**(2008) 01 MP CK 0057**

**In the Madhya Pradesh High Court**

State of Madhya Pradesh and Another APPELLANT

Vs

Dilip Kumar Sangni RESPONDENT

**Date of Decision :** 22-01-2008

**Acts Referred:**
Stamp Act, 1899 — Section 17, 18, 2, 27, 3

**Citation :** AIR 2008 MP 133 : (2008) ILR (MP) 480 : (2008) 1 MPHT 534 : (2008) 1 MPJR 290

**Hon'ble Judges :** K.K. Lahoti, J

**Bench :** Single Bench

**Final Decision :** Allowed

# Judgement

K.K. Lahoti, J.

The State has challenged order dated 14-2-2003 (Annexure P-1) passed by the Board of Revenue, M.P. Gwalior in Revision Case No. 1338/five/2000 by which the Board of Revenue set side the order passed by the Collector of Stamps, Jabalpur, in Case No. 196/B-105/95-06, dated 29-4-2000.

The facts of the case are that:

(a) A sale-deed dated 25-3-1996 was presented to the Sub-Registrar (Registration), Jabalpur by which a piece of land admeasuring 16650 square feet alongwith a house standing on it was transferred by Narendra Agrawal in favour of Smt. Dayalaxmi Sangni for a consideration of Rs. 8000/-. Aforesaid, valuation was put on the basis of judgment and decree passed by the Civil Court in Case No. 19-A/1993, dated 10-12-1993. The suit was decided between the parties by a compromise.

(b) The Registering Authority, Sub-Registrar, Jabalpur was not satisfied with the market value put in the sale-deed for the purpose of payment of stamp duty and sent a proposal to the Collector of Stamps on 11-4-1996, proposing value of property at Rs. 8,79,000/-. The Collector of Stamps after satisfying itself with the proposal sent by the Sub-Registrar issued a show-cause notice Annexure P-4 to

Narendra Agrawal (vendor) and Smt. Dayalaxmi (vendee) u/s 47A of the Indian Stamps Act, 1899 (hereinafter referred to as the ''Stamp Act'').

(c) Though the notice was issued to Smt. Dayalaxmi, but her son respondent Dilip Kumar appeared before the Collector of Stamps and submitted that Smt. Dayalaxmi expired on 22-11-1999 and the respondent being her son and successor filed a reply to the show-cause notice.

(d) In the reply, respondent stated that transaction was a genuine one. His father Damodardas entered into agreement with Narendra Agrawal to purchase land Survey No. 62 area 1.27 acres of Village Ranipur, Tehsil and District Jabalpur for a consideration of Rs. 30,000/- on 1-1-1978. The aforesaid agreement though was entered by Damodar but in the name of his wife Smt. Dayalaxmi mother of the respondent. At the time of the agreement, Rs. 500/-were paid by way of earnest money and possession of land was handed over to the father of respondent. Thereafter, father of respondent constructed his house. Narendra Agrawal had not executed the sale deed as per agreement, so father of the respondent filed a suit on 20-4-1984 against Narendra Agrawal, which was registered as Civil Suit No. 19-A of 1984. In the suit, plaintiff was mother of the respondent, because agreement was in her name. The civil suit remained pending before 5th Civil Judge, Jabalpur between 1984 and 1993. Ultimately, on 24-11-1993, a compromise was arrived between the parties and as per compromise, mother of the respondent restricted her claim towards 16650 sq.ft. of land leaving her right towards remaining land in favour of Narendra Agrawal. It was agreed that Narendra Agrawal will executed the sale-deed of the aforesaid land for a consideration of Rs. 8000/-. The price was fixed in accordance with the terms of agreement. As per compromise, the Civil Court passed a decree. Now, the sale-deed has been got executed in compliance of decree, hence provisions of Section 47-A of the Stamp Act are not applicable. The proposed value of the property by the Sub-Registrar was excessive and illegal. Reliance was placed on a judgment of Andhra Pradesh High Court in Sub-Registrar, Kodad Town & Mandal v. Amaranaini China Venkat AIR 1998 AP 252 and submitted that the aforesaid notice be dropped.

(e) The Collector of Stamps visited the spot and found that the property involved in the sale-deed is situated at Veer Sawarkar Ward, old Ranipur House No. 256, Jabalpur. The property is not on main road but it is situated in 8 feet narrow lane and the level of the land was below 2 feet of the earth level. In the rainy season, the land usually submerges and the house standing on the land also submerges by 4 feet. Marks of submergence were found by the Registrar on the walls of the house. The house was also found to be an old Kachcha and in a dilapidated condition. Out of the total area, only 1445 sq. ft. area was found to be constructed. The location of the property was 5 kms away from bus-stand, 2? kms away from Railway Station and 2 kms away from the market. The house could not be used for habitation and required reconstruction. At the time of the inspection, electricity connection was not found in the house. The Collector of

 

Stamps considering total facts and circumstances found that the valuation proposed by the Assistant Registrar was on higher side and after reconsidering the entire facts found valuation of the property at Rs. 7,83,000/- and directed the respondent to pay deficit stamp duty and registration fee on this valuation.

(f) The order of the Collector of Stamps was challenged by the respondent before the Board of Revenue u/s 56(4) of the Act. The Board of Revenue after considering the entire facts held thus:

(i) That on 1-1-1978, an agreement was entered into between Nar-endra Kumar Agrawal and Smt. Dayalaxmi, which was filed in original before the Board of Revenue.

(ii) That, compromise was arrived between the parties before the Civil Court and as per compromise dated 24-11-1993, the judgment & decree were passed on 10-12-1993.

(iii) That, as per compromise decree, sale-deed was to be executed by Narendra Agrawal after payment of Rs. 8000/- by Smt. Dayalaxmi.

(iv) That, provisions of Section 47-A are not applicable because the agreement was entered in the year 1978 and as per compromise decree, the sale-deed was executed.

(v) That the location of the house is on a narrow lane. Plot level is 2 feet below the normal earth level and in the rain, entire land is submerged and house also submerges by 4 feet.

(vi) The house was 25 year old and was in a dilapidated condition. It was not a habitable house and the location of the house was 5 kms away from bus-stand, 2? kms away from Railway Station and 2 kms away from the market. The house was required reconstruction.

The Board of Revenue relying on judgment of Andhra Pradesh High Court in Sub-Registrar, Kodad Town & Mandal v. Amaranaini China Venkat (supra), found that the sale-deed was executed in compliance of the judgment and decree, the Registering Authority could not demand stamp duty on the basis of market value prevailing on the date of execution of sale-deed. That, the land was not a diverted land but was an agricultural land and unirrigated. The price paid by the vendee to the vendor was a proper consideration as per market value and on these grounds, the revision was allowed and the order passed by the Collector of Stamps dated 29-4-2000 was set aside. The Board of Revenue also held that the stamp duty and registration fee paid by Smt. Dayalaxmi was in accordance with law.

This order has been challenged by the petitioners on the following grounds:

(i) That the stamp duty and registration fee were payable on the market value of property on the date of registration of the sale-deed and these have no concern with the date of agreement or consideration paid therein.

 

(ii) That, u/s 2(12) of the Stamp Act, date of execution is relevant for the purposes of payment of stamp duty and it has no concern with the consideration. The stamp duty is payable as per market value of the property as on the date of registration of the document. Reliance is placed by the petitioner to a Division Bench judgment of this Court in State of Madhya Pradesh and Others Vs. Rambabu Agrawal, and submitted that the order passed by the Board of Revenue be set aside and that of Collector of Stamps be restored.

Shri Jitendra Tiwari, learned Counsel for respondent vehemently opposed the contentions and submitted that the Board of Revenue has taken a correct legal view in accordance with the provisions of Stamp Act. The reasonings assigned by the Board of Revenue are in accordance with law. He placed reliance to judgment of the Division Bench of Madras High Court in S.P. Padmavathi Vs. State of Tamil Nadu and Others, , judgment of Rajasthan High Court in Shanti Lal Vs. Collector and Another, and a judgment of Andhra Pradesh High Court in Sub-Registrar, Kodad Town & Mandal v. Amaranaini China Venkat (supra), and submitted that this petition may be dismissed with costs.

In this case factual position as stated hereinabove are not in dispute. Only the legal position in this case is to be examined that whether the stamp duty is payable in respect of the market value of the subject-matter on the date of registration of the sale-deed or in case where the sale-deed is executed in compliance of the judgment and decree passed by the Court, even on compromise, the stamp duty is payable on a consideration as fixed by the Court or not?

The relevant provisions of the Indian Stamp Act, 1899 as amended in its application to the State of Madhya Pradesh deserves to be referred.

Section 2(6) "Chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in India when such instrument was executed or; where several persons executed the instrument at different times, first executed;

Section 2(10) "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or by Schedule I-A, as the case may be;

Section 27. Facts affecting duty to be set forth in instrument.--(1) The consideration, if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

(2) In the case of instrument relating to immovable property chargeable with an ad valorem duty on the market value of the property, and not on the value set-

 

forth, the instrument shall fully and truly set-forth the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property, the local rates, municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act.

Schedule I-A. Item No. 23: Conveyance:

______________ Description of Instrument Proper Stamp Duty ______________

_ 23. Conveyance, not being a Seven and half per cent of transfer charged or exempted such market value: under No. 62 irrespective of the Provided that if the total market value of the property which amount of the duty payable is is the subject matter of not a multiple of fifty paise.it conveyance. shall be rounded off to the nearest rupee half of a rupee or over being counted as one rupee and less than half of a rupee being disregarded. ______________________

Exemption: Assignment of copyright under the Copy Right Act, 1957 (No. 14 of 1957), Section 18, Co-partnership deed, See Partnership (No. 46).

Explanation : For the purpose of this article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution or after execution of, such agreement without executing the conveyance in respect thereof then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:

Provided that, the provisions of Section 47-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section:

Provided further that where subsequently a conveyance is effected in pursuance of such agreement of sale the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance, subject to a minimum of Rs. 10. ______________________

Section 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 finds that the market value of any property which is the subject matter of such instrument has been set forth less than the minimum value determined in accordance with any rules under this Act, he shall before registering such instrument refer the same to the Collector for the determination of the market value of such property and the proper duty payable thereon.

 

(1-A) Where the market value as set forth in the instrument is not less than the minimum value determined in accordance with any rules under this Act, and the Registering Officer has reason to believe that the market value has not been truly set forth in the instrument, he shall register such instrument and thereafter refer the same to the Collector for determination of market value of such property and proper duty 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 may be prescribed, determined 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 purposes 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 Pradesh Amendment) Act, 1975.

(3-A) For the purpose of enquiries under this section, the Collector shall have the power to summon and enforce the attendance of witness including the parties to the instrument, or any of them and to compel the production of documents by the same means and so far as may be in the same manner, as is provided in the case of Civil Court under the CPC 1908 Cen. Act. V of 1908.

(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 who may either himself decide the appeal or transfer it to the Additional Commissioner of the Division.

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

(6) Every first and second appeal shall be filed within thirty days from the date of the communication of the order against which the appeal is filed, alongwith a certified copy of the order to which objection is made and shall be presented and verified in such manner as may be prescribed:

Provided that in computing the period aforesaid, the time requisite for obtaining a copy of the order appealed against shall be excluded.

(7) The Appellate Authority shall follow such procedure as may be prescribed:

Provided that no order shall be passed without affording opportunity of being heard to the appellant.

(8)The order passed in second appeal, or, where no second appeal is preferred the order passed in first appeal shall be final and subject to orders passed in first or second appeal, as the case may be, the order passed by the Collector under Sub-section (2) or Sub-section (3) shall be final and shall not be called into question in any Civil Court or before any other authority whatsoever.

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, such property would have fetched or would fetch if sold in the open market on the date of execution of the instrument.

From the perusal of the aforesaid provisions, it is apparent that the sale-deed is covered under the definition of conveyance and stamp duty is chargeable as applicable to such instrument. As per Item No. 23 of Schedule I-A, the stamp duty is chargeable on the market value of the property. The aforesaid provision specifically provides that the proper stamp duty for conveyance shall be 7? % of market value. Section 27 as substituted by M.P. Act No. 8 of 1975 w.e.f. 15-5-1975 specifically provides that consideration, if any, the market value of the property and all other facts and circumstances shall be fully and truly set forth in the document for the purposes of ascertaining stamp duty. An instrument relating to sale of immovable property is chargeable with ad valorem duty on the market value of the property and not on the value set forth. The State Government has framed rules namely M.P. Prevention of Undervaluation of Instruments Rules, 1975 of which Rule 3 provides that all the particulars to be set forth in the instrument as required by Sub-section (2) of Section 27 of the Act. Rule 3 of the aforesaid Rules reads thus:

Rule 3. Other particulars to be set forth in the instrument as required by Sub-section (2) of Section 27 of the Act.-The following particulars shall be fully and finally set forth in the instrument relating to immovable property chargeable with ad valorem duty namely:

(i) in case of an instrument relating to agricultural land the land revenue payable by the Bhumiswami of the adjoining agricultural land of the same class of soil, if the land which is the subject matter of instrument, is exempted from payment of land revenue or which has not been assessed to land revenue;

(i-a) In case of an instrument relating to agricultural land assessed to land revenue-

(a) name of the village with name of Revenue Inspector''s circle, Tehsil and

 

District wherein the land is situated; and

(b) whether the land is irrigated or not; and if irrigated, whether irrigation is for one crop only or for two crops.

(ii) in case of an instrument relating to transaction of any immovable property in urban or rural area except agricultural land-

(a) area of the plot and the area of the constructed portion thereon; and

(b) the year of construction.

3-A. Assessment of market rent of the lease executed by or on behalf of the State Government or any undertaking of the State Government.--In case of any property which is subject matter of a lease by the State Government or any undertaking of the State Government, the market rent would be the average annual rent and the market value shall be the amount or value of such fine, or premium or advance as setforth in the instrument.

3-B. Market value of any property, which is subject matter of conveyance executed by or on behalf of the Central Government or the State Government or Semi Government Organisation or any Government Undertaking or any local body, shall be the value shown in the instrument.

The valuation of the property for the purpose of stamp duty is the market value at the time of its execution. The Indian Stamp Act is a taxing statute and is to be construed strictly. In the case of a decree of the Civil Court, may be on the basis of compromise, for the purpose of payment of stamp duty, provision of Section 3 of the Act shall be applicable which specifically provides that the stamp duty shall be chargeable with duty of the amount indicated in the Schedule. Section 27 as amended in Madhya Pradesh specifically provides that the fact affecting the duty to be set forth in instrument and as per Schedule I-A, on the conveyance, the stamp duty is payable on the market value. In these circumstances, there is no iota of doubt that on the sale-deed stamp duty was payable as per market value and it had no concern with the consideration shown or paid to the vendor. Section 47-A provides a procedure in respect of instrument undervalued to be dealt with. The Registering Officer while registering any instrument if has reason to believe that the market value of the property which is the subject-matter of such document has not been truly set forth in the instrument, he may after registering such document refer the same to the Collector for determination of the market value of such property and proper duty payable thereon. In this case, the Sub-Registrar duly referred the matter to the Collector of Stamps for determination of the market value of such property and the Collector of Stamps after holding an enquiry determined the market value of the property which was subject-matter of the sale-deed. From the perusal of the order passed by the Collector of Stamps, it is apparent that each and every aspect was seen and taken into consideration by the Collector of Stamp while determining the market value of the property.

 

In this case, there was a difference between market value and the price as agreed in the agreement or subsequently fixed in the compromise petition. The suit was decided on the basis of compromise arrived at between the parties and as per compromise decree, consideration as settled between the parties was to be paid by the vendee to the vendor. For consideration, aforesaid amount is binding between the parties but for payment of stamp duty, market value on the date of execution of the document was a decisive factor and the stamp duty was payable on the market value of the property at the time of registration of the sale deed and not as per the price fixed under agreement to sell or in the decree of the Court.

In the judgments relied on by the respondent, it was held that where agreement to sell was subject matter of a civil suit and a decree is passed on the basis of agreement to sell for specific performance of contract, the Registering Authority cannot demand stamp duty on the basis of market value prevailing on the date of execution of the sale deed and the consideration shown in the sale-deed as per decree of the Court is proper consideration for the purpose of stamp duty. Aforesaid judgment arc based on the law applicable in the aforesaid States while Section 27 of the Stamp Act as substituted by M.P. Act No. 8 of 1975 is applicable in the present case.

Recently the Apex Court has considered the law in State of Rajasthan v. Mis. Khanciaka Jain Jewellers AIR 2007 SCW 7378, and held thus:

10. Therefore, in the present case when the Registering Authority found that valuation of the property was not correct as mentioned in the instrument, it sent the document to the Collector for ascertaining the correct market value of the property. The expression "execution" read with Section 17 leaves no manner of doubt that the current valuation is to be seen when the instrument is sought to be registered. The Stamp Act is in the nature of a taxing statute, and a taxing statute is not dependent on any contingency. Since the word "execution" read with Section 17 clearly says that the instrument has to be seen at the time when it is sought to be registered and in that if it is found that the instrument has been undervalued then it is open for the Registering Authority to enquire into its correct market value. The learned Single Judge as well as the Division Bench in the present case had taken into consideration that the agreement to sell was entered into but it was not executed. Therefore, the incumbent had to file a suit for seeking a decree for execution of the agreement and that took a long time. Therefore, the Courts below concluded that the valuation which was in the instrument should be taken into account. In our opinion this is not a correct approach. Even the valuation at the time of the decree is also not relevant. What is relevant in fact is the actual valuation of the property at the time of the sale. The crucial expression used in Section 17 is "at the time of execution". Therefore, the market value of the instrument has to be seen at the time of the execution of the sale deed, and not at the time when agreement to sale was entered into. An agreement to sell is not a sale. An agreement to sell becomes a

 

sale after both the parties signed the sale-deed. A taxing statute is not contingent on the inconvenience of the parties. It is needless to emphasize that a taxing statute has to be construed strictly and considerations of hardship or equity have no role to play in its construction.

In Para 14 of the judgment, the Apex Court considered the judgment of the Andhra Pradesh High Court in Amaranaini China VenkatRao (supra), and found that the aforesaid judgment does not lay down the correct law and overruled it. Now in the light of the aforesaid recent pronouncement of the Apex Court, other judgments relied by the respondent are impliedly overruled by the judgment of Mis. Khandaka Jain Jewellers (supra).

In view of the aforesaid discussion, the order passed by the Board of Revenue is not sustainable under the law and is hereby quashed. The order passed by the Collector of Stamps, Jabalpur dated 29-4-2000 is affirmed. Petition filed by the State is allowed with costs. Counsel''s fee Rs. 2000/-.

 