(2008) 09 CAL CK 0032

In the Calcutta High Court

Case No : G.A. No. 1660 of 2008, A.P.O. No. 175 of 2008, C.C. No. 4 of 2008 and E.O.S. No. 32 of 1987

State of West Bengal and Another — APPELLANT

Vs

Sati Enclave Pvt. Ltd. and Others — RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18
Stamp Act, 1899 — Section 2, 47A, 47A, 47A(1), 47A(2)
West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001 — Rule 3, 3(1), 3(2), 3(7), 3(8)

Citation : (2010) 3 CALLT 119 : (2008) 4 CHN 499

Hon'ble Judges : Rudrendra Nath Banerjee, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Indrajit Sarkar and Ritabrata Mitra, for the Appellant; Ashoke Banerjee, Dipak Kumar Mookherjee, Sudip Deb and Deb Kumar Chandra, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This first appeal is at the instance of the State of West Bengal and the Additional Registrar of Assuranee-I and is directed against order dated 15th April, 2008 passed by a learned Single Judge of this Court by which the learned Judge rejected an application filed by the appellant for recalling of the order dated 4th December, 2006 by which the said learned Single Judge while confirming the sale in a partition suit recorded that the consideration money for which the property had been sold by the order of the Court should be treated to be the value for the purpose of registration and stamp-duty.

2. The following facts are not in dispute.

3. In a partition suit numbered as Extraordinary Suit No. 32 of 1987, an order was passed on 15th September, 1987 with regard to the sale of the properties being 20 to 20/14, Chetla Road, Kolkata-27 and subsequently, various orders were made from time to time.

4. By an order dated 9th December, 2005, the learned Joint Receivers appointed by the Court in the suit were directed to take appropriate step for sale of the said property in terms of the order dated 15th September, 1987.

5. The highest bidder, namely, one Priya Dutta who had offered Rs. 1,88,500/- per cottah defaulted in making payment of the consideration in terms of the order of the Court and consequently, the sale in his favour was cancelled and his deposit of the earnest money was forfeited. Thereafter, one of the bidders, agreed to match the offer of Rs. 1,88,500/- per cottah of the highest bidder and the Court, by order dated 4th December, 2006, accepted the offer of the petitioner and confirmed the same in his favour. The Court directed that the aforesaid consideration money being the actual consideration for the property would be treated as the value of the property for the purpose of registration and stamp-duty.

6. The said purchaser duly paid the full consideration and a deed of conveyance was duly executed by the Joint Receivers. The appellant No. 2 before us, being the registering authority, however, refused to accept the consideration at which the property had been sold by this Court through its Joint Receivers as market value of the property for the purpose of registration and stamp-duty.

7. In view of such fact, the said purchaser filed an application for contempt alleging that there had been wilful and deliberate violation of the aforesaid order dated 4th December, 2006 and the learned Single Judge directed the service of the contempt application on the respondents. No rule, however, had, at that point of time, been issued.

8. The appellant No. 2 has opposed the said application for contempt and, at the same time, filed a separate application for recall of the said order on the ground that it is for the appellant No. 2 to consider whether the consideration money indicated in any sale-deed is in accordance with the market price of the property.

9. In other words, according to the appellant No. 2, an order passed by a Civil Court passing direction for sale of any of the items of the property in a suit for partition while accepting the highest price offered in auction cannot compel the Registering Authority to accept the said amount as an adequate one for the purpose of registration within the meaning of the West Bengal Amendment of the Indian Stamp Act as provided in Section 47A.

10. The learned Single Judge has not only dismissed the application for recall by overruling such contention but has also issued a contempt Rule upon the appellant No. 2.

11. Being dissatisfied, the present appeal has been preferred.

12. As no appeal is maintainable against a mere order issuing a Rule of contempt, we have entertained this appeal only for the purpose of considering the legality of the order passed by the learned Single Judge while dismissing the application for recall of the order dated 4th December, 2006.

13. Mr. Sarkar, the learned Advocate appearing on behalf of the appellants, has strenuously contended before us that the learned Single Judge erred in law in holding that it was not open to the Registering Authority to assess the market value when the Civil Court had accepted the consideration money as the market value for the purpose of registration. Mr Sarkar contends that the Statute has invested his clients with the authority to decide such question in accordance with the guidelines indicated in the Rules framed under the Stamp Act and as such, a Civil Court merely accepting the highest bid for the purpose of sale of an item of a property in a suit for partition cannot direct his clients to accept such price as the one indicated in Section 47A. He, therefore, prays for setting aside that part of the order passed by the learned Single Judge and permitting his clients to proceed in accordance with Section 47A of the Act.

14. Mr. Banerjee, the learned Senior Advocate appearing on behalf of the respondent, on the other hand, has opposed the aforesaid contention advanced by Mr. Sarkar and has raised two-fold submission.

15. First, Mr. Banerjee has contended that the appeal at the instance of the Additional Registrar of Assurance is not maintainable and at the same time, the State of West Bengal cannot be represented by the Additional Registrar of Assurance-I. In other words, Mr. Banerjee contends that the Additional Registrar of Assurance-I is in no way aggrieved by the order and, therefore, at his instance, either in his official capacity or as the representative of the State, the appeal is not maintainable.

16. Secondly, Mr. Banerjee contends that a learned Single Judge of this Court on consideration of the materials on record having accepted the highest bid after giving advertisement in newspapers, there was no just ground for not accepting the said valuation as the market price of the property. Mr. Banerjee contends that if any sale is conducted through Court by giving advertisement after accepting the highest bid, and the Court directs the Registering Authority to accept the said valuation, the Registering Authority is bound by such direction. He further contends that the provision of Section 47A of the Act has no application to a sale conducted through Court by auction.

17. In support of his contention Mr. Banerjee has relied upon a decision of a learned Single Judge of this Court in the case of Anglo American Direct Tea Trading Co. Ltd. and Another Vs. State of Madras and Others, and also that of Nitya Hari Kundu and Others Vs. State of W.B. and Others, . Mr. Banerjee has further relied upon an unreported decision of a Division Bench of this Court in the case of Registrar of Assurances, Kolkata v. AI Champdany Industries Ltd. and Anr. in APOT No. 168 of 2002 dated 5th May, 2008.

18. Therefore, the first question that arises for determination in this appeal is whether this appeal at the instance of the State of West Bengal represented by the Additional Registrar of Assurance-I in his official capacity is maintainable.

19. After hearing the learned Counsel for the parties and after going through the

materials on record, we find that the State of West Bengal or the Additional Registrar of Assurance-I was not party to the suit for partition. Notwithstanding such fact, the learned Single Judge, while confirming the sale, directed the Registering Authority, an officer of the State of West Bengal, to accept such valuation as the just market price for the purpose of registration and stamp-duty.

20. In our view, the State of West Bengal as well as the concerned officer who is vested with the authority by the Statute to protect the interest of the Revenue of the State is definitely affected by the order impugned and as such, must be held to be aggrieved party so as to apply for variation of the order before the Court which passed such direction as well as for the purpose of preferring an appeal when their application has been rejected. We, thus, find no substance in the first contention of Mr. Banerjee.

21. The next question is whether the provision of Section 47A of the Act is applicable even to a sale held in auction through any Civil Court in a suit for partition.

22. After hearing the learned Counsel for the parties and after going through the provision of Section 47A, we find that a detailed procedure has been laid down in the said Section for the purpose of verifying that the consideration amount mentioned in the deed presented for registration is really the market value of the subject-matter of transfer. In other words, for protecting the financial interest of the State, such provision has been incorporated so that by making undervaluation of the property in the deed, the State is not deprived of its just revenue. It appears from the amended provision that once any decision is arrived at by the appropriate authority, there is specific provision of appeal to an appellate authority prescribed in Section 47B and suo motu power of revision by the Chief Controlling Revenue Authority as provided in Section 47C against any order either u/s 47A or u/s 47B. Section 47C(3) specifically provides that any order passed by the Chief Controlling Revenue Authority under Sub-section (1) should be final and should not be called in question in any Civil Court or before any other authority.

23. Therefore, the jurisdiction of the Civil Court to decide any matter relating to the valuation provided in Section 47A of the Act has been expressly ousted. It further appears that according to the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001, a specific procedure has been laid down providing manner of determination of the market value and furnishing of particulars relating to the property which is the subject-matter of transfer.

24. From those provisions, it is apparent that Section 47A of the Act applies to all the instruments those are required to be presented for registration, as indicated in the said provision and there is no indication that the said provision would have no application to a Court sale.

25. Banerjee, in this connection, by relying upon the provision of Rule 3(1), contended that for the purpose of determination of market value, the appropriate

authority has been given right to take into consideration the "Court decision" and such being the position, a Civil Court is also empowered to pass specific direction upon the Registering Authority to accept the valuation accepted by it as the market value.

26. We are afraid, we are not at all impressed by such interpretation of the Rule 3(1). In order to appreciate the scope of Rule 3(1), same is quoted below:

3. Manner of determination of market value and furnishing of particulars relating to any property.-(1) The market value within the meaning of Clause (16B) of Section 2 in relation to any land or any land with building shall, after taking into consideration the particulars referred to Sub-rule (2), be determined on the basis of the highest price for which the sale of any land or any land with building, of similar nature and area and in the same locality or comparable locality, has been negotiated and settled during the five consecutive years immediately preceding the date of execution of any instrument setting forth such market value, or on the basis of any Court decision after hearing the State Government, or on the basis of information, report or record that may be available from any Court or any officer or authority of the Central Government or the State Government or any local authority or local body, or on the basis of consideration stated in such instrument for such land or land with building, whichever is greater.

(Emphasis supplied by us).

27. A plain reading of the said Rule 3(1) makes it clear that in order to arrive at market value of the property covered by the Instrument referred to in Rule 3(2), appropriate authority shall take into consideration the following materials:

A) The highest price for which the sale of any land or any land with building of similar nature and area and in the same locality or comparable locality has been negotiated and settled during the five consecutive years immediately preceding the date of execution of any instrument setting forth such market value.

B) Any Court decision after hearing the State Government.

C) Any information, report or record that may be available from any Court or any officer or authority of the Central Government or the State Government or any local authority or local body.

The consideration stated in such instrument for such land or land with building.

28. After taking into consideration the aforesaid four materials, the valuation which will be "greater" will be taken to be the market value for the purpose of registration and the stamp-duty.

29. The "Court decision" referred to above means only those adjudications by a Court regarding the valuation of any property after giving the State an opportunity of hearing and such valuation can be accepted as market value if such valuation happens to be greater than the value available from the other source mentioned above, viz. A, C or D. For instance, if in any course of

reference u/s 18 of the Land Acquisition Act, the market value of any land is assessed by a Court competent to decide such question in the presence of the State, the Registering Authority may for the purpose of Section 47A accept such valuation as the market value if such valuation is found to be higher than the highest price for which the sale of any land or any land with building of similar nature and area and in the same locality or comparable locality has been negotiated and settled during the five consecutive years immediately preceding the date of execution of any instrument setting forth such market value and also higher than any valuation received based on information, report or record that may be available from any Court or any officer or authority of the Central Government or the State Government or any local authority or local body or the one indicated in the disputed instrument.

30. In the case before us, the learned Single Judge by order dated 4th December, 2006 merely accepted the highest bid but there was no adjudication whether such highest bid is the market price even at that stage and such order was passed in a proceeding where the State was not a party.

31. We, therefore, find that Section 47A of the Act applies to all sales even if it is conducted in a partition suit by a Civil Court and in such a case, the appropriate authority, if its attention is drawn to such fact, will merely consider whether the same is higher than the one indicated in the disputed deed as well as the valuation available from the sources, if any available, from the sources indicated in A or B mentioned above, the highest one among those will be the market value.

32. We respectfully disagree with the view taken by a Division Bench of this Court in an unreported decision of Registrar of Assurance, Kolkata v. AI Champdany Industries Ltd. and Anr. (supra). It appears that the Division Bench made the following observation while arriving at the conclusion that Section 47A has no application to Court sale:

...Rules 3(7) the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001 specifically stated the manner of determination of market value and furnishing of particulars relating to any property as follows:

3(7). On receipt of any instrument referred to in Sub-rule (2) in relation to a property together with the statement in Form I, Form II, Form III or Form IV, as the case may be, annexed thereto. If the registering officer has reason to believe that the market value of the property has not been truly set forth in such instrument, he may make such enquiries and take into account such Court decision. Information, report or record from any Court or any officer or authority of the Central Government petitioner the State Government or any local authority or local body or any person having knowledge relating to market value of the property of similar nature and are, and situated in the same locality or in a comparable locality as he deems fit, for ascertaining the market value of the property and proper stamp-duty chargeable.

It has also been stated in Rule 3(8) of the said Rules that on the basis of enquiries, Court decision, information, report or records referred to in Sub-rule (7), as the case may be, the registering officer shall ascertain the market value of the property and shall pass an order in writing to that effect in Form I, Form II, Form III or Form IV, as the case may be. Therefore, it transpires from the said rules that it is the duty of the said registering authority to accept the valuation at which the property was sold in Court auction and therefore they are bound to register the document on the basis of the valuation as stated in the Court order.

(Emphasis supplied by us)

33. With great respect to the Hon''ble Judges of the said Division Bench, we are unable to subscribe to the view taken by Their Lordships and in our opinion, the "Court decision" referred to in various Sub-rules of Rule 3 merely refers to the decisions of the Court after hearing the State on the question of valuation and even that Court decision if found to be lower than the value mentioned in the disputed instrument or lower than the highest price for which the sale of any land or any land with building of similar nature and area and in the same locality or comparable locality has been negotiated and settled during the five consecutive years immediately preceding the date of execution of any instrument setting forth such market value, will not be treated to be the market value of property mentioned in the Instrument. Otherwise, merely because in a Court auction the property has been sold at a particular price, being the highest bid and that too, in the absence of the State, such valuation cannot be treated as the market value for the purpose of Section 47A.

34. We now propose to deal with the other two decisions cited by Mr. Banerjee.

35. In the case of Anglo American Direct Tea Trading Co. Ltd. and Anr. v. State of Madras and Ors. (supra), a learned Single Judge of this Court was considering an application under Article 226 of the Constitution of India where the petitioner, a company incorporated in U.K. transferred its assets in India after taking permission of the Reserve Bank of India. The Registering Authority issued a notice u/s 47A of the Tamil Nadu amendment of the Stamp Act disputing the consideration money mentioned in the instrument. Such notice was challenged on the ground that the Reserve Bank of India having approved the transfer there was no just ground of referring the matter to the Collector. The provisions of Sections 47A(1) and (2) of the Indian Stamp Act, 1899 as applicable to Tamil Nadu provided as follows:

(1) If the registering officer appointed under the Indian Registration Act, 1908 (Central Act 16 of 1908) while registering any instrument of conveyance, exchange or gift has reasons to believe that the market value of the property which is the subject-matter of conveyance, exchange or gift has not been truly set forth in the instrument, refer the same 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 reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject-matter conveyance, exchange or gift and the duty as aforesaid. The difference, if any, in the amount of duty shall be payable by person liable to pay the duty.

36. The learned Single Judge accepted the contention of the learned Advocate for the petitioner by making the following observations:

Clearly the scheme of Section 47A of the Indian Stamp Act, 1899 is to deal with those cases where private parties by arrangement deliberately undervalue the property which is the subject-matter of transfer a view to defraud the Government of legitimate revenue by way of stamp-duty. If that scheme is kept in mind it is very difficult to see how that Section can be held to be attracted in the instant case. Undoubtedly, the modus operandi of the transfer and the valuation were privately agreed upon but there is no dispute that the entire, arrangement was placed before the Reserve Bank of India for its sanction and approval. It cannot be disputed that the Reserve Bank of India, after such enquiry as they must have deemed fit and proper, sanctioned and approved of the arrangement. As is apparent from the document approving the transfer the Reserve Bank of India imposed certain conditions of its own which were accepted by the parties. That being the position the question of the Registering Officer having reason to believe that the market value of the property has not been truly set forth in the instrument of transfer does not arise in the facts and circumstances of the present case. Without intending to lay down any broad proposition as to whether Section 47A of the Indian Stamp Act, 1899 would be inapplicable in all such cases, it is enough to hold that the Section is not attracted in the facts and circumstances of the instant case. That being so the impugned notice and all proceedings on the basis thereof must be held to be without jurisdiction and void.

(Emphasis supplied by us)

37. According to the aforesaid provision contained in the Tamil Nadu amendment, only in cases where the Registering Authority had reason to believe that in any transaction referred to therein the consideration money was not truly given, it gave authority to the Registering Authority to refer the matter to the Collector. In such a background of the Statute, the learned Single Judge while exercising power under Article 226 of the Constitution of India was of the opinion that the Reserve Bank of India having approved such transaction there was no just ground of referring the matter to the collector. His Lordship, however, made it clear that it was not His Lordship''s intention to lay down as a broad proposition of law that Section 47A would be inapplicable in all these type of cases. In the case before us, the question is whether a Civil Court before presentation of the document for registration, can direct the Registering Authority to clear the document for registration without verifying the valuation for the purpose of stamp-duty when the Statute has taken away the jurisdiction of the Civil Court to

decide the disputes as to valuation indicated in Section 47A of the Act. In our opinion, the Civil Court acted without jurisdiction in passing such a direction. Therefore, the said decision is not applicable to the facts of the present case. We make no comment on the question whether as a Writ Court the learned Single Judge was justified in quashing the notice in question as the said question is beyond the province of this proceeding.

38. In the case of Nitya Hari Kundu and Ors. v. State of W.B. and Ors. (supra), the liegistering Authority refused to accept the valuation accepted by the Court while permitting sale of a trust property and such decision was challenged in a writ jurisdiction. A learned Single Judge of this Court allowed the writ application by inter alia making the following observations:

Therefore, in interpreting the statutes if I make harmonious construction of Section 47A read with the Rules made thereunder, (sic) it will be read that valuation made by the Court cannot be said to be done not truely (sic) set forth and there is any reason to disbelieve, otherwise. If any authority does so it will tantamount (sic) to exceeding the jurisdiction made under the law. The authority concerned cannot sit on appeal over a Court decision unless appeal is preferred from such order which is absent herein.

39. In our opinion, the aforesaid proposition of law laid down by the learned Judge cannot be accepted as proper interpretation of the Section 47A and the Rule 3. We are unable to approve the aforesaid view for the reasons set forth by us in the foregoing portion of our judgement.

40. Since, we propose to disagree with the view taken by another Division Bench of this Court, we deem it fit and proper to refer the matter to the Hon''ble Chief Justice for constitution of a Larger Bench for consideration of the following point:

Whether the provision contained in Section 47A of the Stamp Act (West Bengal Amendment) read with Rule 3 framed there under are applicable to an instrument executed pursuant to an order of sale passed by a Civil Court in a suit for partition which is conducted by Receiver appointed by the Civil Court by auction after publication in newspapers?

41. Till the matter is answered by the Larger Branch, the portion of the order impugned directing acceptance of the valuation for the purpose of registration and the stamp-duty will remain stayed.

Rudrendra Nath Banerjee, J.

42. I agree.

