(2012) 10 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8194 of 2007

Ritu Bala APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 25-10-2012

Acts Referred:
Rajasthan Stamp Rules, 2004 — Rule 58

Citation : (2012) 4 WLN 377

Hon'ble Judges : Sangeet Lodha, J;Arun Mishra, J

Bench : Division Bench

Advocate : Pramod Jangid, for the Appellant; K.K. Bissa, Addl. Govt. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—Heard learned counsel for the parties. By way of this writ petition, the petitioner has challenged the constitutional validity of Rule 58 of Rajasthan Stamp Rules, 2004 (for short "the Rules of 2004"), which prescribes the procedure for assessment of market value of immovable property covered by an instrument for the purpose of levy of stamp duty.

2. It is pertinent to note that before framing of the Rules of 2004, the procedure for assessment of market value of immovable property by Registering Officer for the purpose of levy of stamp duty was governed by Rule 59B of the Rajasthan Stamp Rules, 1955 ("Rules of 1955"). The validity of the said Rule was assailed before this Court in the matter of Satyam Properties Vs. State of Rajasthan and Others, wherein Rule 59B of the Rules of 1955 was held to be ultra vires Section 47A(2) of the Indian Stamp Act, 1899 as adapted in Rajasthan under the Rajasthan Stamp Law (Adaptation) Act, 1952. However, the matter was taken in appeal (Civil Appeal No. 3671-3684 of 2003 State of Rajasthan vs. Satyam Properties) before the Hon''ble Supreme Court. The Hon''ble Supreme Court allowed the appeal filed by the State of Rajasthan and while setting aside the decision of this Court, declared Rule 59B of the Rules of 1955 as intra vires. The

order passed by the Hon''ble Supreme Court reads as under:

Heard the learned counsel for the appellants. Although the respondent has been duly served, none appeared therefore. The short question in this case is whether Rule 59(B) of the Rajasthan Stamp Rules, 1955 (for short ''the Rules'') is ultra vires Section 47A of the Rajasthan Stamp Act, 1899 (for short ''the Act''). The High Court has held Rule 59(B) of the Rules to be ultra vires and hence, this Appeal.

Rule 59(B) of the Rules reads as under:-

59(B) Procedure for assessment of the market value of the property by the Registering Officer-(1) In the case of an instrument relating to immovable property, the market value of land shall be assessed by the Registering Officer on the basis of the rates recommended by the District Level Committee constituted under Rule 2(j) from time to time ordered the rates approved by the Inspector General of Stamps from time to time, whichever is higher and market value of the constituted portion shall be assessed on the basis of the rates determined by the State Government from time to time.

(2) If the rates of land recommended by the District Level Committee are not revised within one years from the date of such recommendation ordered if the market value of the land in any area as extra ordinarily increased or decreased, the State Government may suo-motu or on a reference made by the Inspector General of Stamps re-determine by order the rates of the land in such areas on the basis of the recommendation made by a committee consisting of SSF(Revenue) as chairman and Inspector General of Stamps, D.S.F. (Tax), Collector of concerned District and a Public Representative of that District nominated by the Government as member. The rates so determined shall be the market value of that area and be the basis of assessment of the market value of the land with effect from the date specified in such order and be valid till the District Level Committee revises the rates do determined.

Section 47A of the Act is as under:-

47A. Instruments under valued, how to be values (1) Notwithstanding anything contained in the Registration Act, 1908 (Central Act XVI of 1908) and the Rules made thereunder as in force in Rajasthan where, in the case of any instrument relating to an immovable properly chargeable with an ad valorem duty on the market value of the property as set forth in the instrument, the registering officer has, while registering the instrument, reasons to believe that the market value of the property has not been truly set forth in the instrument, he may (either before or after registering) sent it in original to the Collector for determination of the market value and to assess and charge the duty in conformity with such determination together with a penalty not exceeding 10 times of the deficient stamp duty chargeable and surcharge, if any, payable on such instrument.

(2) On receipt of the instrument under sub-Section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in the prescribed manner determine the market value and duty including the penalty and surcharge, if any, payable thereon and if the amount of duty including penalty and surcharge, if any, already paid, the deficient amount shall be payable by the person liable to pay the duty including penalty and surcharge, if any.

It is a well settled principle of interpretation that the Court should try to uphold the validity of a provision unless it is clearly ultra vires. In our opinion, we can re-concile Rule 59(B) of the Rules with Section 47A of the Act by adopting the principle of harmonious construction.

Section 47A of the Act is a provision in the statute, whereas Rule 59(B) of the Rule is only a piece of delegated legislation. In our opinion, we can harmonise the two provisions quoted herein above by holding that the assessment determined under the Rules by the District Level Committee (which is commonly known as ''circle rate'') shall not prevent the Registering Officer from making a reference u/s 47A of the Act to the Collector in case the Registering Officer, prima facie, is of the opinion that the real market value of the property is far above the circle rate so determined by the District Level Committee.

In our opinion, this is the only harmonious construction possible because obviously Rules cannot render nugatory the provisions of the Act. Hence, it is not mandatory for the Registering Officer to necessarily accept in every case the recommendations of the District Level Committee. In an appropriate case and in certain situation, the Registering Officer can disagree with the assessment determined by the District Level Committee and refer the matter to the Collector u/s 47A of the Act. Hence, we set aside the judgment of the High Court. The Appeals are disposed of accordingly. No costs.

3. Thereafter, the question with regard to the constitutional validity of Rule 58 of the Rules of 2004 also came up for consideration before this Court in the matter of "Vijay Raj & Ors. vs. State of Rajasthan & Ors." (D.B.C. Writ Petition No. 3938/11), decided on 04.01.2012, wherein a coordinate Bench of this Court relying upon the decision of the Hon''ble Supreme Court in Satyam Properties'' case (supra), held Rule 58 of the Rules of 2004 to be intra vires and constitutionally valid. This Court observed :

In our considered opinion, once the earlier Rule i.e. Rule 59(B) is found to be in pari-materia with the present Rule 58 impugned herein and when the earlier Rule is held to be intra virus and constitutionally valid by the Supreme Court then as a necessary consequence of such declaration of the Supreme Court, the impugned Rule 58 of Rules 2008 too has to be declared as intra virus and constitutionally valid. In other words, we cannot embark upon any kind of judicial debate and nor we can entertain any kind of argument in support of these writ petitions for again examining the legality and constitutional validity of impugned Rule. Indeed, once the Apex Court decided the issue though in the context of earlier Rule, it makes no difference whether the Rule was part of earlier Rules or the subsequent one. When the object of both the Rules is identical, when there is no change in the wordings of both the Rules and lastly when both operates in the same field being a part of the same Act namely- Rajasthan Stamp Act and the Rules framed there under then there is no room for any argument or discussion or debate at the instance of writ petitioners to find any distinction between the two which really does not exists except to rely upon the decision of Supreme Court quoted supra in extensio in letter and spirit for holding the impugned Rule 58 of Rajasthan Stamp Rules 2008 to be also intra virus and constitutionally valid. We accordingly hold so.

4. Thus, in light of the decision of this Court in Vijay Raj''s case (supra), holding Rule 58 of the Rules of 2004 as intra vires and constitutionally valid, nothing survives for consideration of this Court in the present writ petition. In the result, the writ petition fails, it is hereby dismissed.

