**(1997) 01 PAT CK 0013**

**In the Patna High Court**

**Case No :** C.W.J.C. No. 702 of 1996

Sudama Devi and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

**Date of Decision :** 27-01-1997

**Acts Referred:**

Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995 — Rule 10, 11, 12, 12(4), 13

Stamp Act, 1899 — Section 47A, 47A(1), 47A(3)

**Citation :** (1997) 1 PLJR 327

**Hon'ble Judges :** D.P. Wadhwa, C.J;S.J. Mukhopadhaya, J

**Bench :** Division Bench

**Advocate :** B.P. Pandey, R.K. Sinha, in C.W.J.C. Nos. 1431 and 1499 of 1996, S.K. Mishra, P.N. Pathak, Sandeep Mishra and Sanjay Kumar Mishra, in C.W.J.C. Nos. 702 and 1916 of 1996, Awadhesh Kumar Singh, in C.W.J.C. No. 7755 of 1995, Madan Mohan, in C.W.J.C. Nos. 4469, 4951 and 8908 of 1996, S.K.P. Sinha, in C.W.J.C. No. 7222 of 1996, Krishna Kumar Verma and Girish Chandra Verma, in C.W.J.C. No. 1972 of 1996, Md. Wasi Akhtar, Md. Kamran, M.A. Rahman and Md. Rashid Alam, in C.W.J.C. No. 1806 of 1996 and Vinod Shankar Modi and Niraj Behari Lal, in C.W.J.C. No. 9609 of 1996, for the Appellant; Rameshwar Prasad, Veena Kumar Jaiswal, Arun Kumar, in C.W.J.C. No. 1431, 1499 and 7222 of 1996, Rameshwar Prasad, S.D. Yadav and Veena Kumari Jaiswal, in C.W.J.C. Nos. 702, 1806 and 1916 of 1996, Rameshwar Prasad, Veena Kumari Jaiswal, S.D. Yadav, N.K. Prasad and A.K. Verma, in C.W.J.C. Nos. 4469, 4951 and 8908 of 1996, S.D. Yadav in C.W.J.C. No. 7755 of 1995, S.D. Yadav, N.K. Prasad and A.K. Verma, in C.W.J.C. No. 1972 of 1996 and V.N. Sihha and S.C. Jha, in C.W.J.C. No. 9609 of 1996, for the Respondent

**Final Decision :** Dismissed

## Judgement

D.P. Wadhwa, C.J.—In this batch of writ applications there is challenge to the validity of Bihar Stamp (Prevention of Under Valuation of Instruments) Rules, 1995 framed u/s 47A of the Indian Stamp Act, as amended by Bihar amendment in the year 1988. It is contended that these Rules are in violation of Section 47A of the Act and thus invalid.

2. In some of the writ applications the Petitioners are prospective vendors and in some both prospective vendors and vendees. In only one case, documents were presented for registration. In that case there are five Petitioners and in case of the first Petitioner, the document was accepted for registration and. then impounded. Other Petitioners claim that their documents were refused even to be accepted.

3. During the pendency of these writ applications the Rules came to be amended inasmuch as in certain rules instead of the words "District Collector" the words "District Sub-Registrar" were substituted. Even then the challenge to the Rules did not cease. For the purpose of the decision of these writ applications we will consider the Rules as amended by the amendment notified on August 21, 1996.

4. In order to understand the rival contentions we may set out the relevant provisions. Section 47A of the Act, in relevant part, reads as under--

1. Where the registering officer appointed under the Indian Registration Act, 1908 (XVI of 1908) while registering any instrument of conveyance, exchange, gift, partition or settlement has reason to believe that the market value of the property which is the subject matter of such instrument has not been rightly set forth in the instrument (or is less than even the minimum value determined in accordance with any rules made under this Act) he may at the time of admitting 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 one month''s time to the parties for making their representation and after holding an enquiry 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:

Provided that no such person shall be required to pay any amount to make up the difference if the difference between the consideration or the" market value as set forth in the instrument (or is less than even the minimum value determined in accordance with any rules made under this Act) and the market value determined by the Collector does not exceed 10 percent of the market value so determined.

5. For the purpose of this Act, market value of any property 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 open market on the date of execution of the instrument of conveyance, exchange, gift, partition or settlement.

5. Rules with which we will be concerned are--

5. Guidelines Register of Minimum Value.--For the purpose of assisting the registering officer in finding out actual market value of properties (as accurately as may be possible, the District Sub-Registrar, within the area of the district,

 

shall after classifying the lands of rural or urban areas, prepare a register showing estimated minimum value of the land/properties of that category as per procedure laid down in Rule 6.

6. Procedure for the Fixation of Estimated Minimum value.--(1) The District Sub-Registrar shall obtain from the concerned Registering Office the figure relating to the five conveyances of highest value of each category of land/property situated within each Halka of every revenue circle and ward of notified area/Municipality/ Corporation that have been registered/presented for registration in the preceding financial year.

(2) The average value of conveyances of five highest value obtained under Sub-rule (1) pertaining to each category of land/property shall be deemed to be the estimated minimum value of land/property of that category in that area and shall be so fixed; provided that if less than five conveyances or no conveyance of iand/ property of that category of a particular area have been registered/presented for registration in the preceding financial year the District Sub Registrar shall determine the estimated minimum value of that category at the same rate as that determined for the similar land/property of an adjoining area.

Explanation.--The "Guidelines Register" supplied to the officers is intended merely to assist them to ascertain prima facie whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price, such entries will not foreclose the enquiry of the Collector u/s 47A of the Act nor fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the document.

7. After preparing the Guidelines Register of estimated minimum value of land/ property, the District Sub-Registrar shall without delay send the same to the registry office concerned for needful.

8. The District Sub-Registrar shall revise the Guidelines Register of estimated minimum values every two years, provided that any delay in such a revision shall not render current register invalid:

Provided further, that no register which is due for revision for more than a year shall be deemed valid without the prior written consent of the Inspector-General, Registration, Bihar.

9. (1) Instruments in which the value set forth is less than the estimated minimum value indicated in the guidelines Register supplied by the District Sub-Registrar shall be referred by the Registering officer to the Collector at the time of admission for determination of appropriate market value as per procedure laid down under Rules 11 and 12.

(2) The Registering officer shall refer such instruments to the Collector along with Form I referred to in the appendix of the rules and maintain a copy of the form in his office as record and shall also maintain a register in Form VI.

 

10. (1) If the value set forth in the instrument is according to the estimated minimum value indicated in the guidelines register supplied by the District Sub-Registrar but the registering officer has reason to believe that the market value is higher than the estimated minimum value he shall refer such instruments to the Collector at the time of admission after recording his reasons in writing for fixation of appropriate market value as per procedure laid down in Rules 10 and 12.

(2) The registering officer shall refer such instruments to the Collector alongwith Form I referred to in the appendix of the rules and maintain a copy of the same in this office as a record.

11. Procedure to be followed under Sections 47-A(1) and (3) of the Act on receipt of reference.--(a) In the matter of instruments, referred by the Registering officer to the Collector u/s 47(A)(1) of the Act for determination of the market value or the instruments called for by the Collector u/s 47-A(3) of the Act notice will be given to the following persons by the Collector in Form I or III (as the case may be) appended to the rules,--

(i) Every executant by whom the instrument is executed.

(ii) Every claimant in whose favour instrument is executed.

(b) Through the above notice the parties or the persons concerned will be directed by the Collector to file their representation and adduce evidence regarding the value of the property.

(c) If the Collector considers it necessary he may record the statement of any person to whom the notice is given under Sub-rule (a).

(d) For the purpose of enquiry the Collector--

(i) may call for information or record from any officer of a Government office or officer of autonomous bodies.

(ii) may examine any Government official or authority and record their statements.

(iii) may inspect properties after giving notice to the parties concerned.

12. Order of determination of Market value--(1) Considering the objections and representation received from the persons to whom the notice is given under Sub-rule (a)(i)(ii) of Rule 11 and.

(i) after examining the records produced; and

(ii) after carefully considering all factors and evidences adduced--

the Collector shall pass an order in writing determining the market value of the properties and duties payable on the instrument, communicate the order to the parties and take steps to collect the difference in the duties payable. The basis on which the market value was arrived at shall be clearly indicated in the order.

(2) A copy of the order shall be communicated to the registering officer for his record....

Sub-rule (4) of Rule 12 also provides as to what are the other factors to be taken into account by the Collector for arriving at the market value of the property. Rules 13 to 16 provide for appeals against the order of the Collector and the procedure for disposal of appeals.

6. Learned Counsel for the Petitioners contended that Rule 6 was verbatim reproduction of Rule 5 of 1993 Rules which had been struck down by a Bench of this Court in Umesh Thakur Vs. State of Bihar and Others . Reference was also made to a decision of the Supreme Court in State of Punjab and Others Vs. Mohabir Singh etc. etc., . This judgment of the Supreme Court has been rendered on the amendment of the Stamp Act by the Punjab Stamp Act, 1982 whereby Section 47A was inserted. The language of Section 47A of the Punjab Act is not the same as that of the Bihar Act. The issue raised in the judgment of the Supreme Court is also not the same as to what has been raised before us. That judgment, to our mind, is not applicable in the present case. We have also seen Rule 5 of 1993 Rules and Rule 6 of the present rule of 1995 and we find that they are not the same as instead of District Collector, if is now District Sub-Registrar to whom the guidelines and procedure for fixation of estimated minimum value would be applicable. We find it, therefore, quite unnecessary to distinguish the earlier judgment of this Court in the case of Umesh Thakur v. State of Bihar. We are of the opinion that we should examine the 1995 Rules vis-a-vis Section 47A as they exist. There is no challenge to the constitutional validity or otherwise of Section 47A of the Act.

7. We do not find anything arbitrary in the procedure prescribed for fixation of estimated minimum value of the property sought to be registered. The guidelines register, as mentioned in the explanation to Rule 6, is merely intended to assist the registering authority to ascertain prima facie whether the market value had been truly set forth in the instruments. Under this Rule 6 the District Sub-Registrar is to find out the average value of the conveyances of five highest value on the basis of the documents which had been registered or presented for registration in the preceding financial year. Such average value is to be entered in the guidelines register. Rule 8 provides for revision of the guidelines register every two years though that would not be mandatory. When the Sub-registrar finds that the value set forth in the instrument is less than the estimated minimum value as indicated in the guidelines register he is to refer the matter to the Collector for determining the appropriate market value and for the Collector also the procedure had been set down in Rules 11 and 12. The Collector after giving opportunity to the parties of being heard and following the procedure prescribed is to give his decision which again is appealable. It is difficult to appreciate the arguments of the Petitioners that procedure prescribed for arriving at the minimum value is in any way arbitrary or in contravention of Sub-section

 

(1) of Section 47A of the Act.

8. Then an argument was raised that Rule 9 which had been inserted by amending the rules in 1996 validates the guidelines register of estimated minimum value already prepared under Rule 6 prior to its amendment. This Rule 9 is as under--

9. Savings.--Notwithstanding anything contained in this amendment, the guidelines register of estimated minimum value prepared under Rule 9 of Bihar Stamps (Prevention of Under valuation of Instruments) Rules, 1995 shall not be invalid.

From this rule it would appear that the registering officer would be bound by the value arrived at in the guidelines register which as per Rule 6 prior to its amendment had been the mandate of the District Collector. It was, therefore, submitted that if the District Collector himself had arrived at certain market value of the property any appeal to him would be meaningless. We do not think this is a correct submission to make. It cannot be said that registering officer shall remain bound by the guidelines register already prepared prior to the amendment of Rule 6. This rule enjoins upon the registering authority itself to fix the estimated minimum value of the property. It was fairly submitted by learned Advocate General that the guidelines register which had already been prepared would not be binding on the Collector and that he himself will have to arrive at the value of the property independently after hearing the parties and taking into account all the relevant circumstances mentioned in Rule 12.

9. In Umesh Thakur''s case this Court had observed that Rule 5 as amended in the year 1993 lays down a mathematical formula which may or may not reflect the market value of the property sought to be transferred. Rule 5 thus seeks to negate the principle of Natural Justice. That is not the case now. In the present Rules which are now under challenge as the procedure prescribed is quite comprehensive, any arbitrariness is ruled out and the Rules are also in conformity with Section 47A of the Act.

10. We, therefore, do not find merit in these writ applications and thus these are dismissed. There will be no order as to costs.

S.J. Mukhopadhaya, J.

11. I agree.

 