

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

W.P. No.418/2004

State of Madhya Pradesh
 through District Registrar/
 Collector of Stamps,
 Dewas Petitioner

Vs.

Samrathmal Jain S/O Khemchand Jain,
 R/o - 1, Ram Nagar,
 Dewas. Respondent

 Smt. Jyoti Tiwari, learned G.A. for the petitioner.

Shri G.M. Chaphekar, learned senior Adv. with Shri Ravi
 Sarda, counsel for the respondent.

Whether approved for reporting :

ORDER

(Passed on 28.6.2011)

1/ This Writ Petition under Article 227 of the Constitution of India is directed against the order dated 25.6.2003 (Annexure P/10) passed by the Board of Revenue, Madhya Pradesh, Gwalior in Appeal No.42-TEEN/03.

2/ The respondent had purchased the land admeasuring 8610 sq.ft. having one old house constructed thereon in an area of 4536 sq.ft. for the total consideration of Rs.5,50,000/- situated at Moti Bungla Road, Dewas vide sale deed dated 30.12.1993. When the instrument was presented to

the Sub Registrar for registration, he doubted the market value of the property disclosed in the instrument and referred the same to the Collector for determination of market value and duty payable thereon. In response to the notice issued by the Collector Stamps, the respondent on 12.12.1995 submitted reply justifying the market value stated in the instrument. He also enclosed a copy of the map along with the reply showing the location of the property in question. The Collector Stamps passed the order dated 12.5.1997 assessing the market value of the property as Rs.10 Lac and requiring the respondent to pay a sum of Rs.59,850/- towards the stamp duty and registration charges. A demand notice dated 21.5.1997 (Annexure P/8) was accordingly issued to the respondent. In appeal the Additional Commissioner, Ujjain vide order dated 29.10.2002, affirmed the order of the Collector Stamps, thereafter the respondent had preferred appeal to the Board of Revenue. The Board of Revenue by order dated 25.6.2003 allowed the appeal filed by the respondent holding that the order of the Collector Stamps and the Additional Commissioner are unsustainable and holding that the market value was rightly shown in the sale deed by the respondent. Aggrieved with the same, the petitioner-State has preferred this writ petition.

3/ Smt. Jyoti Tiwari, learned G.A. appearing for the petitioner submitted that the Board of Revenue while passing the impugned order, has not considered the relevant factors such as the location of the property near the Collectorate abutting A.B. Road and its use by the Bank as tenant. She further submitted that the Board of Revenue should have

conducted enquiry before passing the impugned order.

4/ Shri G.M. Chaphekar, learned senior advocate assisted by Shri Ravi Sarda Adv., referring to the provisions of the Act and Rules submitted that the Board of Revenue has passed the impugned order taking into account the relevant factors provided in the Rules. He has also drawn the attention of this Court to the relevant factors which needs consideration for ascertaining the market value of the property in question. He has also submitted that this being a writ petition under Article 227 of the Constitution of India, the scope for interference is limited.

5/ I have heard the learned counsel for the parties and perused the record.

6/ Section 47-A of the Indian Stamp Act (for short “the Act”) provides the manner as to how an undervalued instrument is to be dealt with. In terms of sub-section 1 of Section 47-A the reference can be made by the Registrar to the Collector for determining the market value of property and the proper duty payable thereon. the Collector is required to give opportunity of hearing to the parties and hold enquiry in the prescribed manner for determining the market value of the property and the duty payable thereon. Against the order of the Collector, First Appeal lies to the Commissioner and Second Appeal lies to the Chief Controlling Revenue Authority, which in the present case is the Board of Revenue. Thus under the scheme of the Act Board has the final authority to determine such disputes.

7/ The M.P. Prevention of undervaluation of instruments Rules, 1975 have been framed which inter alia

prescribe the relevant criteria for determining the market value. Rule 5 provides the principles for determination of market value and reads as under :-

“5. Principles for determination of market value.-The Collector shall as far as possible have also regard to the following points in arriving at the [x x x] market value:-

- (a) In the case of land-
 - (i) Classification of the land as dry, or wet and the like;
 - (ii) Classification under various categories in the settlement register;
 - (iii) the rate of revenue assessment for each classification;
 - (iv) other factors which influence the valuation of the land in question.
 - (v) points, if any, mentioned by the parties to the instrument or any other person which require special consideration;
 - (vi) Value of adjacent land or lands in the vicinity;
 - (vii) average yield from the land nearness to road and market, distance from village site, level of land, transport facilities, facilities available for irrigation in any form;
 - (viii) the nature of crops raised on the land.
- (b) In the case of house sites-
 - (i) the general value of house sites in locality;
 - (ii) nearness to roads, railway station, bus route;
 - (iii) nearness to market, shops and the like;
 - (iv) amenities available in the place like public offices, hospitals and educational institutions;
 - (v) development activities, industrial improvements in the vicinity;
 - (vi) local rates, municipal or other taxes to which such house site may be subject and valuation of site with reference to taxation records of the local authorities concerned;
 - (vii) any special feature having a special hearing on the valuation or the site; and
 - (viii) any special feature of the case represented by the parties.
- (c) In the case of buildings-
 - (i) type and structure;
 - (ii) locality in which constructed;

- (iii) plinth area;
- (iv) year of construction;
- (v) kind of material used;
- (vi) rate of description;
- (vii) fluctuation in rates;
- (viii) any other features that have a bearing on the value;
- (ix) local rates, municipal or other taxes to which such building may be subject and valuation of building with referent to taxation records of local authorities concerned;
- (x) the purpose for which the building is being used and the income, if any, by way of rent per annum secured on the building; and
- (xi) any special feature of the case represented by the parties;
- (d) Properties other than lands, house sites and building-
 - (i) the nature and condition of the property;
 - (ii) purposes for which the property is being put to use; and
 - (iii) any other special features having a bearing on the valuation of the property;”

8/ In the present case the Collector of Stamps while passing the order dated 12.5.1997 had recorded that the property is not situated on the main A.B. Road but it is situated inside. The property is occupied by the Bank as a tenant for a long time. The house constructed thereon is an old house. The Collector has also noted that if the house is old and is occupied by a tenant, then its value is reduced to less than half. The Collector also noted that the condition of the house is not good and the rent fetched from the tenant is low. The respondent had filed the valuation report before the Collector dated 30.12.1983 showing the value of the land and the house as Rs.5.61 Lac and its value on the basis of the rent fetched was Rs.3.56 Lac. It was also noted that the access to the house is not from the A.B. Road but it is from the back side

through Moti Bungla.

9/ Though the Collector Stamps noted the aforesaid relevant factors but he did not give proper weightage to these factors. The Collector had rejected the valuation of Rs.15.71 Lacs done by the Dy. Registrar but without assigning any reason the Collector had increased the valuation of the property from Rs.5.50 Lac to Rs.10 Lac in one sentence. The Commissioner without looking into the aforesaid error committed by the Collector, had dismissed the appeal of the respondent and affirmed the order of the Collector.

10/ On perusal of the impugned order passed by the Board of Revenue, it is noticed that the Board of Revenue has taken into account the relevant factors i.e. the house is 60 years old, the property in question is occupied by the tenant and that the market value of the property will be low because it is occupied by the tenant. The Board rightly noted that the Collector has not assigned any reason for rejecting the valuation report and that the Collector has also not assigned any reason for valuing the property at Rs.10 Lacs and that the conclusion of the Collector about the increase in value only on the ground that the registration of sale deed took place two years after the sale agreement, was incorrect because the sale agreement was executed after taking into consideration all the relevant factors.

11/ It is also worth noting that the suit property is a part of the larger plot admeasuring 55283 sq.ft. which was sold in 1987 for a consideration of Rs.10.5 Lacs, whereas suit property is only 8610 sq.ft. i.e. less than 1/5th in area purchased only

after six years on 30.12.1993 for a consideration of Rs.5.5 Lacs, which keeping in view of the above is not under valued.

12/ Thus the aforesaid analysis indicates that the Board of Revenue has rightly taken into account the relevant factors provided under Rule 5 while reaching to the conclusion that the market value of the property disclosed in the sale deed, was correct. The Collector Stamps as well as the Commissioner had committed an error in not considering these relevant factors, therefore, their orders have rightly been set aside by the Board of Revenue.

13/ Even otherwise this Court is exercising the limited supervisory jurisdiction under Article 227 of the Constitution of India, wherein this Court is to see if the inferior court or the Tribunal has exercised jurisdiction within the limits of its authority and not to examine the case as an appellate court. This Court is not to review or reweigh the evidence upon which the determination of the inferior court or the Tribunal purports to be based. [**See: Mohd. Yunus V. Mohd. Mustaqim and others (AIR 1984 SC 38)**]

14/ Thus, I do not find any merit in the writ petition and the same is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
J u d g e

Trilok.