(1979) 08 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 471 of 1978

Sitaram and Others APPELLANT

Vs

The State of Madhya Pradesh RESPONDENT

Date of Decision : 16-08-1979

Acts Referred:
Stamp Act, 1899 — Section 47A, 47A(1), 47A(4)

Citation : AIR 1980 MP 4 : (1979) JLJ 696 : (1979) 24 MPLJ 817 : (1979) MPLJ 817

Hon'ble Judges : M.L. Malik, J;J.S. Verma, J;Faizanuddin, J

Bench : Full Bench

Advocate : V.S. Pandit and P.V. Pandit, for the Appellant; L.S. Baghel, Dy. Govt. Advocate, for the Respondent

Judgement

Faizanuddin, J.

This is a reference under Sub-section (1) of Section 57 of the Indian Stamp Act, 1899 (Act No. 2 of 1899) (hereinafter referred to as the Act) having been made by a learned Member of the M. P. Board of Revenue, Gwalior, as the Chief Controlling Revenue Authority, in consequence of a Revenue Revision No. 132-11/77 against an order dated 28-1-1977 passed by the Sub-Divisional Officer and Collector of Stamps, Burhanpur, in Revenue Case No. 5-B-103/73-74. The short question as contained in paragraph 6 of the order of reference of the learned Member, Board of Revenue and referred to this Bench for its opinion is as follows; --

"Whether in respect of instruments, which were registered prior to the coming into force of the amendments in 1975, the Sub-Registrar is empowered to make a reference to the Collector of Stamps in regard to under-valuation, once such instrument has been registered."

The factual aspects of this case, which emerge out, giving rise to this reference, are that on 29-7-1974 applicants Nos. 1 to 7 named above, executed a sale-deed in respect of 4.72 acres of land in favour of applicant No. 8 (Shri-pat) and another in favour of applicant No. 9 (Mst. Jhamabai) on the same date, in respect of 4.50 acres of lands and consideration in each of the two transactions was shown to be Rs. 70/- only.

Both the deeds were presented for registration on 29-7-74, before the Sub-Registrar, Burhanpur, who registered the said two documents in accordance with the law of registration of documents. Later on, the Sub-Registrar, Burhanpur, considered that the valuation as shown in the two deeds, are much below the average sale price for similar lands during the preceding three years and therefore, he entertained a doubt for under valuation to avoid payment of proper stamp duty with which the two documents were chargeable on proper valuation and consequently, ''the Sub-Registrar made a reference to the S. D. O. and Collector of Stamps, Burhanpur, to assess the real value of the lands so transferred by the two deeds and after such determination recover the deficit stamp duty chargeable with penalty thereon. The S. D. O. and Collector of Stamps, after notice to ''the affected persons, assessed that the stamp duty to the extent of Rs. 225/- was deficit and he also found it to be a deliberate breach for which he imposed a fine of Rs. 5000/-. The applicants, therefore, preferred a revision before the M. P. Board of Revenue, Gwalior, against the above said order of the S. D. O. and Collector of Stamps, Burhanpur.

In the revision, before the learned Member, Board of Revenue on the basis of law laid down in a Full Bench decision of this Court reported in Kamal Chand v. State of M. P. 1965 MPLJ 606 a question was raised that as soon as the registering officer registers a document presented to him for registration, the function in the preformance of which the document was produced before him is over and. therefore, becomes functus officio, having no power u/s 33 to impound the instrument. As such, the Sub-Registrar has no power to make reference as regards the under valuation, and the reference, if any, would be without jurisdiction and the order of the S. D. O. and Collector of Stamps, reassessing the value, duty and imposition of penalty, shall also be without jurisdiction.

The M. P. Board of Revenue, after considering the effect of the new Section 47A of the Act introduced by an amendment in 1975 as also that of Section 33 of the Act is of the opinion that the reference made by the Sub-Registrar is without jurisdiction and the impugned order passed by the S. D. O. and Collector of Stamps, Burhanpur, is illegal and the same deserves to be set aside. The M, P. Board of Revenue, with its above said opinion, made a reference to this Court for its opinion on the question noted above.

At the very outset, we feel it necessary to state that by a local amendment, new Section 47-A was introduced and inserted to the Indian Stamp Act, 1899 in its application to the State of Madhya Pradesh by Section 8 of the Indian Stamps (Madhya Pradesh Second Amendment) Act, 1975 (M. P. Act No. 8 of 1975). In the aforesaid context, it will also be advisable to set out the relevant provisions of said Section 47-A (with which we are concerned in the instant case) for better understanding, which runs as under:--

"47-A. Instruments undervalued how to be dealt with.-- (1) If the registering officer appointed under the Registration Act, 1908 (No. XVI of 1908) while registering any instrument 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, he may after registering such instrument, refer the same to ''the Collector for determination of market value of such 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 enquiry in such manner, as he may prescribe, determine the market value of the property, which is the subject matter of such instrument and the duty as aforesaid. The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, within five years from the date of registration of any 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 any 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 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 prior to the date of the commencement of the Indian Stamp (Madhya Pra-desh Amendment) Act, 1975.

(4) Any person aggrieved by an order of the Collector under Sub-section (2) or Sub-section (3) may in the prescribed manner appeal against such order to the Commissioner of the division.

(5) Any person aggrieved by an order passed under Sub-section (4) may in the prescribed manner appeal against such order to the Chief Controlling Revenue Authority, Madhya Pradesh.

(6) to (8) ...."

Before we proceed to dwell on and consider the effect of the new Section 47-A inserted in the Act on the documents, which were registered prior to its coming into force, we shall first state the law and the principles governing the prospective and retrospective operation of statute or a particular section inserted into it by amendment.

It is an unexceptionable cardinal principle of construction that every statute or a particular new section introduced to it is prospective unless it is manifest by express words or by necessary implication indicating retrospective operation. It, therefore, follows that unless there are words in the statute sufficiently ''to show the intention of the. Legislature to affect the existing rights, it is deemed to be prospective only based on the principles of "nova constitution futur is formam imponere debet non preterits, that is to say, a new law ought to regulate what is to follow, not the past. It has been said that every statute which takes away or impairs vested rights acquired under the existing laws, or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions already past, must be presumed to be intended not ''to have retrospective effect,

In Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, it was observed as under:--

"The principles that have to be applied for interpretation of statutory amendments taking away substantive rights are well established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective: they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited only to the extent to which it has been so made by express words, or necessary implication. The second rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal grammatical meaning. The third rule is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on ''the words, if necessary, even by modification of the language used."

The same view was again reiterated by their Lordships of the Supreme Court in Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others, and Arjan Singh and Another Vs. The State of Punjab and Others, .

Now having the aforesaid principles of law in view, it is not difficult to find out the answer to the question referred to this Court by the Board of Revenue. Bearing in mind these principles, now let us examine Section 47-A of ''the Act reproduced in parapraph 5 above. Sub-section (1) of Section 47-A contemplates that (if) the registering officer, while registering any instrument, has reason to believe that the market value of property covered by such instrument has not been correctly stated, he may, after registering such instrument, refer it to the Collector for determination of market value of such property and proper duty payable thereon. Sub-section (2) provides the procedure to be followed by the

Collector on receiving a reference under Sub-section (1), " to determine the market value of the property sought to be transferred by an instrument and "the duty thereon.

Sub-section (3) confers suo motu powers upon the Collector to be exercised within 5 years from the date of registration of any instrument, to call for and examine the instrument, for purposes of satisfying himself about the correctness of the market value of property and the duty payable thereon, in cases which are not already referred to him under Sub-section (1). But the proviso to this Sub-section (3) attaches a rider for exercise of such power and it contemplates that such power shall not be exercised in relation to any instrument registered prior to the date of the commencement of the Indian Stamp (Madhya Pradesh Amendment) Act, 1975, sub-sections (4) and (5) relate "to first and second appeals and the remaining sub-sections relate to the procedure to be adopted in appeals. Thus, on reading the entire Section 47-A introduced by amendment in 1975, it does not anywhere indicate the Legislative intention to make its provisions retrospective in operation. In such a situation, unless a clear and unambiguous intention is indicated by the Legislature, it cannot be said that Section 47-A has retrospective operation. On the contrary, the proviso to Sub-section (3) of Section 47-A is indicative of the fact that the Collector''s power under that sub-section shall not ''be applicable to the instruments register ed prior to the date of the commencement of Amendment Act, 1975.

Admittedly, the two documents were registered on 29-7-1974 much before the date of coming into force of the new Section 47-A introduced by the Amendment Act and since it has no retrospective effect, the said two registered deeds will not be governed by the amended Section 47-A of the Act; but by the provisions of the Act, as they were before the aforesaid amendment.

Whether or not, under the provisions of unamended Act, a Registering Officer is empowered to make a reference to the Collector of Stamps with regard to the under valuation of property covered by an instrument after it has been so registered by the Registering officer has already been decided by a Full Bench of this Court reported in Komal Chand and Another Vs. The State of Madhya Pradesh, .

Before we part with this case, we must observe that the Sub-Registrar, while making a reference to the S. D. O, and Collector of Stamps, had invoked the provisions of Sub-section (1) of the amended Section 47-A of the Act, Subsection (4) of which also provides for an appeal to the Commissioner against the order of the Collector passed under Sub-section (2) or Sub-section (3) of Section 47-A of the. Act. Thus, if the Sub-Registrar had acted without jurisdiction in invoking the provisions of Sub-section (1) of Section 471A on the basis of which the Collector of Stamps passed the impugned order it was equally permissible for the applicants to challenge the order of the Collector of Stamps in appeal under the provisions of Sub-section (1) of Section 47-A of the Act In Janardan Reddy and Others Vs. The State of Hyderabad and Others, it was observed as under:--

"It is well settled that if a Ct. acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction i. e. an appeal would lie to the Ct. to which it would lie if its order was within jurisdiction." Normally, therefore, where there is a provision for appeal, the revision should not be resorted to, as was done in this case.

Consequently, our answer to the question referred to us is that once an instrument has been registered, the Sub-Registrar is not empowered to make a reference to the Collector of Stamps in regard to the under valuation in respect of the instruments which were registered prior to the coming into force of the Amendment Act, 1975. We may make it clear that we have expressed this opinion only in respect of the position of law before the amendment of the Act in 1975. 14. Looking to the facts and circumstances of this case, let the parties bear their respective costs of this reference.

