
(2016) 01 AHC CK 0177
In the Allahabad High Court
Case No : Special Appeal No. 3 of 2016

Sumati Nath Jain

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 33, Section 56

Citation : (2016) 3 ADJ 350 : (2016) 2 ADJ 533 : (2016) 2 AILLJ 292 : (2016) 2 AllWC 2168 : (2016) 116 ALR 856 : (2016) 131 RD 34

Hon'ble Judges : Dr. D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Aishwarya Pratap Singh, for the Appellant;

Final Decision : Allowed

Judgement

Yashwant Varma, J.—1. Aggrieved by the judgment and order rendered by the learned Single Judge on 21 December 2015, dismissing a writ petition and relegating him to the alternative remedy, the original petitioner is in appeal before us.

2. The writ petition challenged an order dated 26 October 2015 passed by the second respondent in purported exercise of powers conferred under Sections 47-A and 33 of the Indian Stamp Act 1899. The order impugned held the petitioner-appellant liable to pay additional stamp duty of Rs. 7,14,650/- and penalty of Rs. 1,78,663/-, thus totaling Rs. 8,93,313/-. The order imposing additional stamp duty is on an instrument executed in favor of the appellant on 26 September 2011, being a sale deed in respect of Khasra No. 786 admeasuring 0.7160 hectares. This instrument, upon presentation in the office of the Sub Registrar, Gautam Budh Nagar and on payment of stamp duty of Rs. 1,07,600/- had been duly registered and returned to the appellant.

3. From the material brought on record of the writ petition, it appears that a copy of the instrument in question fell for scrutiny before the Sub Registrar,

Gautambudh Nagar who on 7 December 2012 put up a note for consideration of the second respondent asserting therein that the instrument was in respect of a property, which had been valued at agricultural rates. In the opinion of the Sub Registrar, the property comprised in the instrument was liable to be taxed @ Rs. 6,500/- per square meter being the circle rate prescribed by the second respondent for residential properties. Consequently, the Sub Registrar opined that the instrument should be subjected to additional stamp of Rs. 7,14,650/-. Taking note of the aforesaid report, the second respondent assumed jurisdiction and issued a notice dated 30 August 2012 informing the appellant that proceedings in respect of the adequacy of stamp duty paid on the instrument in question were pending before him and that prima facie it appears that the appellant has evaded stamp duty to the extent of Rs. 7,14,650/-. This notice accordingly called upon the appellant to participate and show cause why additional stamp duty together with penalty be not imposed upon him. The appellant filed his response in the proceedings on 28 December 2012. During the pendency of the proceedings, he is stated to have gifted the property comprised in the instrument to his wife Smt. Vijaya Jain on 17 December 2012.

4. During the course of the proceedings before the second respondent, an order came to be passed on 23 October 2013 calling upon the Sub Registrar to conduct a fresh site inspection of the property and submit an actual status report. Pursuant to the aforesaid order, the Sub Registrar is stated to have submitted a report dated 16 November 2013 recording therein that the property in question appeared to have been put to use as farm land. The second respondent upon a consideration of the material before him has proceeded to hold that the land in question falls in the vicinity of the Greater NOIDA industrial development area where land is largely being used for residential and commercial purposes. He proceeded to hold that bearing in mind the area of the property, it was not possible to be utilized for agricultural purposes and that the appellant himself owned no premises in the vicinity of the land in question, which may lend credence to the contention that the property was to be utilized for agricultural purposes only. On a consideration of the aforesaid facts, the second respondent accepted the initial report submitted by the Sub Registrar on 7 December 2012 and proceeded to pass the order which was impugned in the writ petition.

5. To complete the narration of facts it becomes apposite to note that during the pendency of proceedings before the second respondent, the appellant on 17 December 2012 gifted the property to his wife Smt. Vijaya Jain. This gift deed too was subjected to proceedings under Section 47-A of the Act by the second respondent. Smt. Vijaya Jain was also foisted with a demand of additional stamp duty. The order passed by the second respondent against Smt. Vijaya Jain, was subjected to challenge in a writ petition which too came to be dismissed by the learned Single Judge on the ground that she had an equally efficacious remedy of filing an appeal under Section 56. The judgment rendered by the learned Single Judge on that occasion fell for consideration before a Division Bench of the Court in a special appeal² which ultimately came to be allowed by judgment and order

dated 1 September 2015. The judgment of the Division Bench, we may note formed part of the record of the writ proceedings from which the present Special Appeal emanates.

6. Dealing with the correctness of the view taken by the learned Single Judge in relegating the appellant therein to pursue the alternative remedy, this Court in Smt. Vijaya Jain found that the proceedings taken against her were liable to be set aside not just on account of violation of the principles of natural justice but also on the ground of the same having been initiated and continued in breach of the procedure prescribed under the Act and the orders passed by the second respondent suffering from non application of mind and the law as laid down by this Court.

7. On the issue of alternative remedy, the Division Bench in Smt. Vijaya Jain noticed the law as enunciated by the Supreme Court in Government of Andhra Pradesh and others v. Smt. P. Laxmi Devi (, 2008 4 SCC 720 and Har Devi Asnani v. State of Rajasthan , (2011) 14 SCC 160, and held as under:--

"The existence of an alternative statutory remedy as has been consistently held by the Courts is not a rule of inflexible character nor is it an inviolable condition. The Courts vested with the power and jurisdiction under Article 226 of the Constitution of India have always viewed this rule as a self imposed restriction rather than a rule which is to be blindly adhered to and which brooks of no exception. Some of the well settled exceptions to the rule of a petitioner being relegated to an alternative remedy are where the principles of natural justice have been violated or where orders are made without jurisdiction."

"The law as authoritatively laid down by the Supreme Court in the aforementioned two judgments clearly establishes that a petitioner before the High Court is not liable to be relegated to the alternative remedy as a matter of rule. If in the facts of a particular case it is established that the principles of natural justice have been violated or that the order has been rendered without jurisdiction or if it is disclosed to the Court that grave injustice has been caused to the petitioner and it is found that his relegation to the alternative remedy would perpetuate injustice and cause prejudice, it is always open to this Court to exercise its prerogative constitutional powers and to issue an appropriate writ striking at the offending action. This principle stands extended in light of the abovementioned precedents to a case where the petitioner is foisted with an exorbitant and arbitrary demand in which case his relegation to the alternative remedy would not be justified."

8. We are, with respect, of the firm opinion that the learned Single Judge has yet again fallen in error in dismissing the writ petition and relegating the appellant to the alternative remedy.

9. In the facts of the present case, we may note that the initial stamp duty which stood paid on the instrument by the appellant was Rs. 1,07,600/-. The order of the second respondent held the appellant liable to pay additional stamp duty as

well as penalty totaling Rs. 8,93,313/-. This we may note represents an increase of eight times over the initial stamp duty which was paid on the instrument. This was, therefore, clearly one of the exceptional situations which were envisaged by the Supreme Court in Smt. P. Laxmi Devi and Har Devi Asnani as instances where the petitioner was not liable to be relegated to the alternative remedy of an appeal or a revision under Section 56 of the Act.

10. We further find that the proceedings taken against the appellant were clearly without jurisdiction, violative of the procedure prescribed under the Act and there existed no justification in the second respondent invoking the powers conferred by sections 47A or 33 of the Act. We proceed to set forth our reasons for arriving at the above conclusions hereinafter.

11. Pausing here we deem it appropriate to first briefly notice the objections which were taken by the appellant before the second respondent.

12. Referring to the deed in question, it was pointed out that the land was recorded as agricultural and the purpose disclosed in the sale deed also held it out to be for agricultural purposes. The appellant had contended that there was no material before the second respondent to assume that the land was residential on the date of execution of the instrument or to presume that it would be put to residential use in the future. The appellant then placed reliance upon the master plan of NOIDA, orders passed by the National Green Tribunal (NGT) as also upon the Government Orders issued by the State, all of which restrained construction activities in flood plain areas. It was submitted before the second respondent that the land was in the flood plain area of the Hindon river and therefore in light of the various injunctions operating thereupon, the property could never be put to residential use. These objections stood reiterated in the writ petition preferred by the appellant. Dealing with the order of the National Green Tribunal [NGT] the appellant stated:--

"17. That the National Green Tribunal passed an order dated 20.05.2013 in O.A. No. 89/2013 whereby it was held that:--

---It is an admitted position in law that construction upon flood plain area is prohibited. It not only affect the natural flow of the river but even causes environment problems besides raising risk to human life and property."

---Similar order and injunction shall operate in regard to river Hindon as well."

13. Referring to the Government Order dated 16 March 2010, it was stated:--

"The learned Tribunal also relied upon the notification dated 16.03.2010 issued by the Chief Secretary of Uttar Pradesh to all the Authorities including the police in the State of Uttar Pradesh to ensure that no constructions whatsoever is raised on the flood plain zone and whichever constructions have been raised should be removed. The relevant extract of the said notification state as under:--

"1. Clear depiction of flood plain zones along rivers as flood affected areas in the

Master Plans and to prevent any constructions in these areas, these areas should be reserved as Green. It should be ensured to ban all kinds of constructions in flood plain zones under the Zoning Regulations of the concerned cities.

2. No NOC will be granted, under the RBO Act, U.P. Urban Planning & Development Act 1973 and Industrial Development Act 1973, to any kind of construction inside the flood plain zone and nor will be the lay-out plans of such constructions be approved. To stop such kind of illegal constructions, effective action would be taken under the provisions of the above acts...."

We accordingly proceed to deal with the issue of jurisdiction exercised by the respondents under the following broad heads.

VALIDITY OF THE NOTICE DATED 30 AUGUST 2012

14. A plain reading of the notice indicates that the second respondent had accepted the report of the Sub Registrar and already formed an opinion that the instrument was liable to be taxed with additional stamp duty. There was no opportunity provided to the appellant to show cause why the second respondent may not assume jurisdiction under section 47A of the Act as mandated under Rule 7 of the U.P. Stamp (Valuation of Property Rules) 1997. The appellant was neither apprised of the basis nor provided the material upon which the Collector formed the opinion that the property comprised in the instrument was undervalued or that additional stamp duty was payable thereon. Dealing with this aspect of the matter the Division Bench in Smt. Vijaya Jain held:--

"From the provisions extracted above, it is apparent that the Collector proceeds under sub section (3) of Section 47-A read with rule 7 when he has reason to believe that the market value of the property comprised in the instrument has not been truly set forth and that in the opinion of the Collector, circumstances exist warranting him to undertake the enquiry contemplated under rule 7. What we however find from the notice dated 09 September 2013 is that the Collector has proceeded to record, albeit prima facie, that the instrument in question has been insufficiently stamped to the extent of Rs. 8,89,000/-. The notice apart from referring to a note dated 20 May 2013, received from the Assistant Inspector General of Registration neither carries nor discloses any basis upon which the Collector came to the prima facie conclusion that the appellant was liable to pay Rs. 8,89,000/- as deficit stamp duty. In our opinion a notice of this nature must necessarily disclose to the person concerned the basis and the reasons upon which the Collector has come to form an opinion that the market value of the property has not been truly set forth. In the absence of a disclosure of even rudimentary details on the basis of which the Collector came to form this opinion, the person concerned has no inkling of the case that he has to meet. A notice in order to be legally valid and be in compliance with the principles of natural justice must necessarily disclose, though not in great detail, the case and the basis on which action is proposed to be taken against the person concerned. Not only this and as is evident from a bare reading of rule 7, at the stage of

issuance of notice, the Collector has to proceed on the basis of material which may tend to indicate that the market value of the property has not been truly and faithfully disclosed in the instrument. The stage of computation of market value comes only after the provisions of sub rules (2) (3) and (4) of rule 7 come into play. At the stage of issuance of notices, the Collector calls upon the person concerned to show cause "as to why the market value of the property.... be not determined by him..... In the facts of the present case, we find that the Collector had already prejudged the issue by recording that the appellant had paid deficit stamp duty to the extent of Rs. 8,89,000/-."

15. It is apparent that the notice on the basis of which proceedings were initiated against the appellant suffered from the same fundamental flaws and defects as were noticed by the Bench in Smt. Vijaya Jain. We may also note that the requirements of a valid show cause notice were lucidly explained by the Supreme Court in *Oryx Fisheries (P) Ltd. v. Union of India* , (2010) 13 SCC 427 in the following terms:--

"27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defense and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

31. It is of course true that the show cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impregnable wall of prejudged opinion, such a show cause notice does not commence a fair procedure...."

16. We find in the facts of the present case that not only was there a complete non disclosure of the relevant material to which the appellant could respond to establish his innocence, the notice itself was couched in tenor and language which would have led any person to face the specter of what the Supreme Court described as the "impregnable wall of prejudged opinion".

INVOCATION OF SECTION 47A

Section 47A(3) as a plain reading of the provision would indicate comes into operation if the Collector has before him material which may lead him to believe that the market value of the property comprised in an instrument has not been truthfully disclosed. In the present case the Collector proceeded in the matter

solely on the basis of the report of the Sub Registrar dated 7 February 2012. This report doubted the valuation of the property on the ground that in the area abutting it, various residential houses had come up and that Greater NOIDA had become a development hub. Bearing in mind the location of the plot and its likely use, the Sub Registrar opined, it would be inappropriate to value the property at agricultural rates. We find that the very bedrock upon which the opinion of the Sub Registrar based his report was faulty and could not have consequently formed the basis for further action under section 47A (3).

17. We may note that on the date of execution of the instrument the land was admittedly recorded as agricultural. In fact the Khasra of the property remained unchanged throughout and continued to represent the land as recorded for agricultural purposes. The respondents were in our opinion wholly unjustified in initiating proceedings based on an unsubstantiated assumption that the property in future was likely to be put to non-agricultural use.

18. The perceived or presumed use to which a buyer may put the property in the future can never be the basis for adjudging its value or determining the stamp duty payable. The Act, we may note is a fiscal statute. The taxable event with which it concerns itself is the execution of an instrument which is chargeable to duty. The levy under the statute gets attracted the moment an instrument is executed. These propositions clearly flow from a plain reading of the definition of the words "chargeable", "executed" and "instrument" as carried in the Act. In the case of an instrument which creates rights in respect of property and upon which duty is payable on the market value of the property comprised therein, since the tax liability gets fastened immediately upon execution it must necessarily be quantified on the date of execution. The levy of tax or its quantum cannot be left to depend upon hypothetical or imponderable facets or factors. The value of the property comprised in an instrument has to be adjudged bearing in mind its character and potentiality as on the date of execution of the instrument. For all the aforesaid reasons we fail to find the existence of the essential jurisdictional facts which may have warranted the invocation of the powers conferred by section 47A (3). We are therefore of the firm opinion that the initiation of proceedings as well as the impugned order based upon a presumed future use of the property for residential purposes was wholly without jurisdiction and clearly unsustainable. Dealing with this aspect of the matter and after noticing the consistent line of precedent on the subject the Division Bench in Smt. Vijaya Jain observed:--

"This Court on more than one occasion has held that the market value of the land is not liable to be determined with reference to the use to which a buyer intends to put it in future. The market value of the property is to be determined with reference to its character on the date of execution of the instrument and its potentiality as on that date.

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The above principles of law enunciated in the aforementioned judgments have been consistently followed by this Court. We however find that the order of the Collector relies upon no evidence which would support imposition of residential rates on a property which was stated to be agricultural on the date of execution of the instrument."

ADDITIONAL REASON

19. We find that the proceedings taken against the appellant were even otherwise liable to be quashed outright. The reason which compels us to arrive at the above conclusion is this.

20. The response filed before the second respondent clearly asserted that the property in question fell within the flood plain area of the Hindon river. The order of the NGT, NOIDA Master Plan as well as the Government Order clearly restrained all residential activities in this area. There was therefore no basis for the Sub Registrar or for that matter the second Respondent presuming that the property was liable to be treated as for residential purposes and taxed at residential rates. For this additional reason also we find that the proceedings initiated against the appellant and the order impugned in the writ petition are rendered unsustainable.

21. For all the aforesaid reasons we find merit in the instant appeal. We are of the opinion that the learned Single Judge clearly erred in dismissing the writ petition and relegating the appellant to pursue the alternative remedy.

22. We accordingly allow the special appeal and set aside the judgment and order of the learned Single Judge dated 21 December 2015. We consequently also allow the writ petition and quash the order of the second respondent dated 26 October 2015 and all proceedings taken against the appellant.

1The Act

2Special Defective No. 598 of 2015 Vijaya Jain v. State of U.P. & 2 others decided on 1.9.2015