

(2012) 04 MP CK 0135

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4542 of 2011

Ramjilal Kulshrestha

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 18, 50(2), 50C, 56
Stamp Act, 1899 — Section 75

Citation : (2012) 2 JLJ 321

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : V.K. Bharadwaj with Anand V. Bharadwaj, for the Appellant; Nidhi Patankar, Government Advocate for State, for the Respondent

Judgement

Sujoy Paul, J.—In this petition filed under Article 226 of the Constitution, the petitioner has challenged the order dated 31.3.2011, Annexure P-3, whereby the Collector and Chairman, District Valuation Committee has fixed the guidelines for the purpose of determination of the market value of the land. The petitioner, who owns land in village Badagaon, Morar, Gwalior, is interested to sell the land by developing it. As per the contention of Shri Bharadwaj, learned senior counsel, the market value is to be fixed as per the procedure prescribed in Madhya Pradesh Preparation and Revision of Market Value Guideline Rules, 2000 (hereinafter referred to as the "2000 Rules"). These rules are made in exercise of powers conferred by section 75 read with section 47A of Indian Stamp Act, 1899 (hereinafter referred to as the "Stamp Act"). Shri Bharadwaj has attacked the validity of Annexure P-3 on following grounds :

(i) As per rule 5 of 2000 Rules, the Collector is obliged to take into account various factors for determining the market value whereas before issuing Annexure P-3 those mandatory ingredients were not taken into account.

(ii) As per rule 10 of 2000 Rules, the petitioner was not heard and his

representation Annexure P-2 was not decided before issuance of Annexure P-3.

2. To elaborate, learned senior counsel submits that 2000 Rules are made under the Stamp Act and, therefore, the same are statutory, mandatory and binding in nature. He submits that if some thing is prescribed in the Statute and to be done in a proper manner, it has to be done strictly in the same manner and other methods are forbidden. He submits that Collector has failed to fix the market value after taking into consideration the relevant factors enumerated in rule 5 aforesaid. He placed reliance on following judgments :

- (a) Union of India and Others Vs. Indian Charge Chrome and Another,
- (b) T. Vijayalakshmi and Others Vs. Town Planning Member and Another,
- (c) Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others,
- (d) 2010(3) MPLJ 29 (Ujjain Charitable Trust Hospital v. State of M.P. and others);
- (e) AIR 2011 SCW 5636 (Asha Sharma v. Chandigarh Administration);
- (f) Raj Kumar Jain Vs. Savitri Devi and Others, and
- (g) 1989 MPJR HC 71 (G.L. Saxena v. State of M.P.).

3. Second ground of attack on Annexure P-3 is by placing reliance on rule 10 of 2000 Rules. Shri Bharadwaj submits that as per said rule it is mandatory for the committee constituted u/s 4, to serve notice and record statements of persons whereas in the present case the petitioner has not been heard. He submits that this runs contrary to principles of natural justice. By placing reliance on rule 11 it is further stated that if a representation is preferred against the rates shown for market value guidelines, the issue needs to be referred to the committee specified in sub-rule (1) of rule 4.

4. Per contra, Smt. Nidhi Patankar supported the order Annexure P-3. She submits that the procedure prescribed in section 47A of Stamp Act read with 2000 Rules was followed in letter and spirit. By filing the documents and placing the original record for the perusal of this Court, the stand of the State Government is that there is no shift from the prescribed procedure and no case is made out for interference by this Court. It is further stated that fixation of market value is essentially an executive act in which interference can be made only if there is any statutory violation. Since there is no statutory violation, it is prayed that no interference be made.

5. I have heard Learned Counsel for the parties and perused the record.

6. It is profitable to quote relevant portion of rule 5 of 2000 Rules as under:

5. Principle of determination of market value. - The Collector shall as far as possible have also regard to the following points in arriving at [**] market value -

(a) the case of land --

(i) Classification of the land as dry, or wet and the like;

(ii) Classification under various categories in the settlement register;

(iii) the rate of revenue assessment for each classification;

(iv) other factor which influence the valuation of the land in question;

(v) points, if any, mentioned by the parties to the instrument or any other person which require special consideration;

(vi) value of adjacent land or lands in the vicinity;

(vii) average yield from the land nearness to road and market, distance from village site, level of land, transport facilities, facilities available for irrigation in any form;

(viii) the nature of crops raised on the land.

(Emphasis supplied)

The language of the rule shows that it is directory in nature. The words chosen by the Legislature are "as far as possible" in the said rules. The dictionary meaning of word "as far as possible" in "Judicial Dictionary" by Justice L.P. Singh and P.K. Majumdar (Orient Publication) reads as under:

"As far as possible" -- The expression "as far as possible" provides for desired flexibility which should be said to be akin to a play in the joints of administrative machinery. {K.K. Sharma v. Union of India [1989(2) SLJ 635]}.

7. The apex Court in the case reported in *Rajendra Singh and Others Vs. State of U.P. and Others*, , has considered the impact of words "as far as possible". In para 6 of the said judgment it is held that when those words are used, it shows that the words are not prohibitory in nature. They rather connote a discretion vested in the prescribed authority which can exercise that discretion.

8. Apart from this, the stand of the State Government is that the city of Gwalior is an important and potential hub where development is constantly going on in all the fields like education, business, information technology and other important sectors. Factories and colonies are being developed within the area of Municipal Corporation and even out of the area of Corporation. The builders and investors are interested in developing colony and township in the city. The stand of the Government is that before making the guidelines for the year 2011-12. Sub-Registrar of the Registrar's office has called the objections and suggestions. Some persons including Shyam Sunder Baheti, Shiv Kumar Pande, Alok Raghuvanshi have filed their objections and suggestions. A duly constituted committee considered their suggestions and after taking into account the objections and suggestions the guidelines were finalised with proper application of mind. The objections and suggestions were filed as Annexure R-2 by the

Government. It is further stated that with regard to Badagaon area for which the present petition is filed, no objections and suggestions have been received by the authorities within the stipulated time. It is stated that time limit was prescribed as per the rules for receiving objections from 25th March to 28th March, 2011. By referring to the date of Annexure P-2 it is stated that admittedly the objection sent by the petitioner (Annexure P-2) is much after the cut off date and, therefore, there was no question of considering the said objection. It is stated that the District Valuation Committee submitted its report on 29.6.2011 and thereafter matter was placed before the Collector on 13.7.2011. The said authority considered the report and rejected the representation submitted by the petitioner and the same was communicated to the petitioner on 19.7.2011 by post. It is further stated that Badagaon area is being developed for residential purpose and educational activities and, therefore, the rates of the area have been fixed accordingly. It is stated that rules and mandate of Stamp Act are duly followed.

9. The petitioner has not chosen to file any rejoinder to rebut the aforesaid stand of the State Government.

10. It is pertinent to notice the language employed in rule 10 of 2000 Rules which reads as under :

10. Summons to the public, public officers and recording statement by the Committee. -- The committee constituted under rule 4 after serving of the notice if it thinks fit to do so, record the statement of the person and for the purpose of enquiry -

(a) may call any information of record from any public office or officer or authority under the State Government of any local authority;

(b) record statement from any member of the public officer or authority under the State Government or any local authority;

(c) may call the parties to be present on the date specified in the notice and on such other date as may be fixed by it.

(Emphasis supplied)

In this rule, the rule making authority in its wisdom has included the words "if it thinks fit to do so". Thus, this also shows that in a given condition/situation the said authority may serve the notice to a person and may call any information, record statement or may call parties to present on the date specified in the notice. However, rule 10 aforesaid does not prescribe any mandatory duty on the authority to notice all the persons concerned. Thus, even if ingredients of rule 5 and rule 10 aforesaid are not strictly implemented, it will not render the ultimate determination of market value as illegal. A discretion is vested with the authority to consider the aspects and ingredients mentioned in rule 5.

11. In the present case, a duly constituted committee under rule 4 has

considered various relevant ingredients and aspects for the purpose of valuation of the market value of the land in question and thereafter the said committee which was consisting of heads of 12 departments including two members of the non-Government service, one local MLA and the President of District Panchayat, worked under the supervision of Collector, District Gwalior. The said committee considered the relevant aspects and gave its report to the Collector, which ultimately took shape in issuance of Annexure P-3. Thus, on the basis of aforesaid analysis, I am unable to hold that there is any flaw in decision making process and "due process" was not followed. The petitioner is unable to show any mandatory provision which has been violated or any violation which has an impact of rendering Annexure P-3 as illegal.

12. So far the question of opportunity of hearing is concerned, on the cost of repetition it is made clear that even rule 10 contains a language which makes it discretionary for the authority to issue notice to the party. However, as stated in the return which is not rebutted by the petitioner, that objections were invited but petitioner has not filed his objection within the time prescribed. It is also stated that petitioner's objections were subsequently rejected. Thus, this ground of alleged violation of principles of natural justice is also of no assistance to the petitioner in the aforesaid facts and circumstances.

13. During argument learned senior counsel has relied on section 50C of Income Tax Act, 1961 to submit that Annexure P-3 will have an adverse impact if read in context of section 50C of the said Act. Since decision making process is not found to be polluted/vitiated, the said impact is inevitable. Apart from this, this issue has not been raised in the writ petition. Thus, the respondents had no opportunity to meet the same. The apex Court in *Avinash Gaikwad and Others Vs. State of Maharashtra and Others*, held that an issue which is not raised in the writ petition cannot be raised in argument. Thus for this reason also argument is rejected.

14. Shri Bharadwaj, learned senior counsel has relied on *Union of India and Others Vs. Indian Charge Chrome and Another*, . In the facts and circumstances of this case, the said case is of no assistance. The reliance is also placed in *T. Vijayalakshmi and Others Vs. Town Planning Member and Another*, . Para 15 of the said judgment reads as under :

15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regularoty statute but unless there exists a clear provision the same cannot be taken away. It is also a trite law that the building plans are required to be dealt with in terms of the existing law. Determination of such a question cannot be postponed far less taken away. Doctrine of legitimate expectation in a case of this nature would have a tole of play.

A bare perusal of this para would show that the said finding given by apex Court is in a different context and in a different fact and circumstance. The ratio

aforesaid has no application in the present matter.

15. Next reliance is on (2007) 8 SCCF 705 (Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd. and others). In the said judgment the relevant facts were that a land situated in two villages was within the jurisdiction of Gram Panchayat under the Madhya Pradesh Gram Panchayat Act. The respondents submitted the application for grant of building plan in the year 1990 and the same was sanctioned on 5.4.1991. Subsequently, Indore Vikas Pradhikaran published a draft development plan u/s 18 of the Act on 26.7.2003 which had affected aforesaid two villages. A declaration of intention to prepare a town development scheme in terms of section 56 of the Act was issued on 24.8.2004. On 4.1.2005 the said draft development plan was returned by the State Government but the notification was ultimately issued by the State Government on 28.10.2005 bringing those villages within the area of operation of appellate authority which was challenged before the Single Bench of this Court. The learned Single Judge dismissed the writ petition. In writ appeal preferred there against, the Division Bench allowed the appeal and struck down the declaration made u/s 50(2) of the Act. It is held that unless a development plan for an area is published and comes into operation, a draft development scheme cannot be published u/s 50(2) of the Act. The entire adjudication in this matter by Supreme Court is on the basis of those factual background. In paras 101 and 102 of this judgment it is held as under :

101. Admittedly, the villages in question had been included by the State in its notification issued on 28.10.2005. Prior thereto, the said villages having not been included within the area of operation of the appellant authority, any action taken either by way of its intention to frame a town planning scheme or otherwise shall be wholly illegal and without jurisdiction. It would render its act in relation to the said villages a nullity.

102. It is, therefore, difficult for us to accept the submission of Mr. Venugopal and Mr. Gambhir that the Notification dated 13.11.2000 subsumes in the Notification dated 12.8.1977.

A bare perusal of the facts and circumstances on which the law laid down by apex Court in Chairman, Indore Development Authority's case (supra), would show that the apex Court was dealing with a totally different factual scenario and the legal rights accrued in favour of the persons on the basis of aforesaid fact situation. The said ratio has no application in the facts and circumstances of this case. No property right of the petitioner is infringed. Petitioner is not in a position to demonstrate that his fundamental or statutory rights are infringed.

16. The next reliance is placed on Rajesh Kumar Mathur Vs. Chairman, Madhya Bharat Gramin Bank and Others, . The legal principles laid down in para 15 of the said judgment cannot be disputed but all the same it has no application in the facts and circumstances of this case. In Mrs. Asha Sharma's case (supra), the apex Court held that executive and administrative function of the State has to be

fair and in consonance with the statutory provisions and rules. Even if there is no rule on the subject, the executive action should be just, fair and transparent. Arbitrariness in State action is impermissible. In the present case the petitioner could not establish the violation of any mandatory statutory provision nor it could be demonstrated that petitioner's legal rights are infringed. This is settled in law that fixing of tax, its quantum, determining market value are essentially an executive Act and High Court in exercise of writ jurisdiction cannot sit as an appellate authority. This is also settled in law that an executive decision/administrative order or a policy decision cannot be interfered with merely because another view is possible. In *State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo*, , the apex Court held as under :

Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. The scope of judicial review of administrative orders is rather limited. The consideration is limited to the legality of decision making process and not legality of the order per se. The test is to see whether there is any infirmity in the decision making process and not in the decision itself. Mere possibility of another view cannot be ground for interference.

The apex Court in *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, , took this view as under

Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and order of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them.

17. Next reliance is placed on *Raj Kumar Jain Vs. Savitri Devi and Others*, . In the considered opinion of this Court, both the aforesaid judgments and ratio laid down have no application in the present case.

18. On the basis of aforesaid analysis, the decision making process in issuance of Annexure P-3 is found to be in order. In absence of pointing out any violation of any mandatory, statutory provision, merely because another view is possible, no interference can be made. More so, when the committee which recommended the market value was consisting of heads of 12 Government Departments including two members of the non-Government service, one local MLA and the President of District Panchayat. The Collector has acted on the basis of report of said committee constituted under rule 4. Thus, Thus, I find no reason to interfere in an executive act of fixing the market value of land/property. The petition sans substance and is hereby dismissed. No costs.