(2002) 02 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Special Appeals No''s. 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577 and 578 of 1999

Satyam Properties APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:
Rajasthan Stamp Act, 1998 — Section 47A(2), 75
Rajasthan Stamp Rules, 2004 — Rule 59B

Citation : (2002) 3 WLN 361

Hon'ble Judges : Arun Kumar, C.J;Prakash Tatia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arun Kumar, C.J.—The point for consideration in this batch of appeals is the validity of Rule 59-B of the Rajasthan Stamp Rules, 1955.

2. Briefly the facts necessary for appreciating the controversy involved in these appeals are that the appellants purchased certain plots of land vide sale deeds executed by the vendors in their favour between 20th Sept., 1995 to 9th Jan., 1996. The sale deeds were stamped as per the consideration declared therein and they were submitted for registration before the authorities. The question about correct valuation of the sale deeds for the purpose of stamp duty arose for consideration. Following the decision of the District Level Committee, the Collector valued the properties at a rate more than what was disclosed as consideration in the sale deeds and issued notices for recovery of the balance amount of stamp duty. The appellants challenged the decision of the Collector about the enhancement in the valuation of the properties as well as the notices for payment of additional stamp duty by way of writ petitions filed in this court. Out of total number of 14 writ petitions, one writ petition was decided on merits while the remaining 13 writ petitions were dismissed on the ground of limitation.

3. The appellants have filed these 14 appeals against the judgment of the

learned Single Judge dismissing all the 14 writ petitions. We have been taken through the judgment of the learned Single Judge. In our view, the learned Single Judge proceeded on an entirely different basis while deciding the petition on merits, thereby over-looking the real question in controversy. Secondly, we also feel that when the question involved in all these cases was same and it was purely a legal question which was being decided on merits in one of the writ petitions, the remaining petitions need not have been dismissed on the ground of delay specially when the aspect of delay was common to all the cases. The decision on the law point covers all the cases. It was wholly uncalled for to dismiss the remaining cases on the ground of limitation. So far as the decision of the learned Single Judge on merits in one of the petitions is concerned, we are unable to subscribe to the view taken by the learned Single Judge. Our reasons for this are as under.

4. Section 47-A of the Rajasthan Stamps Act, 1899, as adopted in the State of Rajasthan lays down the procedure regarding valuation of documents. Under Sub-section (1), if the registering officer finds that a document presented for registration before him has not been properly valued, he is authorised to refer it to the Collector for determination of the market value of the property and the stamp duty is to be charged accordingly. Under Sub-section (2) of Section 47-A of the Rajasthan Stamp Act, 1899, the procedure has been prescribed for determination of the market value by the Collector. Sub-section (2) is reproduced as under:

(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 the duty including the penalty and surcharge, if any payable thereon, and if the amount of duty paid, the deficient amount shall be payable by the person liable to pay the duty including penalty and surcharge, if any.

5. It is clear from the above provision that the Collector is required to give reasonable opportunity to the parties of being heard and he is also required to hold an enquiry in the prescribed manner to determine the market value of the property. Thus, the function assigned to the Collector Under Sub-section (2) is a quasi judicial function. In this background, we have to see Rule 59-B of the Rajasthan Stamp Rules, 1955, validity whereof is under challenge in these appeals. The said provisions is reproduced as under:

59-B The market value shall 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.

6. Learned Counsel for the appellants argued that the Rule 59- B of the Rajasthan Stamp Rules, 1955 lays down limitation on the power of the Collector

given to him u/s 47-A(2) of the Stamp Act and, therefore, is ultra vires the said provision. Rule 59-B requires the Collector to assess the market value of a property on the basis of rates recommended by the District Level Committee as constituted by the Government or the rates approved by the Registration and Stamp Department of the Government from time to time or the highest rate of similar property in Index-II, whichever is higher. Thus according to Rule 59-B the assessing authority is required to fix the market value of a property on the basis of highest of the three valuations, i.e., one by the District Level Committee, rates approved by the Registration and Stamp Department and rate of similar property. This leaves no discretion with the assessing authority for arriving at the true market value of the property as envisaged u/s 47-A(2) of the Act. Rule 59-B clearly seems to be circumscribing the powers of the assessing authority, i.e., the Collector u/s 47- A(2). While Sub-section (2) of Section 47-A leaves the matter of determination of market value of a property entirely to the wisdom of the Collector, Rule 59-B prescribes limitations on the power of the Collector in this behalf as the Collector Under Rule 59-B is required to base his decision on either of the aforesaid three valuations taking the highest of the three as the market value of the property. Actually Rule 59-B leaves no discretion with the Collector.

7. In our view this limitation placed by Rule 59-B on the power of the Collector, i.e., the assessing authority contained in Section 47-A(2) of the Act is totally contrary to the provisions of the Act. The Act leaves the matter entirely to the judgment of the Collector, While Rule 59-B takes away the decision making power from the Collector. u/s 47-A(2) the Collector is required to hold an enquiry with respect to determination of market value of a property. Inquiry is to be held after giving opportunity of hearing to the parties. This means that parties can place evidence or material before the Collector in support of their respective stands and the Collector can arrive at an independent conclusion on the basis of material placed before him in the inquiry. Such an important function assigned to the Collector is being rendered nugatory by impugned Rule 59-B. Rates fixed by the authorities mentioned in Rule 59(B) cannot be final. They can at best be guidelines. The Collector has to take his own independent decision.

8. In Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others, in the context of the Section 47-A of the Stamp Act the Supreme Court held that circle rate fixed by Collector are not final and they are only by way of guidelines to the registering authorities. Further, the Supreme Court emphasized the aspect of opportunity to be given to the affected party to represent its case before the assessing authority, i.e., the Collector on the question of valuation of the property. An affected party must get adequate opportunity in this behalf according to this decision of the Apex Court.

9. We also find support for our aforesaid view from the decisions of the Supreme Court in State of Punjab and Others Vs. Mohabir Singh etc. etc., and Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another,

10. The rule making power is contained in Section 75 of the Rajasthan Stamp

Act. According to Section 75, the State Government is authorised to make rules to carry out generally the purposes of the Act. Here in the present case, as per facts noted above, Rule 59-B instead of helping in carrying out the purposes of the Act, is trying to control the provisions of the Act by curtailing the power of the Collector given to him under the statute. It is settled law that rules framed in pursuance of rule making power given under a statute cannot over ride the statute. In our considered view Rule 59-B which tries to over ride the statutory provisions contained in Section 47-A(2) of the Act, has to be struck down.

11. Accordingly, these appeals are allowed. Rule 59-B of the Rajasthan Stamp Rules, 1955 is held to be ultra vires Section 47-A (2) of the Stamp Act. It is further held to be beyond the power contained u/s 75 of the said Act. The Rule is hereby struck down. The order of the Collector as well as the notices requiring payment of balance stamp duty and penalty are struck down. The matter is remanded back to the Collector to determine the value of the property in accordance with law.

