(2007) 02 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petitions 1992 of 2000 and 45953 of 2001

Smt. Santosh Achcha Jain — APPELLANT

Vs

State of Karnataka
 Shetty Constructions Vs State of Karnataka — RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:
Karnataka Stamp Act, 1957 — Section 45 A, 45 B

Citation : AIR 2007 Kar 77 : (2007) 4 KarLJ 189 : (2007) 4 KCCR 252 SN

Hon'ble Judges : H.V.G. Ramesh, J

Bench : Single Bench

Advocate : M. Sivappa, in WP 1992/2000 and S.M. Chandrashekar, for the Appellant; A.G. Holla, General and Ramesh B. Anneppanavar, AGA in WP 1992/2000 in WP 45953/2001, for the Respondent

Final Decision : Dismissed

Judgement

H.V.G. Ramesh, J.—These two petitions have been filed challenging the validity of Section 45A and Section 45B of the Karnataka Stamp Act as illegal, arbitrary and ultra vires of the Stamp Act and the Registration Act and for consequential relief.

2. In WP 45953/2001, the prayer is for a direction to the 3rd respondent to register the sale deeds presented by the petitioner on 29.5.2001 which is received by the 3rd respondent.

3. In WP 1992/2000, the prayer is common and also to strike down Section 45A and 45B of the Act and to declare the gale deed - annexure A is properly valued and to direct the 3rd respondent to register the document according to the Stamp Act and the Registration Act and, for such other relief.

4. In WP 45953/2001, petitioner has presented tour documents / sale deeds on 29.5.2001 for having purchased land in Sy No. 1/1B of Bramhapur of Gulbarga District, for registration. The 3rd respondent received the sale deeds and collected the registration fee vide P. Nos. 47, 48, 49, & 50/2001-02 and the

Stamp Duty. Thereafter, the 3rd respondent has referred the matter to the Deputy Commissioner for Stamps alleging that there is under valuation of the property and he also issued notice as per Rule 4 of the Karnataka Stamp (Prevention of Under Valuation of Instruments) Rules, 1977. Petitioner filed objections on 23.7.2001. According to the petitioner, the land in question was a morass which required to be cleared of thorny bushes and he has fill up the muskeg by investing huge amount and the land was not being capable of being sold due to stagnation of drain water and further, the waste dumped was to be dealt and the said land cannot be compared with other lands in the area as such, having regard to the nature of the property, the market value of the property was properly set forth in the document for the purpose of sate consideration. It is also stated that there is no such under valuation as alleged by the respondent and that he has spent nearly Rs. 25 lakhs to clear the area and make the land as it is now. It is also stated that petitioner is also the owner of the neighboring non-agricultural land which was purchased in the year 1997 as per annexure Z1 and the land in question was also agreed to be purchased in the same year but the formalities could not be completed for several technical reasons including litigation, and there was postponement of the registration. According to the petitioner, the document which was earlier registered during 1977 should be the basis for fixing the market value and that should be compared with the document presented. When the petitioner made a request to release the original document/ sale deed on 6.1.2001 for obtaining necessary sanction for future development of the property, an endorsement was given by the 2nd respondent on 8.10.2001 stating that the documents were not registered and as such, could not be returned. Further, it is stated that the 3rd respondent has referred the instrument to the 2nd respondent alleging that there is under valuation, without registering the document as per Section 45A of the Karnataka Stamp Act. According to the petitioner, as per the provisions of the Registration Act, 1908 the 3nd respondent was required to register the document, he had no authority to refuse and at the most, he could refuse registration only as per the provisions of Section 71 of the Registration Act and there was no reason to refuse registration or to keep the process of registration pending as contemplated under the Registration Act. It is also submitted that certain sate guards have been provided u/s 80A of the Registration Act to protect the State''s revenue by way of stamp duty and registration charges. As such, non-registration of the instrument during pendency of enquiry by keeping the document pending registration and compelling the petitioner to pay stamp duty is arbitrary and unreasonable. Further, according to the petitioner, duty payable on the instrument has a first charge on the property, as per Section 46 of the Act and duty can be recovered as arrears of land revenue as per Section 80A of the Registration Act and when such being the position of law and the power vested under the authority, the amendment brought to Section 45A which compels the registering authority to keep the process of registration pending s unreasonable and arbitrary. The process of estimation of market value of the property as per Section 45B and compelling the parties to pay the stamp duty is arbitrary as the parties are deprived of an opportunity in the process of determining the value of the property as such, it causes hardship to the petitioner as, a citizen is required to pay stamp duty on the instrument on the basis of the consideration stated in the instrument. The authorities in the guise of estimating the market value of the property fix the price of the property without any basis and the said process is hypothetical and, compelling the citizen to pay the same is unreasonable and petitioner cannot be compelled to pay the stamp duty over and above the consideration. The payment of stamp duty on the basis of the notification cannot be sustained in the eye of law as such, he has sought for striking down Section 45A & 45B of the Act as void and arbitrary.

5. It is also his contention that the market value of a particular property depends upon various factors such as clear and marketable title, location of the property, market condition, economic condition of the seller, the reason for selling the property, etc. The act of the committee constituted u/s 45B in recommending to issue a notification by estimating the value of the property in a particular area in general terms without specifying or without determining the value with reference to each property and thereby compelling the party to pay the stamp duty on the basis of the notification is illegal and arbitrary. It is further stated that the State has a right to collect the stamp duty which is legitimately due to it and if a citizen has under valued the property, there is a mechanism provided under the Act which can be pressed into service whereas under the present scheme, the Committee compels the citizen to pay the predetermined stamp duty which is on the higher side without appreciating the agreement of the parties and the circumstances. The word whichever'' appearing in the definition clause of market value'' is being abused with a view to make unlawful and unreasonable demand of stamp duty and such a process is ultravires of the Stamp Act. The entire process of estimating the market value of the property u/s 45B of the Act and thereafter compelling the citizen to pay the stamp duty alleging that the market value of the property is higher than the consideration indicated in the instrument and accordingly make a demand for payment or additional stamp duty and further, if the demand is not satisfied the process of keeping the registration pending, is beyond the scope and object of the Registration Act and the Stamp Act. The respondents failed to notice that the process of keeping the document pending leads to disastrous consequences and cause irrevocable and irreparable loss to the purchaser which cannot be compensated. Hence, the petitioner though has acquired the property, cannot develop the property unless the documents are registered, as a result, the petitioner is put to irreparable loss and injury. As per Section 45B of the Stamp Act, the Committee constituted will issue notification prescribing the market value on the basis of its findings. The Sub-Registrar insists to pay stamp duty in pursuance of the said notification and the instrument will not be registered unless the stamp duty determined by the 2nd respondent-Deputy Commissioner is paid. As such, keeping the document pending for registration until determination of the market value is arbitrary and the petitioner therefore, has sought for quashing Section 45A and 45B of the

Stamp Act.

6. Further according to the petitioner, the registering authorities will have to act in accordance with the procedures prescribed under the Registration Act and there is no process by which the registration can be kept pending for payment of stamp duty under the Registration Act As such, Section 45A to that effect, is ultravires the Registration Act and also arbitrary and violative of Article 14 of the Constitution of India. Hence, this petition.

7. Similarly, in WP 1992/2002, it is stated that petitioner has submitted the sale deed dated 28.8.1999 for having purchased the property situate in Mandy City bearing Municipal Katha No. D2, 53/558 for a valuable consideration from her vendor and when it was presented for registration before the 3nd respondent, the Sub-Registrar has collected the registration fee and other fees but, without registering the document presented for registration, has referred the document u/s 45A to the 2nd respondent for determination of the market value on the ground that the value shown in the sale deed in respect of the property purchased by the petitioner did not represent the true value. Accordingly, the sale deed was sent to the 2nd respondent as per the amended provisions of Section 45A of the Act. Pursuant thereto, the document is kept pending for registration until the determination of market value and petitioner was informed that till such determination, the document cannot be registered. Pursuant to the notice issued by the 2nd respondent on 14.9.1999, petitioner filed objection stating mat the deed has been properly valued mentioning the locality and also mentioned the reason for its lesser value and that the property has been properly assessed. It was also mentioned that the property is old and accordingly requested the 3nd respondent to register the Deed. Further according to the petitioner, without holding enquiry and without hearing her, a spot inspection was conducted without informing the petitioner, the value of the property has been determined at Rs. 14,70,000/-arbitrarily without any basis. It is stated that the assessment made by the 2nd respondent is without any basis and the notification insisting the petitioner to pay an amount of Rs. 1,27,500/- as duty and registration fee of Rs. 20,400/- in all, Rs. 1,47,900/- as stamp duty has been assailed in this petition contending that the order of the District Registrar is arbitrary without hearing the petitioner and without holding an enquiry.

8. In respect of the latter petition, statement of objections has been tiled by the State contending that the writ petition is misconceived and is liable to be dismissed. It is stated mat the petitioner has not questioned the legislative competency to amend the Karnataka Stamp Act and it is not necessary to go into that question. It is further stated that before the Amended Act 24/1999, the Sub-Registrar used to register the document and then refer the same to the District Registrar for determination of the market value of the property, as a result, mere was evading of payment of stamp duty by not attending to the proceedings pending before the Deputy Commissioner and because of the non-cooperation such matters were kept pending for more than ten years and there are about

40,000 such cases pending involving more than Rs. 161 crores and that, in order to avoid the delay in collecting proper revenue at the initial stage itself, amendment was brought in as such, the object sought to be achieved is to collect revenue at the initial stage and to have a check against people who have a tendency to evade stamp duty by deliberately undervaluing the property. It is also stated that no such unilateral or arbitrary powers are conferred on the Registering Authorities and the Registering Officer is guided by the estimated market value published by a Committee constituted u/s 45B of the Stamp Act, 1957 to determine the market value and there is no scope for exercising arbitrary powers and that he is bound to exercise power as per law and according to the rules set forth and detailed location wise guidelines are framed in respect of each taluk and urban areas taking into consideration not only the geographical locations but also availability of civic amenities. It is further stated that the averments made in the petition that Section 45A and 45B runs counter to Section 52, 59, 60 and 62 of the Registration Act is baseless and untenable and rather, if the document is duly stamped and presented for registration to the registering authority, they are bound to register the same as provided u/s 52(1)(c) and that the Stamp Act is a tax law and the Registration Act 1908 is a procedural law. The Registration Act only mentions the procedure to be followed for registering the document whereas the Stamp Act states the amount of stamp duty to be paid and the instrument duty stamped should be stamped with the same not only of the amount requited by law but also in the manner prescribed by law. Section 45A(1) of the Act enables the Registering Authority to keep pending the process of registration if the market value of the property is not truly set forth in the instrument. The Sub-Registrar is required to follow the provisions of both the Registration Act and the Stamp Act in the process of registering the document and there is no error in collecting the registration fee as per the Registration Act and thereafter referring the same to the District Registrar for determination of the correct market value. The words ''duly stamped'' as defined in Section 2(1)(e) of the Stamp Act is clear that all instruments must bear the stamp in accordance with law for the time being in force and also as per Section 2(1)(mm) ''market value'' has been defined as market value in relation to any property which is the subject matter of the instrument means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher. Hence, the market value is not necessarily the market value set forth in the document. It is also further stated that the documents can be kept pending subject to determination by the Deputy Commissioner and as per Section 45A(2), the District Registrar is required to dispose of the matter expeditiously as possible within ninety days as such, the Government has safeguarded the interest of the general public and required measures are taken to avoid unnecessary delay and also hardship to the general public. As per Rule 9 of the Karnataka Stamps (Prevention of Under valuation of Instruments) Amendment Rules, 1999 read with Section 45A(5) of the Stamp Act, the amount deposited at the time of tiling of the appeal will be adjusted alter the appeal is disposed of. In case, no amount is required to be paid by the appellant, the amount will be refunded. As a condition precedent to avoid frivolous appeals, deposit of 50% of the deficit stamp duty payable is imposed by virtue of the amendment. There is a provision for adjusting or refund of the deposit as the case may be.

9. Referring to the specific case, it is stated that petitioner had represented the market value of the property as correct and that the property was constructed fifty years back but, the petitioner has not produced any document to that effect as such, the 2nd respondent as per the guideline value published has determined the value on such reference being made by the Sub-Registrar. The property in question is situate in the central place of the City which is a commercial area and taking into consideration the commercial value of the property, the 2nd respondent has assessed the market value by his order dated 10.11.1999 after conducting a spot inspection and after notifying the parties about the same and the husband of the petitioner was also present at the time of spot inspection and the said property is also said to be attached to the property purchased by the husband of the petitioner. As such, it is stated, the contention of the petitioner that 2nd respondent has assessed the value without holding enquiry is without any basis and accordingly, resisted the petition.

10. Heard the counsel for the petitioners, Government Advocate and the Advocate General in respect of these petitions questioning the validity of the provisions of Section 45A and 45B of the Karnataka Stamp Act, 1957.

11. While reiterating the averments made in the petitions, petitioners'' counsel have submitted mat as per the mandate under tine Registration Act, any such document which is presented for registration except u/s 71 of the Registration Act, the registering authority has to register the same even it is under valued. He has no right to keep the registration pending as is held by this Court and the Apex Court in a catena of decisions and submitted, such provision enabling the Sub-Registrar to keep the document pending for registration awaiting the determination of value by the District Registrar/Deputy Commissioner on such reference being made, would cause hardship to the parties as well as it will be antithetical to the provisions of the Registration Act and also against the law laid down by this Court and the Apex Court from time to time. In support of their argument, teamed counsel have relied upon the provisions of the Registration Act and also several decisions and accordingly, sought for allowing the petitions.

12. While resisting the petitions, learned Advocate General submitted that there is no basis for the petitioner to argue that the provisions provided u/s 45A and 45B of the Stamp Act are contrary to the provisions of the Registration Act The provisions of the Karnataka Stamp Act being a tax law has enabled file State to collect revenue and in fiscal matters, the Courts have to take a reasonable view in the matter and under VII Schedule to the Constitution, provisions are provided to collect stamp duty which is as per the market value and the same has been insisted for registration and it will neither be in violation of the Constitution or the provisions of the Registration Act. Learned Advocate General has also

emphasised the fact that the conditions imposed in Section 45A and 45B of the Act are neither arbitrary nor without any basis, rather, they act as a guideline to the registering authority to assess the market value in collecting a fair duty which the State is entitled to. The committee constituted u/s 45B based on the provisions of the Rules framed under the Stamp Act, has to act from time to time and depending upon the prevailing market value taking into consideration various aspects, call for objections after arriving at a particular market value and thereafter, after enquiry being held, the market value will be determined as a matter of guideline for the registering authority on practical basis which will form guidelines for the authorities to avoid under valuation. Under the circumstances, withholding the document for proper determination of the market value by the Sub-Registrar and requesting the District Registrar on reference to determine the market value and that too when time frame is provided i.e., within ninety days reference has to be answered, the provisions are neither arbitrary and such power conferred as per Section 45A and 45B cannot be held to be ultravires of Article 14 of the Constitution or the provisions of the Registration Act. It is further submitted that Section 71 of the Registration Act itself confers the power on the registering authority to refuse registration and it is not as if the authority has to compulsorily register all such documents invariably without considering Entry 63 in the Second List of VII Schedule to the constitution which enables the State to impose tax i.e., to fix the rate of stamp duty in respect of a document. Accordingly, he submitted mat such registration of the document would also be subject to payment of stamp duty and non-insistence for collection of the stamp duty as is provided under the Constitution by the State will be against the interest of the State and by virtue of the amendment, the effect of the earlier judgments relied upon by the petitioners is taken away by law and the same cannot be held to be ultra vires and accordingly, the petitions deserve to be dismissed.

13. In the light of the arguments advanced, let me consider whether the provisions u/s 45A and 45B of the Karnataka Stamp Act, 1957 are arbitrary and unconstitutional and as such, requires to be removed from the Statute.

14. In these two petitions, petitioners being not satisfied with the insistence on payment of market value and for having kept the documents pending for registration by the Sub-Registrar awaiting the decision of the District Registrar on such reference being made to him, have challenged the very provisions of the Act as illegal and arbitrary. At this juncture, it would be appropriate to refer to some of the relevant provisions of the Stamp Act.

Section 2(e) of the Stamp Act, 1957 defines the word

''duty stamped'' as applied to an instrument means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the territories of the State of Karnataka.

Similarly, ''market value'' u/s 2(mm) means

''Market value'' in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument whichever is higher.

Further the unamended Section 45A and Section 45B of the Stamp Act reads thus:

Section 45A: Instrument of conveyance, etc, undervalued how to be dealt with:

1. If the registering officer appointed under the Registration Act, 1908 while registering any instrument of conveyance, gift exchange, settlement, partition, dissolution of partnership, release or an agreement to sell covered under Sub-clause (i) of Clause (e) and Clause (f) of Article 5, a lease covered under item (iv) of Sub-clause (a), item (ii) of Sub-clause (b), item (it) of Sub-clause (c) of Clause (1) of Article 30, a power of attorney covered under Clause (ca) or (eb) of Article 41 or any conveyance under a decree or final order of any civil court, has reason to believe, having regard to the estimated market value published by the Committee, constituted u/s 45B if any, or otherwise, that the market value of the property which is the subject matter of such instrument has not been truly set forth, he shall after arriving at the estimated market value, communicate the same to the parties and unless the parties pay the duty on the basis of such valuation, shall keep pending the process of registration and refer the matter along with a copy of such instrument to the Deputy Commissioner for determination of the market value of the property and the proper duty payable thereon.

2. ...

3. ...

4. ...

5. ...

Section 45B Constitution of a Committee for Estimation of Property:

1. Subject to such rules as may be prescribed, the State Government shall, by notification, constitute for each Taluk or any part thereof one or more committees consisting of such number of members, as may be prescribed, to estimate the market value of any property or of such properties in any area in the prescribed manner and at prescribed intervals and to publish the estimated market value in such manner as may be prescribed.

2. The committee shall follow such procedures as may be prescribed.

15. In the decision in the case of M/s. Safeguard Packaging Systems Vs. State of Karnataka and others, this Court with reference to under valuation and also with reference to the unamended provision of Section 45A of the Stamp Act, has held

mat in the tint category there is under valuation in the real and accepted sense i.e., deliberate suppression of consideration with an intention to evade stamp duty or tax. In the second category, though there may not be intentional suppression of the market price, with the intention of evading stamp duty or tax nevertheless there may be under valuation on determination of the market value as specified in the Rules. In the third and fourth categories, under valuation is created by the fiction of law, this is because sale price or consideration has ceased to be the basis for payment of the stamp duty in the case of conveyance. In its place, the market value of the property has been made the basis for calculating the stamp duty payable. Article 20 in the Schedule to the Stamp Act provides the stamp duty on instruments of conveyance, as it originally stood, that the instruments of conveyance are chargeable to stamp duty at the rates specified on the amount or value of consideration for such conveyance as set forth therein. The Karnataka Stamp (Amendment) Act of 1975, amended Article 20 by substituting the words ''market value of the property which is the subject matter of conveyance'' in the place of the words "amount or value of consideration for such conveyance as set forth therein''. Accordingly, It was held that as per Article 20, the stamp duty is chargeable on the market value of the property and not the sale price. By the very same amendment, Section 45A is also introduced, the explanation of which provides mat the market value of property shall be estimated to be the price which the property would fetch if sold in the open market on the date of execution of the instrument Accordingly, it is held that the stamp duty is payable on the market value of the property on the date of execution of the sale and not on the consideration mentioned in the instrument of conveyance. This ratio laid down in the said decision would answer the argument canvassed by the petitioners that as per the Registration Act, it is for the Sub-Registrar to compulsorily register the same irrespective of the value/ consideration of the property mentioned in the Deed.

16. The next fold of argument advanced on behalf of the petitioners is, as per the decision of this Court in the case of Huleppa Balappa Karoshi Vs. Sub-Registrar, the Sub-Registrar cannot refuse to register the document on the ground of under valuation. If the document is under valued, the Sub-Registrar shall register the document and refer the instrument to the District Registrar for determination of the market value on payment of proper duty as per Section 45A and the District Registrar has to determine the market value of the proper duty payable thereon after giving the parties reasonable opportunity of being heard. Of course, this decision is based on the unamended Section 45A of the Act.

17. Petitioners'' counsel have also relied upon the decision in the case of State of Punjab and Others Vs. Mohabir Singh etc. etc., to contend that as per Section 47A of the Punjab Stamp Act, guidelines issued by the Government is the only material to the Registering Authority for prima facie satisfaction about the under valuation. Even if the registering authority is satisfied that an instrument is under valued he is obliged to register the document and men only make a reference to the Collector for action u/s 47A of the Punjab Stamp Act, 1982. Of course the

said decision was based on the provisions of the said Act.

18. The Division Bench decision relied upon by the petitioners in the case of Sri Veerabadhrappa and Anr. v. Sri Jagadishgouda and Ors. 2002(3) CCR 1875 is to the effect that the Sub-Registrar has no power to keep the document pending and also to the effect that if the stamp duty has been paid on the consideration shown in the document, the Sub-Registrar has no authority to go beyond the recitals and contents of the document to hold that the document was under valued or mat the document was not duly stamped and that the Sub-Registrar can neither keep the document pending nor impound the document on the ground that the value showed is incorrect but, can only take action u/s 28 or the Stamp Act.

19. It is argued by the learned Counsel that the law laid down by the Apex Court and this Court in Division Bench has to be followed and the provisions of Section 45A and Section 45B of the Act introduced by way of amendment confers arbitrary powers on the authority without there being any basis and the decision of the Apex Court and this Court holds good as such, the impugned orders and action by the respondent authorities are contrary to the well settled principles of law laid down.

20. It is to be noted that the provisions of Section 45A and Section 45B are further amended and as per amended Section 45A, if the Registering Officer has reason to believe having regard to the estimated market value published by the Committee constituted if any or otherwise, that the market value of the property which is the subject matter of such instrument has not been truly set forth, he shall alter arriving at the estimated market value, communicate the same to the parties and unless the party pays the duty on the basis of such valuation, shall keep pending the process of registration and refer the instrument to the Deputy Commissioner for determination of the market value of the property and the proper duty payable thereof. Of course as per Section 45A(2), procedure is provided wherein the Deputy Commissioner has to deal with the matter alter giving a reasonable opportunity in the matter and holding enquiry while fixing or determining the market value. So tar as constituting of the Valuation Committee u/s 45B is concerned, it has to be as per the guidelines mentioned under the Karnataka Stamp (Prevention of Under valuation of Stamps) Rules, 1977 which provides for the committee to be constituted for determination of market value based on the classification of the land, date of revenue assessment, average annual yield from the land, value of the adjacent land in the vicinity etc and also the developmental activities, any other features having a special bearing on the valuation of the site, etc. It is to be noted certain rules have been framed to be followed by the Committee to arrive at the guidelines to be fixed.

21. In the decision reported in Tirath Ram Rajindra Nath, Lucknow Vs. State of U.P. and Another, the Apex Court has, with reference to a similar situation, has held in para 7 as under:

This Court has pointed out in several cases the distinction between encroachment on the judicial power and the nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the legislature but the latter is within its permissible limits. In the instant case what the legislature has done is to amend the law retrospectively and thereby remove the basis of the decision rendered by the High Court. Such a course cannot be considered as an encroachment on the judicial power.

Virtually, the effect of the decision rendered earlier under the unamended Section 45A and Section 45B is taken away by further amendment thereby directing the registering authority to arrive at an independent decision based on the guidelines issued and if he feels that any paper presented for registration is under valued, it is for him to form an opinion based on the guidelines or otherwise and to direct the parties to pay the stamp duty and if it is not paid, it is for him to refer the same to the Deputy Commissioner as provided and thereafter, it is for the Deputy Commissioner to pass order determining the market value after due enquiry and after giving an opportunity to the contesting party, to pass an order within the time frame provided i.e., within ninety days such an enquiry has to be concluded.

22. In so far as the committee constituted u/s 45B, it is seen the Committee has a duty cast upon to inquire into the matter before fixing the price in a particular area and as per Rules of the Karnataka Stamp (Constitution of Committee for Estimation of Property) Rules, 1992, proper safe guards are provided. As per the said Rules, there is a provision for rectification of the anomalies. Apart from that, there is also a procedure provided - the committee as per Section 6 has to meet at such intervals and the committee has a minimum number of five members and they have to publish the estimated market value in the office of the Sub-Registrar of the respective jurisdiction and thereafter, they have to call for objections which they would reconsider and finally publish the market value. According to the petitioner, even such provisions provided will be unguided and that should not form the basis for fixing the market value. The prices fixed by the committee for a particular area will be uniform although the individual property price depends upon the conditions and it has to be determined on various factors and submitted that, if the property is involved in any dispute, its value will be still lesser than what is fixed or determined by the Committee for a particular area and thus, the petitioner tried to emphasise that there should not be insistence on guidelines and rather it should be determined on individual cases without there being predetermination.

23. A clear reading of Section 45A would make it clear that having regard to the estimated market value published by the committee constituted u/s 45B, if the market value of the property which is the subject matter of such instrument has not been truly set form, the Sub-Registrar shall have to arrive at the estimated market value and communicate the same to the parties and unless the parties pay the duty on the basis of such valuation, shall keep pending the process of

registration and refer the matter along with a copy of the instrument to the Deputy Commissioner for determination of the market value of the property and in turn, as per Section 45A of the Act itself, an obligation is cast on the Deputy Commissioner to hold a proper enquiry alter affording reasonable opportunity and then to fix the market value. It appears, enough sate guard is provided under the amended Section 45A as well as Section 45B of the Act. Even the guidelines provided does not emphasise on the Sub-Registrar being the registering authority, to accept the guidelines and to determine the market value rather the discretion has been given to the Sub-Registrar whenever a paper is presented for registration and if he is of the opinion that the document is under valued, then it is for him to consider the market value published by the Committee or otherwise and also give his opinion whenever such instrument does not truly set forth the proper market value expressing what is the estimated market value. In the circumstances, question of predetermination of the market value does not arise.

24. As stated by the State in its counter tiled, having its vast experience in these type of cases without there being unguided power or procedure being followed in several cases, parties intending to get the document registered while under the earlier provisions of Section 45, used to get the document registered and thereafter on such reference to the Deputy Commissioner for fixation of the market value and likewise, the matter is shown to have been dragged on for several years without concluding the same for one reason or the other. More over, though it is to the knowledge of the common man as to what would be the prevailing market value, under the guise of exercising right parties used to take advantage of the situation to get the document first registered and men to drag on the matter to the detriment of the Exchequer. In this regard, certain reasonable procedures have been adopted and brought into effect and the same cannot be found fault with as the Stamp Act is a fiscal Act which provides for collection of taxes, liven this Court as well as the Apex Court in similar circumstances are of the view that economic legislation should be viewed by the court with a greater latitude and they cannot be struck down as invalid on the ground of inequities.

25. In the decision in Mohabir Singh''s case cited supra, though the Apex Court has held that the value of the property varies from place to place or even from locality to locality in the same place, it would depend on the prevailing price in the locality in which the land covered by the instrument is situate. It will be only on objective satisfaction that the authority has to reach a reasonable belief that the instrument relating to transfer of property has not been truly set forth when it is presented for registration. The ultimate decision would be of the Collector subject to the decision on an appeal before the District Court as provided u/s 47A(4). This decision is rendered by the Apex Court with reference to the legal position under the Punjab Stamp Act Nevertheless the ratio laid down therein is applicable to be case on hand as a general principle of law. Although Section 45B provides for fixation of the guidelines by the Committee constituted, Section 45A

makes it clear upon such presentation of the instrument for registration by the party and also looking into the guidelines or otherwise, the ''word otherwise'' refers to the objective satisfaction of the authority at the time of registration, to form an opinion that the document is properly valued or undervalued and insist the party to pay the same. In the event the party does not pay the same rather he would refer the matter to the Deputy Commissioner for his determination after due enquiry. Section 45A and Section 45B are in consonance with the ratio laid down by the Apex Court in the decision noted supra with reference to the Punjab Stamp Act and in no way deviates from the above said principle.

26. As the experience goes and also as a matter of fact, when it is to the general knowledge as to what would be market value of the property in a particular area apart from the details available at the office of the Sub-Registrar, various guidelines and factors have been taken into consideration by the Committee in fixing the value, it is needless to say ''more the discretion more the abuse'' i.e., absolute power corrupts absolutely. To overcome this situation, some guidelines are set in by the authorities concerned which stands the test of reasonableness in fixing the market value on the basis of which the registering authority forms an opinion before accepting the document for registration and to register the same as per the true market value of the property.

27. As already noted, Section 2(e) and Section 2(mm) of the Act deals with the definition of words ''duly stamped'' and market value'' according to which stamp in respect of the proper amount has been affixed or used in accordance with the law for the time being in force and the market value is defined as price which such property would fetch if sold in the open market on the date of execution of the said instrument or the consideration stated in the instrument whichever is higher. When the words "duly stamped'' and ''market value'' are clearly explained in the Act and based on that if the registering authority comes to a conclusion as to what would be the proper market value and accordingly insists, on the party to make such payment and on such payment, registers the document, the same would not in any way come in the way of the right of the party much less it can be treated as it is in violation of the provisions of the Registration Act.

28. In so far as provisions under the Registration Act under Sections 52, 58 & 60, it is to be seen that the Registration Act provides the procedure to be adopted in registering the document. Although it is argued that withholding the document for want of registration is against the provisions of file Registration Act which is a Central Act, safe guards have been provided u/s 45A and Section 45B of the Stamp Act wherein when the authority forms an opinion as to the market value of the property to be registered, it has to be communicated to the party to pay the proper market value and if the party pays the amount, question of keeping the document pending or in abeyance does not arise. Only if a dispute arises as a principle of natural justice, it is for the Deputy Commissioner on such reference, after enquiry and after affording an opportunity to the party concerned, to pass an order as regards the market value of the property and that too, within the

time frame stipulated i.e., ninety days. The Registration Act provides of procedure for registration and the duty cast thereon. Entry 63 in the II List of the VII Schedule to the Stamp Act which is a fiscal statute, necessarily enables the State to impose stamp duty which is a matter of revenue to the State at the time of such registration of the document. Just because certain conditions are imposed to pay the market value of the property to be registered and thereby for such purposes if the document is not registered until such market value is paid, it cannot be said that it will take away the effect of the Registration Act nor the Stamp Act can be said to be in conflict with the provisions of the Registration Act as if the Stamp Act is overriding the provisions of the Registration Act. Exercising power under the Stamp Act, the registering authority have to insist for collection of the revenue and on such payment it is for him to compulsorily register the document on being satisfied with the compliance of various provisions of the Registration Act. Of course Section 71, though not mentions as to withholding of the document for such purpose and refusing to register the same other than on the point of jurisdiction, still there is power available to the Sub-Registrar when certain conditions are not satisfied, not to entertain the same and he would rather refer the matter to the higher authorities for their opinion. In the circumstance, the argument advanced on behalf of the petitioners that the very act of authorising the Sub-Registrar to withhold the document without registering the same until payment of the market value is not in accordance with law, holds no water since the provisions u/s 45A is subsequently amended by way of amendment which came into effect on 1.4.2003 by Act 8/2003 enabling the registering authority to withhold such instrument if he is of the opinion that the instrument is undervalued. All the judgments which were rendered earlier by this Court either by a Single Bench or by Division Bench are with reference to the then legal position. After amendment of Section 45A and Section 45B, the stand taken by the respondent authorities in these two cases insisting upon the petitioners to deposit the amount as per the market value cannot be found fault with.

29. In one of the cases, it appears, the petitioner is shown to have paid the amount under protest and thereafter, registration is made and in another case where the petitioner''s properties are valued by the Deputy Commissioner on such reference, it is for the petitioner to pay the market value determined on such enquiry being held and get the documents registered. Further, in the case where the petitioner has already paid under protest and got the document registered, no interference is called for. But, in the other case, it is for the respondent authority to register the document as per the determination made by the Deputy Commissioner on such reference by the Sub-Registrar.

30. For the foregoing reasons, while answering the questions raised by the petitioners, I do not find any unconstitutionality or unreasonableness or arbitrariness in the amended provisions of Section 45A and Section 45B of the Stamp Act, 1957. Further more, the act of the respondent authorities in withholding the registration and insisting the petitioners to pay the stamp duty

does not call for interference.

31. If the petitioners are aggrieved by the fixing of the market value by the respective Deputy Commissioners on such reference being made by the Sub-Registrar, it is for them to exhaust the remedy by approaching the appellate forum to get the market value determined and if the Deputy Commissioner had not given sufficient opportunity by property serving the notice on the concerned petitioners, it is for him to reconsider the matter and pass orders in accordance with law.

32. In the result, both the petitions are dismissed.

