

(2001) 10 AP CK 0062

Andhra Pradesh High Court

Case No: Writ Petition No. 19655 of 1999

R. Srikant

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision: Oct. 16, 2001

Acts Referred:

- Constitution of India, 1950 - Article 1, 245
- Stamp Act, 1899 - Section 47A, 47A(2)

Citation: AIR 2002 AP 109 : (2002) 1 ALT 210

Hon'ble Judges: L. Narasimha Reddy, J; Bilal Nazki, J

Bench: Division Bench

Advocate: M.V. Raja Ram, for the Appellant; Govt. Pleader, for Revenue, for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.

The constitutional validity of proviso to Sub-section (2) of Section 47-A of the Indian Stamp act as amended by A.P. Act 8 of 1998 (for short "the Act") is challenged in this writ petition.

2. The facts, as stated by the petitioner, are that he purchased immovable property "situated within the territorial limits of Sub-Registrar, Chikkadpally and presented the sale deed duly executed by the vendor, for registration before the 3rd respondent on 12-12-1997. The 3rd respondent refused to register the document on the ground that the stamp duty on the document should have been paid, calculated on the basis of the market value of the property at the rate of Rs, 9,000/- per square yard and the stamp duty of Rs. 77,600/- paid by the petitioner is not adequate. Feeling aggrieved by the said demand, the petitioner preferred an appeal before the 2nd respondent, who in turn, fixed the stamp duty payable by the petitioner at Rs. 1,74,670/- taking the market value of the property at the rate of Rs. 8,500/- per

square yard.

3. According to the petitioner, the property purchased by him is only residential in nature, whereas the valuation adopted by respondents 2 and 3 is the one for commercial areas. Challenging the order passed by the 2nd respondent, the petitioner presented an appeal before the Court of the Chief Judge, City Civil Courts, Hyderabad, which is AS(SR), 12045/99 on 25-8-1999. This appeal was returned by the Court for compliance with the proviso to Sub-section (2) which requires deposit of the difference of amount of stamp duty as a condition precedent for entertaining the appeal. The petitioner contends that proviso to Sub-section (2) in so far as it requires the deposit of the difference of amount of stamp duty, is unconstitutional and is liable to be set aside,

4. The respondents filed a counter-affidavit contending inter alia that the facts as such are not in dispute, that the controversy is only as regards interpretation of the provisions of the Act as well as their constitutional validity, that the impugned provision is within the legislative competence of the State legislature and that it does not suffer from any vice of arbitrariness.

5. Sri M. V. Raja Ram, the learned Counsel for the petitioner raised two contentions in support of his plea that proviso to Sub-section (2) of Section 47-A of the Act is unconstitutional. The first contention is that the State Legislature lacked legislative competence to enact the amendment Act 8 of 1998 and, at any rate, the impugned provision was not within the scope and ambit of the limited power of the State Legislature vis-a-vis the Indian Stamp Act. His 2nd contention is that even assuming that the State Legislature had the competence to enact the provision the proviso is violative of Article 14 of the Constitution of India, in so far as it imposes an onerous condition and renders the remedy of appeal a nugatory one.

6. The learned Government Pleader Sri Raj Gopal, on the other hand, submits that the subject relating to levy of stamp duty being an entry in the Concurrent List, the State Legislature has the competence to legislate the same and that Act 8 of 1998 has also received the assent of the President. He further submits that the impugned proviso is not violative of Article 14 of the Constitution of India as similar provisions in various enactments have been upheld by the Hon"ble Supreme Court.

7. As regards the 1st contention of the learned counsel for the petitioner, it may be seen that the subject relating to stamp duty occurs at Entry 44 in List 3 of the VII Schedule to the Constitution. The rates of stamp duty are provided in Entry 63 of List 2. The Indian Stamp Act was enacted by the Indian Parliament in exercise of its powers under Entry 44 of List 3. The State Legislature is competent to legislate on any subjects enlisted in List 3. However, if there is an Act of Parliament covering the subject and the State Legislature intends to bring about any enactment, the same has to be done duly obtaining the consent of the President of India. It has been stated in the counter-affidavit and it is a matter of record that AP Act 8 of 1998,

which sought to amend certain provisions of the Indian Stamp Act had received the assent of the President of India. Hence, it cannot be said that the amendment was without competence. The subsidiary contention of the learned Counsel for the petitioner that the State Legislature was not competent to her the provisions relating to the appeal cannot be countenanced. Once the Legislature is competent to enact on the subject, its power cannot be restricted or circumscribed. The provisions relating to appeals and other related matters cannot be said to be outside the purview of the main subject. Therefore, the 1st contention of the learned counsel for the petitioner cannot be accepted.

8. So far as the 2nd contention is concerned, it needs to be seen whether the condition contained in the proviso impugned in this writ petition is violative of Article 14 of the Constitution of India. The proviso requires the party proposing to prefer an appeal to deposit difference of the amount of stamp duty as a condition precedent. It may be true that compliance with such a condition would be onerous and a burdensome but in the very scheme of the things, it cannot be said to be violative of Article 14 of the Constitution. The law is more than settled on the subject. It is a matter of common knowledge that such provisions, which insist on pre-deposit of the disputed amounts are found in various enactments, such as, Customs Act, Central Excise Act, Workmen's Compensation Act, etc. The provisions when challenged before the Courts were upheld. Dealing with the challenge to the provision contained in the Customs Act, the Supreme Court in its decision in [Vijay Prakash D. Mehta and Another Vs. Collector of Customs \(Preventive\), Bombay](#), held as under :

"Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications.

The right to appeal is a statutory right and It can be circumscribed by the conditions in the grant."

9. In [The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc.](#), , the Supreme Court dealt with the constitutional validity of proviso to Subsection (2) of Section 406 of the Bombay Municipal Corporation Act, 1949, which is almost in identical terms as the proviso that is challenged in this writ petition. Reviewing the case law on the subject, the Supreme Court ultimately held as under :

"When the statement of law is so clear, we find no difficulty in upholding the vires of Clause (e) of Sub-section (2) of Section 406 read with the proviso thereto. Any challenge to its constitutional validity on the ground that onerous conditions have been Imposed and right to appeal has become Illusory must be negatived."

Following the same, we reject the 2nd contention of the learned counsel for the petitioner. No other point arises for consideration. Accordingly, the writ petition is dismissed. There shall be no order as costs.

10. However, we give one-month time for the petitioner to comply with the condition in the appeal presented by him in the civil Court against the order of the 2nd respondent.