

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.20666 OF 2004

ORDER:

The petitioner assails orders of the 1st and 2nd respondents in Proceeding Nos. CCRAI/16738/2001 dated 20.03.2004 and RCG6/P10/NDK/91 dated 16.10.2000 respectively, as illegal and without jurisdiction.

The writ prayer presents for consideration of scope of Sections 41-A and 47-A of the Indian Stamps Act, 1899 (for short 'the Act').

The circumstances leading to the filing of the writ petition are not in dispute and the short question that arises for consideration is the binding nature of an order passed under Section 47-A of the Act by the 2nd respondent and whether the order under Section 47-A can be reviewed by 2nd respondent under Section 41-A of the Act. The circumstances are as follows:

On 30.09.1991, sale deed was executed by one M.Satyanarayana in favour of petitioner for the premises bearing Door Nos.12/D, D1, D2 and D3 in Nandikotkur, Kurnool District, was presented for registration before the Sub Registrar, Nandikotkur. The Sub Registrar, Nandikotkur kept the document with him pending registration for determination of value of the property shown in the document and the stamp duty payable thereon. The Sub Registrar, Nandikotkur referred the document to 2nd respondent for consideration and decision under Section 47-A of the Act. The 2nd respondent through proceedings No.Rc.G6/P10/NDK/91 dated 03.12.1991 passed

an order under Section 47-A (2) of the Act. The 2nd respondent on verification of the material available on record and report submitted by the Sub Registrar, Nandikotkur determined the valuation of property covered by sale deed dated 30.09.1991 as Rs.5,00,000/-. The 2nd respondent directed payment of deficit stamp duty of Rs.11,000/- and registration fee of Rs.500/- for the enhanced value. The petitioner claims to have complied with the decision and on 23.12.1991 the Sub Registrar, Nandikotkur registered the sale deed. Thus the matter has attained finality.

The 2nd respondent in purported exercise of the power under Section 41-A of the Act issued notices dated 12.06.2000, 04.07.2000 and 12.09.2000 to the petitioner alleging that the registration of property covered by document No.2051/91 is not properly valued and the market value as on the date of execution of registration is valued at Rs.10,00,000/-. The petitioner filed objections dated 22.09.2000 resisting the exercise of jurisdiction under Section 41-A

of the Act both in fact and law. I am not considering the detailed explanation offered by the petitioner, for the outcome of the writ petition is dependant on the answer to the legal objections raised by the learned counsel for the petitioner.

The 2nd respondent through proceedings No.RCG6/P10/NDK/91 dated 16.10.1991 re-determined the market value of the property covered by document No. 2051/91 registered on 23.12.1991 and also the stamp duty payable on the re-determined value. The effect of the finding of 2nd respondent is that the market value of the property covered by document No.2051/91 is enhanced from Rs.5,00,000/- to Rs.10,62,720/- and the difference of stamp duty

as Rs.64,715/-. The petitioner availed the remedy of the appeal before the 1st respondent and through proceedings No.CCRAI/16738/2001 dated 20.03.2001, the appeal is dismissed thereby confirming the order dated 16.10.2000. Hence, the writ petition.

Sri K.Somakonda Reddy, learned counsel for the petitioner contends that the 2nd respondent has no jurisdiction to re-determine his decision on market valuation or stamp duty payable under Section 47-A of the Act and according to the scheme of Section 47-A, if the department had a reason that the determination of the 2nd respondent at the first instance is not reflecting either the correct market value or correct stamp duty payable on the instrument, the department if aggrieved it ought to have pursued the remedy provided for under Section 47-A(4) of the Act as provided under Andhra Pradesh Stamp (Prevention Undervaluation of Instruments) Rules,1975 (for short 'the Rules'). Having failed to pursue the remedy available under the Act and secondly having allowed finding to become final the question of market valuation and stamp duty payable on the subject instrument is not within the jurisdiction of 2nd respondent and the recourse to re-determination under Section 41-A of the Act is nothing but illegal exercise of jurisdiction and liable to be quashed.

On the other hand, the learned Government Pleader contends that in all the circumstances where there is deprivation of revenue to the department, the Court is required to appreciate that though if not under Section 41-A of the Act, but under any other provision if such power is available, the same can be sustained. In support of

such contention, the learned counsel relies upon Section 47 (3A) (i) of the Act.

Now the point for consideration is whether the exercise of jurisdiction through notice dated 12.06.2000 etc. under Section 41-A of the Act to re-determine the market value and the stamp duty payable on document No.2051/91 dated 23.12.1991 is legal and within the jurisdiction of 2nd respondent?

Section 47-A of the Act reads as follows:

“Instruments of conveyance, etc., under-valued how to be dealt with:- (1) Where the registering officer appointed under the Registration Act, 1908, (Central Act 16 of 1908), while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument, and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon.

Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned.

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving the parties an opportunity of making their representation and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject-matter of such instrument and the duty as aforesaid.

Provided that no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducting the amount

already deposited by him.

Provided further that where after the determination of market value by the Collector, if the stamp duty borne by the instrument is found sufficient, the amount deposited shall be returned to the person concerned without interest.

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(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may appeal to the appellate authority specified in sub-section (5). All such appeals shall be preferred within such time and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.

(4A) Any person aggrieved by the order of the Inspector-General under sub-section (3A) may appeal to the High Court within a period of two months from the date of receipt of such order.

(5) The appellate authority shall be—

- (i) in the cities of Hyderabad and Secunderabad, the City Civil Court,
- (ii) elsewhere—

- (a) The Subordinate Judge or if there are more than one Subordinate Judge, the Principal Subordinate Judge, having jurisdiction over the area in which the property concerned is situated; or
- (b) If there is no such Subordinate Judge, the District Judge having jurisdiction over the area aforesaid.”

Section 41-A reads as follows:

“Recovery of Stamp Duty not levied or short levied:- (1) Whereafter the commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1986, any instrument chargeable with duty has not been duly stamped and registered by any Registering Officer by mistake and remarked as such by the Collector or any audit party, the Collector may, within five years from the date of registration serve a notice on the person by whom the duty was payable requiring him to show cause why the proper duty or the amount required to make up the same should not be collected from him”

Provided that where the non-payment was by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this

Act or the rules made thereunder with intent to evade payment of duty, the Collector may, within ten years from the date of registration, serve a notice on such person to show cause why the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of deficit stamp duty.

(2) The Collector or any officer specially authorized by him in this behalf shall, after considering the representation if any, made by the person on whom notice is served under sub-section (1), determine by an order, the amount of duty and the penalty due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount as determined. On payment of the amount the Collector shall add a certificate under Section 42.

(3) Any person aggrieved by an order under sub-section (2) may prefer an appeal before the Chief Controlling Revenue Authority, Andhra Pradesh, Hyderabad within three months from the date of such order.

(4) Any amount payable under this section shall be recovered as an arrear of land revenue.”

I propose to consider the scope and application of Section 47-A of the Act as follows:

Section 47-A provides for a contingency of undervaluation or deficit stamp duty of an instrument at the time of registration of a document and the Sub Registrar is in disagreement with the details furnished by the parties to the document is required to make a reference to the Collector for determination. The Sub Registrar refers the document for determination of the market value of the property and the proper duty payable thereon. The 2nd respondent on receipt of reference from the Sub Registrar is to follow the procedure stipulated under Rules 4 and 5 of the Rules. What is required to be noticed from the combined reading of Rules 4 and 5 of the Rules is that on receipt of a reference by the 2nd respondent, for all purposes a lis on the question of market valuation and the stamp duty payable thereon is

presented for determination. The Rules provide for guidelines to be followed by 2nd respondent in determining the market valuation and collection of deficit stamp duty. Upon consideration of the reference in the manner indicated by the Rules, the 2nd respondent passes an order finally determining the market value of the property covered by the pending document and the deficit stamp duty payable thereon. The requirements of final determination are covered by Rule 7 of the Rules. Appeal against the determination of Collector under Section 47-A(2) and (3) of the Act is available under Section 47-A (4) of the Act. The expression used in sub section (4) is that any person aggrieved by the order of the Collector under sub section (2) or sub section (3) may appeal to the appellate authority specified in sub section 5. From the above, it is clear either the executants to the documents or any person aggrieved by the final determination of the market value or stamp duty payable thereon, the remedy open to such aggrieved person is to file an appeal and assail the findings of 2nd respondent. Therefore, if no appeal is filed and the document is registered after receiving the difference of stamp duty determined by the 2nd respondent for all purposes the matter is concluded between the parties except subject to the further examination under sub section (3 A) (i) of Section 47-A of the Act. It is to be noted here that the sub section is substituted through A.P. Act No.19 of 2005 with effect from 01.08.2005. Be that as it may, by incorporating Section 47-A of the Act as above and juxtaposing the same with the admitted facts of the case on hand it is to be concluded that the exercise under Section 47-A of the Act has attained finality both on valuation of property and deficit stamp duty payable thereon.

The jurisdiction under Section 41-A of the Act is applicable

where the stamp duty is not levied or short levied on a document already registered. Section 41-A provides for limitation for taking action as five years and in cases of fraud, collusion within 10 years from the date of registration. The 2nd respondent by issuing notice dated 12.06.2000 for all purposes is re-determining his own value by exercising the power under Section 41-A of the Act. Either by a plain reading of Section 41-A or combined reading of Sections 41-A and 47-A of the Act does not confer power on 2nd respondent to review or re-determine his final order under Section 47-A (2) of the Act. The circumstances contemplated by Section 41-A of the Act are entirely different and distinct from circumstances envisaged by Section 47-A of the Act. If re-determination under Section 41-A of final orders under Section 47-A is admitted in favour of the department then the object of both the sections in recovering the deficit stamp duty is lost. The lis is taken up for decision on the reference of sub Registrar. Therefore the Sub Registrar is required to make out a full and complete case including suppression or fraud for decision by the 2nd respondent. Had it been a case where without reference to determination under Section 47-A of the Act registration of document is completed, then Section 41-A of the Act is attracted. In view of the aforesaid discussion, I am of the view that the 2nd respondent acted without jurisdiction in re-determining his own valuation. The proceedings No.RCG6/P10/NDK/91 dated 16.10.2000 as confirmed by 1st respondent in Proceedings No. CCRAI/16738/2001 dated 20.03.2004 are set aside and the writ petition is allowed. No order as to costs.

Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

S.V.

BHATT,J

DATE:31.10.2014

Note:

L.R. copy to be marked.

B/o.

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