(2016) 04 MP CK 0056

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 324 of 2014

State of M.P. APPELLANT

Vs

M/s Saifi Timber Mart RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Citation : (2016) 164 AIC 767 : (2016) 3 MPLJ 461

Hon'ble Judges : P.K. Jaiswal and Vivek Rusia, JJ.

Bench : Division Bench

Advocate : Shri Pushyamitra Bhargava, Learned Dy. A.G, for the Appellant; Shri R.D. Sonwane, Learned Counsel, Shri Tousif Warsi, Learned Counsel, Shri G.M. Agrawal, Learned Counsel, Shri Manoj Munshi, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

Vivek Rusia, J.—State of Madhya Pradesh has filed the present writ appeal being aggrieved by the order dated 20.08.2013 passed in Writ Petition No.10368/12 filed by the respondent No.1 M/s Saify Timber Mart challenging the order dated 31.08.2007 passed by the Collector, Stamps; order dated 30.09.2009 passed by the Commissioner, Indore and order dated 20.09.2012 passed by the Board of Revenue by which the writ petition was allowed and the aforesaid orders were quashed with the direction to the respondents to get the sale deed executed in favour of the petitioner as per Circular dated 12.05.20016.

2. That respondent No.1/petitioner was allotted plot No.T.S-5 situated in Scheme No.31, Indore by the then Town Improvement Trust which was later on merged in to the Indore Development Authority for a consideration of Rs. 29,265/-. At that time petitioner did not apply for registration but constructed the house over the plot. On 12.05.2006 a Circular was issued by the Registrar, Stamps Indore to the effect that the plots for which no sale deed has been executed by the individuals they can apply for registration on or before 01.06.2006 and they are only required to pay the stamp duty and registration fee on the basis of the rate

on which the allotment was made. Similar type of advertisement was also issued by the IDA on 16.05.2006 for execution of registered deed on the basis of allotment which took place on 12.02.1975.

3. The contention of the petitioner is that in pursuant to the aforesaid advertisement he submitted an application on 16.05.2006 enclosing various documents which was duly received by the IDA. However, the IDA has remanded back the documents to the petitioner with a direction to resubmit the same along with site plan. That on 19.02.2007 IDA handed over the documents to the petitioner for presentation before the Deputy Registrar. That after completing the formalities, deeds were submitted before the registering authority on 22.02.2007 and on the same day Sub Registrar has forwarded it to the Registrar for determination of market value under section 47-A of the Stamp Act. That the Collector, Stamps registered a case No.105/06-07/47-a(1) and proposed the market value of the plot at Rs. 1,66,61,000/-. The petitioner appeared before the Collector of Stamps and contested the matter on the ground that there was a delay on the part of the IDA, therefore, he is entitled for the benefit of the Circular dated 01.06.2006. The aforesaid contention of the petitioner was rejected and vide order dated 31.08.2007 Collector, Stamps assessed the market value of the property at Rs. 1,49,45,000/- and directed the petitioner to pay the deficit stamp duty of Rs. 14,91,600/- within a period of thirty days.

4. The aforesaid order of the Registrar dated 31.08.2007 was challenged by the petitioner before the Commissioner by way appeal under the Indian Stamps Act, 1899. Vide order dated 30.09.2009, Commissioner, Indore has dismissed the appeal and maintained the order of the Collector of Stamps. Being aggrieved by the order of the Commissioner, petitioner preferred an appeal before the Board of Revenue, Gwalior. Vide order dated 20.09.2012, the Board of Revenue also dismissed the appeal and maintained the order of the Commissioner dated 30.09.2009.

5. That respondent No.1/petitioner approached this Court by way of writ petition No.10368/12 against the order of the Collector of Stamps, Commissioner and Board of Revenue. In para-6.2 of the writ petition, the petitioner has admitted that the disputed plot was allotted to him on 12.02.1975. It is also admitted that the registration of the instrument could not be executed for some reasons. In para-6.3 petitioner further stated that he applied for registration of the instrument with IDA on 16.05.2006 but the IDA has not given copy of the proposed instrument to the petitioner before 01.06.2006 and the same was delivered to him on 19.02.2007. Thereafter he immediately submitted the instrument for registration on 22.02.2007, hence he is not liable for the delay and he could not be penalized. He is liable to pay the prevailing market value which was prevalent on the date on which the instrument was executed. That in the writ petition the Government Advocate supported the order passed by the authorities. Counsel for the respondent/IDA submitted that though the petitioner submitted the document on 16.05.2006 but the document was incomplete as the

site plan was not submitted and on submission of the site plan documents were handed over to the petitioner. Accordingly, there was no delay on the part of the petitioner and he is not entitled to get the benefit of the Circular.

6. That the learned Single Judge vide order dated 20.08.2013 has held that vide application dated 16.05.2006 petitioner had enclosed various documents which includes copy of the site plan as mentioned in the application itself which was duly received in the office of the respondent No.5 IDA. That vide order dated 26.05.2006 it was directed that the letter be sent to the petitioner for calling the site plan. This letter was dispatched on 31.05.2006 vide dispatch No.8543 but the same is not available on record. Hon''ble Single Judge has held that the fault lies with the respondent No.5 i.e. IDA in submitting the documents in time, hence the demand of Rs. 14,91,600/- as stamp duty is unjustified and the petitioner is entitled for the benefit of the Circular issued by the respondent as he submitted the application in time i.e. on 16.05.2006.

7. Being aggrieved by the above order, the State Government has preferred writ appeal under section 2(1) of the Madhya Pradesh Ucha Nyayalaya (Khand Nyaypith Ko Appeal) Adhiniyam, 2005 before this Court mainly on the ground that the petitioner did not submit the instrument up to 31.05.2006 for registration as such he is liable to pay the stamp duty of Rs. 14,91,600/- demanded by the Collector of Stamps. It is further submitted that the writ Court failed to consider the factual dispute between the IDA and the petitioner as a result of which revenue loss is caused to the State Government. Since he failed to get the sale deed executed since 1975 to 2007 he is liable to pay stamp duty as per the present rate and not entitled for the benefit of the Circular dated 12.05.2006.

8. Arguments were heard on admission and the delay of 114 days was condoned vide order dated 08.12.2015. Notices were issued on 11.01.2016 to the respondents and the effect of order dated 20.08.2013 was stayed. Today the appeal is heard finally at motion stage with the consent of parties.

9. Shri Pushyamitra Bhargava, learned Dy.A.G appearing for the appellant/State submits that the Collector of Stamps, Commissioner and the Board of Revenue have rightly appreciated the facts of the case and directed the respondent No.1/ petitioner to pay the deficit stamp duty of Rs. 14,91,600/- as it is not disputed that the instrument was presented on 21.02.2007 after 01.06.2006. He further submits that State Government is entitled to get the stamp duty irrespective of the fact that who is responsible for the delay. In support of his contention he has placed reliance over the judgment of the Supreme Court in the matter of V.N. Devadoss v. Chief Revenue Control Officer-cum-Inspector and others reported in (2009) 7 SCC 438. Para-13, 15 and 18 of the judgment reads as under:

13. Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject matter of the conveyance has not been truly set

out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

15. The stand of the State is that what has been disclosed is clearly a sale value and the same cannot be termed as market value. There is fallacy in this argument.

18. On the facts of the case it cannot be said that Section 47-A has any application because there is no scope for entertaining a doubt that there was any undervaluation. That being so, the High Court''s order is clearly unsustainable and is set aside. The registration shall be done at the price disclosed in the document of conveyance. There is no scope for exercising power under Section 47-A of the Act as there is no basis for even entertaining a belief 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.

10. Per contra, counsel for the respondent No.1/petitioner Shri R.D. Sonwane submits that there is no fault or delay on the part of the petitioner as he submitted the instrument before time to the IDA, however, IDA handed over the instrument to him with delay and the IDA is responsible for the delay. Counsel for the IDA submitted that the advertisement No.91 dated 12.05.2006 published in the newspaper on 13.05.2006 was, in fact, invitation to the allottes of lease hold plot to get their lease deed executed on or before 31st May, 2006 and not for execution of the sale deed. The aforesaid advertisement was published in view of the amendment inserted in the Indian Stamp (Madhya Pradesh Prevention of Undervaluation of Instruments) Rules, 1975 as per notification No. (45) b-4-5-2005-2V dated 29.11.2005 published in M.P Rajpatra Part 4(Ga) dated 16.12.2005 which reads as under:

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

11. The said amendment came into force w.e.f. 01.06.2006 accordingly. In case of any conveyance executed by the State Government the market value of any property which is subject matter of conveyance shall be the value shown in the instrument for the purpose of stamp duty and registration fees. He has further argued that the time limit of registration of the instrument under section 23 of the Registration Act, 1908 is four months which is further extendable to four months. However, petitioner took 31 years to get it registered, therefore, he is not entitled for any relief. He has further contended that there is no default on

the part of the IDA. Petitioner himself has submitted incomplete documents without site plan and now he cannot blame the IDA.

12. In view of the aforesaid, in our opinion, the present appeal filed by the State Government deserves to be allowed on the ground that the State Government is entitled to get the stamp duty on execution of any instrument under the provisions of Stamp Act. Admittedly, in the present case the benefit of the Circular dated 12.06.2006 was available up to 01.06.2006 and the instrument in dispute was presented before the registering authority on 21.02.2007 i.e beyond the period of 01.06.2006, therefore, the registering authority is not concerned with the delay either on the part of the petitioner or IDA. They have to act in accordance with the provisions of the Indian Stamp Act as laid down by the Supreme Court in the case of V.N. Devadoss (supra) which has held that the instruments of conveyance etc undervalued has to be dealt with under Section 47-A of the Indian Stamp Act. In the case of Residents Welfare Association, Noida v. State of Uttar Pradesh and others reported in (2009) 14 SCC 716 it was held that when the valuation shown in agreement presented for registration is undervalued, registering authorities can hold enquiry to find out if duty is chargeable on market value of the property. In the present case, there is a serious disputed question of fact between the petitioner and the IDA about the presentation of the instrument for registration, incomplete documents and delay on the part of the IDA to hand over them to the petitioner. These disputed questions cannot be decided in the writ petition especially when admittedly the documents were submitted after the cut off date for registration, therefore, petitioner is not entitled for the benefit of the relaxation as per the Circular dated 12.05.2006. The State Government is entitled to get the stamp duty because the instrument was presented after the cut off date. Accordingly, we set aside the order passed by the learned Single Judge dated 20.08.2013 and direct the respondent No.1/petitioner to pay the deficit stamp duty.

13. Accordingly, appeal is allowed. No costs.

