
(2016) 04 DEL CK 0040

DELHI HIGH COURT

Case No: W.P. (C) No. 3591 of 2014.

Amit Gupta

APPELLANT

Vs

Govt. of NCT of Delhi and Others

RESPONDENT

Date of Decision: April 8, 2016

Acts Referred:

- Delhi Municipal Corporation Act, 1957 - Section 147
- Delhi Stamp (Prevention of Under Valuation of Instruments) Rules, 2007 - Rule 4(1)(c)
- Stamp Act, 1899 - Section 47A, 75

Citation: (2016) 6 ADDelhi 210 : (2016) 163 AIC 574 : (2016) 229 DLT 385

Hon'ble Judges: Gorla Rohini, C.J.; Rajiv Sahai Endlaw, J.

Bench: Division Bench

Advocate: Arvind Datar, Sr. Adv. with Anirudh Wadhwa and Vipul Kumar, Advocates, for the Appellant; Rahul Mehra, Sr. Standing Counsel with Kaustubh, R.A. Iyer, Aditya and S. Banerji, Advocates and Ms. Biji Rajesh, Adv. for Gaurang Kanth, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rajiv Sahai Endlaw, J. - CM No. 3100/2016 (of petitioner for modification/clarification of the judgment dated 23rd December, 2015).

1. We heard the senior counsel for the petitioner/applicant, counsel for the respondents Govt. of NCT of Delhi (GNCTD) and counsel for the respondent Municipal Corporation of Delhi (MCD) and reserved order on 19th February, 2016 with liberty to the counsels to file written submissions within one week. No written submission has been filed.

2. The senior counsel for the petitioner/applicant:

(i) contended that the direction contained in para 22 (A) and (B) of the final judgment dated 23rd December, 2015 to the Registrar/Sub-Registrar entrusted with the responsibility of registration of the document to "notify the parties presenting the instrument/document for registration that the consideration set forth in the instrument and the stamp duty computed on the basis thereof is less than the valuation as per the circle rates" and to "give them an opportunity to amend the document/instrument, to bring the valuation thereof for the purpose of payment of stamp duty, in consonance with the circle rates and make up deficiency in stamp duty" is not sanctioned by Section 47-A of the Indian Stamp Act, 1899 or by any other law. It is contended that circle rates being in public domain are known to each and every person and the directions contained in para 22(A) and (B) will delay and complicate the process of the parties presenting the instrument/ document for registration and also add to the administrative burden of the Registering Officer who would be required to give "notice" in all cases of deemed undervaluation;

(ii) contended that the directions contained in para 22(C) of the judgment dated 23rd December, 2015 directing the Registering Officers, to in all cases of deemed undervaluation, after registering the document, forward the same to the Collector of Stamps for determination of value and the proper stamp duty, takes away the discretion conferred by Section 47-A of the Act in the Registering Officers;

(iii) suggested that instead of forwarding the document/instrument in original to the Collector of Stamps, it be directed that the original would be returned to the parties for securing home loans on the basis thereof and/or for creating equitable mortgage and the adjudication of stamp duty be done by the Collector of Stamps on the basis of a copy of the document/instrument;

(iv) seeks clarification that the procedure prescribed in Section 47-A of the Act is applicable only qua the stamp duty and not qua the transfer duty under the Municipal Corporation of Delhi Act, 1957 (MCD Act) which is payable only on the amount or value of the consideration for sale as set forth in the instrument. Modifications/clarifications to the aforesaid effect are sought.

3. As far as the aspect of, "notifying" the parties presenting the instrument/document for registration of the stamp duty paid/computed thereon being not in consonance with the circle rates is concerned, we have not directed any notice in writing to be given by the Registering Officer to the parties in this regard. All that we have observed is that the parties, before the Registering Officer proceeds on the premise that proper stamp duty has not been paid thereon, would be given an opportunity to make up the deficiency in stamp duty, so that the procedure prescribed for computation of the correct stamp duty is not commenced without the parties having an opportunity to make up the said deficiency. We therefore do not feel the need for any clarification as is sought in this respect.

4. As far as the contention, that our directions take away the power of the Registering Officer to satisfy himself whether the document is properly stamped, is concerned:

(A) We may record that though Section 47-A of the Stamp Act as applicable to Delhi empowers the Registering Officer, if has reason to believe that the value of the property or the consideration has not been truly set forth in the instrument/document, to refer the document/instrument to Collector for determination of the value or consideration and the proper stamp duty payable thereon but offers no guidance to the Registering Officer in this regard. The Registering Officer thus had/has no means to know whether the valuation/price disclosed in the document/instrument and on the basis of which stamp duty was computed, was correct or not. The same resulted in mammoth undervaluation of properties to avoid payment of appropriate ad valorem stamp duty and thereby encouraged use of unaccounted/black money in property transactions on the one hand and widespread corruption in Registering Offices on the other hand. It was to curb the said dual menace affecting the economy of the country that circle rates were introduced for each locality to enable the Registering Officer to know the valuation of the properties therein and to detect undervaluation to the detriment of the public revenue through levy of stamp duty. The circle rates serve as the indice available to the Registering Officer to have the reason to believe that the value of the property or the consideration has not been truly set forth in the instrument/document.

(B) The petitioner/applicant and other persons whose writ petitions were also decided vide judgment dated 23rd December, 2015 however challenged the same as contrary to Section 47-A of the Act.

(C) We had during the hearing of the writ petitions put it to the counsel for the respondents GNCTD that the right of a person presenting the instrument/document for registration to establish that the valuation of his particular property, for whatsoever reasons, is below the circle rates, cannot be taken away by insisting upon payment of stamp duty as per the circle rates and GNCTD on re-consideration of the matter had agreed to what has been directed by us in para 22 of the judgment.

(D) The senior counsel for the petitioner/applicant now contends that in the first instance, the Registering Officer should be allowed to form an opinion whether the value of the property or the consideration has been truly set forth in the instrument/document. It is contended that the Registering Officer cannot be directed to mechanically forward all documents/instruments valuation whereof is below circle rates to the Collector for determination of stamp duty, as is the purport of our direction, as the same would be contrary to Section 47A i.e. take away the statutory discretion vested in the Registering Officer under Section 47A. Reliance is placed on *State of Punjab v. Mohabir Singh*, (1996) 1 SCC 609 to contend that the

"satisfaction" in the first instance has to be of the Registering Officer.

(E) What the petitioner/applicant is thus wanting is, to vest the discretion in the Registering Officer to, notwithstanding the circle rates, register documents/instruments with a valuation/ consideration below circle rates.

(F) Circle rates have been notified under Rule 4 of the Delhi Stamp (Prevention of Under-valuation of Instruments) Rules, 2007 framed in exercise of power under Section 75 of the Stamp Act entitling the State Government to make rules to carry out generally the purpose of the Act. As per said Rule 4, (i) the circle rates are prepared after the Deputy Commissioner of each District has undertaken the prescribed exercise; (ii) before the circle rates are notified they are placed in public domain for fifteen days for inviting objections/suggestions thereon and notified after a decision has been taken on the objections/ suggestions so received; (iii) the said circle rates are to act as guide/indicator for the purpose of assessing the duty chargeable on the value or the consideration of any property; and, (iv) any instrument setting forth the market value below such valuation is to be referred by the Registering Officer to the Collector.

(G) Per Section 47-A of the Stamp Act as applicable to Delhi, the Registering Officer if "has reason to believe that the value of the property or the consideration" has not been truly set forth in the document/instrument presented for registration, the document/instrument is to be referred to Collector for determination of the value or consideration and the proper duty payable thereon. It further provides that the Collector, after giving the parties reasonable opportunity of being heard and after holding an enquiry as may be prescribed shall determine the value of the property or the consideration and the duty payable thereon.

(H) In our view, Section 47-A of the Act does not vest any power in the Registering Officer to, on his own, arrive at a conclusion that the valuation of the property or consideration has been truly set forth in the document/instrument, notwithstanding the same being below the circle rates. The said conclusion/ determination, under Section 47-A of the Act itself, has been left to be reached/done by the Collector and not by the Registering Officer. The Stamp Act has constituted the Collector as the Adjudicating Authority and not constituted the Registering Officer as the Adjudicating Authority for determination of the value or consideration and the duty payable thereon. The Stamp Act does not envisage a two tier adjudication, first by the Registering Officer and then by the Collector. That is why, though against the order of the Collector appeal to the District Judge is provided, no appeal to the Collector against the order of Registering Officer has been provided. The words "reason to believe" in Section 47-A do not confer any such discretion in the Registering Officer when after following an elaborate detailed procedure circle rates have been notified as an indice for the Registering Officer to have reason to believe.

(I) If it were to be held that notwithstanding the circle rates, the Registering Officer would be entitled to register an instrument/document even though for a valuation/consideration below circle rate, the same would nullify the very exercise of prescribing the circle rates and bring back the malady aforesaid to cure which the circle rates were prescribed. As we have already observed above, the Registering Officer has no means of forming an opinion that the value of the property or the consideration has not been truly set forth in the instrument/document, except on the basis of circle rates. Not only so, the practicality of the life is that the Registering Officer is not equipped to carry out any enquiry in this respect. Once the exercise, after survey and assessment, has determined the circle rates, the question of then empowering the Registering Officer to, even if the value or the consideration set forth in the instrument/document is below the circle rate, allow registration of the instrument/document, does not arise.

(J) We are also unable to read Mohabir Singh supra relied upon by the senior counsel for the petitioner/applicant as laying down so. Rather, we find the Supreme Court in Ramesh Chand Bansal v. District Magistrate/Collector, Ghaziabad, (1999) 5 SCC 62 to have, after considering Mohabir Singh and though in interpretation of Section 47-A of the Stamp Act as applicable in the State of Uttar Pradesh to have held, i) that the object of the Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable - this is to protect the State revenue; ii) it is a matter of common knowledge that in order to escape such duty by unfair practise, many a time undervaluation of a property or lower consideration is mentioned in a sale deed; iii) the imposition of stamp duty is on actual market value and not the value described in the instrument; iv) thus, an obligation is cast on authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument; v) there has to be some material before such authority as to what is likely value of such property in that area; vi) in the absence of any such material, it would be very difficult for Registering Authority to assess the valuation of the instrument; vii) it is to give such support to the Registering Authority that the Rule for prescribing circle rates had been introduced; viii) under the said Rule the Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate; ix) the circle rate would at best be the prima facie rate of the area concerned and is a mere guideline which helps the Registering Authority to assess the true valuation of a transaction in an instrument and gives the Registering Authority material to test prima facie whether description of valuation in an instrument is proper or not; x) Section 47A also prescribes how a Registering Authority is to deal in case there is divergence in the valuation between what is described in an instrument and in the circle rate; xi) it requires the Registering Authority to refer to the Collector for determination in case property is undervalued in the instrument; xii) the circle rate does not take away the right to show that the property in question is correctly valued as opportunity to prove it is provided before the Collector after reference is made; xiii) this also marks the

dividing line for the exercise of power between the Registering Authority and the Collector; xiv) in case the valuation in the instrument is same as recorded in the circle rate, it could be registered by Registering Authority but in case it is undervalued, it has to be referred and decided by the Collector; xv) thus the circle rate is merely a guideline and is also indicative of division of exercise of power between the Registering Authority and the Collector.

(K) We find the provisions of the Stamp Act as applicable to Delhi and of the Delhi Stamp (Prevention of Under-valuation of Instruments) Rules, 2007 to be akin to the position in the State of Uttar Pradesh and thus the question to be no longer *res integra*. Supreme Court, in *Ramesh Chand Bansal supra*, explained that *Mohabir Singh supra* was a case under the Punjab Act, 1982, the provisions whereof were materially different.

(L) We are thus unable to find any merit in the plea in the application of a clarification being required in this respect.

5. We are also of the view that there cannot be two valuations, one for the purpose of stamp duty under the Stamp Act and the other for the purpose of payment of transfer duty under the MCD Act. Transfer duty is a duty on the transfer of property. Though Section 147 of the MCD Act, while prescribing the said transfer duty prescribes it on the amount or value of the consideration set forth in the instrument but transfer duty has at the same time been prescribed as a surcharge imposed under the Stamp Act and once the Registering Officer has formed an opinion that the consideration has not been truly set forth in the instrument/document, the same, in our view, would apply to transfer duty also and would not be restricted to stamp duty alone. To read/interpret the provision any other way belies logic and would turn true the satirical statement "Law is an ass". The judgments cited, of the Full Bench of this Court in *Dayal Singh v. The Collector of Stamps*, AIR 1972 Delhi 131 and of the Division Bench of this Court in *Sudershan Talkies v. Collector of Stamps*, AIR 1978 Delhi 112 were not concerned with the said issue. We therefore do not find any merit in the modification/clarification sought to the said effect.

6. As far as the last suggestion of the senior counsel for the petitioner/ applicant, of directing the registering authority to though referring a document/instrument setting forth the valuation/consideration of it below the circle rate to the Collector, returning the original document/instrument to the parties presenting the same to enable them to obtain loan on the basis thereof is concerned, we are of the view that Rule 4(1)(c) of the Delhi Stamp (Prevention of Under-valuation of Instruments) Rules, 2007 requires the original document/instrument to be referred to the Collector. If the original document is returned to the parties, there would be nothing to refer to the Collector. The suggestion, if accepted, would even otherwise lead to a situation where even in the event of the Collector finding the valuation/consideration set forth in the instrument/document being deficient, the Collector being left with no way to compel payment of proper stamp duty thereon inasmuch

as the parties, after receiving the original registered document/instrument would have already transacted the same. Moreover, the instrument/document, till it is duly stamped, cannot be registered and if such instrument/document, registration whereof is conditional to payment of deficient stamp duty if any found is to be returned and used by way of equitable mortgage, the same is also likely to put our banking system to further strain by holding title documents and having lent monies on security thereof but which title documents may not even have conferred title in the property. We are therefore not inclined to accept the said suggestion or to agree with the judgment of the Division Bench of the Kerala High Court in *Periyar Real Estates v. State of Kerala*, AIR 2002 Ker 248 followed by the Full Bench of the High Court of Orissa in *Kukumina Constructions v. Registrar*, AIR 2010 Orissa 104. We may also mention that the said judgments proceeded on the interplay of the provisions of the Registration Act, 1908 being a Central Act on the one hand and the amendments to the Stamp Act by the respective States, being State Acts on the other hand. Here, the Delhi Stamp (Prevention of Under-Valuation of Instruments) Rules have been notified by the Lt. Governor of National Capital Territory of Delhi in exercise of power conferred under Section 75 of Stamp Act read with Government of India, States Ministry's Notification dated 24th August, 1950 and Ministry of Home Notification dated 22nd July, 1961 and vide Rule 10 provide for return of the document referred to Collector under Section 47-A of Stamp Act, only when Collector has finally dealt with it.

7. Before parting with the application, we may also add that the modifications/clarifications sought are otherwise also not tenable, after the writ petition has been disposed of and which was disposed of in the circumstances as already noted by us in the judgment dated 23rd December, 2015. The petitioner/applicant by way of the application of the present nature is seeking to re-open a decided matter and which is not permissible.

Reference if any required can be made to *Ram Chandra Singh v. Savitri Devi*, (2004) 12 SCC 713 and *A.P.S.R.T.C. v. Abdul Kareem*, (2007) 2 SCC 466.

8. There is thus no merit in the application, the same is dismissed.

9. No costs.