

(2004) 10 AP CK 0034
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 135 of 2004

Shalimar Video Company

APPELLANT

Vs

Divya Exports and Others

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Cinematograph Act, 1918 — Section 2
Civil Practice Rules — Rule 32
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 24
Copyright Act, 1957 — Section 14, 19(2), 2, 51
Trusts Act, 1882 — Section 73, 74

Citation : (2004) 6 ALD 447 : (2004) 6 ALT 244

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : T. Lakshmi Narayana, for the Appellant; P. Srinivasa Reddy and Y. Padmavathi, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Divya Exports Vs. Shalimar Video Company and Others, AIR 2011 SC 3063 : (2012) 1 RCR(Civil) 154 : (2011) 9 SCALE 630 : (2011) AIRSCW 5276

B. Subhashan Reddy, J.—In this writ petition, the constitutional validity of Section 47-A of Indian Stamp Act, 1899 as amended by A.P. Act No.8 of 1998 is challenged. By the said provision, the party whose document is presented for registration is required to deposit 50% of differential duty as estimated by the registering authority.

2. The petitioner had purchased land bearing S.No.594/B situated at village Kapra of Keesara Mandal of Ranga Reddy District. Firstly, agreement of sale was entered on 25-1-1989 and as there was breach of contract in performance on the part of Vendor, a suit in OS No.1416 of 1997 was filed before II Additional Senior Civil Judge, Hyderabad and the same was decreed. When the sale deed was not

executed pursuant to the decree, Execution Petition No.5 of 2000 was filed. An officer of the Court was deputed to present the sale deed which was stamped according to the directions of the Court. But, the registering authority raised objection with regard to quantum of non-judicial stamps, on which the sale deed was engrossed. By letter No.288 of 2000, dated: 19-2-2000, the registering authority, the Sub-Registrar, Malkajigiri, Ranga Reddy District, has addressed to the Second Senior Civil Judge, City Civil Court, Hyderabad that the document has to be referred u/s 47-A and as a condition precedent for such reference, has called upon the party i.e., the petitioner to pay 50% of the differential amount according to the estimate made by him. Insofar as the action of the registering authority is concerned, he cannot be found fault with as the above requisition in letter dated 19-2-2000 is in accordance with the provision contained in Section 47-A of the Stamps Act. That is how, the validity of the above provision is assailed in this writ petition.

3. Mr. R. Narasimha Reddy, the learned Counsel appearing for the petitioner submits that the estimate made by the registering authority is only provisional and that will attain finality only after the authority on reference u/s 47-A adjudicates the same and for the reference for such adjudication, no obligation can be imposed to deposit 50% of the provisional valuation and that the said provision contained u/s 47-A is arbitrary and unreasonable violating the fundamental rights guaranteed in Articles 14 and 19(1)(g) of the Indian Constitution.

4. Countering the said arguments, Mr. D. Prakash Reddy, the learned Additional Advocate-General appearing for the State submits that the provision contained u/s 47-A is salutary and should the party raise objection to the preliminary valuation made by the registering authority, it being a creature of a statute providing a remedy, for availing such remedy, the statutory requirement of 50% deposit has to be made and that such a provision is not arbitrary and not unreasonable and that there is no violation of any of the fundamental rights guaranteed in Part-III of Indian Constitution.

5. Stamp Act levying stamp duty is an enactment of the Parliament. The source is Concurrent List i.e., List ID of Schedule VII appended to the Indian Constitution. The stamp duty was leviable basing upon the amount of consideration mentioned in the document. But, the State of Andhra Pradesh brought forth Section 47-A by A.P. Amendment Act No.22 of 1974, which received the assent of the President. On the advent of the said provision, the concept of market value has undergone a change, thus, empowering the registering authority to levy stamp duty on the basis of the consideration amount stated in the document or the market value as depicted in the Basic Valuation Register, whichever is higher. But, whenever a party raises an objection to such a valuation made by the registering authority, the registering authority would refer the matter to the Collector for determination of market value. But, that was only after registering the document. Thereafter, A.P. Act. No.17 of 1986 was enacted

effective from 16-8-1986 amending Section 47-A obligating the registering authority to only give pending registration number and not to register the document and then refer to the Collector for proper determination of market value for the levy of appropriate stamp duty. Latest is the amendment contained in A.P. Act No.S of 1998. After such amendment, by Section 7 of the Amendment Act, Section 47-A of Stamp Act, as amended in State of Andhra Pradesh, reads thus:

"47-A. Instruments of conveyance etc., under-valued how to be dealt with :--

(1) Where the registering officer appointed under the Registration Act, 1908, (Central Act 16 of 1908), while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon:

Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned.

(2) On receipt of a reference under subsection (1), the Collector shall, after giving the parties an opportunity of making their representation and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject-matter of such instrument and the duty as aforesaid:

Provided that no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducting the amount already deposited by him;

Provided further that whereafter the determination of market value by the Collector, if the stamp duty borne by the instrument is found sufficient the amount deposited shall be returned to the person concerned without interest.

(3) The Collector may suo motu within two years from the date of registration of such instrument, 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-matter of such instrument and the duty payable thereon and if, after such examination, he has reason to believe that market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-

section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty :

Provided that nothing in this sub-section, shall apply to any instrument registered before the date of commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1971.

(3-A) (i) The Inspector-General may suo motu, call for and examine the record of any order passed or proceeding recorded by the Collector under sub-section (3), and if such order or proceeding recorded is found leading to loss of legitimate revenue due to disregard of market value by the Collector, based on mistake, omission, or failure to take any factual evidence effecting the market value of the property may make such enquiry or cause such enquiry and inspection of the property to be made and subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such order in reference thereto as he thinks fit:

Provided that the powers conferred under this clause shall be invoked within a period of six months from the date of the order of proceeding issued by the Collector under sub-section (3);

(ii) the power under clause (i) shall not be exercised by the authority specified therein in respect of any issue or question which is the subject matter of an appeal before, or which was decided on appeal by the appellate authority under subsection (5);

(iii) no order shall be passed under clause (i) enhancing any duty unless an opportunity has been given to the party to show-cause against the proposed revision of market value and deficit stamp duty.

(iv) where any action under this subsection has been deferred on account of any stay order granted by the Court in any case, or by reason of the fact that another proceeding is pending before the Court involving a question of law having a direct bearing on the order or proceeding in question, the period during which the stay order was in force or such proceeding was pending shall be excluded in computing the period of six months specified in the proviso to clause (i) of this section for the purposes of exercising the power under this subsection:

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may appeal to the appellate authority specified in subsection (5). All such appeals shall be preferred within such time and shall be heard and disposed of in such manner, as may be, prescribed by rules made under this Act.

(4-A) Any person aggrieved by the order of the Inspector-General under sub-section (3-A) may appeal to the High Court within a period of two months from the date of receipt of such order.

(5) The appellate authority shall be-

(i) in the cities of Hyderabad and Secunderabad, the City Civil Court;

(ii) elsewhere-

(a) the Subordinate Judge or if there are more than one Subordinate Judge, the Principal Subordinate Judge, having jurisdiction over the area in which the property concerned is situated; or

(b) if there is no such Subordinate Judge, the District Judge having jurisdiction over the area aforesaid.

(6) For the purpose of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch if sold in the open market on the date of execution of any instrument referred to in sub-section (1):

Provided that in respect of instruments executed by or on behalf of the Central Government or the State Government or any authority or body incorporate by or under any law for the time being in force and wholly owned by Central/ State Government, the market value of any property shall be the value shown in such instrument."

6. The petitioner has got a right to purchase the property and so she has purchased. Of course, she is liable to pay the stamp duty under the Act. The stamp duty so leviable is computed on the basis of the market value prevalent on the date of the execution of the document. Such market value is to be arrived at having regard to the similar property. The Registering Officer receives the document and goes by the guidelines issued in that regard by his superior authority including the Government. Such guidelines bind him and do not bind the person presenting the document like the petitioner. The petitioner can value his document on the basis of the consideration arrived at and pay the stamp duty thereon. But, the same should be acceptable to the Registering Officer. But, then the Registering Officer is not having powers to adjudicate as to whether the stamp duty paid is correct or not. He can only tell the party presenting the document that it does not conform to the value prescribed by the guidelines or the Basic Valuation Register, as the case may be. Should the party presenting the document accept the demand of the Registering Officer regarding the stamp duty leviable, the document will be registered and returned to the said person. But, when the person presenting the document does not accept the version of the Registering Officer, the Registering Officer being not the authority to decide the contentious issue regarding proper value, is duty-bound to refer the matter to the Collector. The Collector is the authority to determine the proper market value and the stamp duty leviable thereon. So far as the percentage of stamp duty is concerned, that is fixed under the Act, but the quantum thereof may fluctuate basing upon the market value. At the time of presentation of the document, should there be a dispute regarding the quantum of stamp duty payable, the said quantum will be in a fluid state and crystallises only after the adjudication by the Collector. The above act of Registering Officer is only administrative in nature

with no element of adjudicator powers on the aspect as to whether the document is duly stamped or not. The only part which can be played by the Registering Officer is to indicate that in his opinion, the document is not duly stamped and if the party disputes, then it is incumbent upon the Registering Officer to refer the document for the decision as to the proper market value by the Collector. The Collector shall then have to afford opportunity to both the parties and after holding enquiry, has to determine the market value of the property sought to be conveyed or transferred, as the case may be, by such document. If the Collector decides that there is a deficit duty, then the same has to be paid by the party and if it is not agreeable to him, then he has to file an appeal to the judicial authority. However, if the Collector finds that market value has been correctly depicted and the stamp duty has been duly paid, there is no exception, but to register the document. This is the main purport of the above statutory provision and is not objectionable. But, what is objectionable is the imposition of deposit of 50% of the differential stamp duty as per the provisional valuation made by the Registering Officer, as a condition precedent for referring the matter to the Collector. If a statute confers power upon the Registering Officer to decide for himself placing him in the capacity of a quasi-judicial authority and if the said authority adjudicates the issue with regard to proper valuation of the document after following the fair procedure, the party is bound to take the said decision and either to honour it or to challenge it by way of an appeal. Of course, no litigant can demand as of right for a provision of appeal and such provision regarding appeals, revisions etc., are always creatures of the statute and if statute prescribes some conditions for availment of such an appeal or revisional remedies, then the litigant cannot agitate against such imposition, as there is no fundamental right to have appeal or revisional remedies under a statute. But, the situation here is entirely different as the Collector does not stand in the status of appellate authority. He is a quasi-judicial authority to determine the proper market value of the subject-matter of the document and the said decision may either go against the Registering Officer or the party presenting the document. Such a procedure always satisfies the equal protection of laws enshrined in Article 14 of Indian Constitution. But, the imposition of deposit of 50% of the differential stamp duty for referring the document to the Collector runs beyond the object and intendment of the above statutory provision. The object and intendment of the Stamp Act is to collect the proper stamp duty and such proper stamp duty is dependent upon the determination of market value of the subject-matter of the document and such determination is only made by the Collector and until such determination is made by the Collector, the document which is received for registration even after collection of whatever stamp duty deposited and the registration fee is paid by the party, is not released to the party, but is kept pending registration and such document kept pending registration is not having any evidentiary value and is not entered into the books of registration and no certified copy of the same can be granted and no rights flow from such document, be it sale, exchange, gift, mortgage, lease etc. By keeping the document pending registration, there is enough safeguard for collecting the

deficit stamp duty, as in the event of the Collector accepting the valuation suggested by the Registering Officer and the party not paying the said stamp duty, the document remains under pending registration and even may be returned to the party for want of the payment of the differential stamp duty. This being the aim and intendment of the stamp duty protecting the public exchequer, there is absolutely no nexus for calling upon the party to deposit 50% of the differential stamp duty as a condition for making reference. It is not that a party seeks a reference on his own, but the Registering Officer is duty-bound to refer the moment party does not accept the valuation suggested by him. The party presenting a document is the master of his choice as to whether he should deposit the deficit stamp after determination of the Collector or not. If he feels that the market value determined by the Collector is exorbitant, then he may resile from going ahead with the registration of the document and may take return of the document. There is nothing to stop him from doing so. Stamp duty is not akin to a compulsory tax such as, property taxes levied upon the house properties, sales-tax levied upon the turn-over, income tax levied upon the income prescribed etc. If a party wants to have his document registered, he should pay stamp duty and should he feel that it is exorbitant and he cannot bear the same, he can resile from the same even after presenting the document. The authority under the Stamp Act cannot force upon the party to compulsorily pay the stamp duty. Such compulsion is imposed only upon the party's insistence for registration of the document and not otherwise. In such circumstances, the imposition of deposit of 50% of the amount towards the differential stamp duty as a condition for referring the matter to the Collector runs beyond the scope, intendment and object of the Act and, thus, offends equal protection of laws guaranteed under Article 14 of Indian Constitution and thus, is arbitrary and the said proviso to Section 47-A of Indian Stamp Act which reads:

"Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned".

is unconstitutional and is accordingly struck-down. Now, the Registering Officer shall refer the document to the Collector without any conditions attached. The writ petition is allowed. No costs.