
(2013) 01 BOM CK 0288

In the Bombay High Court

Case No : Writ Petition No. 762 of 2012 and Writ Petition No. 763 of 2012

Shri Michael G. Fernandes and Others APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:

Stamp (Goa, Daman and Diu Amendment) Act, 1968 — Section 47A

Citation : (2013) 01 BOM CK 0288

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : R.G. Ramani, for the Appellant; S. Narvekar, Addl. Government Advocate for the Respondent No. 1, for the Respondent

Judgement

F.M. Reis, J.—Heard Shri R.G. Ramani, learned Counsel appearing for the Petitioners and Shri S. Narvekar, learned Addl. Government Advocate for the Respondent no. 1. Notice to the remaining Respondents stands dispensed with. Rule. Heard forthwith with the consent of the learned Counsel. Learned Addl. Government Advocate appearing for the Respondent no. 1, waives service.

2. The above Petitions seek for following reliefs:

a) for a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction of this Hon'ble Court calling for the records and case papers of STP Appeal No. 02/2011/A from the Court of the Civil Judge Senior Division at Quepem and after perusing the same and after going through the legality and propriety thereof to quash and set aside the impugned Order dt. 30/6/2012 and to direct the Court of the Civil Judge Senior Division at Quepem to decide the STP Appeal No. 02/2011/A on its merits.

3. Shri Ramani, learned Counsel appearing for the Petitioners, has assailed the impugned Order on the ground that despite of the provisions of Section 47-A in the Indian Stamp (Goa, Daman and Diu Amendment) Act, 1968, (herein after referred to as the "said Amendment Act"), the learned Judge erroneously passed

the impugned Order holding that the learned Judge has no powers or jurisdiction to entertain an Appeal. Learned Counsel further pointed out that the impugned Order before the learned Judge was an Order passed in a reference made by the Sub-Registrar under the provisions of Section 47-A(1) of the said Amendment Act which came to be decided after holding an inquiry by the Collector in terms of Section 47-A(2) of the said Amendment Act. Learned Counsel further pointed out that under the provisions of Section 47-A(4) of the said Amendment Act, an Appeal is provided before the learned Civil Judge Senior Division. The learned Counsel as such submits that the learned Judge has erroneously passed the impugned Order which deserves to be quashed and set aside.

4. I have carefully considered the submissions of the learned Counsel. I have also gone through the records. The impugned Order has been passed by the learned Judge without considering the provisions of Section 47-A as amended by the Indian Stamp (Goa, Daman and Diu Amendment) Act, 1968. Section 47-A provides thus:

47-A. Instruments of conveyance, etc. undervalued how to be dealt with.-

(1) If the registering officer appointed under the Registration Act, 1908 (Central Act 16 of 1908) while registering any instrument of conveyance, exchange or gift has reason to believe that the market value of the property which is the subject matter of the conveyance, exchange or gift has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under subsection (1) the Collector shall, after giving the parties a reasonable opportunity of being heard 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 conveyance, exchange or gift and the duty as aforesaid, and, thereupon, the difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Collector may on his own motion or otherwise, within two years from the date of registration of any instrument of conveyance, exchange or gift 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 as set forth in such instrument, which is the subject matter of conveyance, exchange or gift and the duty payable thereon and if after such examination he has reason to believe that the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2) and, thereupon, 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 the commencement of the Indian Stamp (Goa, Daman and Diu Amendment) Act, 1975.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3), may appeal to the Civil Judge, Senior Division and 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.

Explanation:-For the purposes of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the Civil Judge, Senior division, as the same may be, such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance, exchange or gift.

On plain reading of sub-section 4 of Section 47-A, an Appeal by a person aggrieved by an Order passed u/s 47-A(2) can be filed before a learned Civil Judge, Senior Division. Consequently, the learned Judge was not justified to come to the conclusion that it had no jurisdiction to entertain the said Appeal. Considering the said provisions of law, I find that the impugned Order cannot be sustained and deserves to be quashed and set aside.

In view of the above, Rule stands disposed of in terms of prayer (a). Both the Petitions accordingly stands disposed of.