

(2005) 10 AHC CK 0137

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 10944 of 2002

Rais Ahmad

APPELLANT

Vs

The Commissioner, Allahabad
Division, Additional Collector and
Sub Registrar I

RESPONDENT

Date of Decision: Oct. 24, 2005

Acts Referred:

- Stamp Act, 1899 - Section 47A, 47A(1), 47A(2), 47A(3), 47A(4)
- Stamp Rules - Rule 340, 340(3), 341, 346, 347

Citation: (2006) 2 AWC 1496 : (2006) 1 RD 167

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: Haider Hussain, for the Appellant; C.S.C., for the Respondent

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

Heard learned counsel for the parties.

2. This writ petition is preferred against the order of reference dated 22.11.1999 made by the Sub-Registrar I, Chail, Allahabad and orders dated 29.4.2000 and 10.9.2001 passed by the Additional Collector, Sadar, Allahabad and the Commissioner Allahabad Division, Allahabad respectively appended as Annexures 2, 3 and 5 respectively to the writ petition.

3. The case of the petitioner is that one Hint Lal resident of Mundera Bazar. Allahabad was the owner of House No. X (New No. 12), Bara situate in the New Market, Bamrauli, Pargana & Tehsil Chail, Allahabad. He executed a registered sale-deed on 28.11.1994 in favour of the petitioner Rais Ahmad for a sale consideration of Rs. 3,60,000/- and paid Rs. 66,000/- as stamp duty on the valuation of Rs. 4,55,000-. The sale-deed executed was in respect of a construction said to be

45 to 50 years old consisting of 4 Kotharies 8 feet X 8 feet; one thatched (Khaprail) verandah 10 feet X 15 feet; 2 thatched (Khaprail) Kotharis 10 feet X 15 feet; and Latrine, Bathroom and Sehan. The annual assessment of the construction was Rs. 1320/-.

4. The Collector, Allahabad had fixed the market value at circle rate of the said property for the purposes of stamp duty and valuation of the property itself according to the rates given in Annexure 1 to the writ petition. According to the aforesaid notification appended as Annexure 1 to the writ petition though the value of the property at the circle rate of Rs. 600/- per square meter comes to Rs. 4 Lacs but the petitioner paid stamp duty on the valuation of Rs. 4,55,000 - in order to avoid any complication. The stamp duty paid on the valuation of Rs. 4,55,000/- was Rs. 66,000/-.

5. It is submitted by the learned counsel for the petitioner that after the sale-deed was executed the name of the petitioner was recorded in the revenue records in accordance with law after due publication in newspapers but no objection whatsoever was raised by the authority concerned. The Sub Registrar, however, made a Reference to the Collector for enquiry on 22.11.1999 after a gap of more than 4 years of the execution of sale-deed on wholly incorrect facts alleging that there was deficiency of Rs. 96,947.50p in the stamp duty without showing the valuation of the property and the stamp duty paid thereon showing a deficiency of Rs. 96,947.50p. It is urged that the Additional Collector, Sadar, Allahabad without issuing any notice to the petitioner and without inviting any objection or hearing the petitioner, approved the report of the Sub-Registrar on wholly irrelevant consideration without making any inquiry as required under Rules 340 (3), 341, 346, 347, 348, 349 and 350 of the Stamp Act and incorrectly mentioned in the order that notice was sent to the petitioner but he has not filed any objection. The petitioner has vehemently denied the allegations as wholly incorrect.

6. Aggrieved by the aforesaid order the petitioner filed a revision u/s 56 of the Stamp Act before the Commissioner, Allahabad Division, Allahabad wherein specific ground taken was that the sale-deed was executed on 28.11.1994 but the Reference was made on 28.11.1999, i.e., after a gap of more than 4 years. It was also a ground taken by the petitioner in the revision that no notice whatsoever was served upon him and the order was passed by the Collector without jurisdiction and without giving any opportunity of hearing to the petitioner. The petitioner also took a ground regarding valuation of the property at the circle rate of market value. The learned counsel for the petitioner has relied upon Section 47A of the Stamp Act as applicable in the State of U.P. which provides as under: -

The Collector may also, suo muto, 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 mentioned in Rule 340, call for and examine the instrument for the

purpose of satisfying himself as to the correctness of the market value of the property forming the subject-matter thereof and shall follow the same procedure as laid down in Rules, 347, 349, 350 and 351 and, after taking such action as may be necessary, return the instrument to the authority from which it was received.

7. On the basis of the aforesaid provisions of Section 47A as amended by Act No. 22 of 1998 w.e.f. 1.9.1998 it is urged that the Collector has failed to make any enquiry as required under the law. By amendment in Section 47A a proviso has been added as under: -

Provided that with the prior permission of the State Government and action under this Sub-section may be taken after a period of 4 years from the date of registration of the instrument on which duty is chargeable on the market value of the property.

8. It is further submitted by the learned counsel for the petitioner that in the instant case the Collector on the reference of the Sub-Registrar took cognizance after four years of the execution of the sale-deed but without obtaining any permission from the State Government and thus the reference as well as the order of the Collector is wholly illegal and without jurisdiction. Reliance in this regard has been placed on a Full Bench decision of this Court rendered in [Girjesh Kumar Srivastava and another Vs. State of U.P. and others](#), wherein it is held that the limitation of four years contained in Section 47A(4) applies to action which may be initiated by Collector and not to reference from any Court or authorities enumerated therein. Starting point of limitation is registration of instrument and Rule 346 cannot be read in isolation but has to be read with Rule 352. Rule 346 cannot change the meaning of Section 47A(4).

9. This point is dealt with in Paragraph 10 of the decision as under: -

10 There is no dispute from either side that the starting point of limitation is the date of registration of the instrument and the period of limitation is four years. According to learned Chief Standing Counsel if a reference from any Court or Commissioner of Stamps or Addl. Commissioner of Stamps" or a Dy. Commissioner of Stamps or any officer authorized by the Board of Revenue in that behalf is made within four years from the date of registration of the instrument, whether any action is taken by the Court or not, the proceedings would be within limitation. Shri Rajiv Joshi, learned counsel for the applicants has, on the other hand, contended that the limitation of four years is for the Collector to initiate action and the date on which a reference is made by a Court or authorities enumerated in the opening part of sub-section (4) of Section 47A is irrelevant. The question which arises for consideration is whether the period of four years qualifies the action of the Collector or the making of reference. Under Sub-section (1) of Section 47A the registering officer is required to make a reference to Collector before registering the instrument, while under Sub-section (2) a discretion has been given to him to register the instrument and then make a reference to the Collector for

determination of market value. In normal course of events this reference would be made immediately after registering the instrument and, therefore, the enquiry under Sub-section,(3) is likely to commence soon as the persons in whose favour the instrument has been executed would forthwith come to know about the reference and would be interested to get the matter concluded. In the first case the instrument "would remain unregistered and in the second case he will not get back the instrument after registration on account of it having been referred to the Collector. Therefore, in cases covered by Sub-section (1) and Sub-section (2) at least the factum of reference would be immediately known to the person in whose favour instrument has been executed and he is bound to take all proceedings expeditiously in order to secure his title or get the benefits of the instrument. Under Sub-section (4) power has been conferred on the Collector to call for and examine the instrument after it has been registered for the purpose of satisfying himself as to the correctness of the market value of the property which is subject of such instrument and the duty payable thereon. The action can be taken either suo motu or on a reference from any Court or any one of the authorities enumerated in the Sub-section. In our opinion, the language of the Sub-section shows that the period of four years qualified the action which may be taken by the Collector. If the interpretation suggested by learned Chief Standing Counsel was correct, the Sub-section would have read like this:

The Collector may, suo motu or on a reference from any Court or from the Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorized,by the Board of Revenue in that behalf made within four years from the date of registration of any instrument.

10. The learned Standing Counsel has denied the assertions made by the learned counsel for the petitioner and states that there has been an amendment in the Act by which the limitation is now eight years instead of four years and that the Collector has rightly accepted the auditors report for the purpose of market value. The provisions of Stamp Act do not empower auditors to determine market value or stamp duty payable under the Stamp Act.

CONCLUSIONS

11. u/s 47A of the Stamp Act as amended by Act No. 22 of 1998 the Collector was bound to make enquiry and also to give a finding on the market value of the property. He has merely referred to the audit objection in his order, which is no evidence of market value and has not applied his mind in f| determining market value of the property. The circle rate fixed under the Stamp Act is prima-facie evidence of market value of the area where the property is situated. No reasons have been given in the impugned order for holding market value above the circle rate. From the language of the Sub-section it is not possible to hold that the period of four years qualifies the reference made by the authorities of the Stamp Department and this question has been decided in the full Bench decision in Girjesh

Kumar Srivastava (Supra).

12. The mention in the impugned order that notice had been sent to the petitioner but no objection was filed appears to be incorrect. No notice or opportunity appears to have been given to the petitioner and the Collector has based his judgment on the audit report which was filed Subsequently, as such the impugned orders dated 29.4.2002, 10.9.2001 and the order of reference passed in violation of the principles of natural justice are liable to be set aside.

13. For these reasons the petition is allowed and the impugned orders are quashed. No order as to costs.