(2018) 07 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Writ No. 1712, 1713, 1714 of 2012

State Of Rajasthan @APPELLANT@Hash Smt. Sarla Devi Sethia & Ors.

Date of Decision : 13-07-2018

Acts Referred:
Rajasthan Stamp Act, 1998 — Section 2(xxiii), 54
Constitution of India, 1950 — Article 226

Citation : (2018) 07 RAJ CK 0060

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : N.S. Rajpurohit, S.L. Jain

Final Decision : Dismissed

Judgement

The instant bunch of writ petitions involves common questions of facts and law and is thus being decided together by this single Judgment.

The petitioner State of Rajasthan through Sub-Registrar (Registration & Stamps), Churu has approached this Court by way of these writ petitions filed

under Article 226 of the Constitution of India for assailing identical judgments dated 25.05.2011 passed by the Rajasthan Tax Board, Ajmer in

Revisions No.(2020/2007, 2021/2007 and 2022/2007) affirming the orders dated 26.07.2007 passed by the Collector (Stamps), Bikaner in three

separate references.

Facts in brief are that private respondents herein purchased properties located opposite the Brahmcharya Ashram, Churu in the year 2005. The

stamps for registration were presented in the office of the Sub-Registrar, Churu on 09.08.2005 and the same were returned after registration of the

sale-deeds. During subsequent assessment made by audit party of the Accountant General, it came to light that the property in question is located in

the prime commercial market area and thus, it was considered fit to get references made for determination of the stamp duty chargeable on the

instruments as per market value of the property. The Sub-Registrar, Churu, acting on instructions received from the office of the Accountant General,

issued notices to the parties under Section 54 of the Rajasthan Stamps Act requiring them to deposit the deficit stamp duty assessed by the auditor.

However, despite service of notice, the parties to the sale-deed (respondents herein) failed to make payment of the deficit stamp duty whereupon,

three separate references for each instrument were made to the Collector (Stamps), Bikaner who dismissed the same by separate orders dated

26.07.2007. Being aggrieved by the orders passed by the Collector (Stamps), the State Government preferred three separate revisions before the Tax

Board, Ajmer which too, dismissed such revisions by separate orders dated 25.05.2011. These three sets of orders are assailed in these writ petitions.

Shri Rajpurohit, learned AGC representing the petitioner Stamp Department vehemently urged that the property in question was located in the prime

commercial market area. As such, the stamp duty chargeable on the registration of instrument was required to be calculated at the market value

which was much higher than what was charged by the Sub-Registrar. He further urged that the Collector (Stamps), while answering references as

well as the Tax Board, while rejecting the revisions, failed to take into account the relevant provisions of the Rajasthan Stamps Act. He urged that as

per definition of market value provided under Section 2(xxiii) of the Rajasthan Stamps Act, every property which is subject matter of sale has to be

assessed in accordance with the rate, which it would fetch if sold in the open market. He contended that as indisputably, the land in question was

ocated in the prime commercial market area of Churu, registration of the instruments by treating the property to be residential as done by the

SubRegistrar is grossly illegal and amounts to a material omission by such authority. He thus implored the Court to exercise its extraordinary writ

jurisdiction and quash the impugned orders as being contrary to law and direct the respondents to pay the deficit stamp duty on the questioned

instruments by treating the subject property to be commercial in nature.

Per contra, Shri S.L. Jain, learned counsel representing the respondents, placed reliance on the Supreme Court Judgment in the case of State of Uttar

Pradesh & Ors. vs. Ambrish Tandon & Anr. reported in (2012)5 SCC 566 and contended that when registration of a sale deed is undertaken,

determination of stamp duty on the instrument has to be done as per the nature of user of property as on the date of the transaction. If the property is

residential at the time of transaction and it may be used later for commercial purposes, the stamp duty cannot be calculated by regarding it as

commercial property. He further contended that two competent authorities viz. The Collector (Stamps) and the Rajasthan Tax Board, have recorded

concurrent findings of facts while dismissing the references made as well as the revisions filed at instance of the State Government and thus, this

Court should not feel persuaded to exercise its extraordinary writ jurisdiction so as to interfere in such concurrent findings. He thus implored the Court

to dismiss the writ petitions and affirm the impugned orders.

I have given my thoughtful consideration to the arguments advanced at bar and have gone through the material available on record.

Suffice it to say that the entire thrust of arguments advanced by Shri Rajpurohit for assailing the impugned orders was that as the property in question

was located in the prime market area, the same should have been reckoned to be commercial while determining its market value for the purpose of

charging stamp duty. However, the basis of such arguments is totally lacking from the pleadings filed before the authorities or of the writ petitions. It

may be stated here that the Sub-Registrar himself, considered a part of the property to be commercial and the remaining to be residential while

registering the documents. Thus, apparently, the Sub-Registrar consciously applied his mind while registering the documents. It is a settled preposition

of law that the primary basis for determining market value of the property subject matter of sale would be the DLC rate prescribed by the empowered

committee of the State Government. Neither in the pleadings before the Referal Authority or the Tax Board nor in the these writ petitions, has the

State Government clarified that the DLC rate of the property under sale was, at any point of time higher than what was determined by the Sub-

Registrar. Hence, this Court is not in the least satisfied with the argument advanced by Shri Rajpurohit that the instruments in question required to be

registered by treating the entire property as commercial merely because it was located in line with commercial establishments, shops, banks etc. It is

the firm opinion of this Court that the determining factor in these circumstances would be as to whether, the area in question has been declared to be

within the commercial zone in the relevant master-plan and its corresponding DLC rate determined by the empowered committee. In case, the entire

area is declared to be commercial in the master-plan and the DLC rate is prescribed as such then, probably the State would be entitled to claim that

the registration of the instruments should be carried out by applying commercial rates. The ratio of the Supreme Court Judgment cited by Shri Jain

virtually covers the controversy raised in these writ petitions in all aspects.

As an upshot of the above discussion, and finding no illegality, infirmity or perversity in the impugned orders, this Court is not inclined to exercise its

extraordinary writ jurisdiction so as to interfere therein.

Hence, the writ petitions are dismissed as being of merit.

A copy of this order be placed in each file.