(1994) 03 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3924 of 1992

Umesh Thakur APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 09-03-1994

Acts Referred:

Citation : (1994) 03 PAT CK 0008

Final Decision : Allowed

Judgement

S.B. Sinha, J.—In all these writ application; Petitioners have questioned the vires of Section 47A of the indian Stamp Act hereinafter called and referred for the sake of brevity, as the said Act) as amended by the Bihar Act, 18 of 1988 which was subsequently amended by Bihar Amendment Act, 1991 as also the Rules framed by the State of Bihar known as Bihar Instrument Valuation Rules, 1991, published in the Bihar Gazette dated 27.12.1991. The Petitioners have also questioned the respective orders passed by different registering authorities whereby and whereunder he refused to register the instruments presented to him, inter alia, on the ground that the valuation mentioned therein does not reflect the market value of the property which are the subject matter of the transaction in question.

2. In view of the pure question of law involved in these writ applications, it is not necessary to State the fact of the matter in details.

Suffice it to say that the writ Petitioners intended to transfer their right, title and interest in favour of third parties.

3. In most of writ petitions, the Petitioners presented deeds of sate before the concerned registering authorities but the said authorities without registering the instruments sent the same to the Collector concerned on the ground that the amount of consideration shown in the respective sale deeds is much less than the market value there of and the collector in turn has issued notices to them as to why steps should not be taken for realisation of the deficit amount of stamp

duty.

4. Before considering the rival contentions raised by the parties the provisions of the said Act and the Rules framed there under, which are necessary for the purpose of disposal of these applications, may be noticed.

The said Act was enacted to consolidate and amend the law related to stamps.

5. The words ''duty stamped'' has been defined in Section 2(11) of the Act which reads as follows:

"Duty stamped" as applied to an instrument means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and such stamp has been affixed or used in accordance with law for time being in force in India;"

The world ''Instrument'' has been defined in Section 2(14) and ''Conveyance'' in Section 2(10) of the said Act which read as follows: "Instrument" includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded;

"Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or by Schedule 1- A, as the case may be".

6. Section 3 of the said Act is the charging section which reads thus:

3. Instruments chargeable with duty -- Subject to the provisions of this Act and the exemption contained in Schedule I, the following instrument shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say--

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899.

(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

(c) every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which not having been previously executed by any person is executed out of India on or after that day, relates to any property, situate, or to any matter or thing done or to be done, in India and is received in India.

7. Section 47A of the Act was inserted by Bihar Act No. 15 of 1988 of the Indian Stamp (Amendment) Act, 1988 which reads as follows:

47A. Instrument of conveyance. --(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 he may, after registering 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 of the market value as set forth in the instrument and the market value determined by the Collector does not exceed 10 percent of the market value so determined.

(3) The Collector may suo motu within two years from the date of registration of such instrument not already referred to him under sub- Section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the properly which is the subject matter of such instrument and the duty payable thereon and if after such examination he has reason to believe that the market value of such property, has not been rightly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in Sub-section (2) The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Bihar Amendment) Ordinance, 1986.

(4) Any person aggrieved by an order of the Collector under Sub-section (2) or Sub-section (3) may appeal to the Commissioner concerned of the administrative division, such appeal shall be preferred within sixty days of the order and shall be heard and disposed of by the Commissioner.

(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.

8. By reason of the aforementioned Bihar Act No. 15 of 1988, amendment was also made in Schedule 1-A of the said Act in so far as in column 2 against Clause (C) to Article 18 after the word ''consideration'' the words ''(or market value)'' was inserted. The said entry now reads thus:

18. Certificate of Sate, (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector or other Revenue Officer --

(a)...

(b)...

(c) in any other case... The same duty as a conveyance (No. 23) for a consideration (or market value) equal to the amount of the purchase money only.

Similarly other Articles, namely, Article 31, Article 32, Article 33. Article 35, Article 40, Article 45, Article 48, Article 54, Article 58, Article 59, Article 62 and Article 63 were amended in terms whereof the words ''or market value were added after the word ''consideration'' or the words ''consideration of market value'' were inserted.

9. The said Act was further amended by Indian Stamp (Bihar Amendment) Act, 1991 whereby Section 47A of the Act was amended by Section 3 thereof. In terms of the said amendment in Sub-section (1) of Section 47A of the said Act after the words ''that the "market value of the ''property which is the subject matter of such instrument has not been rightly set forth in the instrument''; the following words shall be inserted ''or which is less than the value calculated in terms of the rules framed under this Act shall be inserted''.

By reason of Sub-section (2) of Section 3 of the said Amending Act of 1991 the words ''after registering such instrument'' were deleted and in its place, the words ''at the time of acceptance'' were inserted.

10. Section 75 of the said Act reads thus:

Power to make rules generally to carry out Act--The State Government may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof

The State of Bihar in exercise of the aforementioned power made Rules for the purpose of giving effect to Section 47A of the said Act, known as Bihar Instrument Valuation Rules, 1991 (hereinafter called as ''the said Rules''). Rule 3 of the said Rules mandates description of certain particulars enumerated therein in the instruments relating to immovable property.

Rules 4, 5 and 6 which are material for the purpose of the cases read thus:

4. The District Collector within the area of his district shall after classifying the land of rural urban area, determine the minimum value of the land/properly of that category on the basis of instruments relating to conveyances of the highest value that has been registered/presented for registration in the preceding financial year.

5. Procedure for the fixation of minimum value. -- (i) The District Collector shall

obtain from the concerned registering officers the figures relating to the highest value of conveyance of every category of land/property situated within each Halka of all circles and ward of notified area/ Municipality/Corporation registered/ presented in the preceding financial year.

(ii) The highest value on which a deed of conveyance of land/property of an area was registered/presented for registration in the preceding financial year would be deemed to be the minimum value of the land/property of that area:

Provided that, if no conveyance of land/properly of any area was made in the preceding financial year, the Collector shall obtain from the concerned Registering Officer the registration figure of conveyance made in adjoining areas.

6. After so determining the minimum value of land the Collector shall send without delay the list of minimum values to the Registering Officers concerned for needful and shall also send a copy to the Inspector General of Registration.

Rule 7 empowers the Collector to redetermine the minimum value of the land in every two years. Rule 10 provides for the procedure to be followed u/s 47(A)(i) and (ii) of the Act on receipt of the reference.

By reason of the said Rule, a notice is required to be given to every executant and every claimant.

Rule 10(b) provides that the parties would be directed by the Collector to file representation and adduce evidence regarding the value of the property.

Rule 10(c) empowers the Collector to record the statement of any person to whom the notice is given under Sub-rule (a).

Rule 10(d) of the said Rules reads as follows:

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". Rule 11 of the said Rules reads thus:

11. Order of determination of market value-- (a) Considering the objections and representations received from persons to whom the notice is given under Sub-rule (a) and (b) of Rule 9 --

(i) after examining the records produced, and

(ii) after carefully considering all factors and evidence adduced-- the Collector shall pass the order of determination of market value and the stamp duty and shall inform the parties concerned and if there is any difference in the amount of

Stamp Duty shall take necessary action to recover the same.

(b) A copy of the order passed by the Collector shall be sent to the Registering Officer.

(c) After the deposit of the deficit Stamp Duty by the party concerned a certificate of its being property stumped shall be recorded by the Collector, on the instrument.

(d) After the certificate of duty/property stamped being recorded by the Collector, the instrument shall be returned to the Registering Officer concerned for necessary action.

11. During the pendency of these writ applications, the said Rules were amended by S.O. No. 236 dated 9th July, 1993. The said amendments are to the following effect:

1. In the said Rules for Rule 5 following shall be substituted, namely.-- ''

5. Procedure for the fixation of minimum value.--

(1) The District Collector shall obtain from the concerned Registering Officers the figures relating to the five conveyances of highest value of every category of land/property situated within each Halka of every Revenue Circle and wards of Notified Area/Municipality/Corporation that have been registered/presented for registration in the preceding financial year.

(2) The average value of conveyances of highest value so obtained under Sub-rule (1) of Rule 5 pertaining to each category of land/property shall be deemed to be the 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 conveyances of land/property of that category of the particular area have been registered/presented for registration in the preceding financial year, the Collector shall fix the same after obtaining the market value of land with any minimum value of land as that pertaining to a similar category of land or shall fix the minimum value of land on the basis of land price in the adjoining area.

2. After Rule 11, the following new Rule shall be added, namely.--

12. Power of Revision. -- The Commissioner of the. Division shall have the power to revise the minimum value of land/property fixed by Collector under these Rules if he either suo motu or on the application of any aggrieved party is of the opinion that in the fixation of minimum value those Rules have not been property followed or that the minimum value so fixed is arbitrary or improper. The Commissioner after giving reasonable opportunity of being heard to the parties concerned shall pass such orders as he deemed fit and proper.

3. This Rule shall come into force with effect from the date of publication of this notification in the Bihar Gazette.

12. Mr. Shreenath Singh, learned Counsel appearing on behalf of the Petitioners has raised a number of contentions in support of this application. Learned Counsel firstly submitted that the Amending Act of 1988 is beyond the legislative competence of the State of Bihar. According to the learned Counsel stamp duties are levied on the consideration mentioned in the instruments and not on the transactions which bring into existence such instruments.

In this connection, our attention has been drawn to Entry 44 of List III, Entry 63 of List II and Entry 91 of List I of the 7th Schedule of the Constitution of India.

13. Learned Counsel, submitted that in view of the definition of the word ''conveyance'' as contained in Section 2(10) of the Stamp Act referred to hereinbefore, the deed of sale is also included therein and if the same is read conjointly with Section 3 of the Act, it would be evident that the stamp duty can be levied only on the instrument.

However, the State of Bihar by reason of Bihar Act No. 21 of 1977 added a proviso after Clause (c) of the said provision in terms whereof Schedule 1-A was inserted.

14. Learned Counsel also referred to Sections 3 and 4 of the Amending Act of 1988 which read thus:

3. Amendment of Section 24 of Act 2 of 1899. - In Section 24 of the said Act --

(i) for the words "in respect whereof the transfer is charegeable with advalorem duty, the words "and the transfer is chargeable with ad valorem duty", in respect of the said consideration or the market value of the property transferred, whichever is higher", shall be substituted:

(ii) the illustrations (1), (2) and (3) shall be deleted.

4. Amendment of Section 27 of Act 2 of 1899.- In Section 27 of the said Act, for the words and brackets "(if any)" the words "if any, the market value of the property" shall be substituted.

15. According to the learned Counsel, in view of the aforementioned provisions as also the insertion of Section 47A in the Act, the concept of imposition of stamp duty on an instrument has been given a go bye and the new legislation contemplates imposition of stamp duty on theoretical market value to be determined by the Collector which is beyond the legislative competence in terms of Entry 44 List III of VII Schedule of the Constitution of India.

16. Learned Counsel in this connection has taken us through various decisions for the purpose of showing that the execution of the document is the taxing event and stamp duty is leviable on the instrument and not on transaction.

Learned Counsel in support of the aforementioned contention relied upon the decisions in the Commissioners of Inland Revenue v. G. Angus and Co., reported in 1989 (23) QBD 579, Muller and Co.''s Margarine Limited v. Commissioners of

Inland Revenue, reported in 1900(1) QBD 310 and 319, Minister of Stamps v. Annie Quayle Townend, reported in 1909 App Cases 633 at 639, which has been followed in Bharpet Mohammad Hussain Saheb and Anr. v. District Registrar, Kurnol, reported in AIR 1964 Andhra Pradesh 43 at page 44, AIR 1935 567 (Lahore) , Superintendent of Stamps Vs. Breul and Co., , New Central Jute Mills Co. Ltd. and Others Vs. The State of West Bengal and Others, .

17. Mr. Singh further submitted that entries of the VII Schedule have to be assigned the same meaning as it is ordinarily understood in common parlance and in support of his contentions he strongly placed reliance upon a decision of the Supreme Court in The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., .

18. Learned Counsel submitted that the word ''market value'' cannot have any definite connotation and in this connection, learned Counsel has referred to Section 23 of the Land Acquisition Act and has submitted that from judicial pronouncements, it is clear that different modes have been provided for arriving at such a market value. According to the learned Counsel, the concept of the ''market value'' has thus been given merely a lip service but the Collector has been conferred with the power to determine the same on the basis of the transactions which may not reflect the true market value. He, therefore, submitted that as the impugned provision conferred a wide and unguided power, the same is ultra vires Article 14 of the Constitution of India.

19. Learned Counsel further submitted that Section 47A of the Act as amended by 1991 Amending Act must be held to be violative of Article 14 of the Constitution of India, inasmuch as by reason thereof the words ''shall register it'' have been deleted.

20. Learned Counsel further submitted that the said Rules arc ultra vires Section 47A of the Act inasmuch as whereas the word ''may'' has been used in Section 47A(1) which is directory, the word ''shall'' has been used in Rules 8 and 9 of the said Rules.

21. It was next contended that the words ''reasons to believe'' having been used in Section 47A, the same implies a judicial consideration in a judicial proceedings. But the said Rules frustrate the dictates of the Legislature by making process completely non-judicial and only ministerial.

22. It was further submitted that from a perusal of Rule 10 of the said Rules, it would appear that the Collector has been empowered to collect the materials behind the back of the party which is violative of the principles of natural justice and thus must be held to be violative of Article 14 of the Constitution of India inasmuch us violation of the said Rules had also been made penal.

23. Learned Advocate General appearing on behalf of the Respondents, on the other hand, submitted that from a perusal of Entry 44 List III of the VII Schedule of the Constitution of India, it would appear that the same covers the field of

legislation providing "stamp duties other than the duty and fee collected by means of judicial stamp but not including the rate of stamp duty".

It was submitted that the measure of charge has either to be fixed or ad valorem, the chargeable event being execution of instrument. According to the learned Advocate General the same has not to be confused or mixed up or identified as a measure of duty which is clearly indicated in the second column of the schedule.

Learned Counsel in this connection has referred to Section 28 as amended by Act No. 2 of 1989 and submitted that from comparison of the said provision with Section 47A, it would appear that such conveyance shall be chargeable on the ad valorem duty in respect of the distinct consideration or the market value on such part whichever is greater.

24. It was submitted that the amending Act has been enacted in order to check evasion of duty, which necessitated the determination of market value as basis of the liability or the quantum of stamp duty.

25. According to the learned Advocate General by reason of Bihar Act No. 15 of 1988 the chargeable event has not been shifted from execution of an instrument to transaction.

Learned Advocate General further submitted that the quantum of taxation is a matter of policy and it depends upon exigencies of financial burden. According to him the Legislature has adopted a uniform standard for assessment of the quantum of duty which is within the competence of the State Legislature and not violative of either Article 14 or Article 300A of the Constitution of India.

Learned Counsel in support of his contention has relied upon the decision in the The State of Tamil Nadu Vs. T.N. Chandrasekharan, and Kaka Singh v. The Additional Collector and District Magistrate (Finance and Revenue), reported in AIR l986 All 107.

26. It was further submitted that Section 47A of the Act is merely a charging Section and the provisions thereof are to be invoked only in a case where the true market value is not reflected in the instrument. It was pointed out that similar amendments have been made by the State of Uttar Pradesh, Andhra Pradesh, Madras and Bombay.

27. Entry 44 of List III, Entry 63 of List II and Entry 91 of List I of the VII Schedule read thus:

Entry 44 of List III--Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

Entry 63 of List II -- Rates of stamp duty in respect of documents other than those specified in the provisions of List 1 with regard to rates of stamp duty."

"Entry 91 of List I--Rates of stamp duty in respect of bills of exchange, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

28. It is not in dispute that Entry 63 of List II or Entry 91 of List I have no application inasmuch as the said Entries refer to the rate of stamp duty.

29. The sum and substance of the submission of Sri Sreenath Singh is that stamp duty is levied on the amount of consideration mentioned in the sate deed and not on the transaction and stamp duty will be levied at the rate as applicable in the State where the deed has been executed.

30. In a decision in the Commissioners of Inland Revenue v. G. Angus and Co., reported in 1989 LRQBD 579, the court of appeal upon consideration of Section 70 of the Stamp Act, 1878 held that the term ''conveyance'' or ''sale deed'' includes every instrument whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser.

31. In Muller and Co.''s Margarine, Limited v. Commissioners of Inland Revenue, reported in 1900 (1) QBD 310, Collins L.J. held:

Now, it is to be observed that what the Stamp Act deals with is not the bargain which arises out of the consent of the parties, but the instrument which records that bargain.

32. In Minister of Stamps v. Annie Quayle Townend, reported in 1909 App Cases 633, the Privy Council at page 639 observed:

Learned Chief Justice puts it in most concise way when it says that the statute taxes instrument and does not tax transactions.

In that case the Privy Council was dealing with a gift which was no made by an instrument in writing and as such it was held that as no transaction was effected by any document, no stamp duty was payable.

33. The aforementioned decision was followed by Andhra Pradesh High Court in Bharpet Mohammad Hussain Saheb and Another Vs. District Registrar, Kurnool, wherein it was held:

Another principle that is to be borne in mind in the context of this enquiry is that it is the instrument that is presented for registration that should be taxed. We cannot read a number of documents to see if a particular transaction is spread over all these instruments. We have to take into account the nature of the document that is sought to be taxed."

Learned Judges also observed:

"It is plain from this statement of law that it is only the instrument that is presented for registration that should be charged with stamp duty. The authorities cannot look into the various documents that are connected with it with a view to judge the nature of the transaction that is covered by this document read in conjunction with several Ors. . That being the legal position, there will be no warrant for taking into consideration several connected instruments with a view to judge the character of the transaction evidenced not by one document but all of them put together.

34. In Nanak Chand v. Fattu, reported in AIR 1935 Lah 567, a Special Bench of Lahore High Court also followed the case of Minister of Stumps v. Annie Quayle Townend (supra) and stated the law thus:

If therefore a document is so worded that it expressly, or by necessary implication comes within a particular provision of the Act, it must be stamped accordingly. But the implication must arise from the phraseology used in the document, and not be a matter of legal inference or presumption. An implication of law does not involve liability to duty, though it may give rise to certain legal obligation.

35. In Superintendent of Stamps Vs. Breul and Co., Stone C.J. while interpreting Article 43 of Schedule I of the said Act held that the instrument and not transaction attracts duty.

36. In New Central Jute Mills Co. Ltd. and Others Vs. The State of West Bengal and Others, the Supreme Court was considering a matter as to whether a document was executed in Uttar Pradesh but registered in Anr. province, the stamp duty would be payable as per the law of former province or the latter province.

37. Mr. Sreenath Singh, therefore, contends that as the duty would be payable only on the instrument and not on transaction, Entry 44 of List III of the Seventh Schedule of the Constitution of India must be construed as such. The submission of the learned Counsel cannot be accepted. The decision relied upon by the learned Counsel was noticed hereinbefore has no direct application on the facts and circumstances of these cases.

38. As indicated hereinbefore, learned Counsel in support of his aforementioned contention strongly relied upon the decision of The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., and drew our attention to paragraphs 17 to 19 thereof. In that case the Supreme Court while interpreting the word ''sale of goods'' occurring in Entry 48 of List II of the Seventh Schedule of the Constitution of India held that as the expression "sale of goods" is a term of well recognised legal import in the general law relating to sale of goods, the legislative practice relating to that topic both in England and in India, it must be interpreted in Entry 48 as having the same meaning as in the Sale of Goods Act.

39. In my opinion Entry 44 should be given a wide meaning as by reason thereof both the Parliament as also the State Legislature had been given the power to enact law relating to stamp duty which is an expression of wide import. Legislation on stamp duty includes a provision to check for evasion thereof and in that process may also include the procedural provision for plugging the loopholes.

The provisions of Stamp Act provides for the manner in which the evasion of duty has to be prohibited.

40. In AIR 1971 1070 (SC) , the Supreme Court while considering the provisions of Section 35 of the Stamp Act held

Section 35 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. ''Instrument'' defined in Section 2(14) as including every document by which any right of liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.

41. In-the State of Tamil Nadu v. T.N. Chandrasekharan, reported in AIR 1974 Mad 117 the Division Bench held:

We agree with him that stamp duty is a duty on an instrument as defined in the Stamp Act, and that this concept as to the character of the duty is in accordance with the British and Indian Legislative Practice and the scope of Entry 44 in List III of the Seventh Schedule to the Constitution, to wit "stamp duty other than the duties or fees collected by means of judicial stamp, but not including rates of stamp duty." But we cannot agree with him that the substitution made by the Amending Act has altered the character of the duty while stamp duty is a charge on the instrument which by itself is the taxable event, the measure of the charge may be fixed or ad valorem.

It was further held-

Section 27 of the principal Act requires facts affecting duty to be set forth in the instrument. If the value of the property is understood, Section 64 makes it an offence punishable with fine. But on that account an instrument will not become void, nor is it rendered inadmissible in evidence. The Amending Act, in order to check evasion requires, by the substitution complained against market value to be mentioned in the instrument of conveyance, gift, or partition as the basis for measure of the extent of liabilities or quantum of stamp duty with which such instrument is chargeable and provides for determination of the true market value where it is suspected to be understated and right of appeal, to Court by an aggrieved party. We are already of opinion that the amendment to that effect has not shifted the chargeable event from an instrument to market value, and the duty after the Amending Act is still on the instrument, and not on the market value and more than consideration mentioned therein We hold that the Amending Act is within the competence of the State Legislature.

(underlining is mine)

It was also observed:

Even so, we are inclined to think that the object of the Amending Act being to avoid large scale evasion of stamp duty, it is not meant to be applied in a matter of fact fashion and in a haphazard way. Market value itself, as we already mentioned, is a changing factor and will depend on various circumstances and matters relevant to the consideration. No exactitude is, in the nature of things possible. In working the Act, great caution should be taken in order that it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist, which suggest fraudulent evasion. Even in such a case, we trust that dispute will not be raised for petty sums, unless the difference is considerable or sizeable and it appears patent that the amount mentioned in the document is a gross undervalue, no disputation as to value is expected to be started.

42. In Kaka Singh Vs. The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another, , it was held as follows:

15. u/s 47-A, the Collector has the power to determine whether a particular document which is presented for registration is undervalued with a view to evade payment of stamp duty. For this purpose, he would be entitled to take into account the minimum prescribed by Rule 341 as a circumstance. But the minimum laid down in the Rule is not conclusive or determinative of the controversy. However, as stated above, this can be considered along with Ors. .

43. Section 47A inserted in Uttar Pradesh appears to be in pari materia with the provisions of Section 47-A as amended by Bihar Act No. 15. of 1988.

44. In fact Section 47A as amended in Uttar Pradesh empowers the registering authority appointed under the Indian Registration Act, to refer a matter in the event he finds that the market value of any property which is the subject matter of any instrument is less than even the minimum value determined in accordance with the Rules under the said Act to the Collector for determination of the market value of such property for the duty payable thereupon.

45. It appears that similar amendments have been carried out in the States of Andhra Pradesh, Haryana, Himachal Pradesh, Madhya Pradesh, Meghalaya, Orissa, Rajasthan, Tamil Nadu, Goa, Daman and Diu also. It therefore, appears that although normally the consideration stated as market value in the instrument should be taken as reflecting the correct value unless the circumstances exist suggesting fraudulent evasion, but where the parties deliberately undervalue the properties with a view to defraud the Government, the provisions of Section 47-A would be attracted.

46. In Sitaram and Others Vs. The State of Madhya Pradesh, , the Madhya Pradesh High Court while dealing with Section 47A of the Stamp Act as inserted by M.P. Act No. 8 of 1975 held that the said provision is prospective in nature. In that case it was held:

Once an instrument has been registered the Sub-Registrar is not empowered to make reference to the Collector of the Stamps in regard to undervaluation in respect of the instrument which was registered prior to coming into force of the

Amending Act, 1975.

47. In Collector of Nilgiris at Ootacamund v. M/s. Mahavir Plantations Pvt. Ltd., reported in AIR 1982 Mad 138, a learned single Judge of the Madras High Court held that the object of Section 47-A is to neutralise the effect of the undervaluation of the property. The learned Judge held:

I, however, reject the contention as untenable although the expression ''market value'' has now come to assume a definite juridical meaning and is not to be dismissed as a vague term, regard must be paid by a court of construction to the context in which that expression is employed in the given statute. The learned Additional Government Pleader suggested that the usual lest adopted by Courts or law in land acquisition cases of the market value being the price which is paid by a ''willing buyer and a ''willing seller'' is the very conception which is to be found in the Explanation to Section 47 A, when it refers to the price which the property would fetch or would have fetched, if sold in the open market. In a loose sense, the Additional Government Pleader may not be far wrong. But I must observe that the imagery of a ''willing buyer'' and a ''willing seller'' has been adopted by Courts of law in land acquisition cases only because the acquisition thereunder is under legal coercion and the property owner to whom compensation is to be given on the basis of market value is almost always an unwilling party. It is only in that context that courts have uttered the homily that the market value must be determined on the basis of a willing buyer and a willing seller. This they have said notwithstanding the additional provision in Section 23 of the Land Acquisition Act that over and above the market value, solatium at 15% percent of the market value should also be paid to the person deprived of his property solely for the element of compulsoriness in the acquisition.

The learned Judge further held that market value in land acquisition proceeding cannot be the sole basis for determining the market value.

48. In Anglo American Direct Tea Trading Co. Ltd. and Another Vs. State of Madras and Others, , Section 47-A of the Stamp Act as amended in the State of Tamil Nadu fell for consideration. A learned Single Judge observed the scheme of Section 47-A of the Act is to deal with those cases where private parties by arrangement deliberately undervalue the property which is the subject matter of a transfer with a view to defraud the Government of legitimate revenue by way of stamp duty.

49. It is now well known that the entries of a Schedule have to be construed in the same manner as that of the provisions of the Constitution.

In Tata Iron and Steel Co. Ltd. Vs. The State of Bihar and Others , it has been held as follows:

Further, now it is well known that Entry in the List of the 7th Schedule of the Constitution has to be given a broad meaning (See M/s. Ujagar Prints v. Union of

India and Ors. reported in AIR 1989 S.C. 516), wherein the law has been laid down. in the following terms

Entries to the legislative Lists, are not sources of the legislative power but are merely topics or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression "with respect to" in Article 246 brings in the doctrine of "pith and substance" in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the legislation, looked at as a whole, is substantially with respect to the particular topic of legislation. If the legislation has substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic.

50. The constitutionality of statute would depend upon the legislative power conferred in this regard by the Constitution. Entry 44 of List III of 7th Schedule of the Constitution of India refers to stamp duty other than the duty of fee collected by means of judicial stamps but not including rates of stamp duty. The power to legislate on stamp duty is thus a wide one and should be construed as such. The said words, in my opinion, not only carry with them all the powers to realise stamp duty on instrument as also the procedure therefore which would necessarily include the power to stop evasion of payment of stamp duty. The legislature, therefore, must be held to have power to make legislation covering the entire field of stamp duty. As indicated hereinbefore several High Court''s decisions referred to hereinbefore have also categorically held that Such provisions have been enacted in order to neutralise the effect of under-valuation in an instrument. For the reasons aforementioned, in my opinion, it has to be held that Section 47-A of the Stamp Act as amended in the State of Bihar is within its legislative competence.

51. As noticed hereinbefore, the second contention of Mr. Shree Nath Singh is that Section 47-A of the Act is ultra vires Article 14 of the Constitution of India. It is true that by reason of the amendment carried out in the year 1991 the words "he shall register it" were deleted from the earlier provisions. But such a provision, in my opinion, cannot be held to be wholly unreasonable so as to attract the wrath of Article 14 of the Constitution of India.

52. As noticed hereinbefore, the object and reasons for enacting the aforementioned provisions is to check evasion of stamp duty. As held hereinbefore that Entry 44 of List III of the 7th Schedule of the Constitution of India has to be construed in widest possible terms and thus the same must be held to include a power of enacting a legislation covering the field of evasion of payment of stamp duty. Only because in some cases a deed of conveyance is executed for a specific purpose or has been executed as an emergent measure, it cannot be said that the provisions of Section 47-A of the Act whereby the registering authority has been empowered to send the instrument to the Collector before registering the same cannot be said to be wholly unreasonable

inasmuch as the said action is taken only in a case where the registering Authority has ''reason to believe'' that the valuation shown in the instrument is far below the market value of the property.

53. The grievance of Mr. Shree Nath Singh to the effect that Registrar under the Act being the District Magistrate hardly gets lime to dispose of such a reference, must be rejected outright in view of the fact that every statute is presumed to be constitutional. It is expected that every statutory authority shall perform his duties in accordance with law. However, in a case where the statutory authority fails and/or neglects to perform his statutory duty, it is always open to an aggrieved person to move the higher court as also invoke the writ jurisdiction of this Court so as to compel the statutory authority to per-form his duty within a reasonable time. It is now well known that a provision conferring discretionary power cannot be struck down only on apprehension of its being misused. (Sec Sukumar Mukherjee Ors. Vs. State of West Bengal and another,).

Mr. Singh further contended that the registering authority has inherent duties to register a document although according to him the valuation of the property sought to be transferred in the instrument does not reflect the market value cannot be accepted. If the instrument itself is registered and then impounded for payment of proper stamp duty, in many cases, the purpose thereof may be frustrated. In any event, in my opinion, only because prior to amendment carried on in 1991 Amending Act the registering authority had to register the document before sending the file to the Collector cannot be held to mean that the Legislature although has the jurisdiction or power to legislate, would be denuded from exercising the said power.

54. The next contention of Mr. Shree Nath Singh is that by reason of the said provision, the executive has been made a final arbitrator of the matter who may not take into consideration the judicial aspect of it. I am also not impressed by the aforementioned submissions inasmuch as the Collectors have been empowered to carry out the functions of a Registrar under the Indian Stamp Act for a long time. Further under various statutes, the Collector of the district has been conferred with the judicial functions. There also exists a provision of appeal.

55. It has further been contended that whereas in Section 47-A of the Act the Registering Authority has been conferred with wide discretionary power, inasmuch as the Legislature has used the word ''may''. Rules 8 and 9 are couched in mandatory terms inasmuch as the word ''shall'' has been used therein. It is now well settled principle of law that while interpreting the Act and the Rules, both should be construed harmoniously: The task of interpretation of statutory enactment is not a clerical or arithmetical task. It is more than a mere reading of mathematical formula because few words possess the precision of mathematical symbols. It is now well known that the employment of the word ''may'' or ''shall'' for denotation as to whether the same are directory or mandatory in nature is not conclusive. The registering authority has been enjoined with a statutory duty to refer the matter to the Collector only in the

event he comes to a conclusion that consideration mentioned in the instrument does not reflect the true market value of the property. In such a case, even if a discretion has been conferred upon the statutory authority, but, if such a discretion is coupled with a duty it must be held to be mandatory, (See Julius v. Bishop of Oxford reported in (1880) App Cases 214).

56. The registering authority is not merely to act as a Post Office. He has to apply his judicial mind and consider as to whether the market value of the property which is the subject matter of such instrument has not rightly been set forth therein. He must have a reason to believe therefore which can be subject to scrutiny by the Registrar under the Act and the higher authority as also in appropriate cases by this Court. The words "reason to believe" are significant. In a given case, the higher authority as also this Court can determine as to whether the registering authority had reason to believe that instrument was under-valued. In any event, if the Collector or the Appellate Authority comes to the conclusion that a market value stated in the instrument is correct, he may immediately direct the registering authority to register the documents.

57. In this view of the matter it cannot be said as has been contended by Mr. Shree Nath Singh that the registering authority has merely become a post office.

58. Mr. Shree Nath Singh submitted that whereas the Act provides for determination of market value, Rules throw away the object thereof, appears to have some substance. By reason of S.O. No. 35 dated 9th July, 1993, published in Extraordinary Bihar Gazette dated 9th July, 1993, Rule 5 has been amended. In terms of the aforementioned Rule, the District Collector for his own information is required to obtain from the concerned Registering Officer the figure relating to five conveyances of the highest value of every category of land/ property situated within each Halka of every Revenue Circle and ward of the Notified Area/Municipality/Corporation that has been registered or presented for registration in the preceding financial year. In terms of Sub-rule (2) of Rule 5 aforementioned, the average value of conveyances of highest value should be deemed to be the minimum value of the land of that category in that area and shall be so fixed. Proviso appended to the said Rule states that if less than five conveyances or no conveyance of land/property of that category of that particular area has been registered/ presented for registration in the preceding financial year, the Collector shall fix the same after obtaining the market value of the land with minimum value of the laud as pertaining to similar category of land or shall fix minimum value of the land on the basis of the land price in the adjoining area.

59. The said Rules thus exclude adduction of any evidence on the part of the parties to the transaction with regard to the market value of the property.

60. In my considered opinion as the market value cannot be a fixed sum and further keeping in view the objects of the reason of Section 47-A of the Act, it must be held that conferring any power upon any authority to fix the market

value of any property cannot be brought within an inflexible rule as determination of the market value of the property is a judicial act.

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. For the purpose of determination of the market value of any property situated within a Halka or at a revenue circle in rural area or ward of Notified Area/Municipality/ Corporation cannot be determined in mathematical exactitude. In fact, determination of proper market value of any property is a difficult task. The Supreme Court has been laying down the criteria for determining the market value of a property in terms, of Section 23 of the Land Acquisition Act from time to time. It is now well known that in determining the market value of a property acquired under the Land Acquisition Act some guess work may also become inevitable in some cases.

The Supreme Court in many decisions said that normally the valuation reflected in a sale deed whereby the transfers have been made of the land similarly situated is the best guide but the Court can take judicial notice of the fact that such deeds of sale are often not available. The Courts have also found in number of cases that regard being had to the peculiar feature of the property, a deed of sale executed in relation to a land situate in a neighbouring area or a neighbouring locality may not be held to be decisive for determination of the market value of the land in question. In cases where market value of the land in question has to be ascertained by a Court or Tribunal, parties are entitled to adduce their respective evidences, not only by producing the deeds of sale but also by bringing on record relevant materials, namely, the locate of the land, the potential value thereof, the area, existence of any tree, well or structure, facilities of irrigation on the land if the same is agricultural or horticultural in nature and many more factors. The State, therefore, while framing Rule 5 could not have framed an inflexible rule in terms whereof not only the parties but also the Collector under the Act shall be bound. Such an inflexible rule as laid down in Rule 5 of the said Rules makes a mockery of determination of market value by an authority who is required to discharge judicial function. At the cost of repetition; it may be reiterated that laying down an inflexible rule is opposed to the norms of exercise of judicial power inasmuch as a Court or a Tribunal exercising judicial function has to apply its mind to the correct decision with regard to the matter at issue. Thus while determining the market value of a property all relevant factors have to be taken into consideration.

61. By way of example, I may mention that the market value of a property in a part of the locality of a ward cannot be the same to the area located in the other parts of the same locality. The market value of a properly is further dependent upon many factors.

Market value of a property situated on a road side of a busy market area cannot be the same as that of the property which is situated on the back side thereof and the ingress and egress therefrom may be by a small lane where even a car cannot enter, although located in the same area.

62. In Kulkarni M.G. and Ors. v. State of Karnataka and Ors., reported in 1984 (2) KLJ 341, a learned Single Judge of Karnataka High Court was considering the provision of Section 45-A of the Stamp Act as amended by Karnataka Stamp (Amendment) Act, 1975 (Karnataka Act 12 of 1975).

63. The learned Judge, inter alia, observed that although the term ''market value'' of the property has not been defined, Sub-section (5) of Section 45-A thereof seeks to achieve the said purpose. It was held that the Deputy Commissioner has no jurisdiction to issue notification fixing criteria for determination of the market value of the properties.

64. The learned Judge further quoted with approval the decision of the Judicial Committee in Raja Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatnam (66 Indian Appeals 104) dealing with a case of award of compensation for a land acquired under the Land Acquisition Act of 1894, the concept of market value thereto u/s 23 of that Act that there is nothing like a general market value for immovable properties and referred to the decision in the Special Land Acquisition Officer v. Veerbhadrapa reported in ILR 1984 (2) Kar 41 and held:

What emerges from these cases is that there is nothing like a general market value of immovable properties in a city or a locality and the same cannot be pre-determined on any notional or hypothetical consideration and the market value of the particular property has necessarily to be fixed on a particular date with due regard to the factors enumerated in the statute. From this it follows that the general market value fixed by the D.C. which is not authorised by Section 45A of the Act or the Rules and in derogation of them, unnecessarily restricting the power of the Registering Officers as also his own determination to be made as and when a case arises before him, is without jurisdiction and illegal.

The learned Judge also observed:

The specification of proper stamp duty in the instrument and payment of proper stamp duty thereon, with which alone the Act is concerned, has no concern with the consideration specified in the instrument their payment or non-payment between the parties to the instrument. The Act does not concern itself with the consideration paid or payable between the parties to the instrument. The source from which the consideration is paid or the source to which the consideration is paid or the person to whom it is paid, the object with which it is paid have no relevance to the determination of market value of the property and the stamp duty payable thereon under the Act. In the case of a gift of immovable property made out of love and affection only and not for any monetary consideration, the above position can hardly be doubted.

65. I respectfully agree with the law laid down in the aforementioned decision.

Further, if Rule 5 of the Rules as amended in the year 1993 is given effect to, the same shall render Sub-section (2) of Section 47-A as also other rules absolutely otiose.

In case Rule 5 of the Rules is applied, the question of holding of any enquiry for the purpose of determining the market value of the property upon giving an opportunity to the parties to file a representation as also the detailed procedures laid down for holding such enquiry lose all justification.

A Rule, as it is well known, cannot prevail over an Act, nor the same can be read in such a way which would render other provisions therein completely redundant.

Further if Rule 5 is given its full effect, in many of the cases, the provision for appeal also would become nugatory, as the appellate authority can interfere only in a case where the market value has been determined by the Collector without considering any sale deed in an arbitrary manner or only in a case when there does not exist any sale deed at all.

In this view of the matter Rule 5 of the Rules has to be declared ultra vires Article 14 of the Constitution of India.

66. A question which may be raised is as to why Rule 5 cannot be read down so as to uphold its constitutionality. The answer to the aforementioned question is to be found in a decision of the Supreme Court in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, wherein Ray, J. has observed as follows:

This however, does not under any circumstances mean that where the plain and literal meaning that followed from a bare reading of the provisions of the Act, Rule or Regulation that it confers arbitrary, uncanalised, unbridled, unrestricted power to terminate the services of a permanent employee without recording any reasons for the same and without adhering to the principle of natural justice and equality before the law as envisaged in Article 14 of the Constitution cannot be read down to save the said provision from constitutional invalidity by bringing or adding words in the said legislation such as saying that it implies that reasons for the order of termination have to be recorded.

Sawant, J. also observed as follows:

.... However, when the provision is cast in a definite and unambiguous language and its intention is clear it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the Court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires to amend it.What is further, if the remaking of the statute by the Courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires an extensive additions and deletions. Not only it is not part of the Court''s duty to undertake such exercise, but it is beyond its jurisdiction to do so.

(the underlining is mine for emphasis)

67. It may further be noticed that Rule 3 states that it shall come into force on such date as the State Government may by notification in the Bihar Gazette appoint. Despite the said argument advanced by Mr. Ambastha, one of the learned Counsel appearing on behalf of the Petitioners, no notification has been produced before us to show that any appointed date has been fixed by the State of Bihar not only in relation to the original rule but also the amended Rule 5. In this view of the matter too, we have no other option but to hold that the Rules have not come into force.

68. As in terms of the provisions contained in Section 47-A of the Act as amended by Indian Stamp (Bihar Amendment) Act, 1991, the market value has to be determined only in terms of the Rules prescribed therefor, the Collector cannot determine the market value in absence of the rule. In this view of the matter, it has to be held that the orders passed by the registering authority in different writ applications cannot be sustained.

69. For the reasons aforementioned, these applications are allowed in part and to the extent mentioned hereinbefore but in the facts and circumstances of the case, there shall be no order as to costs.

R.N. Prasad, J.

70. I agree.

