

(1999) 02 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 299 to 303, 305 to 308, 310 to 312, 783 and 4373 of 1998

Satyam Properties

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 47, 47A
Stamp Rules, 1955 — Rule 59B

Citation : AIR 1999 Raj 276 : (1999) 2 RLW 823 : (2000) 1 WLC 598 : (1999) 1 WLN 281

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : M.S. Singhvi, for the Appellant; D.K. Parihar, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethana, J.—In this group of petitions, though separate notices issued for the plots in question by the respondents are challenged, but the parties are the same and the points raised in these petitions are also same, therefore, all these petitions are disposed of by this common judgment.

2. Before dealing with the submissions raised by the learned counsel Shri Singhvi for the petitioners in all these cases, I must state few important facts, which are as under :--

"(i) The petitioner - Satyam Properties is the sole petitioner in all these petitions.

(ii) The petitioner in all these petitions has challenged the impugned notice dated 18-11-1997 (Annex. 6) issued by the respondent No. 2, Collector (Stamps), Bhilwara calling upon the petitioner to deposit the amount assessed, failing which the proceedings for recovering the amount as arrears of land revenue be initiated against it. And, also the order dated 26/27-11-97 (Annex. 7) issued by the

Tehsildar, Bhilwara calling upon the petitioner to deposit the amount in addition to other amount mentioned in the notice.

(iii) The plots in question is a part of big industrial property known as "Duduwala Property" in an industrial town of Bhilwara of State of Rajasthan.

(iv) Many cases were pending before the Calcutta High Court against the Duduwala and Company and the property of "Duduwala and Company" consisting of big plot divided into subplots of different measurements of 44" x 31", 44" x 44", and 44" x 88" came to the share of Govinda Investment, Bhilwara as per the order of Calcutta High Court dated 30-8-93.

(v) All the sub-plots of main plot were purchased by the petitioner-Satyam Properties from Govinda Investment under the registered sale deed of different dates (Annex. 1 in all the petitions). Annex. 2 is a map showing the sub-plots in the main big plots.

(vi) The Registering Authority in all these cases was of the opinion that the consideration mentioned in instrument of transfers of plots in question was less than the rates fixed by the District Level Committee and as per the rate fixed by the Committee the value was running into lacs of rupees and, therefore, the petitioner was asked to pay the amount of stamp duty on the value assessed. However, the petitioner did not pay the dues proposed by the Registering Authority, therefore, the matter was referred to the Collector (Stamps) for determination of the market value of the plots in question u/s 47-A (ii) of the Indian Stamp Act, 1899 (for Short the "Act").

(vii) The petitioner filed reply in each case to the notice issued against it contending that there was no basis for the Registering Authority to treat the plots in question as commercial and to value it accordingly. The Collector (Stamps) by his order valued the property in lacs and directed the petitioner to deposit the difference of amount in the stamp duty in lacs of rupees as per the measurement of the plots and also to pay the registration charges and penalty. The Collector passed the order on different dates. His impugned orders calling upon the petitioner to pay the difference amount in stamp duty, registration charges and penalty is Annex. 5 in all these petitions.

Thereafter, the respondent No. 2, Collector (Stamps) issued notice on 18-11-1997 (Annex. 6) in all the cases directing the petitioner to deposit the amount assessed or proceedings will be initiated for recovering the amount as arrears of land revenue.

(viii) The Tehsildar, Bhilwara by his order dated 26/27-11-97 (Annex. 7) in turn issued notice in all the cases to the petitioner to deposit the amount in addition to the other amounts mentioned in the notice.

3. According to the averments made in para No. 8 by the petitioner in all these petitions that now the respondents are proceeding to effect the recovery of the amount by coercive process under the provisions of Rajasthan Land Revenue Act.

4. It must be stated that though the impugned orders at Annex. 5 was passed by the Collector (Stamps) in all the petitions in 1997 or so and the notice dated 18-11-1997 (Annex. 6) and the order dated 26/27-11 -97 (Annex. 7) passed by the Collector (Stamps) and Tehsildar, respectively, only one petition i.e. S. B. Civil Writ Petition No. 783/ 98 was initially filed by the petitioner before this Court as a test case on 7-3-1998. On 17-3-1998, this Court (P. P. Naolekar, J.) issued notice to the respondents calling upon them to show cause as to why this petition should not be disposed of at the admission stage and on stay Petition No. 634/98 issued the notice. On 21-4-1998 this Court (Dr. B. S. Chauhan, J.) ordered to issue fresh notice against the respondents in the main Writ Petition 783/98 and made it returnable within four weeks. On 20-7-98, this Court (V. G. Palshikar, J.) ordered that no coercive steps be taken to recover the additional stamp duty till the disposal of the writ petition and also admitted the main writ petition on 14-7-1998. Thereafter, on 26-11-1998 rest of the petitions were filed out of which only one petition i.e. S. B. Civil Writ Petition No. 4373/98 was placed before the Hon"ble Dr. B. S. Chauhan, J. on 11-12-1998 and on that day i.e. 11-12-1998 Hon"ble Dr. B. S. Chauhan, J. ordered to put up the same in January, 1999 and also ordered that on that day Mr. Singhvi may argue on the issue of delay particularly in view of the judgment in case of Jagdish Lal and others Vs. State of Haryana and others,

5. Accordingly, it was placed on 14-1-1999 before Hon"ble Bhagwati Prasad, J. and the matter was put up after two weeks as prayed for by Mr. Singhvi. Then it came up before me on 2-2-1999. In view of the earlier order dated 11-12-1998 passed by Hon"ble Dr. B. S. Chauhan, J. Mr. Singhvi was called upon to explain the delay in view of the judgment of Apex Court in case of Jagdish Lal and others Vs. State of Haryana and others, However, Mr. Singhvi submitted that identical petition filed by the petitioner was already admitted by this Court, but he was not having the number of that petition, therefore, it was kept by me on 4-2-1999 at the top of cause list. On 4-2-1999, Mr. Singhvi gave number of that petition which was already admitted by this Court. Hence, papers of Writ Petition No. 783/98 were called from the office. From the papers I found that Petition No. 783/98 was filed on 7-3-98, whereas, this petition No. 4373/98 was filed on 26-11-1998, after 8 months of filing of that petition. Under the circumstances. Mr. Singhvi was first called upon to explain the delay in Writ Petition No. 4373/98. During the course of arguments it transpired that petitioner had also filed other writ petitions but the same were not placed for admission before the Court at any point of time, therefore, all the petitions were listed for admission on that day i.e. 4-2-99.

6. On close scrutiny I found that all those petitions were also filed by the petitioner on the same date i.e. 26-11-1998 along with S. B. Civil Writ Petition No. 4373/98 and from the endorsement made in all these petitions it appears that these matters were also ordered to be placed on 2-2-1999 before me by the office, but said petitions were not placed because of the adjournment slip given by Mr. Singhvi in the office, therefore, they were not placed before me on 2-2-99

along with S. B. Civil Writ Petition No. 4373/98. As per the order dated 11-12-1998 passed by Hon"ble Dr. B. S. Chauhan, J. Mr. Singhvi was ready to argue all these matters which were not earlier listed before this Court and also the main Writ Petition No. 783/98. Accordingly, Mr. Singhvi was heard on the point of delay as well as on merits of all these cases.

7. On the point of delay, learned counsel Shri Singhvi for the petitioners submitted that when in identical matter i.e. S. B. Civil Writ Petition No. 783/98 while issuing notice this Court ordered that it should be disposed of at the admission stage, then merely because rest of the petitions were filed after 8 months, it should not be thrown out on the ground of delay and laches because delay of 8 months in filing those petitions loses all its significance in view of the fact that one identical petition was already pending final disposal at the admission stage before this Court. In support of his submission Mr. Singhvi has placed reliance on the following Supreme Court judgments :--

(i) Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others, Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others,

(ii) K. Prasad and Others Vs. Union of India (UOI) and Others,

(iii) Lt. Governor of Delhi and others Vs. Const. Dharampal and others,

(iv) Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others,

(v) Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others,

8. In case of Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others, the question was regarding refund of tax paid by the assesses under the mistake of law. In that context the Apex Court held that delay should not come in the way.

9. Case of K. Prasad and Others Vs. Union of India (UOI) and Others, has no relevance to the facts of these cases as it was a service matter and complicated nature of issues was involved.

10. In case of Dharampal AIR Q 90 SC 2059) (supra) facts were totally different and were not applicable to the facts of these cases. It was a famous case of termination of services of police personnel, where the assurance was also given in the Parliament to reinstate the police personnel, who were dismissed for going on strike.

11. In case of Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, the Apex Court observed that, "it is a discretion of the Court to exercise its jurisdiction in the matter or not where there is delay and it is to be exercised in facts of each case and the fundamental rights guaranteed to the citizens of this Country cannot be denied on the ground of delay and laches."

This is not the case here.

12. In case of Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others, the Apex Court, on the contrary, observed that, "there may be cases where even delay of shorter period may be considered to be sufficient to refuse relief in a petition under Article 226 of the Constitution....."

13. Thus, in short, to exercise jurisdiction by this Court depends upon facts of each case and there cannot be any blanket proposition either way. As held by the Apex Court in Vallabh Glass Works (supra) that even a delay of shorter period may be considered to be sufficient to refuse the relief in a petition under Article 226 of the Constitution.

14. The facts narrated by me earlier shows that the petitioner has disentitled itself from entertaining all these petitions, except Writ Petition No. 783/98, on the ground of delay and laches. It was highly improper on the part of the petitioner to file only one petition as a test case and after waiting for sufficient time to move this Court to get rest of the matters heard and decided on merits on the ground that identical petition has been entertained by this Court. Apart from the fact that there is no explanation whatsoever offered by the petitioner all other petitions, except S. B. Civil Writ Petition No, 783/98, for filing the same late i.e. in the end of November, 1998 the conduct of the petitioner disentitle it from any discretionary relief by this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India.

In view of the above discussion, all these writ petitions except Writ Petition No. 783/98, are required to be dismissed solely on the ground of delay and laches.

15. Now, I will come to the Writ Petition No. 783/98. On merits, Mr. Singhvi, learned counsel for the petitioner submitted that the Apex Court in case of State of Punjab and Others Vs. Mohabir Singh etc. etc., and in case of Prakashwati (Smt) Vs. Chief Controlling Revenue Authority, Board of Revenue, U.P. at Allahabad and Others, held that no higher or lower value of the property can be fixed. However, in these judgments the Apex Court itself made it clear that it can be on the facts of each case. On facts of the presentcases, it is found that value assessed by the petitioner in the sale deed is highly disproportionate and too less. The prices were to be fixed on the commercial basis and not on residential basis.

16. The submission of Mr. Singhvi was that the petitioner purchased the plots for the residential purposes, therefore, the rates should have been counted on that basis and not on the commercial basis. This submission of Mr. Singhvi cannot be accepted for the simple reason that the petitioner had purchased the sub-plots from the main big plot by different sale deeds apparently for commercial purpose and that the property also belonged to business concern i.e. "Duduwala and Company" and they were just near to commercial area. It could not have been used for residential purpose. Even if there were some residential places nearby then also that fact would not be sufficient to consider the residential prices when

the intention of the petitioner was very clear to use it for commercial purposes.

17. Mr. Singhvi then submitted that the District Level Committee made valuation without any basis. In support of his submission, Mr. Singhvi has tried to rely upon the minutes of Committee at Annexs. 10, 11 and 12. Annexs. 10, 11 and 12 are of different dates and different prices for commercial and residential purposes. That very fact shows that the District. Level Committee after full application of mind fixed the prices. In such cases this Court cannot sit in appeal over the decision of District Level Committee in a petition filed under Article 226 of the Constitution of India.

18. There is also a challenge to Rule 59-B of the Stamp Rules, 1955. Rule 59-B. which is reproduced as under :--

"The market value shall be assessed by the registering officer, taking into consideration all facts affecting duty, on the basis of the rates recommended by the District Level Committee as constituted by the Government from time to time or the rates approved by the Registration and Stamps Department from time to time or the highest rate of similar property in Index II, whichever is higher."

19. However, Mr. Singhvi completely failed to show how Rule 59-B is ultra vires. Merely submitting that Rules are ultra vires it would not become ultra vires. There is no vagueness in Rule 59-B.

20. Rule 59-B provides a complete procedure for assessing the market value by the Registering Officer. He has to take into consideration all facts affecting duty on the basis of rates recommended by the District Level Committee which consists of three expert persons constituted by the Government from time to time. Only submission made by Mr. Singhvi was that the Registering Authority has to exercise quasi-judicial function, therefore, his powers cannot be curtailed by the recommendation of the District Level Committee. This submission cannot be accepted for the simple reason that there is a complete procedure prescribed for District Level Committee for assessing the prices. Under Rule 59-B the Registering Authority has to take into consideration, (i) the rates recommended by the District Level Committee, or (ii) the rates approved by the Registration and Stamps Department, or (iii) the highest rate of similar property shown in Index II. Thereafter, the Registering Authority has to assess the market value whichever is higher. Thus, it cannot be said that it curtails the power of Registering Authority. On the contrary it gives three options to the Registering Authority for assessing the market value.

21. Thus, on merits also all these petitions including main Writ Petition No. 783/98 had no substance and they were required to be dismissed.

22. In view of the above discussion, all these petitions fail and are hereby dismissed with no order as to costs. Accordingly, all the stay petitions including stay Petition No. 634/98 filed in S. B. Civil Writ Petition No. 783/98 are hereby dismissed and stay granted earlier in stay Petition No. 634/98 filed in Writ

Petition No. 783/98 stands vacated, forthwith.