(2003) 08 MP CK 0016

In the Madhya Pradesh High Court

Case No : L.P.A. No. 44 of 2003

State of Madhya Pradesh and Others — APPELLANT

Vs

Rambabu Agrawal — RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

- Madhya Pradesh Preparation and Revision of Market Value Guidelines Rules, 2000 — Rule 1
- Madhya Pradesh Stamp (Prevention of Under Valuation of Instruments) Rules, 1975 — Rule 5
- Stamp Act, 1899 — Section 47A

Citation : AIR 2004 MP 104 : (2004) 1 MPLJ 188

Hon'ble Judges : S.S. Jha, J;Chandresh Bhushan, J

Bench : Division Bench

Advocate : N.K. Mody,A.A.G. and Vijay Sundaram, for the Appellant; P.C. Chandil, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jha, J.

This appeal is filed by the appellants-State challenging the judgment delivered by the Single Bench in Writ Petition No. 1165/2002 decided on 29-1-2003.

Brief facts of the case are that respondent Rambabu Agrawal had filed a civil suit for specific performance of contract. Suit was decreed and the Court directed the defendant to execute the sale-deed of the property at Rs. 50,000/-, Sale-deed was executed through Court for a consideration of Rs. 50,000/-. The sale-deed was presented for registration valuing the property at Rs. 50,000/- and stamp duty was paid accordingly. Sale-deed was presented before the Registrar. Registrar without registering the document wrote a note that market value of the property is less than the market value fixed, and referred the matter to the District Registrar and Collector of Stamps, Gwalior u/s 47A(1) of the Indian Stamp Act, 1899. Collector of Stamps issued notice for the purpose of assessing the market value of the property in question and for payment of stamp duty accordingly. Respondent filed a writ petition challenging the action of the Collector of Stamps praying therein that in this case question of referring the dispute does not arise as the property was agreed to be sold long back and stamp duty is paid on the market value existing on the date of agreement. Show cause notice was issued to the respondent (petitioner before the writ Court) for determining proper stamp duty. Single Bench issued notices to show cause and decided the petition after hearing both the parties. Single Bench has held that for the purposes of assessing the value of the property on the basis of agreement for sale, executed in pursuance to a decree of the Civil Court, the market value should be the date on which agreement in question was entered into. After recording this finding, Single Bench directed the petitioner (respondent herein) to raise objections before the Collector of Stamps and the Authority concerned shall value the property taking note of the fact that the agreement to sale was executed in the year 1984 and shall decide the dispute in accordance with the law laid down in the cases referred in the judgment.

Learned Additional Advocate General appearing for the appellants-State submitted that the market value of the property is to be determined on the date when the document was presented for registration. He submitted that the language of Sections 47A(1), (1-A) and (2) of the Indian Stamp Act, 1899 (hereinafter, referred to as the "Act") is clear and without any ambiguity. He further submitted that the Single Bench judgment of Andhra Pradesh High Court in the case of Sub-Registrar, Nalgonda Dist. Vs. Amaranaini China Venkat Rao and others, has been overruled by the Division Bench of that High Court. Learned counsel for the State submitted that the Single Bench has relied upon the Single Bench judgments of the Andhra Pradesh High Court and Patna High Court in the cases of Sub-Registrar, Kodad Town and Mandal supra and Smt. Shanti Devi Prasad v. State of Bihar, AIR 2001 Patna 161 respectively. He submitted that the law is not laid down in the light of the amendment in the Stamp Act and it should be held that respondent is liable to pay the stamp duty on the market value of the property on the date of presentation of the sale-deed.

Counsel for the respondent submitted that the respondent is not at fault. He had entered into an agreement in the year 1984 and since his vendor had refused to execute the sale-deed, he had to file a civil suit and on account of delay in litigation, respondent cannot be penalised by realising the stamp duty on the current market value of the property. He submitted that there was no fault on the part of the respondent and he should not be made to suffer. He supported the judgment of the Single Bench.

Sections 47A(1), (1-A) and (2) of the Act are reproduced below:

"(1) If the Registering Officer appointed under the Registration Act, 1908 (No. 16 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 that 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 u/s (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, 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."

Question involved in the case is whether in the case of suit for specific performance, party is entitled to value his property on the basis of market value on the date of agreement or on the date the document is presented for registration.

Judgment of the Single Bench of the Andhra Pradesh High Court in the case of Sub-Registrar, Kodad Town and Mandal (supra) came up for consideration before the Division Bench of that High Court in Writ Petition No. 1649/2001 : (Reported in 2001 AIHC 4382). In this writ petition, the Division Bench has considered two conflicting judgments of Single Bench. In the judgment of Sub-Registrar, Kodad Town and Mandal supra. Single Bench has directed the Registering Officer that while conducting enquiry he should concentrate whether the consideration mentioned in the instrument of conveyance is true or the instrument was undervalued to avoid stamp duty and it is not his concern to see whether the market value of the property as given in the instrument is proper or correct and the Registering Officer cannot contend that the value of the property shown in the sale-deed is true consideration and that was paid by the respondent to their vendors. As the vendor went back on performing his part of contract, the respondents are forced to approach the Court of law by way of filing a suit for specific performance. Because of the cumbersome legal procedure that are vogue in this country, the suit could not be disposed of till 1977. Hence, there is no justification on the part of Registering authority in demanding stamp duty on the basis of the market value prevailing on the date of execution of the sale-deed by the Court. Division Bench considering the case and referring to Section 47-A of the Act as amended by State of Andhra Pradesh held that the tax imposed is to be collected on the basis of the rate when the instrument itself is executed. Such an instrument, for the purpose of registration or otherwise in terms of the provisions of the Indian Stamps Act cannot relate back to the date of execution of an agreement for sale. It is now well settled principle of law that there cannot be any intendment in relation to a tax. It is held that the Sub-Registrar has a right to determine the market value of the property on the date the instrument was presented for registration and it is further held that Collector can also take suo motu notice thereof and if some orders are passed, remedy of appeal or other provisions is available to the party under the Act.

Counsel for the respondent has referred to the judgment in the case of Sitaram and Others Vs. The State of Madhya Pradesh, wherein the Full Bench has considered the scope of Section 47-A as inserted by M. P. Act No. 8 of 1975 with effect from 15-5-1975. Full Bench held that the amendment in Section 47-A of the Act has no retrospective operation, it has prospective operation. It is held 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 that case, documents were presented for registration on 29-7-1994 much before the date of coming into force of new Section 47-A of the Act introduced by Amendment Act and since it has no retrospective effect, the said registered deeds will not be governed by the amended provision of the Act. It was further held that once the document was registered, Sub-Registrar is not empowered to make 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.

In the case of Smt. Shanti Devi Prasad supra, Single Bench while considering the scope of Section 47-A as inserted by Bihar Amendment Act 15 of 1988 has held that the provision has no application in respect of the documents presented for registration pursuant to decree for specific performance of the agreement executed prior to coming into force of the amended provision of the Act. Thus, this judgment also relates to the instrument which was presented for registration pursuant to the decree for specific performance of agreement executed prior to coming into force of the amended provision of the Act. In that case, the agreement came into force prior to amended Act. Single Judge considered the Act and held that the registration can be refused only on the ground that under valuation was made with a view to fraudulently evade payment of proper stamp duty.

Even otherwise, after the amendment in Section 47-A of the Act by Amendment Act No. 11/2000, there is complete departure from the language used earlier and the amendment of the State of Andhra Pradesh and State of Bihar. Prior to amendment, it was provided that the Registering Officer has reason to believe that market value of the property, which is the subject-matter of instrument has not been truely set forth. Now by amendment, in place of words "reason to believe", it is provided that when the Registering Officer finds that the market value of any property has been set forth less than the minimum value determined in accordance with any rules under this Act. Therefore, the Registering Officer is required to consider the minimum value set forth under the rules. Therefore, judgment of Andhra Pradesh High Court in the case of Sub-Registrar, Kodad Town and Mandal supra, Patna High Court in the case of Shrimati Shanti Devi Prasad supra and Full Bench judgment of this Court in the case of Sitaram supra will not be applicable in the light of the amendment in the Act.

Section 47-A(1) of the Act clearly provides that the Registering Officer 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 the Act, he shall before registering such instrument refer the same to the Collector for the determination of the market value of such property and proper duty payable thereon and Section 47-A(1-A) relates to the instrument where the market value set forth is not less than the minimum value determined in accordance with any rules under the Act, 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 payable thereon. Procedure for enquiry is prescribed u/s 47-A(3-A) of the Act.

Full Bench of this Court in the case of Oriental Insurance Co. Ltd. v. Smt. Saraswati Bai 1995 Jab LJ 11 has considered the word "judgment" for the purpose of Clause 10 of the Letters Patent while considering the question whether decision of the Single Bench under the Motor Vehicles Act is appealable under Clause 10 of the Letters Patent.

Division Bench of Madras High Court in the case of S.P. Padmavathi Vs. State of Tamil Nadu and Others, , has held that the power can only be exercised when the Registering Officer has reason to believe that the market value of the property which is the subject-matter of conveyance has not been truly set forth with a view to fraudulently evade payment of proper stamp duty. Mere lapse of time between the date of agreement and the execution of the document will not be the determining factor that the document is undervalued and such circumstance by itself is not sufficient to involve the power u/s 47-A of the Act, unless there is lack of bona fides and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty. It may be mentioned that in this judgment the word bona fide belief was considered.

Section 47-A(1) of the Act, as amended in M. P. clearly provides that the Registering Officer while registering any instrument finds that market value of the property which is the subject-matter of such instrument has been set forth less than the minimum valuation determined in accordance with the rules under the Act, the document shall be referred to the Collector before registering for determining the market value of the said property and proper duty payable thereon. Amended provision by M. P. Act No. 11 of 2000 is entirely different from Andhra Pradesh and Bihar amendment and the language is clear and unambiguous. Therefore, the Registering Authority is only required to examine whether market value set forth in the instrument is not less than the minimum value determined in accordance with the rules made under the Act. Rules have been framed which are known as Madhya Pradesh Prevention of Undervaluation of Instrument Rules, 1975. Rule 5 of the aforesaid Rules relates to the principles for determination of market value. Rules known as Madhya Pradesh Preparation and Revision of Market Value Guideline Rules, 2000 have been framed. Under the aforesaid Rules, market value of the property is determined and notified by Central Valuation Board and thus, the market value determined under the aforesaid Rules in accordance with the guidelines is binding upon the Registering Authority,

Thus, on the date of presentation of the instrument, if the Registering Authority finds that the valuation set forth in the instrument is less than the market value determined under the rules for determining the market value, Registering Authority is bound to refer the matter to the Collector of Stamps. Collector of Stamps then after hearing parties shall decide the question of valuation and payment of stamp duty. It will be open for the respondent to raise objections before the Collector of Stamps that the market value mentioned in the document is proper or may point out Irregularity in determination of the market value. Objection raised by the respondent shall be decided by the Collector of Stamps in accordance with law. Respondent, if aggrieved by the order of Collector of Stamps has remedy of appeal under the provisions of the Act. In the said facts of the case, we are of the opinion that the Registering Authority has not committed any error in referring the instrument to the Collector of Stamps and Collector of Stamps has rightly issued notice to the respondent.

In the result, appeal succeeds and is allowed. Order passed by the Single Bench in Writ Petition No. 1165/2002 decided on 29-1-2003 is set aside and the writ petition filed by the petitioner (respondent herein) is dismissed without any order as to costs.

