been preferred with the following prayers:
"(A)For issuance of an appropriate writ(s),order(s), direction(s) including a writ of mandamus for quashing/setting aside" the Guidelines Register of Estimated Minimum Value of Land/property dated 1.8.2013(hereinafter referred to as "Guidelines Register" in short) allegedly frame under the provisions of Bihar Stamps (Prevention of Under Valuation of Instruments) Rules,1995 as amended by Jharkhand (Amendment) Rules 2009(hereinafter referred to as Amended Rules 1995" in short) by the District Registrar-cum-Deputy Commissioner. Ranchi as being illegal, arbitrary without any rational basis being violative of the Constitution of India, especially in view of the fact that these "Guidelines Registers" have been prepared without properly classifying the lands/properties situated in urban area in terms of various rules including Rules 5 and 6 of the aforesaid Rules, 1995 in as much as these Guidelines Registers does not provide any difference in the rates for registration of different shops of commercial use in different floors of the same building and has arbitrarily taken the rates fixed for ground floor of a commercial building as the base rate for all the floors of commercial building for the purpose of registration on account of the fact that in a commercial building the ground floor rate is much higher than the upper floors

and as and when the height increase the rate of a commercial building decreases; (B) For issuance of an appropriate writ(s) order(s) direction(s) directing the respondents particularly respondent no. 4 not to refuse registration of deed of conveyance even if sale value stated in the deed is lower than that of the revised Guidelines Register effective from 1.8.2013 because of the said Revised Guidelines Register has been prepared in contravention of the provisions of Rules 1995 inasmuch as at the time of registration of a shops in a commercial building, the cost of land and building is charged separately for determining the cost of commercial shops although cost of land is already included along with the cost of shops in a commercial building in the deed of conveyance for the purpose of registration and as such the Revised Guidelines register imposes payment of double stamp duty for the same land causing huge burden upon the purchaser; (C) For issuance of an appropriate writ(s) order(s) direction(s) directing the respondents to prescribe separate rates schedule for finished and semi finished shops of a commercial building in urban area in as much as there is a huge margin in the cost of purchasing finished and semi finished flats however the purchaser is compelled to pay same registration fees as well as stamp duty at the rate which is applicable for the finished shops in a commercial building as such Revised Guidelines Register imposing same rate for finished and semi finished flat amounts to violation of Article 14 of the constitution of India as the purchaser of finished and semi finished shops in a commercial building altogether constitute different class for which different registration charge is required to be fixed in terms of provisions of Rule, 1995; (D) For issuance of an appropriate writ(s) order(s) direction(s) upon the respondents to make provision for categorization in the Revised Guidelines Register for different locations of the same area as in absence of proper categorization of the cost of flats in the same location it has been found that the actual cost of flat is much less than the value fixed in the Revised Guidelines Register and as such, the said Revised Guidelines Register is discriminatory in nature in as much as only two rates have been prescribed in a particular locality of urban area ignoring the fact that different rates should have been prescribed for lanes, sub lanes and the plot located in the area where there is accessibility of only Kachha Road but, unfortunately no such categorization has been made by the respondents in the Revised Guideline Register."

2. Counsel appearing for the petitioner has vehemently submitted that - (I) Very high are the rates of the property prescribed under the Jharkhand Stamps (Prevention of Under Valuation of Instruments) Amendment Rules, 2012; (II) Counsel for the petitioner further submitted that there is no reasonable classification for arriving at minimum value of the market price of the land under the aforesaid Rules, 2012; (III) There is a total arbitrariness on the part of the State Government under the Rules, 2012 for arriving at market value of the land in the State of Jharkhand; (IV) By virtue of this Rule, 2012, there is an increase by 10% every year, whereas, in relation to that market price is not being enhanced by 10% every year; (V) The object under section 47-A of the Indian

Stamps Act, 1899 has not been achieved by the Rules, 2012; (VI) Under the earlier Rules 2009, there was a very valid classification i.e. for every main road, for every bye-lane, for every sub-lane, for every kaccha road of the bye-lane etc. different rates for arriving at market value or arriving at for maximum value were prescribed. This has been done away with, under the Rules 2012; (VII) There is an amendment in the Income Tax Act, especially, under section 43 (CA), which has been brought into effect from 01.04.2014, which is about deemed income etc, which has direct bearing upon the determination of the minimum value of the land in the State of Jharkhand; (VIII) In Punjab & Haryana States in the year 2014-2015 and in the year 2015-2016, especially, for Gurgaon, the rates have been managed as they were, whereas, in the year 2016-2017, these rates have been reduced by 15%. This must be awarded by the State of Jharkhand as far as possible; (IX) In State of Chhatisgarh also, same is the position like Punjab & Haryana States; (X) Determination of minimum value of the land, which is popularly known as "circle rate" should be reduced under the Rules, 2012.

3. We have heard Additional Advocate General, who has submitted that this is not a Public Interest Litigation at all. If under the Rules 2012, higher is the circle rate, the same can always be challenged by the party, who is selling or purchasing the immovable property in the State of Jharkhand by cogent and convincing evidences to be led before the concerned court or tribunal. In extract, no land can be valued in the High Court in the PIL. The rates prescribed under the Rules 2012 are the guidance given to the public at large and nothing beyond that. It has become fashion for the purchasers of the immovable property that 60% cash is being taken away and only on 40% of the total transaction value, the duties are being paid. Whenever the ratio of the cash is increased, the rate of tax is bound to be increased. This aspect of the matter cannot be decided in so-called Public Interest Litigation. If anybody is aggrieved by the government valuation, remedies are always available under the revenue laws or they can approach lowest available court under section 15 of the Code of Civil Procedure. Hence, this Public Interest Litigation may not be entertained by this Court.

4. Further, Additional Advocate General has submitted that what has been done by the Punjab & Haryana States and Chhatisgarh State may be suitable for those States. This State is a sovereign body itself. The State is taking decision, which is a policy decision of the State. The rate of the tax or rate of determination of the market value is also a policy decision, which can be challenged by the individual, whenever they are purchasing or selling the immovable property. In extract, value of the land property cannot be determined in the High Court in the PIL. As and when, challenge will come, the State will give exact reply for the said property.

5. Having heard counsel for both sides and looking to the facts and circumstances of the case, we see no reason to entertain this Public Interest Litigation for the following reasons :- (a) This is not a Public Interest Litigation at all;

(b) Rates are prescribed, under the Jharkhand Stamps (Prevention of Under Valuation of Instruments) Amendment Rules, 2012, for determination of market value of immovable property, including land. These rates and the justifications of the quantum of the rates cannot be determined in this type of litigation, much less in the Public Interest Litigation. All depends on the facts and circumstances of the case, whenever any property is purchased;

(c) Rates prescribed under the Rules, 2012 are nothing but a guidance given to the public at large as well as authorities at large, so that, the under valuation of the property can be checked and verified, in the light of the aforesaid Rules, 2012. Basis is provided under Rules, 2012, so that, even a layman can understand about the approximate value of the property. Otherwise also, exact valuation depends upon the facts and circumstances of the each case e.g. if the rate, as per Rules, 2012, for the market value of any land comes to Rs.100/- and if any purchaser has valued the same at Rs.60/-, he can always challenge higher valuation of the Government in the Court. Thereafter, he will give cogent and convincing evidence before the concerned Court and the concerned Court has power, jurisdiction and authority to decide about the correct valuation of the land. Thus the valuation of the land arrived at under the rules is nothing but approximation of the valuation. The said valuation under the Rules 2012 is not a conclusive evidence of market value, but, the same gives approximate value of the property, so that , under valuation of the instrument can be verified properly;

(d) Thus in this public interest litigation such type of the Rules 2012 cannot be challenged nor this court will arrive at any conclusion that the rates prescribed under the Rules are excessive and unreasonable. If anybody purchases the property on main road or in sub-lane or bye-lane and he is aggrieved by the government valuation, he is always at liberty to go before the concerned trial court;

(e) Much concerned has been shown by the petitioner about the estimation under section 43(CA) of the Income Tax Act, which has been brought into effect from 01.04.2014. We have not to cross the bridge, without reaching to the river. As and when, such type of matter will come up, the High Court or the trial court or tribunal will decide, whether presumption is rebuttable or not? Always such type of presumption is rebuttal, depending on the evidence led before the concerned court or tribunal. Even at the cost of reproduction, we are saying that valuation arrived under the Rules, 2012 is nothing, but, the approximated value. Exact valuation depends upon situation of the land and market price prevailing in the society at the relevant time;

(f) Government has all power, jurisdiction and authority to prescribe such type of rate, which is popularly known as "circle rate" under the Rules 2012, for the guidance of the officers and for the guidance of all those who are concerned with dealing with properties especially immovable property;

(g) Much has been pointed out about Punjab & Haryana and Chhatisgarh States.

We are not commenting upon the rates prevailing in the rest of the Country other than the State of Jharkhand. All the States are sovereign body under the Constitution. One is not depending on the other. Jharkhand State may or may not follow the "circle rates" prevailing in rest of the States of the Country;

(h) It has become fashion in the society whenever any immovable property is purchased especially, the land or land with the super structure, such type of purchases are always under valued i.e. some part of the consideration is received in a cash, which is never shown as a transaction value. More the tendency for under valuation, higher shall be the rates.

(i) This corollary is inevitable to run the affairs of the State. We see no reason, especially, in this Public Interest Litigation to hold that the Rules, 2012 are unreasonable, arbitrary etc. These issues are kept open for determination by the concerned courts, as and when, such type of challenges will come in individual cases by the purchasers or by the sellers. In fact, this is not a Public Interest Litigation at all. This has been preferred only with a view to avoid the tax liability. This is a Publicity Interest Litigation and not a Public Interest Litigation at all. This petitioner has nothing to do with the challenge. Such type of petitioner ought to have waited for individual challenge in the court. Every citizen is free to challenge the market value arrived at by the State, through such type of rules 2012. Thereafter, they will give the evidence before the concerned trial court that what has been the market value prevailing through sale transaction in the nearby vicinity and it is for the concerned trial court to arrive at true and correct market value. Such type of the challenges can be made by the individual in their transaction. Validity of the aforesaid rules, 2012 cannot be determined in this Public Interest Litigation.

6. As a cumulative effect of the aforesaid facts and circumstances of the case, we, hereby, dismiss this Public Interest Litigation, with the cost of Rs. 1,00,000/- (Rupees one lakh only) , in the form of bank draft, to be deposited by the petitioner, within period of the twelve weeks from today, before the Jharkhand State Legal Services Authority, Nyay Sadan, Doranda,Ranchi .The same may be utilized by the Jharkhand State Legal Services Authority in "access to justice" programme or "disaster management" programme or for the "victims" compensation".

7. In view of final disposal of this Public Interest Litigation, I.A. No. 8428 of 2016 and I.A. No. 5900 of 2015 also stand disposed of.