(2012) 01 JH CK 0114

In the Jharkhand High Court

Case No : L.P.A. No. 268 of 2006

The State of Jharkhand and Others — APPELLANT

Vs

M/s Domco Smokeless Fuels (P) Ltd. — RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : (2012) 1 JLJR 253

Hon'ble Judges : Prakash Tatia, J;Aparesh Kumar Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. The appellant-State is aggrieved against the order passed by the learned Single Judge dated 16th December, 2005 passed in W.P.(C) No. 5075 of 2005 allowing the writ petition filed by the writ petitioner-respondent.

3. The brief facts are relevant for the purpose of deciding this L.P.A. are that according to the writ petitioner- respondent he entered into an agreement for the purchase of immovable property for a consideration of Rs. 15.00 Lakhs and for that purpose an agreement was executed by the vendor on 10th May 1995 in favour of the writ petitioner. The said agreement was not acted upon by the vendor and , therefore, the writ petitioner- respondent filed a civil suit in the year 2003 for specific performance of contract dated 10th May, 1995. The suit was decreed in the same year 2003. After the decree a sale deed was executed and was presented for registration before the Sub Registrar in the month of October, 2003 itself. But there was objection of the Stamp Deputy Collector that the property has been undervalued at Rs. 15.00 Lakhs only whereas the Circle rate, where the property is situated , is Rs. 1.00 Lakh per Katha. Because of this objection, the case was registered and was referred to the Stamp Deputy Collector, who held that petitioner-respondent has to pay the stamp duty on the

market value of the property, which the Stamp Deputy Collector assessed to Rs. 2.00 Lakh per Katha. The learned Single Judge held that "in the case of instrument of conveyance executed pursuant to the decree for specific performance passed by the Civil Court, in which there is no allegation of deliberate undervaluation of lack of bona fide in valuing the subject of transfer with a view to evade payment of proper stamp duty, the mere fact that there is a time gap between the agreement of sale and the execution of the document by itself is not sufficient for the Registering Officer to invoke his power u/s 47 A of the Stamp Act, unless there are reasons to believe that there is an attempt on the part of the parties to the instrument to under value with a view to evading payment of proper stamp duty".

4. After observing , the learned Single Judge set aside the order passed by the Stamp Deputy Collector dated 21.2.2004, hence this L.P.A is preferred by the State.

5. At the outset, we may state that according to the writ petitioner-respondent himself the market value of the property as on 10th May, 1995 was Rs. 15.00 Lakhs, therefore we can take judicial notice of the fact that the price of the immovable property could not have remained the same market value of the property in the year 2003.

6. Be that as it may, in view of the recent judgment of the Hon''ble Supreme Court the stamp duty is not payable according to the sale consideration shown in the agreement, for which we may rely upon a decision of the Hon''ble Supreme Court delivered in the case of State of Haryana and Others Vs. Manoj Kumar, , wherein ,specifically, the issue was similar to this case. In that case in the impugned judgment the High Court observed that "the authenticity of decree not open to question therefore, genuineness of sale price has to be presumed". The Hon''ble Supreme Court held that this finding of the High Court cannot be sustained "as it would have far reaching ramifications and consequences. If the genuineness of the sale price entered into by the buyer and the seller cannot be questioned, then in majority of the cases it is unlikely that the State would ever receive the stamp duty according to the circle rate or the collector rate".

7. Otherwise also, asking for payment of stamp duty, according to the market value of the property, which is as on the date of presentation of the deed of transfer is not questioning the correctness of the decree as the vendor has right to sell his property for any consideration which include sale on a price which may be less than market value of the property. In such cases also stamp duty payable is the market value of the property as it is on the day of presentation of sale deed before the Registering Authority. Even in a case where the market value and the sale consideration shown in the agreement are same, even then the market value of the property may change when the actual deed of transfer is presented before the registering authority. The registering authority is bound to charge the stamp duty according to the market value as on the date when the deed of transfer is presented before him. It is not dependent upon what

consideration has been paid by the vendee to the vendor.

8. Learned counsel for the respondent very fairly admitted that in another case also, delivered by the Supreme Court in the case of State of Rajasthan and Others Vs. Khandaka Jain Jewellers, the same view has been taken by the Supreme Court that stamp duty is liable to be charge according to the market value at the time of execution of sale deed. In view of the above reasons , the order passed by the learned Single Judge cannot be sustained and liable to be set aside.

9. Learned counsel for the respondent submitted that even in the opinion of the State Government, circle rate of the property was Rs. 1.00 lakh per katha and the Stamp Deputy Collector without having any material on record declared the market value of the property in question at Rs. 2.00 lakh per katha and , therefore, on this count the order of the Deputy Stamp Collector is set aside.

10. What was the market value of the property when the deed of transfer was presented for transferring of the said property is a question of fact and, therefore, this question cannot be allowed to be raised in L.P.A and that too by the respondent, who did not question the correctness of the market value held by the Deputy Stamp Collector in its order and he also did not raise this point in the writ petition and there is no factual foundation in the writ petition and therefore, cannot be agitated now as respondent in L.P.A.

11. In view of the above reasons, this L.P.A is allowed and the impugned judgment and order dated 16.12.2005 passed in W.P.(C) No. 5075 of 2005 is set aside. Writ petition of the petitioner is dismissed. No order as to costs.