
(2004) 09 CAL CK 0005

In the Calcutta High Court

Case No : C.O. No's. 2451, 2452 and 2453 of 2000

Sanjoy Bansal, Nirmala Devi and Ram Baboo Bansal

APPELLANT

Vs

Addl. District Magistrate (L.R.R.M.) Section

RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Stamp Act, 1899 — Section 47A(2), 47A(3)

West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 1994 — Rule 4, 5(2)

Citation : (2005) 1 CHN 490

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Bidyut Kumar Banerjee and Sheela Sarkar, for the Appellant; Wasem Ali Mondal, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Bhattacharya, J.—The hearing stems from three applications filed by three petitioners praying for revision of the orders dated 02.06.2000 passed by the Divisional Commissioner, Burdwan in Appeal Case Nos. 6/95, 7/95 & 8/95 which have been heard analogously for the sake of convenience and gravity as same questions of law and fact are involved.

2. The circumstances leading to the aforesaid revision are that the property comprised in holding No. 58 (57) Atwalnagar S.B. Garai Road, Asansol-1 belonged to one Surinder Kaur who let out distinct portion of the said premises to Nirmala Devi & Ram Baboo Bansal at a monthly rental of Rs. 1000/- & Rs. 300/- respectively inclusive of municipal taxes as she agreed to pay municipal taxes, and according to the agreement of tenancy, the tenants were entitled to make addition and alteration and to let out whole or part of the respective demise premises. Accordingly, Nirmala Devi and Ram Baboo Bansal made addition and alteration as also construction of other structure with their own cost and let out the portion of the premises to sub-tenants. Surinder Kaur divided the

premises into three parts and sold out the distinct parts to the petitioners Sanjoy Bansal, Nirmala Devi & Ram Baboo Bansal at a consideration of Rs. 1,50,000/-, 3,50,000/- & 1,50,000/- respectively. After purchase of the property, the Collector, Burdwan issued a notice in Form - VII calling for objection relating to determination of market value. After considering the objections submitted by the petitioners, the market value of the property was arbitrarily determined by the O.P. at Rs. 5,44,400/-, Rs. 6,48,800/- & Rs. 5,64,000/- respectively with a direction to the petitioners to deposit deficit stamp-duty of Rs. 39,440/-, 29,880/- & 41,400/- respectively. The Divisional Commissioner, Burdwan disposed of the appeals by allowing 10% deductions as the property was tenanted and further assessed the deficit stamp-duty without disclosing the material in support of his objective satisfaction.

3. Being aggrieved by, and dissatisfied with, the said orders, the petitioners have preferred the present revision.

4. All that now requires to be considered is whether the appellate authority was justified in passing the said orders.

5. Mr. Bidyut Kumar Banerjee, learned Counsel for the petitioners, on referring to the notice in Form - VII of determination under Sub-section (2)/ Sub-section (3) of Section 47A of the Indian Stamp Act, 1899 issued by Additional District Magistrate/Collector, Burdwan on 29.08.1995 demanding payment of deficit stamp-duty contended that no portion having been struck out, which portion actually relates to the present case remains unindicated. Mr. Wasem Ali Mondal, learned Counsel for the O.P., on the other hand, contended that the market value of the property was assessed by the authority concerned vide orders dated 21.08.1995 followed by issuing the said notice in Form-VII and so merely because the portions not applicable were not struck out it did not at all affect the petitioners, and there appears to be enough force in such contention. In the aforesaid order dated 21.08.1995 how the market value of the property was determined was elaborately discussed and through the said notice the gist of determination was indicated. As such, the petitioners cannot be held to have been mislead or prejudiced in any way due to want of striking out the inapplicable portion of the notice.

6. Mr. Banerjee on referring the decisions reported in Ranjit Ghosh Vs. Hindusthan Steel Ltd. and Others, next argued that the ground for assessment of valuation of the land at Rs. 20,000/- has not been disclosed nor any copy of report of Additional District Magistrate/Registrar, Delhi in the matter of assessment of the said valuation has been supplied to his clients thereby violating the principle of natural justice. Mr. Mondal, on the other hand, contended that as the enquiry was held in presence of both the parties thus not necessitating preparation of any report, the question of supplying copy of report to the petitioners does not arise. Under Sub-section (1) of Section 47A of the Indian Stamp Act the Registering Officer, while registering any instrument, may, if he has reason to believe that the market value of the property has not been

truly set forth in the instrument, register such instrument provisionally, subject to determination of the market value under Sub-section (2) and refer the matter to such authority as may be prescribed for determination of the market value of the property and proper duty payable thereon. Sub-section (2) provides that on receipt of a reference, such authority shall, after giving the parties concerned an opportunity of making their representation and after holding an enquiry in such manner as may be prescribed by rules made under the Act, determine the market value of the property and the amount of duty payable. Rule 4 of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 1994 similarly provides for reference by the Registering Officer, after registering the instrument, to the Collector for determination of the market value of the property. Under Clause (a) of Sub-rule (2) of Rule 5 of the said Rules, the Collector if he thinks fit, may, for the purpose of his enquiry, call for any information, report or record from any public office or authority under the Central Govt. or State Govt. or any local authority or local body or any person who has, in his opinion, knowledge with respect to valuation of property. It would appear from Clause (a) of Sub-rule (2) of Rule 5 above that information may not necessarily be in writing. Neither the Act nor the Rules contain any provision obligating the authority concerned to supply copy of enquiry report. The language "necessary enquiries in the matter have also been made to ascertain the actual valuation of the property in question" as used in the order dated 21.8.1995 of the authority concerned does not lead to indicate collection of "enquiry report" and so the question of supplying a copy of enquiry report to the petitioners is out of the way. Rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the legislature and varying situations. The question whether in a particular case they have been contravened must be judged not by any preconceived notice of what they may be but in the light of the relevant Act. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case, as was observed in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . If fairness is shown by the decision-maker to the person proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of the situation, no breach of natural justice can be complained of, as unnatural expansion of natural justice without reference to the scheme and other factors of a given case can be exasperating. In the present case, there is nothing to indicate in the order of the authority concerned that Additional District Magistrate/Registrar, Delhi assessed the valuation of land, but he simply referred the matter of determination of proper valuation of the property whereupon the authority concerned after necessary enquiries relating to the actual valuation of the property in question

assessed the valuation of the land at Rs. 20,000/- per cottah considering it to be fair and reasonable taking into account the location of land. Therefore, when the authority concerned after making necessary enquiries to ascertain the actual valuation of the property determined the valuation of the land after observing all necessary formalities and no ground of non-supply of copy of report to the petitioners appears to have been taken in the revisional application nor it is sustainable, the need for considering the alleged ground does not arise. As such the contention of Mr. Banerjee does not stand.

7. On referring a decision reported in M.B. Gopal Krishna and others Vs. The Special Deputy Collector, Land Acquisition, , Mr. Banerjee last contended that though the fact that a freehold land normally commands higher compensation while the land burdened with encumbrances secures lesser price was considered by the appellate authority, only 10% deduction on the assessment of Additional District Magistrate, Burdwan was allowed without disclosing any reason for not allowing higher deduction and so the decision of the appellate authority should be liable to be set aside for a fresh decision in the matter. Mr. Mondal, on the other hand, on referring the decisions reported in AIR 1991 SC 1494 & Manikyapuri Housing Co-op. Society Vs. Mahesh Chaturvedi and Another, contended that the jurisdiction under Article 227 of the Constitution is limited and cannot be used to correct an error, if any, and so the said findings of the appellate authority may not be disturbed. Indubitably, the fact of a tenant in occupation is an encumbrance and no willing purchaser will willingly offer the same price as would be offered for a freehold land. In other words, the land burdened with encumbrance being a disabling factor takes less price than the freehold land. Taking into account the above aspect and considering the location of the land when the appellate authority allowed 10% deduction on the assessment of Additional District Magistrate/ Collector, Burdwan and there is no hard and fast rule as to how much reduction is permissible in such a case, it will not be justified to interfere with the said findings of the appellate authority, since the jurisdiction under Article 227 does not confer the power to act as an Appellate Court but it is confined only to see whether the inferior Court or Tribunal has acted within its parameters, and can set aside the findings of the fact if based on no evidence or it is perverse, i.e., no reasonable person would possibly arrive at such a conclusion which is not involved here. In this connection, the aforesaid decisions so cited by the learned Counsel for the O.P. may be referred to.

8. In the premises, in the light of the above discussion there being no material to interfere with the decision of the appellate authority the present revisional applications fails and it be dismissed on contest but without any cost in the circumstances.

9. The impugned orders dated 02.06.2000 passed by the Divisional Commissioner, Burdwan in Appeal Case Nos. 6/95, 7/95 & 8/95 are hereby affirmed.

10. Let a copy of this order be sent down at once to the appellate authority.