

P.P. Buildcon Pvt. Ltd. Vs Chief Controlling Revenue Authority

Court: Allahabad High Court

Date of Decision: April 24, 2014

Acts Referred: Constitution of India, 1950 " Article 226, 227

Stamp Act, 1899 " Section 27

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 " Section 143, 27(2)

Citation: (2014) 7 ADJ 663 : (2014) 106 ALR 35 : (2015) 1 AWC 482 : (2014) 124 RD 316

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: Anupam Kulshreshtha, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

Heard Sri Anupam Kulshreshtha, learned Counsel for the petitioner and learned Standing Counsel for the respondents.

The petitioner, a private limited company engaged in reality business, purchased half share in Plot No. 125Kha, area 3.056 hectare, situated in

Mauza Maholi, Tehsil and District Mathura, vide sale deed dated 27.6.2007. The consideration for the land purchased by it disclosed in the sale

deed was Rs. 26,25,000/- and it was registered as document No. 7881 of 2007. For the purpose of stamp duty, petitioner disclosed market value

of property as Rs. 30,25,000/-, over which stamp duty of Rs. 3,02,500/- was paid. The property was purchased from Smt. Urmila Devi Agarwal,

wife of Sri Ram Prakash Agarwal and Sri Ram Prakash Agarwal, son of Late Sri Kailash Chandra Ji Bindal, resident of 135, Krishnapuri,

Mathura.

2. Thereafter, vide report dated 23.10.2007, Assistant Commissioner, Stamp, Mathura, referred the document for determination of "true market

value" u/s 47-A(3) of Indian Stamps Act, 1899 (hereinafter referred to as "Act, 1899") observing that land in dispute was not agricultural but a

part of "Pushpanjali Upvan Awasiya Colony", wherein plotting for residential purpose was already going on and a layout plan for the land in

dispute was already got sanctioned from Mathura Vrindavan Development Authority (hereinafter referred to as "MVDA") on 29.5.2007 i.e. even

before execution of sale deed. Moreover, one small plot in disputed plot, measuring 372.28 sq. m. was already sold by seller on 30.8.2007 for

consideration of Rs. 9,30,700/-. MVDA, in layout plan, has sanctioned 58.31% of land for residential plotting and 4.92% for commercial plotting,

which clearly shows that land in dispute was wrongly valued treating it an agricultural land though it was not.

3. A notice was issued to the petitioner vide registering the matter as case No. 622/2007-08. The petitioner contested by filing objection dated

07.1.2008 stating that land was not declared non-agricultural u/s 143 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter

referred to as ""Act, 1950"" and therefore, it has rightly been shown in the sale deed as an agricultural land. The petitioner claimed that copy of

Khatauni of 1412-17 fasli was also filed alongwith objection. The respondent No. 2 passed order dated 31.12.2008 determining true market

value of property at Rs. 2,59,76,000/-, over which stamp duty of Rs. 25,97,600/- found payable and hence deficiency of stamp duty of Rs.

22,95,100/- was worked out. The petitioner was required to pay the same alongwith penalty of Rs. 2,60,000/- and interest from the date of

execution of sale deed till actual payment of deficient stamp duty and penalty. The petitioner preferred revision but the same has also been

dismissed by Chief Controlling Revenue Authority vide order dated 30.9.2013.

4. The petitioner claimed that before passing revisional order, his Counsel was not heard and restoration application was filed but the same was

also rejected by respondent No. 1 vide order dated 14.3.2014 observing that order was passed after hearing Counsel for the petitioner.

5. Sri Anupam Kulshreshtha, learned Counsel for the petitioner contended that on the date of execution of sale deed, land was shown- as

"agricultural land" in revenue record. There was no declaration u/s 143 of Act, 1950, hence, it was rightly disclosed to be an agricultural land and

respondents, in holding that it is not an agricultural land, have committed manifest error. He also contended that various relevant factor for

determining stamp duty have not been considered while determining alleged true market value and value determined by respondents is wholly

arbitrary, exaggerated, excessive and imaginary. He said that exemplar of small piece of land have been referred to, to determine market value of a

very large piece of land though rate of small piece of land cannot be applied to a larger chunk of land. He also contended that any subsequent

event would be of no use since it is the date on which document was executed, the state of affairs available on that date would be relevant. He

placed reliance on this Court's decision in Shakumbari Sugar and Allied Industries Limited Vs. State of U.P., He further submitted that principles

followed in determining market value under Land Acquisition Act, 1894 would be equally applicable for determining true market value for the

purpose of stamp duty and relevant considerations laid down in various judicial precedents by Apex Court have not been adhered to and

considered by authorities below in passing the impugned orders, therefore, impugned orders are liable to be set aside. In this regard he placed

reliance on the decisions of Apex Court in Pitambar Hemlal Badgujar (dead) by LRs. and others Vs. Sub-Divisional Officer, Dhule and another,

Hasanali Khanbhai and Sons and Others Vs. State of Gujarat, K. Vasundara Devi Vs. Revenue Divisional Officer (LAO), and Karan Singh and

Others Vs. Union of India (UOI),

6. Learned Standing Counsel, on the contrary, submitted that petitioner is guilty of disclosing incorrect facts in the document in question and in view

thereof, Collector has determined true market value taking into consideration true affairs as they were on the date of execution and registration of

document and in absence of anything otherwise, it is not a fit case where this Court would be justified in interfering under Article 226 of

Constitution of India.

7. Certain facts, which this Courts finds uncontroverted, are that plot No. 125Kha, measuring 3.056 hectare was registered in the name of Smt.

Rani Devi, Wife of Suresh Chandra, Sri Prashand Bindal, son of Ram Prasad Agarwal. Half of the aforesaid plot was purchased by Sri Mayank

Agarwal, Son of Sri B.D. Agarwal in the capacity as Director, P.P. Buildcon Pvt. Ltd. along-with certain other land, vide sale deed dated

13.6.2006. The land was inside Pushpanjali Upvan Awasiya Colony but the Company claimed that immediately it invested a huge sum, levelled the

land, and then has developed Pushpanjali Upwan Awasiya Colony on the entire land. The remaining half part of the land, was in share of Sri

Prashant Bindal, son of Ram Prakash Agarwal, who died on 2.9.2006. Thereafter land was succeeded by Smt. Urmila Devi Agarwal, wife of Sri

Ram Prakash Agarwal and Sri Ram Prakash Agarwal, son of Late Sri Kailash Chandra Ji Bindal, i.e., father and mother of deceased Prashant

Bindal. The aforesaid remaining half share of land was purchased by petitioner vide sale deed dated 27.6.2007, therefore, entire land of plot No.

125Kha stood transferred to petitioner vide two sale deeds i.e. dated 13.6.2006 and 27.6.2007.

8. It is the own admission of petitioner that land is part of ""Pushpanjali Upvan Awasiya Colony"" and it has been developed by it for plotting and

residential purposes. It has admitted this very fact in another sale deed dated 29.8.2007, which has been placed on record as Annexure 5 to the

writ petition. It would be useful to reproduce certain part thereof, as under:

The said firm, by spending considerable amount, has got the purchased land levelled, and has turned the rugged and uneven land into better shape.

Considerable amount has been spent by the said firm on this count. On the purchased land, the said firm has constructed Pushpanjali Upvan

Awasiya Colony.

(English Translation by Court)

9. It is also interesting to note that in respect of this very plot, a layout plan was already submitted by petitioner even before its purchase, before

MVDA, and the said layout plan was sanctioned by it (MVDA) on 29.5.2007.

10. In the sale deed in question, all these facts were concealed by petitioner and seller. The parties to instrument are under statutory obligation to

disclose all facts and circumstances, which may affect chargeability of any instrument with duty, or the amount of duty with which it is chargeable,

fully and truly. Similarly, section 27(2) requires that where instruments relates to immovable property, chargeable with ad valorem duty on the value

of property, and not on the value set forth, the instrument shall, fully and truly, set forth the annual land revenue in the case of revenue paying land,

the annual rental and gross assets, if any, in case of other immoveable 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 the Act.

11. In reference to aforesaid provisions, Rule 3 of U.P. Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as Rules, 1997")

contemplates certain facts to be set forth in an instrument and reads as under:

3. Facts to be set forth in an instrument.--In case of an instrument relating to immovable property chargeable with an ad valorem duty, the

following in addition to the market value of the property:

(1) In case of land--

(a) included in the holding a tenure holder as defined in the law relating to land tenures:

(i) the Khasra number and area of each plot forming part of the subject-matter of the instrument

(ii) Whether irrigated or unirrigated-the source of irrigation.,

(iii) if under cultivation-whether dofasali or otherwise.,

(iv) land revenue or rent, whether exempted or not, and

(v) classification of soil supported in case of instruments exceeding twenty thousand rupees in value by the certified copies or extracts from the

relevant revenue records issued in accordance with laws.,

(vi) location, (whether lies in an urban area, semi-urban area or country side), and

(vii) minimum value fixed by the Collector of the district.

(b) being non-agricultural land:

- (i) area of land in square metre,
- (ii) minimum value fixed by the Collector of the district,
- (iii) location whether lies in urban area or semi-urban or country side.

(2) In case of grove or garden:

- (a) the nature, size, number and age of trees;
- (b) annual recorded land revenue or where the grove is not assessed to any revenue, or is exempted from it, the annual rent and/or premium, if let

out; otherwise the average annual income which has arisen from it during the three years immediately preceding the date of the instrument;

- (c) area covered by the grove or garden;
- (d) location (whether lies in urban, semi-urban, or country side.

(3) In case of building:

- (a) total covered area and open land, if any, in square metres;
- (b) number of storeys, area and covered area of each storey in square metres:
- (c) whether pucca or katcha construction;
- (d) year of construction,
- (e) actual annual rent;
- (f) annual value assessed by any local body and the amount of house tax payable thereon, if any,
- (g) nature of building, whether non-commercial or commercial, and
- (i) in case the building is noncommercial its minimum value of construction as fixed by the Collector of the district, and
- (ii) in case the building is commercial, its minimum monthly rent per square metre and covered area fixed by the Collector of the district, and
- (iii) location (whether lies in urban, semi-urban or country side).

12. In respect of a land included in the holding of a tenure holder, Rule 3(1)(a) requires several informations and in respect of non-agricultural land,

informations need be disclosed in the instrument are provided in Rule 3(1)(b) of Rules, 1997. In case, contention of petitioner is taken on its face

value to be correct that land was an agricultural land, I find that no information has been given with respect to land revenue or rent, whether it was

under cultivation or not. Proper location was not disclosed and therefore, details under Rule 3(1)(a) in entirety were not disclosed. The only reason

for treating the land in question as agricultural land is that in revenue record, it was so recorded since there was no declaration till the date of

execution of sale deed u/s 143 of Act, 1950 though its user had already gone under change, inasmuch as, layout plan for residential and

commercial plotting was already approved by Development Authority on 29.5.2007.

13. For the purpose of determining market value, it is not bare entry in revenue record, which is conclusive but entire state of affairs, as were

available on the date of execution of sale deed, have to be looked into. The land in question has already crossed from being a mere agricultural

land, unused, and undeveloped. Instead, development activities had already undergone, inasmuch as, layout plan was approved on 29.5.2007 by

Development Authority and thereafter half of share of this very plot was purchased on 29.6.2007 after having been developed as residential colony

with commercial activities also namely Pushpanjali Upvan Awasiya Colony and this fact is stated by petitioner himself in sale deed executed, which

is a few days later i.e. 29.8.2007. The petitioner, therefore, was under an obligation to declare all these facts in the instrument in question and

having failed to do so, I have no manner of doubt that he has contravened the provisions of section 27 of Act, 1899, which were relevant for

determining true market value of the property in question.

14. It is true that size of land is a relevant factor for determining its value but in the present case, nothing otherwise has been shown by petitioner,

either before authorities below or before this Court :o show that true market value of property in question could have been lower than what was

stated in the sale deed dated 29.8.2007, which is not a much subsequent document but was executed within a few days after the sale deed in

question.

15. So far various authorities cited at bar in support of contention advanced by learned Counsel for the petitioner are concerned, I find no

exception to the exposition of law laid down therein. It cannot be doubted that circle rate determined by Collector lays down certain price is

relevant for determining minimum value u/s 47-A(3) and guideline for the purpose of determining true market value u/s 47-A(3). Similarly, future

potential of land cannot be a relevant factor to determine true market value but potential of land as on the date of sale is an extremely important

factor as held in Shakumbari Sugar & Allied Industries Ltd. (supra) wherein, in para 15, the Court has said:

In determining the market value, the potential of the land as on the date of sale alone can be taken into account and not what potential it may have

in the distant future.

16. The Court approved observations from Maya Foods and Vanaspati Ltd., Allahabad Vs. Chief Controlling Revenue Authority (BR), Allahabad

and others,

17. In Dal Chand Vs. Ram Dayal and Others this Court said:

The vendee pays the price that satisfies the vendor and, therefore, it is the utility of the land as on the date of transfer by the vendor.....

18. In the present case, on the date of transfer of land it had already developed the potential utility of the land as a residential colony with

commercial activity since its layout was already approved by Development Authority on 29.5.2007. The petitioner had already started

development in the colony of which the land in question was a part. None of the authorities, therefore, relied on by petitioner in my view render any

help to him. In my view, the impugned orders warrants no interference since it is difficult to hold that respondents have committed a manifest error

apparent on the fact of record so as to justify interference of this Court in writ jurisdiction under Article 226 of Constitution of India.

19. In supervisory jurisdiction of this Court over subordinate Courts, the scope of judicial review is very limited and narrow. It is not to correct the

errors in the orders of the Court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority.

20. This power involves a duty on the High Court to keep the inferior Courts and tribunals within the bounds of their authority and to see that they

do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to

correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal it must be restricted to cases of

grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court

interferes.

21. In D.N. Banerji Vs. P.R. Mukherjee and Others, the Court said:

Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226

and 227 of the Constitution to interfere.

22. A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in Waryam Singh and Another Vs. Amarnath and

Another, and made following observations at p. 571:

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J. in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee,

to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not

for correcting mere errors"".

23. In Mohd. Yunus Vs. Mohd. Mustaqim and Others, the Court held that this Court has very limited scope under Article 227 of the Constitution

and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be

used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption

of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there

must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

24. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and do

hows the factual and legal position on record (See: Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, Rukumanand Bairoliya Vs. The State

of Bihar, Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, Laxmikant Revchand Bhojwani and Another

Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, , Reliance Industries Ltd. Vs. Pravinbhai Jasbhai

Patel and others, , Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, and Virendra Kashinath Ravat and Another Vs.

Vinayak N. Joshi and Others,

25. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts,

howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them.

(See: Mrs. Rena Drego Vs. Lalchand Soni, Etc., Chandra Bhushan (Deceased) by Lrs. Vs. Beni Prasad and Others, , Smt. Savitrabai Bhausheb

Kevate and Others Vs. Raichand Dhanraj Lunja, and M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another,

26. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should

not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: Union of India and

Others Vs. Himmat Singh Chahar,

27. In Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, the Court has held that there

is no justification for the High Court to substitute its view for the opinion of the Authorities/Courts below as the same is not permissible in

proceedings under Articles 226/227 of the Constitution.

28. In Mohan Amba Prasad Agnihotri and Others Vs. Bhaskar Balwant Aher (D) Through I.Rs., the Court said that jurisdiction of High Court

under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts

below unless there is no evidence to support findings or the findings are totally perverse.

29. In *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another*, the Court observed that it is impermissible for the Writ

Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising

appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the

purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or

evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material

which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and

possibly be taken the High Court can not interfere.

30. In *Union of India and Others Vs. Rajendra Prabha and Another*, the Court observed that the High Court, in exercise of its extraordinary

powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings

of Authorities below.

31. Similar view has been reiterated in *State of Maharashtra Vs. Milind and Others*, *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, and *Ouseph*

Mathai and Others Vs. M. Abdul Khadir,

32. In *Surya Deo Rai v. Ram Chander Rai and others*, 2003 (52) ALR 707 (SC) it was held that in exercise of supervisory power under Article

227, High Court can correct errors of jurisdiction committed by subordinate Courts. It also held that when subordinate Court has assumed a

jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a

manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction.

However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law

unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of

law; or, a grave injustice or gross failure of justice has occasioned thereby.

33. In *Jasbir Singh Vs. State of Punjab*, the Court said:

...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly

and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority. The power of superintendence

exercised over the subordinate Courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary,

The independence of the subordinate Courts in the discharge of their judicial functions is of paramount importance, just as the independence of the

superior Courts in the discharge of their judicial functions.

34. In *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, the Court said that power of interference under Article 227 is to be kept to

the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain

public confidence in the functioning of the tribunals and Courts subordinate to High Court. The above authority has been cited and followed in

Kokkanda B. Poondacha and Others Vs. K.D. Ganapathi and Another, and Bandaru Satyanarayana Vs. Imandi Anasuya and Others,

35. In *Abdul Razak (D) through L.Rs. and Others Vs. Mangesh Rajaram Wagle and Others*, Court reminded that while exercising jurisdiction

under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

36. In *T.C.N. Kumar v. State of Kerala and others*, 2011 (72) ACC 655 (SC) the Court said that power of superintendence conferred on the

High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in

appropriate cases in order to keep the subordinate Courts within the bounds of their authority.

37. In *Commandant, 22nd Battalion, CRPF and others v. Surinder Kumar*, (2011) 10 SCC 244 Apex Court referring to its earlier decision in

Union of India and Others Vs. R.K. Sharma, observed that only in an extreme case, where on the face of it there is perversity or irrationality, there

can be judicial review under Articles 226 or 227.

38. In view thereof, I find no justification warranting interference with the orders impugned in this writ petition. Dismissed.