(2003) 01 MP CK 0133

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7089, 7081 and 7088 etc. etc. of 2002

State of M.P. and Another APPELLANT

Vs

P.B. Menon and Others RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Stamp Act, 1899 — Section 47A

Citation : AIR 2004 MP 117 : (2004) 1 MPLJ 285

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Judgement

Arun Mishra, J.

This bunch of 12 writ petitions is filed by the State Government assailing the order Annexure P/6 passed by the Board of Revenue dated 3-4-2002.

Sale deeds were presented by the purchasers for registration, the sale deeds are styled in the form of deed of assignment cum sale deed. Different sale deeds were executed each for a consideration of Rs. 4,16,667/-, plot value was shown at Rs. 3,50,000/-, structure value Rs. 66,667/-, stamp duty paid was Rs. 32,620/-. The sale deeds were registered by the Sub-Registrar (Registration), Jabalpur and transactions were recorded. Sub-Registrar opined that valuation of the land and building in the instrument is not proper and adequate and forwarded the same to the Collector of Stamps for determination of the market value of the property and the proper stamp duty payable thereon as per memo P/2 dated 29-6-1999. In the opinion of the Registering Officer each of the property ought to have been assessed at Rs. 38,77,000/- in accordance with the provision of Section 47A of the Indian Stamps Act. On receipt of the instrument the Collector of Stamps called for the average index of the sale deeds, in response thereto Sub-Registrar forwarded the data P/3. The Collector of Stamps assessed the value on the basis of data in P/3, spot inspection was also conducted Collector of Stamps assessed the market value of the property at Rs.

32,36,657/- and that of building Rs. 1,27,500/-, total valuation arrived at was Rs. 33,64,157/- in each case and payment of stamp duty of Rs. 2, 33,406/- and deficiency of Rs. 23,576/- was directed as per order (P/ 4) dated 26-2-2000. Respondents preferred an appeal before the Commissioner. Jabalpur, Commissioner dismissed the appeal as per order P/5 dated 15th Feb. 2001.

Aggrieved by the orders P/3 and P/5 purchaser respondent No. 1 preferred an appeal before the Board of Revenue, M.P. Gwalior, same has been decided and partly allowed as per order P/6 dated 3-4-2002.

Learned Board of Revenue on elaborate discussion of evidence on record has held that construction is in 1.000 sq. ft., same 60-70 years old and even roof is not of cement and concrete and house is in dilapidated condition and was badly damaged by earthquake in 1997. The doors, electricity wirings are completely damaged, the house is situated in sublane, in a residential area, there are no means conveyance available and the house is three Kms. away from the railway station and six kms. away from bus stand, the spot inspection report of Collector of Stamps has been taken into consideration in which the existing condition of the construction is mentioned in extensive details which supports the finding arrived at by the Board of Revenue. It has opined that costs of construction in the present form cannot be taken to be at Rs. 170/- per sq. ft., the Board has assessed the value construction at Rs. 100/- per sq. ft. and has valued the cost of construction 1000 x 100 = Rs. 1,00,000/- 75% deduction has been made owing to the dilapidated condition of structure owing to damage by earthquake and the final valuation has been made of constructed structure at Rs. 25,000/- as in the opinion of the Board of Revenue the construction is of no utility and is not habitable. With respect to the value of land the Board of Revenue has found that valuation made by the Collector of Stamps at Rs. 170/- per sq. ft. has no realistic basis. The land was held on lease by the assigner. In the opinion of the Board of Revenue, Collector has not looked into the comparable sales of the ad-joining areas and has erred in making the valuation on the basis of index maintained for the entire Civil Lines Area and Near Railway Station, Jabalpur area. The Board of Revenue has referred the sale deed dated 15th June, 1999 executed by M.P. Housing Board for the land situated in front of Commissioner Offices, Civil Lines, Jabalpur which was situated near main road and just 1-2 kms. away from the railway station, the land was sold by Rs. 7/- per sq. ft. whereas the property in question is situated at three Kms. distance in sub-lane and is not on main road and land was held on lease hold basis, thus, valuation arrived at by the Collector of Stamps is not correct and the Board of Revenue has held that valuation should be made at Rs. 50/- per sq. ft. and valuation of land is assessed at Rs. 9,35,450/- and cost of construction Rs. 1,00,000/- after deduction 75% for damage to structure cost is Rs. 25,000/-, total cost arrived at is Rs. 9,60,450/- accordingly the stamp duty has been directed to be paid. Thus, Board has not accepted the valuation mentioned in the sale deed and has put it at double then the sale consideration on elaborate discussion.

It is clear from the orders passed by the Collector of Stamps and Commissioner that only criteria adopted for making the valuation was register of valuation of the various sale deeds. The entries in valuation register have been relied upon.

Section 47-A as inserted in M.P. prescribes that valuation has to be determined in accordance with Sub-section (2) of Section 47-A. There is nothing in Section 47A to suggest that such basic valuation register has the statutory force. Section 47-A Sub-sections (1), (2) and explanation are quoted below:--

"Section 47A. Instruments undervalued, how to be dealt with :--

(1) If the registering officer appointed under the Registration Act, 1908, (XVI of 1908) while registering any instrument has reason to believe that the market value of the property which is the subject matter of such instrument has not been truly set forth in the instrument, he may, after registering such instrument, refer the matter to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under Sub-section (1) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as 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."

Explanation -- For the purposes of this Act.

(i) Market value of any property other than the property which is the subject-matter, of conveyance by or on behalf of the Central Government or the State Government or any authority or body incorporated by or under any law for the time being in force, 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 market on the date of execution of instrument :

(ii) Market value of any property which is the subject-matter of conveyance by or on behalf of the Central Government or the State Government or any authority or body incorporated by or under any law for the time being in force shall be the value shown in the instrument.

(M.P. Act VIII of 1975; amended by M.P. Act No. 24 of 1990)."

In Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, , the Apex Court has held that market value of the property has to be determined u/s 47-A, the basic valuation register has no statutory foundation and, therefore, it does not bind the parties. Neither the Registrar nor the vendor is bound by it. The Apex Court held that at page 2855; of AIR SCW:--

"The Indian Stamp Act, 1899 provides the power to prescribe stamp duty on Instruments, etc. Entry 44 of List III. Concurrent List of the Seventh Schedule read with Article 254 of the Constitution empowers the State Legislature to amend the Indian Stamp Act, 1899. In exercise thereof all the State Legislatures including the legislature of A.P. amended the Act and enacted Section 47-A empowering the registering officer to levy Stamp Duty on instruments of conveyance, etc., if the Registering Officer has reason to believe that the market value of the property, covered by the conveyance, exchange, gift, release of right or settlement, has not been truly set forth in the instrument, he may refuse registering such instrument and refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. On receipt of such opinion, he may call upon the vendor as per the Rules prescribed, to pay the additional duty thereon. If the vendor is dissatisfied, he has been given the right to file an appeal and further getting reference made to the High Court for decision in that behalf. Section 47A would thus clearly show that the exercise of the power thereunder is with reference to a particular land covered by the instrument brought for registration. When he has reasons to believe, it to be undervalued, he should get verified whether the market value was truly reflected in the instrument for the purpose of stamp duty, the Collector on reference could determine the same on the basis of prevailing market value. Section 47A conferred no express power to the Government to determine the market value of the lands prevailing in a particular area, village, block. District or the region and to maintain Basic Valuation Register for levy of stamp duty for Registration of an instrument, etc. No other statutory provision or rule having statutory force has been brought to our notice in support thereof. Whether an instrument is liable for higher stamp duty on the basis of valuation maintained in the Basic Valuation Register came up for consideration in Sagar Cements Ltd., Mattampalle v. The State of Andhra Pradesh 1989 (3) ALT 677. B.P. Jeevan Reddy, J. as he then was, considered the question and held that the Government has unilaterally fixed the valuation of the lands the Basic Valuation Register had no statutory foundation and therefore it does not bind the parties. Neither the Registrar nor the vendor is bound by it. The market value of the land for proper stamp duty has to be determined as per the law u/s 47A itself. That view was followed by another learned single Judge in P. Shashidhar v. Sub-Registrar 1992 (4) ALT 49. It is, therefore, clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for Registration. Equally it would not be a basis to determine the market value u/s 23 of the Act, the lands acquired in that area or town or the locality or the Taluk etc. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value."

8, The Supreme Court in U.P. Jal Nigam, Lucknow through its U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, has held that basic valuation registers cannot be a foundation for determining the market value. It has been held that:--

"5. This Court in Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, , had considered whether market value of the acquired land would be determining on the basis of basic valuation register maintained by the Collector for the purpose of levy of stamp duty under the Stamp Act and the method of valuation on that basis is valid in law. This question was considered in extenso in the context of the power of the State u/s 47-A of the Stamp Act to fix the basic valuation for stamp duty. After elaborate survey of the amendment made by the State legislature by local amendment to the Stamp Act u/s 47-A, this Court had held that the market value shall be determined only on the basis of the evidence adduced by the claimant and in rebuttal thereof by the State, as to the prevailing market value of that particular land. The basic valuation is only for the purpose of collecting the stamp duty and that, therefore, it cannot form foundation to determine the market value."

"6. The finding of the Court that the concession that the market value determined by the Collector on the basis of basic valuation would be properly applied, is obviously illegal, Shri Gopal Subramaniam contended that the Govt. of U.P. had issued three different circulars accepting the position that the basic valuation would form basis for determination of the compensation u/s 23(1) and that, therefore, the High Court was right in accepting the valuation made by the Collector and in directing to pay the compensation -- on that basis. After the judgment in Nagnathans case AIR 1994 SC 2852 (supra), the Division Bench of the High Court of Allahabad in State of U.P. v. Shau Singh 1995 1 HVD 191 held that the rates fixed for the collection of stamp duty cannot be relied upon to determine market value. Therefore, the instructions issued by the Government for determination of the market value on the basis of basic valuation register were held illegal. The Collector, therefore, was obviously wrong in determining the compensation u/s 23(1) on the basis of prevailing rates in 1992 as per basic valuation circulars."

In State of Punjab and Others Vs. Mohabir Singh etc. etc., , the guidelines issued by the State Government prescribing minimum prices are held to be inconsistent with Section 47-A. The State Government has been directed to revise the guidelines and issue proper directions consistent with law. The Apex Court has held that:--

"6. It would thus be seen that the aforesaid guidelines inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself, before registering the document, whether true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under Sub-section (1) of Section 47A, he registers the document. Thereafter, he should make a reference to the Collector for action under Sub-sections (2) and (3) of Section 47A. Accordingly, we hold that the offending instructions are not consistent with Sub-section (1) of Section 47A. It would, therefore, be open to the State Government to revise its guidelines and issue proper directions consistent with law."

In Chamkaur Singh v. The State of Punjab, AIR 1991 Punjab & Haryana 26, a Division Bench said that the guidelines issued u/s 47-A laying down minimum price of land are violative of Section 47-A; such guidelines are not permissible. Question has to be dealt with by the authority u/s 47-A. In Ponnavolu Sasidar Vs. Sub-Registrar Hayatnagar, and others, it is held that basic valuation of register does not have the statutory sanction. An enquiry has to be made independently. In Gourang Naik Vs. State of Orissa and Others, it is held that guidelines issued by the State Government or Board of Revenue to registering authority for valuation of land are not the last word in the assessment of market value. Jurisdiction has to be exercised in accordance with Section 47-A to reach the satisfaction, the valuation of the property cannot be done in a mechanical manner on the basis of guidelines. Similar is the view taken in Collector of Nilgiris at Ootacamund Vs. Mahavir Plantations Pvt. Ltd., Various factors have to be taken into consideration and the departmental guidelines cannot properly serve as the basis.

Section 47-A has been considered by the Apex Court and various High Courts and it has been held that basic valuation register cannot be the basis to determine the market value, thus, in my opinion, the orders passed by the Collector of Stamps as well as Commissioner were wholly unrealistic and bad in law and Board of Revenue has passed the order P/6 making the valuation which cannot be said to be impermissible or without jurisdiction.

Apart from the fact that there was no basis for making the valuation made by the Collector of Stamps as well as Commissioner, it is clear that the property is situated in sub-lane, the constructed structure was wholly dilapidated as found in the inspection report also, the comparable sales were not looked into, in no case the valuation register could be the safe criteria to determine market value as adopted by the Collector of Stamps and Commissioner, all the facts and circumstances were not taken into consideration by the Collector of Stamps and Commissioner which have been adverted to by the Board of Revenue.

The jurisdiction of writ Court under Article 226/227 of Constitution is limited to the error of jurisdiction, this Court can not substitute the valuation until and un less it is shown to be wholly perverse, unrealistic. The finding of fact recorded, by Board of Revenue is proper.

No interference is required in the order P/6 passed by the Board of Revenue. Writ petitions are devoid of merit and are dismissed.

