(1997) 03 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 104 of 1997

Sub-Registrar and Another — APPELLANT

Vs

Mr. M. Damodar Reddy — RESPONDENT

Date of Decision : 28-03-1997

Acts Referred:

Andhra Pradesh Stamp (Prevention of Under Valuation of Instruments) Rules, 1975 — Rule 3(3), 3(4)
Stamp Act, 1899 — Section 2(6), 47A, 47A(2), 47A(4)

Citation : (1997) 3 ALD 325 : (1997) 5 ALT 187

Hon'ble Judges : P.S. Mishra, C.J;V. Rajagopala Reddy, J

Bench : Division Bench

Advocate : E. Madan Mohan Rao, Governement Pleader for Revenue, for the Appellant; G. Anjappa, for the Respondent

Final Decision : Dismissed

Judgement

V. Rajagopala Reddy, J.—The Writ Appeal by the Commissioner and Inspector General of Registration and Stamps and the Sub-Registrar, Banjara Hills, Hyderabad, is brought under Clause 15 of the Letters Patent, challenging the judgment of the learned single Judge in Writ Petition No. 20631 of 1996.

2. The learned single Judge, while allowing the writ petition filed by the petitioner-respondent issued a writ in the nature of mandamus directing the respondents-appellants to register the sale document taking the value shown in the Basic Value Register prior to 1-8-1996 as the market value of the property in question.

3. Facts in brief are as under: The petitioner-respondent, having purchased Plot No. 296, admeasuring 480 Sq.Yds., at Road No. 10, Jubilee Hills, Hyderabad, presented the sale document on 9-8-1996 before the Sub-Registrar, Banjara Hills, the 1st appellant herein. The petitioner-respondent set out the market value of the plot at Rs. 6,01,000/- on the basis of the value fixed in the Basic Value Register. The Sub-Registrar has passed the receipt and given No. P

1344/96 to the document, pending registration of the document. On 9-9-1996 the Sub-Registrar sent a letter No. 280/96 directing the petitioner-respondent to appear before him and when appeared he had informed the petitioner-respondent to pay the deficit stamp duty and registration charges based upon the enhanced market value of the said property, which was enhanced with effect from 1-8-1996 in pursuance of the proceedings dated 31-7-96 issued by the Commissioner and Inspector General of Registration and Stamps, 2nd appellant herein. Questioning the proceedings dt. 31-7-96 as illegal and void, the petitioner-respondent filed the above writ petition on the ground that the Commissioner has no jurisdiction to enhance the market value of the property in the twin cities of Hyderabad and Secunderabad and secondly when once sale documents have been executed on the market value prevailing, the Sub-Registrar ought to have registered the document without insisting upon payment of the deficit stamp duty on the basis of the enhanced market value.

4. The Sub-Registrar filed a detailed counter-affidavit and resisted the plea of the petitioner-respondent. It is his case that taking into consideration the Rectification Anomalies Committee''s guidelines and Revised Market value Guidelines dt. 31-7-1996 and also having regard to the transactions that were held during the period from January to May, 1996 and also taking into consideration the guidelines communicated by the Government, he has come to the conclusion that the market-value mentioned in the instrument was not properly set forth and hence he has referred the matter to the Collector under Sub-section (1) of Section 47A of the Indian Stamp Act, 1899 (for short, ''the Act''). The Sub-Registrar has not withheld the Registration of the document, as alleged, but he has only impounded the document for reference to the Collector. Since the petitioner-respondent refused to pay the deficit stamp duty the matter has been referred to the Collector. The petitioner-respondent has got a remedy u/s 47-A of the Act to approach the Collector for determination of the proper market value and also if still aggrieved by the order of the Collector, has got a remedy of appeal under Sub-section (4) of Section 47-A of the Act to the Civil Court. Thus, the writ petition was not maintainable on the ground of availability of adequate alternative remedy.

5. Learned single Judge of this Court accepted the contention that the subsequent revision of the values in the Basic Value Register was not relevant for the purpose of registering the sale documents presented by the petitioner-respondent and accordingly allowed the writ petition directing the Sub-Registrar to register the document on the basis of the values mentioned in the Basic Value Register prior to 1-8-1996.

6. Learned Government Pleader appearing for the appellants herein contended that the Sub-Registrar has only referred the matter to the Collector under Sub-section (1) of Section 47-A of the Act for adjudication regarding the market value of the property and that the respondent herein before awaiting the enquiry to be conducted by the Collector as per the procedure under Sub-section (2) of Section

47-A of the Act, rushed to this Court by filing the above writ petition under Article 226 of the Constitution. Thus, the writ petition ought to have been rejected as not maintainable, by the learned single Judge. The next contention put forth is that the view of the learned single Judge that the Basic Value Register was the basis for ascertaining the market-value is wholly incorrect and that the mandamus issued on the basis of such view is vitiated.

7. The respondent, it is true, has executed the document and presented the same before the Sub-Registrar on 9-8-1996. He has valued the property on the basis of the values mentioned in the Basic Value Register, at Rs. 6,01,000/-. The Sub-Registrar totally denied the allegation that he had refused to register the document relying upon the impugned proceedings dt. 31-7-1996. When a document is presented for registration, the Sub-Registrar has to follow the procedure prescribed under Sub-section (1) of Section 47-A of the Act. He has to see whether the market value of the property has been truly set-forth in the instrument. If he has "reason to believe" mat the market value of the property in the instrument has not been truly set forth, the Sub-Registrar is liable to refer the matter to the Collector for determination of the market value and the appropriate stamp duty payable thereon. The Collector, under Sub-section (2) of Section 47-A of the Act, shall hold an enquiry after giving an opportunity to the party and determine the market value. Against the order of the Collector, an appeal lies to the Civil Court. What the Sub-Registrar has done in this case was strictly in accordance with the Sub-section (1) of Section47-A of the Act and his action appears to be above reproach.

8. Learned Counsel for the respondent, however, strenuously contends that the Sub-Registrar has committed serious illegality in referring the matter to the Collector without there being no reason to believe that the market value was not truly set forth in the instrument. Learned Counsel, relying upon Rule 3 of A.P. Stamp (Prevention of Under-valuation of Instrument) Rules, 1975, (for short, ''the Rules''), framed in G.O.Ms.No. 1031 Revenue (V-II), dt. 31-7-1975, submits that for the purpose of formation of information whether the market value has been correctly furnished in the instrument or not, the Sub-Registrar should give hearing to the concerning party and elicit information on the subject and until then it cannot be stated that the Sub-Registrar has reason to believe that the market value of the property was not truly set-forth in the instrument. Since the respondent has not been heard under Rule 3 of the Rules and no information was elicited from him, the action of the Sub-Registrar in doubting the market value of the document as undervalued and referring it to the Collector was illegal. Learned Counsel has referred to the decision of a Division Bench of this Court in W.A. No. 176/91, dt. 25-3-1996, in support of his contention. This contention, in our view, is not warranted by the true meaning of Sub-section (1) of Section 47.A of the Act and Rule 3 of the Rules. It is not in doubt that the market value set-forth in the instrument by the petitioner-respondent was based upon the value mentioned in the Basic Value Register. It is the case of the respondent that true market value of the property cannot be more than the market value

mentioned in the Basic Value Register on the date of the execution of the instrument and that the revised market value shown in the revised Basic Value Register, which came into force w.e.f. 1-8-1996, which is evident from the impugned proceedings dt. 31-7-96, are wholly inapplicable, since the document has been executed prior to 1-8-96. It is the allegation of the respondent that the Sub-Registrar has impounded the document on the sole ground that the market value was not shown as contained in the revised Basic Value Register and that he has no other information with him with regard to the market value of the property. This premise of the respondent falls to the ground, if we consider the counter-affidavit filed by the appellants. The Sub-Registrar has clearly stated that he has not taken into consideration the impugned proceedings dt. 31-7-1996. He further stated that in view of the high prices at which the lands were purchased during the auctions held from January to May, 1996; the revised guidelines issued by the Rectification Anomalies Committee and the guidelines issued by the Government, he had every reason to believe that the respondent had undervalued the instrument as on the date or the execution of the sale deed. Hence, he has taken action u/s 47-A of the Act. The law is well settled that the value mentioned in the Basic Value Register should not be the sole basis for the determination of the market value. The market value of the property is what the property would fetch in the open market on the date of the execution of the instrument. The chargeability, which is defined in Sub-section (6) of Section 2 of the Act is referable to the market value of the property if sold in the open market. Thus, from the above it is evident that the Sub-Registrar has not only taken the values in the Basic Value Register but also the values of the properties in the vicinity on the basis of sales made during January to May, 1996 and also the revised guidelines issued by the Government and the Rectification of Anomalies Committee. Thus, the Sub-Registrar has sufficient material to have every reason to believe that the market value was not properly set-forth in the instrument. The action of the Sub-Registrar cannot, therefore, be faulted.

9. The contention of the learned counsel for the respondent that the appellants ought to have heard the respondent and elicited information from him to form an opinion that the market value was not truly set-forth in the instrument, does not reflect the correct position of law. Sub-section (1) of Section 47-A of the Act nor Rule 3 of the Rules do not support such an interpretation.

10. Sub-rules (3) and (4) of Rule 3 of the Rules, which are relied upon by the learned Counsel for the respondent, are extracted hereunder:

"3. Furnishing of statement of market value:

(3) The registering officer may, for the purpose of satisfying himself whether the market value or the consideration has been correctly furnished in the instrument or not make such enquiries, as he may deem fit. He may elicit from the parties concerned, any information having a bearing on the subject and call for and examine any records kept with any public officer or authority.

(4) If the Registering Officer is of the opinion that the market value of the property affected by the instrument is not correctly furnished, he shall keep the document pending and without delay refer the matter to the Collector with details or his assessment of the Market Value arrived at by him in the Form-I. No copy of such document shall be granted notwithstanding anything contained in any of the provisions of any other Act or Rules."

From a reading of the above Rule it is manifest that for the purpose of satisfying himself about the market value, the registering officer may make enquiries. He may elicit information from the party concerned. Thus, in the course of satisfying himself to form an opinion that the market value set forth in the document is under-valued, the registering officer may hear the party concerned. It is not obligatory that he should do so. If he has got sufficient information, otherwise, about the true market value of the property, the officer need not hear the party. He may directly impound the document and make a reference. Sub-rule (3) of Rule. 3 of the Rules thus is only an enabling provision for the registering officer to get information regarding the market value from the party in the course of his enquiry. Since the Sub-Registrar has sufficient information with regard to the market value from other sources, as mentioned above, he thought that there was no reason to get any other information from the respondent to invoke Section 47-A of the Act and refer the matter to the Collector. We do not, therefore, find any substance in the contention raised by the Counsel for the respondent in this regard.

11. We have closely examined the judgment of the Division Bench in W.A.No. 176 of 1991. The decision is an authority to the proposition that-

"...The basic value register would not empower the registering officer to blanketly hold that only because the document does not correspond to the valuation as per the Basic Value Register he must necessarily refuse to register the document. To hold the view he must do some more exercise to collect some other materials which has to be taken into account in addition to the Basic Value Register for him to properly take the view of the document as not representing the correct valuation. We must also hold that the working principle devised in the decision in Sagar Cements Ltd v. State of Andhra Pradesh (1989 (3) ALT 677) cannot be a "made to order test" for registering or refusing to register documents. The very test, in many a case may be divorced from realities and we feel that it would be a wholesome principle to leave to the discretion, to be properly exercised in each case, to the registering officer guided not only by the Basic Value Register which may form part of the consideration but also to be supplemented by such other materials as he may collect, even by a spot inspection if necessary, to reach a proper conclusion."

This finding, in fact, supports the view we have taken. The Sub-Registrar has taken into account not only the Basic Value Register but also other factors which are germane for ascertaining the market value of the property. The learned Judges of the Division Bench, however, allowed the writ appeal on the basis of the factual matrix of the case in the said appeal holding that the Collector did not make the reference in accordance with Form-I of the Rules.

12. The next contention raised by the appellants has also sufficient force. Under Sub-section (2) of Section 47-A of the Act, the Collector shall, after giving the parties adequate opportunity and after holding an enquiry, determine the market value of the property and under Sub-section (4) the aggrieved party has got a right of appeal against the order of the Collector, to the Civil Court. The respondent has thus adequate remedy to agitate before the Collector satisfying him about the true market value. He has also a right of further remedy of appeal before the Civil Court. Thus, the respondent without availing the adequate alternative remedy, has rushed to this Court. The writ petition was therefore not maintainable and ought to have been dismissed by the learned single Judge.

13. The impugned judgment of the learned single Judge, directing the Sub-Registrar to register the document on the basis of the Basic Value Register prior to 1-8-1996, is also contrary to the ratio decided by the Division Bench in the above W.A.No. 176 of 1991, which has clearly held that the values mentioned in the Basic Value Register cannot form the sole basis for evaluating the true market value of the property.

14. For the above reasons the impugned judgment is set aside and the writ petition filed by the respondent is dismissed. The writ appeal is accordingly allowed. No order as to costs.

