(2006) 01 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20216 of 1996

Shraddha Goel APPELLANT

Vs

Collector (Market Valuation) and Others RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Stamp Act, 1899 — Section 27, 47A, 47A(6)
Stamp Rules — Rule 4

Citation : (2006) 3 ALD 232 : (2006) 5 ALT 237

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : S. Rani, for the Appellant; Govt. Pleader for Revenue, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—When Andhra Pradesh State Finance Corporation (APSFC) advertised for sale in public auction of a plot to an extent of 1975.55 sq.ft in D-7 phase V, IDA, Patancheru, Medak District for the default committed by its owner borrower, petitioner participated in the bid and became the highest bidder for Rs. 2,70,000/-, which was accepted by the APSFC, which later executed a sale deed in respect of the said property and presented it to the Sub-Registrar, Sangareddy (3rd respondent) who, instead of registering the same, kept it pending after receiving a registration fee of Rs. 1,621/- and referred it to the Collector (Market Valuation) Sangareddy, for determination of the market value of the property, u/s 47-A of the Indian Stamp Act, 1899 (for short ''the Act''). Thereafter, since no action has been taken, petitioner addressed several letters seeking registration of the document for which there is no response. Hence he filed this petition seeking a direction to the respondents to drop proceedings u/s 47-A of the Act and register the document.

2. On behalf of the respondents, 3rd respondent filed his counter-affidavit inter alia contending that in view of Section 27 of the Act, the market value of the

property is relevant for determining the stamp duty payable on the document of sale executed by the APSFC and so it was kept pending under Rule 4 of the Stamp Rules as amended in G.O. Ms. No. 997 Revenue (U), dated 14-8-1986, and during the course of spot inspection it came to light that true facts were suppressed to avoid payment of correct stamp duty, as the market value of the property was determined as Rs. 10,74,501/- at the time of spot inspection, and the said fact was reported to the Competent Authority, Medak District at Sangareddy and so the document is pending consideration by the competent authority, and so petitioner is not entitled to any relief.

3. The contention of the learned Counsel for the petitioner is that inasmuch as the property was purchased in a public auction conducted by APSFC, question of any under valuation to avoid stamp duty does not arise, inasmuch as a Division Bench of this Court in The Sub-Registrar of Assurances, Asifabad, Adilabad v. Sri Bharatia Pulverisers Private Limited, Kumuguda, Asifabad Mandal, Adilabad District WA No. 355/1998, dated 11.3.1998, held that in public auction sales conducted by the State agencies malfeasance cannot be attributed and so authorities under the Act cannot, by invoking Section 47-A of the Act, make an enquiry in respect of the property sold in public auction by the state agency. The contention of the learned Assistant Government Pleader is that inasmuch as proviso to Section 47-A(6) of the Act was introduced into the Act by A.P, Act 8 of 1998 and since the document in favour of the petitioner was executed long prior to the coming into force of A.P. Act 8 of 1998, petitioner cannot invoke the benefit of the proviso to Section 47-A(6) of the Act, and inasmuch as Article 20 of Schedule I-A of the Act, contemplates payment of stamp duty on the consideration mentioned in the document or on market value of the property covered by the instalment, whichever is higher, in view of Section 27 read with Section 47-A of the Act, respondents have authority to make an enquiry and determine the actual stamp duty payable and since the matter is still under consideration by the competent authority - petitioner is not entitled to any relief.

4. It is no doubt true that as Article 20 of Schedule I-A of the Act stamp duty payable on a conveyance is "on the consideration set forthwith in the instrument or on the market value of the property which is the subject-matter of the document, whichever is higher", and Section 27 of the Act, contemplates setting forth of the consideration and the market value of the property etc., effecting the chargeability of the instrument, in the instrument. Those provisions are made to prevent under valuation, with a view to avoid payment of correct stamp duty on the instrument of conveyance. When both the parties to the instrument are private parties, may be in some cases, parties may not truly and correctly disclose the value, to evade payment of higher stamp duty. But, when the property is sold in a public auction, that too by the APSFC question of under valuation with a view to avoid stamp duty may not arise, because price obtained in the public auction should be taken as the market value of that property. Otherwise, there would have been higher bids for that property.

5. No doubt, by the date of execution of the document Section 47-A(6) of the Act was not in the Statute and was introduced therein by A.P. Act 8 of 1998. But, the contention of the learned Assistant Government Pleader that petitioner cannot invoke the benefit conferred thereunder, cannot be accepted because in Para IV of the Statement of Objects and Reasons to A.P. Act 8 of 1998, it is stated "Section 47-A casts a duty on the Registering Officer to satisfy about the correctness of the market value adopted by the parties and levy proper stamp duty. In order to enable the Registering Officer to arrive at a decision as to whether the parties have declared the correct market value, guideline values are supplied to them. These guideline values are not binding over the parties or Collectors. However in view of various judicial decisions in the recent past, it is felt necessary to provide some statutory backing to these guideline values. So it is clear that Sub-section (6) to Section 47-A of the Act is introduced only to give statutory backing to the guidelines already issued," so it is clear that guidelines in respect of the matters that were already issued only are incorporated in Section 47-A(6) of the Act.

6. As rightly contended by the learned Counsel for the petitioner a Division Bench of this Court in M/s. Sri Bharatiya Pulverisers Pvt. Ltd., case (supra) clearly held that in respect of property sold in a public auction by one of the agencies of the State, malfeasance on its part cannot be expected and, when the State agencies themselves have assented in the matter of registration and present the document before the Registering Authority, question of seeking further clarification does not arise. The ratio in the said decision gained statutory force also by the introduction of the proviso to Section 47-A(6) of the Act. In view thereof it is difficult to accept the contention of the learned Assistant Government Pleader that the proviso to Section 47A(6) of the Act does not have retrospective effect. In view thereof, question of respondents continuing the enquiry u/s 47-A of the Act is unwarranted and uncalled for.

7. For the above reasons, the writ petition is allowed with costs and the respondents are directed to drop further proceedings u/s 47-A of the Act and take further action on the document presented for registration in accordance with law.