

Keshav Prasad Singh Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: Sept. 12, 2013

Citation: (2013) 9 ADJ 38 : (2013) 101 ALR 305 : (2013) 121 RD 280

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: Indra Raj Singh, for the Appellant;

Judgement

Arun Tandon, J.

Petitioner before this Court seeks a writ of mandamus declaring the U.P. Stamp (Valuation of Property) (Second

Amendment) Rules, 2013 (hereinafter referred to as the Rules, 2013) as ultra vires of Article 14 of the Constitution of India and a writ of certiorari

for quashing the annual valuation list issued by the Collector/District Magistrate, Azamgarh with reference to the aforesaid Rules, 2013. Counsel

for the petitioner submitted that vide Rules, 2013 the earlier Rules on the subject have been amended and the Collector has now been conferred a

power on yearly basis to fix the minimum value of the properties both agricultural and non-agricultural. According to the petitioner the Rules do not

lay down sufficient guidelines in the matter of such determination of the minimum value and further since no appeal or revision has been provided

against such determination, the Rule is rendered arbitrary and, therefore, violative of Article 14 of the Constitution of India. For the proposition,

counsel for the petitioner has placed reliance upon the judgment of the Apex Court in the case of Krishna Mohan Pvt. Ltd. Vs. Municipal

Corporation of Delhi and Others, .

2. I have heard Shri Indra Raj Singh, counsel for the petitioner and the learned Standing Counsel on behalf of the department.

3. The U.P. Stamp (Valuation of Property) Rules, 1997 as amended in the year 2013 have been framed by the Governor of the State in exercise

of powers under Sections 27, 47A and 75 of the (Indian) Stamp Act. The said sections read as follows:

27. Facts affecting duty to be set forth in instrument.--(1) The consideration (if any) and all other facts and circumstance affecting the chargeability

of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

(2) In the case of instruments relating to immovable property chargeable with an ad valorem duty on the value of the property, and not on the value

set forth, the instrument shall fully and truly set forth the annual land revenue in the case of other immovable property the local rates, Municipal or

other taxes, if any, to which such property may be subject and any other particulars which may be prescribed by rules made under this Act.

47-A Undervaluation of the instrument.--(1)(a) If the market value of any property which is the subject of any instrument, on which duty is

chargeable on the market value of the property set forth in such instrument, is less than even the minimum value determined in accordance with the

rules made under this Act, the registering officer appointed under the Registration Act, 1908 shall, notwithstanding anything contained in the said

Act, immediately after presentation of such instrument and before accepting it for registration and taking any action u/s 52 of the said Act, require

the person liable to pay stamp duty u/s 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance

with the said rules and return the instrument for presenting again in accordance with Section 23 of the Registration Act, 1908.

(b).....

(c).....

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in clause (a) and presents the instrument

against for registration, the registering office shall, before registering the instrument, refer the same to the Collector, for determination of the market

value of the property and the proper duty payable thereon.

(2) On receipt of a reference under sub-section (1) the Collector shall, after giving the parties a reasonable opportunity of being heard and after

holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the

subject of such instrument and the proper duty payable thereon.

(3) The Collector may, suo motu, or on a reference from any Court or from the Commissioner of Stamps or an Additional Commissioner of

Stamps of a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the State Government in that

behalf, within four years from the date of registration of any instrument on which duty is chargeable on the market value of the property, 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 property which is the subject for 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 truly set forth in such instrument, he may determine the market value of such property and the

duty payable thereon.

75. 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.

4. From a simple reading of the aforesaid sections, it is apparently clear that Section 27 provides for levy of stamp duty ad valorem on the value of

the property and not on the value set forth in the instrument and provides for the factors to be taken into consideration for the purpose.

5. Section 47-A confers a power upon the registering authority to ensure that if the market value of the property as disclosed in the instrument

chargeable to duty thereon is less than even the minimum value determined in accordance with the rules made after presentation of such instrument

to require the person liable to pay the duty which is found to be deficient on the basis of minimum value determined in accordance with the said

Rules.

6. Section 47-A(d) provides that if any person does not make the payment as aforesaid on the notice being received by the Registering Officer, the

matter is to be referred to the Collector for determination of the market value of the property and the duty payable thereon. Thereafter the

Collector u/s 47-A(2) is obliged to afford a reasonable opportunity of being heard to the person concerned before actually determining the market

value of the property which is the subject of the instruction.

7. Section 47-A(3) confers suo motu power upon the Collector to determine the market value and the amount of duty payable on an instrument.

The (Indian) Stamp Act confers a power of revision against such orders of the Collector as well as a power of appeal u/s 56(1) and Section 56(1-

A) respectively.

8. Section 75 of the (Indian) Stamp Act confers the power to make the rules for carrying out the purpose of the act. It is with reference to these

statutory provisions that the Collector has been conferred a power under the Rules, 2013 to determine the minimum valuation per hectare/per sq.

mtr. of agricultural and non-agricultural land alongwith construction of non-commercial building.

9. Under the Rules detailed guidelines have been provided in the matter of fixation of such minimum market value. For the agricultural land

classification of soil, proximity to road, market, bus station, location with reference to its situation in urban area, potentiality have to be taken into

consideration. Similarly, in the case of non-commercial building location of the building, kind of construction and the value of the building has to be

taken into consideration. In respect of commercial building nature of economic activity alongwith prevailing rent in the locality has to be taken into

consideration. Further Clause 4(2) of the Rules, 2013 confers a power upon the Collector earlier suo motu or an application made to him in this

behalf, on being satisfied about the in-correctness of the minimum value of the land or of the construction of the building of minimum rent etc. fixed

to revise the same within a period of one year.

10. This Court may record that the provisions so incorporated are comprehensive in nature. Sufficient guidelines have been laid down for such

fixation with a further right to object to the minimum value so determined both at the stage when such determination is notified and individually

when a case u/s 47-A is initiated pointing out deficiency in the stamp duty.

11. In view of the aforesaid statutory provisions and there being no challenge to the power of the State Government to frame Rules u/s 75 for the

purposes of carrying out the Act, the challenge made is found to be without substance and therefore, rejected.

12. Reliance placed by the counsel for the petitioner upon the judgment in the case of Krishna Mohan Pvt. Ltd, (Supra) appears to be completely

misplaced and based on non consideration of the provisions as were under consideration before the Apex Court. The judgment is clearly

distinguishable.

13. The Apex Court in the case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , has held as follows:

It is well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

The said judgement has been followed by the Apex Court in the case of Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and

Another, .

For the said reasons recorded, this writ petition is dismissed.