
(2010) 09 AHC CK 0552
In the Allahabad High Court
Case No : Writ C. No. 31061 of 2010

Saya Traders

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Registration Act, 1908 — Section 17, 21, 23, 27, 29
Stamp Act, 1899 — Section 17, 2, 47A, 56

Citation : AIR 2011 All 11

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—A short but an intricate question is involved in this writ petition.

2. The question is as to whether the authorities under the Indian Stamp Act, 1899 in exercise of power u/s 47A of the Act are empowered to determine the market value of the land under transfer when the same has been sold by public auction or by inviting tenders under the supervision of the Court at a value approved by the Court.

3. The facts leading to the above question may be summarised as under:

M/s. Bharat Berg Ltd., a company incorporated under the Companies Act was ordered to be wound up by the order of the Bombay High Court dated 21.12.1999 passed in Company Petition No. 514 of 1998. The Official Liquidator stepped in and took possession of all assets of the company in liquidation which included the property in question i.e. the land situate in village Okhara, Tehsil Bindki, Malwa, district Fatehpur, Uttar Pradesh. He was granted permission to sell the above land by the Court on 3rd August, 2000. Accordingly, sale notices were published in the newspapers and the offer of M/s. Sanjug Trading Company Ltd. for a sum of Rs. 37,51,000/- was accepted/confirmed by the Court on 26.4.2002.

Subsequently, the Court vide order dated 17.12.2003 permitted the sale deed to be executed in favour of Petitioner M/s. Saya Traders, as a nominee of M/s. Sanjug Trading Company Ltd. The Official Liquidator on 30.4.2004 executed a deed of conveyance in favour of the Petitioner for a sale consideration of Rs. 37,51,000/- and presented the same for registration before the Sub-Registrar on 19.4.2004 but the document was returned without registering. The deed was again presented for registration on 28.5.2004 after removing the objections.

4. The Sub-Registrar on 28.5.2004 submitted a report stating that the conveyance deed showing the value of the land to be Rs. 37,51,000/- has been presented on which stamp duty at the minimum rate as prescribed by the District Magistrate has to be paid and accordingly suggested value of the land as Rs. 11,57,18,763/- for realising stamp duty.

5. The Collector vide impugned order dated 29.3.2010 accepted the report of the Sub-Registrar. The market value of the property has been taken as Rs. 11,59,48,763/- on which deficiency in stamp duty of Rs. 89,79,900/- has been determined and a penalty of Rs. 50,000/- has been imposed. The deficiency has been directed to be paid with interest at the rate of 1.5% per month.

6. The above order passed by the Collector has directly been assailed by means of the present writ petition without exhausting the statutory remedy of appeal/revision provided u/s 56 of the Act on the allegation that the order is without jurisdiction; Section 47A of the Act is not applicable in the present case; the order is arbitrary and imposes unforeseen financial liability and the remedy of appeal which provides for depositing 1/3rd of the amount and furnishing security for the balance for grant of interim protection would not be an efficacious remedy on account of the onerous condition aforesaid.

7. Initially learned Standing Counsel made an attempt to oppose the petition on the ground of alternative remedy but in view of the pure legal question arising which do not involve any factual dispute, he agreed for the disposal of the writ petition on merits after exchange of necessary affidavits at the admission stage.

8. Now pleadings of the parties are complete and they agree for final disposal of the writ petition on merits irrespective of the alternative remedy available.

9. The Court has also overlooked the alternative remedy so available as prima facie the contention is that the sale was made under the supervision of the Court at a price fixed by it and the provisions of Section 47A of the Act would not be applicable as allowing determination of market value under the Act in effect would be allowing the authorities to sit over the decision of the High Court.

10. Apart from the above, the Apex Court while considering the validity of Section 47A of the Act, as amended by Andhra Pradesh Act No. 8 of 1998 which requires a party to deposit 50% of the deficient stamp duty as a condition precedent for a reference to the Collector u/s 47A of the Act, in paragraphs 28, 29 and 30 in the case of Government of Andhra Pradesh and Others Vs. Smt. P.

Laxmi Devi, observed that where the determination made is arbitrary and is based on extraneous considerations and violates Article 14 of the Constitution, it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer.

11. In view of above, I proceed to decide the writ petition finally on merit.

12. I have heard Sri Manish Goyal, learned Counsel for the Petitioner and Sri Sanjay Goswami learned Standing Counsel appearing for the Respondents.

13. The submission of Sri Goyal is that the transfer of the property is by the Court at the value determined by the Court. Therefore, the authorities have "no reason to believe" that the market value of the property has not been truly set forth in the instrument and, as such, the provisions of Section 47A of the Act would not be applicable. The reference, as such, is bad and the authorities are not obliged to determine the market value of the property.

14. Sri Goswami, on the other hand, has submitted that under the scheme of the Act the registering authority is competent to make a reference for determination of the market value where the market value set forth in the instrument is less than the minimum value as prescribed by the Collector under the Rules. He has also submitted that it is not a Court sale but a sale by the Official Liquidator and, therefore, there is no hurdle in determining the market value of the property u/s 47A of the Act. In support he has placed reliance upon a decision of this Court reported in 2004 (96) RD 635 : 2004 All LJ 2715 Vishwanath Agarwal v. State of U.P. and Ors. which has also been relied upon by the authorities below.

15. In grappling with the above dispute, I consider it beneficial to bring forth the scheme of Section 47A of the Act. The aforesaid provision deals with cases of under valuation of the property with the view to defraud the Government of legitimate revenue by way of stamp duty. It is in two parts. The first part is contained in Sub-section (1)(d) of Section 47A of the Act whereas Sub-section (3) of Section 47A of the Act deals with the second part.

16. The first part provides that when any instrument is presented for registration and the registering officer finds that the market value of the property as set forth in the instrument, is less than even the minimum value prescribed, he shall require the person presenting the instrument to recompute the market value and to pay stamp duty according to prescribed rate in accordance with the rules framed under the Act and to present the instrument thereafter for registration. It further provides that in the event the value is amended and the stamp duty on recomputed value is paid the instrument on re-submission would be registered but where it is resubmitted for registration without recomputing, the registering authority instead of, registering the instrument shall refer the same to the Collector for redetermination of market value of the property and the proper duty payable thereon.

17. The second part provides for a suo motu action by the Collector for

determination of market value of the property and the proper stamp duty payable on the instrument or on a reference after the instrument is registered.

18. It would be convenient for the appraisal of the controversy to reproduce the relevant provisions of Section 47A of the Act here in below;

47A. Under-valuation of the instrument.-- (1) (a) If the market value of any property which is the subject of any instrument, on which duty is chargeable on the market value of the property as set forth in such instrument, is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908 shall, notwithstanding anything contained in the said Act, immediately after presentation of such instrument and before accepting it for registration and taking any action u/s 52 of the said Act, require the person liable to pay stamp duty u/s 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with Section 23 of the Registration Act, 1908.

(b) When the deficit stamp duty required to be paid under Clause (a), is paid in respect of any instrument and the, instrument is presented again for registration, the registering officer shall certify by endorsement thereon, that the deficit stamp duty has been paid in respect thereof and the name and the residence of the person paying them and register the same.

(c) Notwithstanding anything contained in any other provisions of this Act, the deficit stamp duty may be paid under Clause (a) in the form of impressed stamps containing such declaration as may be prescribed.

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in Clause (a) and presents the instrument again for registration, the registering officer shall, before registering the instrument, refer the same to the Collector, for determination of market value of the property and the proper duty payable thereon.

(2) On receipt of a reference under Sub-section (1) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject of such instrument and the proper duty payable thereon.

(3) The Collector may, suo motu, or on a reference from any Court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the State Government in that behalf, within four years from the date of registration of any instrument on which duty is chargeable on the market value of the property, not already referred to him under Sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the

correctness of the market value, of the property which is the subject for such instrument, and the duty payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in such instrument, he may determine the market value of such property and the duty payable thereon: Provided that, with the prior permission of the State Government, an action under this Sub-section may be taken after a period of four years but before a period of eight years from the date of registration of the instrument on which duty is chargeable on the market value of the property.

Explanation.-- The payment of deficit stamp duty by any person under any order of registering officer Under Sub-section (1) shall not prevent the Collector from initiating proceedings on any instrument under Sub-section (3).

19. A comparison of the language employed in Section 47A(1) and 47A(3) would bring out the distinction between the two Sub-sections. Under Sub-section (1) of Section 47A the reference is made by the registering officer before registration if the market value of the property set forth in the instrument presented for registration is less than even the minimum value prescribed in accordance with the rules framed under the Act. This provision does not contemplate that the reference has to be made if there is reason to believe that the market value has not been truly set forth in the instrument. In contrast, Sub-section (3) of Section 47A envisages a reference by the Court or by the authorities under Act or on suo motu action by the Collector after registration of the instrument provided there is "reason to believe" that the market value of the property has not been truly set forth in the instrument. In this way, there is a marked departure in the language employed in the two Sub-sections for making reference to the Collector at two different stages. In the later reference there has to be a reason to believe that the market value has not been truly set forth in the instrument whereas in the former no such opinion is necessary. Secondly, under Sub-section (1) of Section 47A of the Act reference is made before registration of the instrument whereas u/s 47A(3) it is made after registration.

20. It is well settled that in view of Section 17 of the Act the market value of the property in relation to an instrument chargeable to stamp duty is determinable on the date of its execution irrespective of the date of its registration, if any.

21. The deed of conveyance which was presented for registration has been filed as Annexure - 2 to the writ petition. I have carefully gone through the same. The aforesaid deed of conveyance when first presented for registration, was returned by the Sub-Registrar on 19.4.2004 with the endorsement to ensure compliance of Sections 21, 32A and 27 of the Act. It was again presented on 28.5.2004 but there is no endorsement of any registration. In paragraph 9 of the writ petition it has been stated that the deed was registered. This averment has not been specifically denied in the counter affidavit. It has simply been stated that it is a matter of record. However, during the course of argument it has been strongly canvassed from the side of the Respondents that the deed was not registered and in effect by specific order dated 28.5.2004 made under the signatures of the

Sub-Registrar the registration was kept pending. A perusal of the deed do indicates that certificate of registration as contemplated by Section 60 of the Act by making an endorsement "Registered, signed and sealed" by the registering officer, has neither been said to have been issued nor appears to have been issued. In this view of the matter, the deed in question is an unregistered deed of conveyance which has been referred for determination of market value of the property and the stamp duty payable thereon by the registering officer in exercise of power u/s 47A (1) of the Act. It is not a reference by the Collector suo motu or by any authority under the Act as contemplated by Section 47A(3) of the Act.

22. Now treating the deed to be an unregistered one and the reference to be u/s 47A(1), I have to examine as to whether the reference was validly made.

23. In 2008 (7) ADJ 293 : 2008 (5) ALJ 261 Vijay Kumar and Anr. v. Commissioner, Meerut Division, Meerut and another this Court held that for determining the market value the Collector must have "reason to believe" that the stamp duty has not been properly set forth in the instrument as per market value of the property. In the aforesaid case the reference was made subsequent to registration of the deed and, as such, the reference was u/s 47A(3) of the Act. It is in context with the reference u/s 47A(3) of the Act that the Court held that there has to be a "reason to believe" on the part of the Collector. The aforesaid authority is of no help to the Petitioner as the reference in the instant case is not u/s 47A(3) of the Act but u/s 47A(1) of the Act wherein the expression "reason to believe" has not been used and therefore, if the market value mentioned in the instrument happens to be less than the one prescribed under the rules it is sufficient for making a reference to the Collector.

24. The other decision in this regard relied upon by learned Counsel for the Petitioner is Hajari Lal Sahu Vs. State of U.P. and Others, In said case the learned single Judge while considering the expression "reason to believe" held that it has to be an honest belief based on reasonable grounds for determining the market value. The aforesaid authority nowhere lays down that "reason to believe" must exist even while making a reference before registration of the instrument u/s 47A(1) of the Act.

25. Similarly, the authorities of the Calcutta High Court reported in Nitya Hari Kundu and Others Vs. State of W.B. and Others, and Madras High Court reported in S. Jayalakshmi Vs. The Government of Tamilnadu, laying down that there cannot be a reason to believe that the market value set forth in the instrument is not proper in the absence of material or when the sale deed was executed by the Government itself would not be applicable.

26. The existence of material for formation of opinion as to "reason to believe" that the market value of the property has not been truly set forth in the instrument and, as such, requires re-determination of the market value by the Collector is not postulated by Section 47(A)(1) of the Act. The submissions made

in this regard by learned Counsel for the Petitioner as such has no merit and is not tenable.

27. This brings me to the next point as to whether the authorities under the Act are empowered to determine market value of the property and the stamp duty payable thereon when the sale took place under the authority of the Court at a price approved by it.

28. There is no dispute to the fact that the deed in question is an instrument of conveyance as defined u/s 2(14) read with Section 2(10) of the Act and is chargeable to stamp duty u/s 3 of the Act. The levy of stamp duty is not dependant upon the parties to the deed so long as the instrument is not exempt from the payment of stamp duty. In such a situation every instrument chargeable to stamp duty is required to be dealt with in accordance with the provisions of Section 47A of the Act so that the Government is not deprived of its legitimate revenue by way of stamp duty. Thus the question as to on whose behalf or under whose direction the transfer is made is of no significance.

29. A strong reliance has been placed upon a decision of the Supreme Court reported in 2009 (107) RD 679 V.N. Devadoss v. Chief Revenue Control Officer-cum-Ins (S.C.). In the said case M/s. Dunlop India Limited was declared a sick industry and various properties of the said company were disposed of under the orders of the BIFR/AAIFR through the Asset Sales Committee. Tender of the Petitioner for a sum of Rs. 24,34,40,000/-, being the highest was accepted by the Committee and the company was granted permission to execute the sale deed. The Apex Court held that the sale being a public sale there is no question of any intention to defraud the exchequer by non-declaration of the correct price and, therefore, Section 47A of the Act has no application.

30. A plain leading of the above authority may seem to have covered the controversy at hand, but it is no so. The said authority is a case from Tamil Nadu where there is a State amendment in the Act. If the provisions of Section 47A of the Act as applicable to the State of Tamil Nadu are compared to the provisions as applicable to the State of U.P. a vast difference between the two could easily be noticed. In the State of Tamil Nadu reference can only be made if the authority is satisfied that there is sufficient "reason to believe" that the market value of the property has not been truly set forth in the instrument. There is no provision for prescribing the minimum market value, unlike the one prevailing in U.P. In the State of U.P., as discussed earlier, there are two different stages at which a reference can be made. In the first stage, reference can be made before registration by the registering authority and in the second stage, after registration by the authorities under the Act or by the Collector on suo motu exercise. In the second stage reference is made on objective satisfaction on the basis of material that there is "reason to believe" that the market value has not been truly set forth in the instrument. In the first stage a reference can be made simply if the market value of the property as set forth in the instrument is below the minimum market value prescribed. No such provision is there in the State of

Tamil Nadu. There reference can only be made if the authority is satisfied that there is sufficient "reason to believe" that the market value of the property has not been truly set forth in the instrument. In contrast in U.P. a reference can also be made if the market value of the property is not truly set forth in the instrument and is below the minimum market value prescribed or notified by the Collector as per the Rules. Thus, the aforesaid case-law is distinguishable and is not applicable under the legal situation prevailing in the State of U.P.

31. Sri Goyal has attempted to submit that a reference to the Collector can only be made after registration of the document as has been held by the Supreme Court in the case of Residents Welfare Association, Noida Vs. State of U.P. and Others, and there can be no reference without registering the instrument.

32. I have carefully considered the aforesaid decision of the Supreme Court. No doubt it was a case arising from the State of U.P. but their Lordships of the Supreme Court relying upon its earlier decision in the case of State of Punjab and Others Vs. Mohabir Singh etc. etc., made an observation that whenever a document is presented for registration the Sub-Registrar is first required to register it and thereafter to make a reference u/s 47A, if he thinks fit and proper. The provisions of the Indian Stamp Act as applicable to the State of Punjab are quite different from those which are applicable in the State of U.P. In the case of Mahaveer Singh (supra) the Supreme Court considering the provisions of Indian Stamp Act in its applicability to the State of Punjab held that a reference to the Collector u/s 47A can be made only after registration of document. In the State of Punjab the provisions of Section 47A(1) of the Indian Stamp Act are very clear and it provides that the registering officer while registering any instrument, if has a reason to believe that the market value of the property or its consideration has not been truly set forth in the instrument, may after registering the instrument refer the case for determination of market value of the property or its consideration for proper payment of stamp duty to the Collector.

33. In U.P. the provisions are very different and more elaborate. The Indian Stamp Act in its applicability to State of U.P. provides, as stated earlier also, that a reference to the Collector can be made by the Sub-Registrar even before registration of instrument, if he is satisfied that the market value of the property or the consideration set out in the instrument is less than even the market value notified by the Collector under the Rules and the party has failed to make good the deficient stamp duty despite opportunity.

34. In the State of Punjab there is no Sub-clauses (a), (b), (c) and (d) in Section 47A(1) of the Act whereas in U.P. by the aforesaid Sub-sections (a), (b), (c) and (d) a complete mechanism of referring an instrument to the Collector by the Registering Officer before registering the instrument has been provided. Sub-section (d) of Section 47A(1) of the Act as applicable in U.P. uses the language "the registering officer shall, before registering the instrument, refer the same to the Collector, for determination of market value of the property and the proper duty payable thereon. The aforesaid language used clearly demonstrates the

authority of the registering officer to refer the instrument to the Collector before registering it. In contrast to this, in State of Punjab the words used in Section 47A of the Act are "after registering such instrument". Thus, the law applicable in State of Punjab cannot be imported and applied to in respect of the proceedings under the Act as applicable to the State of U.P.

35. In view of above, the aforesaid decisions of the Supreme Court are distinguishable and would not be applicable to the proceedings under the Act in the State of U.P.

36. It may be worth noting that the "value of the property" and the "reserve price" of a property may vary and may not be the same. In State of Uttar Pradesh Vs. Shiv Charan Sharma and Others, the Supreme Court explaining the meaning of reserve price observed that it is a price with which the public auction starts and below which the bidders are not permitted to give bid. In other words, the true market value can always be on the higher side than the reserved price. The Apex Court in the case of Anil Kumar Srivastava Vs. State of U.P. and Another, as such observed that the concept of reserve price is different from the valuation of the property and the two are not synonymous. The two terms operate in different spheres.

37. In the end, it may also be noted that even though the Court while making a sale of any property ensures to fetch the best possible price but that may not necessarily be the prevailing market price.

38. The Apex Court in Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, has observed as under:

Court sale is a forced sale and notwithstanding the competitive element of a public auction, the best price is not often forthcoming.

39. In Anil Kumar Srivastava (supra) the Supreme Court while dealing with the tender price has examined the concept of valuation and upset/reserved price and held as under:

In the case of McManus v. Fortescue (1907) 2 KB 1, it has been held by Court of Appeal that in a sale by auction, subject to reserve, every offer/bid and its acceptance is conditional. That the public is informed by the fact, that the sale is subject to a reserve that the auctioneer has agreed to sell for the amount which the bidder is prepared to give only in case that amount is equal to or higher than the reserve. That the reserve puts a limit on the authority of the auctioneer. He cannot accept a price below the upset/reserve price. The concept of reserve price is not synonyms with "valuation of the property". These two terms operate in different spheres. An invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin. (see: Pollock and Mulla on Indian Contract and Specific Relief Acts (2001) 12th edition, page 50).

Valuation is a question of fact. That court is reluctant to interfere where valuation is based on relevant material (see: Duncans Industries Ltd. Vs. State of U.P. and

Others, The difference between valuation and upset price has been explained in the case of B. Susila and Another Vs. Saraswathi Ammal and Others, in which it has been held that fixation of an upset price may be an indication of the probable price which the land may fetch from the point of view of intending bidders. However, notwithstanding the fixation of upset price and notwithstanding the fact that a bidder has offered an amount higher than the reserve/upset price, the sale is still open to challenge on the ground that the property has not fetched the proper price and that the sale be set aside. That the fixation of the reserve price does not affect the rights of the parties. Similarly, in the case of A.U. Natarajan and Another Vs. Indian Bank, it has been held that the expressions "value of a property" and "upset price" are not synonymous but have different meanings. That the term "upset price" means lowest selling price or reserve price. That unfortunately in many cases the word "value" has been used with reference to upset price. That the sale has to commence at the higher price and in the absence of bidders, the price will have to be progressively brought down till it reaches the upset price.

40. In view of above legal position, it is clear that the upset price or the reserve price of any property fixed by the Court may not be the true market value of the property. The market value of the property is generally higher and at times lesser than the reserve price so fixed and as such it can always be subject to determination.

41. Moreover the fixation of reserve price/upset price by the Court while granting permission to sell the property on that price under the Companies Act is to safeguard the interest of the person to whom the property belongs and the creditors. It is not determined or fixed considering the interest of the revenue. The two Acts i.e. the Companies Act and the Stamp Act operate in different spheres and what may be good under the one Act may not be true/correct for the purposes of the other Act. Therefore, also from the angle of protecting the revenue it is necessary that the market value of any property which is subject matter of transfer under an instrument chargeable to stamp duty ought to be determined in accordance with the provisions of the Act.

42. In the present case, the permission to sell the property was granted on 3rd August, 2000 and the sale was accepted on 26.4.2002 whereupon the conveyance deed was executed on 30.4.2004. This shows that the minimum sale price, if any, was fixed by the Court as far back as on 3rd August, 2000. The conveyance deed was executed on 30.4.2004. The stamp duty according to Section 17 of the Act is payable on the market value of the property as on the date of execution of the conveyance deed. There is nothing on record to establish determination of the market value of the property on the date of execution of the conveyance deed.

43. Accordingly, for the purposes of levying the stamp duty, it is all the more necessary to determine the market value of the property in accordance with the provisions of the Act as on the date of execution of the conveyance deed i.e.

30.4.2004, instead of relying upon the value of the property on which permission to sell was granted by the Court on 3.08.2000.

44. In view of above, I am of the opinion that the reference made is one u/s 47A(3) of the Act and the Collector is competent to determine the market value of the property under transfer by the instrument in question for the purposes of levy of stamp duty irrespective of the upset/reserve or minimum price fixed by the Court while granting permission for the sale of the same.

45. Accordingly, the petition is devoid of merit and is dismissed with liberty to the Petitioner to assail the correctness of the determination of the market value and the deficiency in stamp duty before appropriate appellate or revisional forum in accordance with the provisions of Section 56 of the Act.

46. Parties to bear their own costs.