(1991) 10 AHC CK 0025

Allahabad High Court

Case No: C.M.W.P. No. 678 of 1990

Jugal Kishore		APPELLANT
	Vs	
State of U. P., Lucknow and others		RESPONDENT

Date of Decision: Oct. 30, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226
- Stamp Act, 1899 - Section 47

Citation: AIR 1992 All 194 : (1991) 2 AWC 619 : (1992) RD 41

Hon'ble Judges: R.K. Gulati, J; A.N. Varma, J

Bench: Division Bench

Advocate: Mr. Swami Dayal, for the Appellant;

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

A.N. Varma, J.
This group of petitions raising identical issues are being disposed of by a common judgment. The simple point urged in support of the petition is whether the Collector while purporting to act under sub-section (4) of Section 47-A inserted in the Stamp Act, 1899 by State legislature has power to impose penalty on the ground that the Stamp Duty paid on the instrument in question was insufficient i.e. instrument is under-valued. So far as this question is concerned, the same must be answered in favour of the petitioners in view of the provisions of the Stamp Act as applicable in this State. Sub-section (4) of Section 47-A of the Stamp Act provides:

"The Collector may, suo motu, or on a reference from any court or from the Chief Inspector of Stamps, Uttar Pradesh, or any officer of the Stamp Department of the Board of Revenue, within four years from the date of registration of any instrument of

conveyance, exchange, gift settlement, award or trust, not already referred to him under sub-section (1) or sub-section (2), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property, which is the subject of conveyance, exchange, gift, settlement, award or trust, 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 truly set forth in the instrument, he may determine the market-value of such property and the duty payable thereon in accordance with the procedure provided for in sub-section (3). The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty."

2. Under this provision, the Collector has been authorised either suo motu or on a reference from any Court or from the Chief Inspector of Stamps or any officer of the Stamp Department of the Board of Revenue, within four years from the date of registration of the instrument of conveyance etc. to call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value for the property as reflected in that instrument, and if it does not, to determine the market value of such property. If the Collector upon such examination finds that the duty payable thereon in accordance with procedure provided for under sub-section (3) of Section 47-A, is more than the duty paid by the petitioners and he has reason to believe that the instrument does not reflect the market value of the property conveyed thereunder, truly and correctly, he may himself determine the market value and, thereafter, the difference of the duty payable by the parties can be realised from them.

3. In the present case, it appears that in the purported exercise of powers, the Additional District Magistrate, Finance came to the conclusion that the instruments in question did not truly and correctly set forth the market value of property and consequently directed the petitioners not only to pay the differences but a penalty on each of the petitioners of varying amounts.

4. From a mere glance at sub-section (4) of the Section 47-A it is apparent that the Collector (A.D.M. Finance in the present case) does not have any power of to impose penalty in these proceedings. We are fully fortified in the opinion that we disposed to take by a Bench decision of our Court in the case of Kaka Singh Vs. The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another, The Bench has ruled that Section 47-A does not empower the Collector to impose penalty even if he finds that the market value was not truly set forth in the instrument.

5. It is worthy of note that while enacting Section 47-A, the legislature did not authorise the Collector to impose any penalty. Under this provision the only power vested in the Collector was to determine the market value of the property and if he finds that the duty paid on the instrument in question is less than that payable on the correct market value of the property, he may order that the difference may be realised from the party to the instrument.

6. With respect, we entirely agree with the above dictum and hold that the impugned orders passed by the Additional District Magistrate, Finance passed in each of the these cases are in so far as the imposition of penalty on the petitioners is concerned, wholly beyond the jurisdiction of the Additional District Magistrate, Finance and hence liable to be quashed.

7. Learned counsel for the petitioner next submitted that the orders passed by the Additional District Magistrate, Finance are also unsustainable on merits. It is urged that the Additional District Magistrate, Finance has adopted an artificial circle rate for determining the market value of the property. The circle rates relied on by the Additional District Magistrate, Finance, it is urged, did not truly and correctly represent the correct market value of the property.

8. We are for the present expressing no opinion on this contention as in our opinion the petitioners have an effective alternative remedy available to them by way of approach to the Chief Controller Revenue Authority. Under sub-section (2) of Section 56 of the Stamp Act, the Chief Controlling Revenue Authority has been authorised to look into all such matters and pass appropriate orders. A revision is maintainable against the impugned orders. The remedy is effective and indeed appropriate in the present case. We are of the view that for deciding the issues sought to be raised in regard to the valuation of the properties in question, Chief Controlling Revenue Authority would be a more appropriate forum as the issues require determination of disputed questions of fact, which can be more effectively undertaken by the Chief Controlling Revenue Authority in a revision. As however, the petitions have been pending in this Court for a long time, the Chief Controlling Revenue Authority may not reject the petitioners" revision on the ground of delay if the same are submitted within six weeks from the date on which a certified copy of this order is ready for delivery.

9. In the result, the petitions succeed and are allowed in part. The impugned orders insofar as the imposition of penalty on each of the petitioner is concerned are quashed. The determination of the market value of the properties and the amount recovered from the petitioners on that basis is however, left untouched to be undertaken by the Chief Controlling Revenue Authority in the revision proposed to be filed by the petitioners. We further direct that if the petitioners submit the revisions within six weeks from the day the certified copy is made available to the petitioner the Chief Controlling Authority may entertain the same and dispose of them on merits in accordance with law overlooking the delay in filing the same. No order as to costs.

10. A copy of this judgment may be given to the learned Counsel for the petitioners on payment of usual charges by 11th November, 1991.

11. Petitions partly allowed.