(2006) 12 MP CK 0029

In the Madhya Pradesh High Court

Smt. Harvinder Kaur and Others — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:
Stamp Act, 1899 — Section 2

Citation : AIR 2007 MP 86 : (2007) ILR (MP) 223 : (2007) 1 MPJR 225 : (2007) 102 RD 556

Hon'ble Judges : S. Samvatsar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Samvatsar, J.

This petition is filed by the petitioners challenging orders Annexures-P-2, P-4, P-5 and P-6 dated 5-1-1998, 24-7-2001, 2-4-2002 and 5-5-2003 respectively.

Brief facts of the case are that the petitioners have entered into an agreement dated 28-8-1978 with Kishanlal s/o Ganpatlal John for purchase of a house situated at MLB Board opposite Phoolbagh, Lashkar, Gwalior. The agreement was not complied with by respondents No. 4 to 10, hence the present petitioners filed a suit for specific performance No. 18-A/1991. The decree for specific performance was passed in favour of the present petitioners on 13-10-1995 and in execution of the said decree the Court directed to execute the sale deed in favour of the present petitioners.

The sale deed was presented before the Registrar of Stamps for registration. The Registrar at the time of registration referred the matter for fixing market value vide order Annexure P-2 dated 5-1-1998. On his reference the Collector of Stamp issued notices to the petitioners, who filed objections Annexure P-3 and P-3-A. According to the petitioners. as they have purchased the property in pursuance of an agreement to sale in their favour, which was entered into on 28-8-1978 is liable for payment of stamp duty as on the date of agreement.

Therefore the Registrar of Stamp has no right or jurisdiction to demand additional stamp duty. According to them, as the agreement was entered into in the year 1978. they have truly set forth the valuation in the instruments.

The Collector after hearing both the parties passed the order Annexure P-4, wherein he has stated that the stamp duty on the instrument shall be payable on the date on which the document was presented for registration and the document cannot be registered on the market value as per agreement and rejected the objections raised by the petitioners. This order was challenged by the petitioners before the Commissioner by filing an appeal. The Commissioner dismissed the appeal vide order Annexure P-5 dated 2-4-2002 and the said order was confirmed by the Board of Revenue in the appeal filed by the petitioners on 5-5-2003 vide Annexure P-6. Hence, this petition is filed by the petitioners.

The first contention raised by learned Counsel for the petitioners is that the object of Section 47-A of the Indian Stamp Act, 1899 is to prevent evasion of stamp duty. According to him, the petitioners had entered into an agreement to purchase the property on 28-8-1978 and had filed civil suit for specific performance, which was ultimately decided on 13-10-1995. Thus, they were involved in the litigation for about 17 years. Thereafter, they filed execution and ultimately the Court has directed to register sale deed in their favour in pursuance of the agreement dated 28-8-1978. Therefore. they are required to pay stamp duty on the market value, which was prevailing on 28-8-1978 and not on the date of tendering the documents for registration.

For this purpose, learned Counsel for the petitioners has relied on judgment of Andhra Pradesh High Court in the case of Sub-registrar, Sub-Registrar, Nalgonda Dist. Vs. Amaranaini China Venkat Rao and others, In that case the parties have entered into an agreement to sell in the year 1965 and a decree for specific performance was passed in the year 1977 and the documents were registered in pursuance of decree for specific performance. The Registrar demanded the stamp duty as per market value on the date when document was presented. The Andhra Pradesh High Court held that as document is 30 years old. there is no question of evasion of stamp duty and directed to the Registrar to register the documents and held that stamp duty is payable on the date on which agreement was entered between the parties.

Another judgment cited by learned Counsel for the petitioners is in the case of S.P. Padmavathi Vs. State of Tamil Nadu and Others, , in which the Madras High Court has held that as per Section 47-A(3) (as inserted by Tamil Nadu Amendment Act 24 of 1967) the provisions of Section 47-A of the Act can be invoked by the Registrar only if circumstances show fraudulent evasion of payment of stamp duty. Therefore, in that case the Madras High Court set aside the orders passed by the Registrar to refer the matter u/s 47-A of the Act. The Madras High Court has held that there is no lack of bona fides or fraudulent attempt on the part of the parties and merely by lapse of time the stamp duty on the market value on the date of execution of the document cannot be demanded.

In that case also the document was executed in pursuance of decree for specific performance.

Similar view is taken by the Patna High Court in the case of Smt. Shanti Devi Prasad and Another Vs. The State of Bihar and Others , wherein the Patna High Court has held that refusal to register the documents cannot be ordered on the ground that undervaluation was made with view to fraudulently evade payment of proper stamp duty. In that case the Patna High Court held that powers u/s 47-A of the Act can be exercised when the Registering Authority has reasons to believe that the property has not been rightly set forth in the instrument with view to fraudulently evade payment of proper stamp duty.

The Full Bench of this Court in the case of Sitaram and Others Vs. The State of Madhya Pradesh, has laid down that the amendment in Section 47-A affects the vested rights of the parties and therefore said amendment is prospective and not retrospective. The Full Bench has considered the amendment in Section 47-A by Madhya Pradesh Second Amendment Act, 8 of 1975. In the present case, the document was presented for registration on 5-1 -1998. Now, the question, which is to be determined by this Court is whether as per Section 47-A of the Act, which was prevailing in the year 1998, the Registrar had right to demand additional stamp duty on the market value prevailing in the year 1998 or he was bound to register the document as per consideration shown in the agreement dated 28-8-1978.

The amended provisions of Section 47-A of the Act reads as under:

If the registering officer appointed under the Registration Act, 1908 (No. 16 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.

From perusal of said section, it is clear that Registrar can demand additional stamp duty whenever he is of the opinion that market value put forth in the document is not truly set forth in the instrument. Said section, nowhere indicates that the Registrar can exercise said power only in case of fraud or evasion of stamp duty. The object of registration is not only to prevent the evasion of stamp duty but to provide authority to the execution of document.

After perusing the aforesaid judgments in the case of Sub-Registrar. Kodad Town and Mandal 1998 AP 252 supra. S.P. Padmavathi (supra) and Smt. Shantidevi Prasad 2001 Pat 161 supra, I find that said judgments are based on interpretation of Section 47-A of the Act as applicable in their respective states. So far as State of Madhya Pradesh is concerned. the position is made clear by explanation of Section 47-A of the Act, which was inserted by M.P. Act 30 of 1997 which came into effect from 15 11-1997 Said explanation read as under:

Explanation - 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 the instrument.

From reading of said explanation. it is clear that for the purpose of Indian Stamp 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 the instrument.

The word "execution" is also defined under the Act and as per Section 2(12) execution of instrument means ''signed'' of the said instrument. Thus. this provision makes it clear that stamp duty is payable on the date on which instrument was signed in the document and put to registration. Thus. Judgments cited by learned Counsel for the petitioners have no application in the State of Madhya Pradesh. as the provisions are not considered in the aforesaid judgments.

Thus. the duty of the Registrar is to see whether the stamp duty is paid on the market value prevailing on the date of presentation and if he comes to the conclusion that stamp duty has not been truly set forth in the instrument, he can refer the same to the Collector for determination of market value of the property. Thus, the Registrar is not concerned with the date of agreement and he has to decide the matter keeping in view the market value prevailing on the date of presentation of instrument before him.

In the present case. the sale deed was presented before the Registrar on 5-12-1997 and the Registrar has referred the matter to the Collector vide Annexure P-2 dated 5-1-1998. From perusal of Annexure P-2. it is clear that the Registrar has no-where recorded any reasons to believe that the market value shown in the instrument is not truly set forth. He has merely recorded that the document is received for registration from the 5th Additional District Judge. Gwalior. He has also mentioned that he has not inspected in spot and asked the Collector to decide the market value after inspection. Thus, there is nothing on record to show that the Registrar had reasons to believe that the market value set forth in the instrument is not true. Unless and until the Registrar records such reasons. he has no jurisdiction to refer the matter to the Collector. Reason to believe is a condition precedent for exercising jurisdiction u/s 47-A and so long as this ingredient is not present in the order of the Sub-Registrar. he has no jurisdiction. to refer the matter to the Collector. Reason to believe means a cogent reason for believing that the value shown in the instrument is not truly set forth and such reason should be based on material on record.

In the present case. the Registrar has not at all mentioned any reason or not even made any averment. He has reasons to believe that the market value set forth in the instrument is not true. Therefore. in absence of such averments by the Registrar. he has no jurisdiction to refer the matter to the Collector for registration. In such circumstances. on this point only this petition deserves to be allowed and impugned orders cannot be sustained in the eyes of law.

In the result. petition is allowed and impugned orders Annexure P-2 dated 5-1-1998. P-4 dated 24-7-2001. P-5 dated 2.4. 2002 and P-6 dated 5-5-2003 are set aside.

In the facts and circumstances of the case. there shall no order as to costs.

