

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15131 of 2012

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1. Ashok Kumar Yadav S/O Sri Ram Autar Prasad Resident Of Village Bari Pahari, P.S- Agamkuan, Distt- Patna.

.... **Petitioner**

Versus

1. The State Of Bihar Through Secretary-Cum- Inspector General Of Registration, Govt. Of Bihar, Patna.
2. The Inspector General Of Registration, Bihar, Patna.
3. The Commissioner, Patna Division, Patna.
4. The Collector Cum District Magistrate Cum Registrar, Patna.
5. Inspector Of Registration Officer, Patna Pramandal, Patna.
6. Deputy Collector, Law Section, Patna.
7. Sub Divisional Magistrate, Patna City, Patna.
8. The Sub Registrar, Patna City, Patna.
9. The Circle Officer, Patna Sadar, Patna.
10. Smt. Dani Devi W/O Late Ganga Prasad Vill- Bari Pahari, P.S- Agamkuan, Distt- Patna.

.... **Respondents**

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Bhartee

For the Respondent/s : Mr. Harendra Pd. Singh GA8

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT
07-12-2015

The petitioner seeks quashing of the order, dated 15.5.2012 passed by the Commissioner, Patna Division (Respondent no.3) in Stamp Appeal Case No.99 of 2012 affirming the order, dated 18.8.2007 passed by the Inspector of Registration Office (Respondent No.7) in Land Valuation Case No.15 of 2005-06 with a direction to the respondents to admit and register the sale deed presented before the Sub-Registrar, Patna City, Patna (Respondent No.8) on 21.4.2005.

2. By the impugned orders dated 18.8.2007 and 15.5.2012 the



stamp duty payable and the valuation of the property, which is subject matter of sale was assessed on its current market value at time of presentation of document for registration, declining to accept the plea of the petitioner to assess its value as existing on date of execution of sale deed. The petitioner's case is that the price of the property and the stamp duty payable ought to be assessed as existing on the date of execution of sale deed. The relief of the petitioner is founded on the ground that the Vendee should not be penalized for the delay caused by the vendor in registering the sale deed, for which he had ultimately to move the Civil Court for specific performance of the contract. It is further case of the petitioner that Section 47A of the Indian Stamp Act, 1899, which was inserted by Bihar Act 15 of 1988 w.e.f. 31.3.1990 and partly amended by Bihar Act 8 of 1991 w.e.f. 29.11.1991, would have no application in respect of a document presented for registration, pursuant to a decree for specific performance of an agreement. In support of his submission, the petitioner has relied upon a Division Bench judgment in the case of Brijnandan Singh vs. State of Bihar, reported in 2006(3) PLJR 538.

3. The facts of the case in brief is as follows:-

(i) One Ganga Prasad, husband of Smt. Dani Devi, respondent No.10, executed an agreement for sale of land on 20.1.1994 for consideration of Rs.3,50,000/- and a sum of Rs.50,000/- was paid at the time of execution of agreement by the petitioner. However, the sale was not registered as Ganga Prasad fell ill in 1999 and finally died on



20.7.2001. After death of Ganga Prasad, the petitioner requested Smt. Dani Devi (respondent No.10) to execute and register the sale deed (Annexure-3) on receiving the balance consideration amount, which the former was ready to pay. As respondent no.10 evaded registration of the sale deed on death of her husband, the petitioner filed Title Suit No.50 of 2002 for specific performance of contract. The suit was decreed in his favour by the Court of learned Subordinate Judge III, Patna. A copy of the judgment and decree passed in Title Suit No.50 of 2002 is at Annexure-4. In terms of judgment and decree, the petitioner paid the balance consideration amount along with interest to respondent No.10, who executed sale deed in favour of on 7.3.2005, which was presented along with a copy of judgment and decree before the respondent no.8 for registration.

(ii) The consideration amount of the land mentioned in the sale deed executed in the year 1994 was Rs.3,50,000/-. The Registering Officer, e.g. Respondent no.8, was of the view that the current market rate on the date of presentation/Registration of sale deed would be applicable, and not the rate prevalent on the date of execution of sale deed, which was dated 20.1.1994. The Registering Officer, as such, referred the matter to the Collector-cum-District Magistrate-cum-Registrar, Patna (Respondent No.4) under section 47A (1) for fixing its proper valuation, which gave rise to Valuation case no.15 of 2005-06. The Circle Officer, Patna Sadar was directed to ascertain and report the



actual market value of the property described in the sale deed. The Circle officer, Patna Sadar after enquiry vide letter No.4129, dated 26.12.2005 addressed to the S.D.O., Patna City (Annexure-A to the counter affidavit) assessed the market value of the property as Rs.50,47,500/-. The case in the meantime was transferred to the Inspector of Registration Office (IRO), Patna Division, Patna, who was vested with the power of Collector under section 47(A) of the Indian Stamp Act, 1899 vide letter no.1015, dated 20.5.2006 of the Government, in view of a large pendency of such cases and to ensure their quick disposal.

(iii) The IRO accepted the report of the Circle Officer and assessed the valuation of land as Rs.56,35,500/- and directed the petitioner to deposit a sum of Rs.8,13,767/- as deficit stamp duty in addition to Rs.54,100/- paid as stamp duty at the time of presentation of deed in 2005. The petitioner being aggrieved, filed C.W.J.C. No.9696 of 2010 which was disposed of by order dated 27.1.2012 with liberty to take resort to remedy of statutory appeal, under the law. The petitioner accordingly filed appeal, which was rejected on 15.5.2012 and hence this writ application.

4. The question for consideration before this Court is:

(i) Whether the stamp duty is to be assessed on the basis of consideration money disclosed in the agreement for sale, dated 20.1.1994, or on the basis of market value of the property prevailing on the date of presentation of sale deed for registration in the year

2005 (i.e. 7.3.2005), consequent to a decree of specific performance of contract in Title Suit No.50 of 2002 of Sub Judge III, Patna.

(ii) Whether section 47A of the Act would have any application in respect of a document presented for registration pursuant to a decree of specific performance of an agreement, executed after coming into force of Section 47A of the Indian Stamp Act on 31.3.1990, partially amended on 29.11.1991.

5. Before I examine the issues, it would be appropriate to notice the relevant provisions of law. The stamp duty liable to be paid on registration of sale deed etc. is determined in accordance with Indian Stamp Act, 1899, as amended from time to time by the State amendments. Section 47(A) which would be relevant in the context, was inserted in the Indian Stamp Act by Bihar Act 15 of 1988, with effect from 31.3.1990. Section 47(A)(1) reads as follows:

“47-A. Instrument of conveyance.- (1) Where the registering officer appointed under the Indian Registration Act, 1908 (XVI of 1908) while registering any instrument of conveyance, exchange, gift, partition of settlement, has to believe that the market value of the property which is the subject matter of such instrument has not been rightly set forth in the instrument he may, after registering such instrument refer the matter to the Collector for determination of the market value of such property and the proper duty payable thereon”.

(underlining is mine for emphasis)

6 Section 47(A)(1) was partly amended by Bihar Act 8 of 1991 w.e.f. 29.11.1991 which reads as follows:

“47A. Instrument of conveyance:-

(1) where the registering officer appointed under the

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- Indian Registration Act, 1908 (XVI of 1908) while registering any instrument of conveyance, exchange, gift, partition or settlement, has reason to believe that the market value of the property which is the subject matter of such instrument has not been rightly set forth in the instrument he may, at the time of admitting such instrument refer the matter to the Collector for determination of the market value of such property and the proper duty payable thereon.*
- (2) *On receipt of a reference under sub-section (1), the Collector shall, after giving one month's time to the parties for making their representation and after holding an enquiry determine the market value of the property which is the subject matter of such instrument and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty"*

(underlining is mine for emphasis)

7. One aspect is worth mentioning that the 1991 amendment, for the first time, conferred power on the registering authority, to refer the matter of valuation to the Collector for determination of market value of such property 'at the time of admitting such instruments' which power it did not have earlier. For instance, prior to 1991 amendment, and after 1988 amendment effective from 31.3.1990, the registering authority, had no option but to Register the sale deed first, and then to refer the matter to the Collector, for determination of the valuation of the property.

8. **In past, somewhat identical issue** fell for consideration in the case of *Shanti Devi Prasad vs. State of Bihar, reported in AIR 2001 Patna 161*, which is as follows:

Whether authorities exercising power under section 47(A) of



the Indian Stamp Act (as amended by Bihar Amendment Act, 1988) read with Bihar Stamp (Prevention of under Valuation of Instrument) Rules, 1995 can refuse to register an instrument duly presented for registration in execution of decree of specific performance of contract of sale of immovable property passed by a Civil Court of competent jurisdiction on the ground of under valuation of the property, which is subject matter of decree.

9. The primal difference between the issues involved in the present case and that of *Shanti Devi Prasad* case is that in the latter's case, the agreement was executed prior to amendment in 1990 and 1991, whereas in the instant case the agreement executed was subsequent to the date of amendment.

10. The facts in case of *Shanti Devi Prasad (supra)* is as follows:

An agreement was entered into between the parties in the year 1978 much prior to 1990 amendment. The agreement was executed on 30.11.1978 for consideration of Rs.24,000/-. However, the vendor dilly dallied, and avoided the execution of the sale deed. The vendee had to take resort to Court by filing Title Suit No.125 of 1981 for specific performance of contract. The suit was decreed, which was challenged by the vendor unsuccessfully up to the Hon'ble Apex Court. On the direction of the executing Court, the Office Clerk presented the sale deed before the Sub-Registrar for acceptance of its execution and registration on 23.12.1998. The Sub-Registrar referred the matter to the District

Registrar for fixation of proper valuation and corresponding stamp duty payable thereof, as the valuation mentioned in the sale deed was of the year 1978, i.e. the date the sale deed was executed between the parties and not based on current market rate on the date of execution of registration.

11. A writ was filed seeking direction to the respondents to register the sale deed. After hearing the parties and considering the relevant provisions of law, Hon'ble Mr. Justice M.Y.Eqbal, His Lordship as he then was, observed that Section 47A as amended by Bihar Act, 1988 would have no application in respect of a document presented for registration pursuant to a decree of specific performance of contract executed prior to coming into force of the amended provision of Bihar Act, 1988 effective from 31.3.1990. Paragraph 22 of the judgment is quoted herein below:

“22. Having regard to the entire facts and circumstances of the case and the law discussed herein above, I have come to the following conclusions:

- (1) Section 47A of the Act, as amended by Bihar Amendment Act, 1988 shall have no application in respect of a document presented for registration pursuant to a decree for specific performance of an agreement executed prior to coming into force of the amended provision of the Act.*
- (2) Power under Section 47A of the Act can be exercised when the Registering authority has reasons to believe that the valuation of the property which is the subject matter of conveyance has not rightly been set forth with a view to fraudulently evade payment of proper stamp duty. Mere lapse of time between the date of agreement and execution of document will not be the determining factor that the document is undervalued and such circumstances may not itself be sufficient to invoke power under Section 47A of the said Act.*

- (3) *The Registering authority is empowered under Section 47A of the Act to hold an inquiry to satisfy himself whether value of the property has been rightly shown in the document, but in the instant case as the agreement entered into between the parties is much before the amending Act came into existence and having regard to the fact that the parties have been litigating for about 20 years, the Registering authority has no jurisdiction to initiate inquiry under the said provision of the Act and the Rules made thereunder."*

(Underlining is mine for emphasis)

12. In short the judgment lays down that section 47A as amended in 1988 would have no application in respect of a document presented for registration pursuant to a decree for specific performance of an agreement executed prior to coming into force of the amended provisions of the Act. Nonetheless section 47A can be exercised if the valuation of the property which is subject matter of conveyance has not been rightly set forth in order to fraudulently evade payment of proper stamp duty. In other words, if at the time of entering into an agreement the property has been under valued, the registering authority can look into it, but merely because some time has lapsed between the date of agreement and the execution of document, the same may not be sufficient to invoke power under section 47A of the Act.

13. The view was adopted in the case of ***Baiju Singh v. State of Bihar & Ors, reported in 2004(2)PLJR 743***. In the said case too, the sale deed was executed prior to 1990 on 12.5.1974, much prior to amendment in 1990.



14. The correctness of ratio decided in the aforesaid case was doubted by a learned Single Judge of this Court in case of ***Brij Nandan Singh v. State of Bihar, reported in 2006(3) PLJR 538***, who referred the matter to a Division Bench by order dated 3.4.2006 expressing reservations with regard to two earlier judgments; namely, ***Shanti Devi Prasad (supra)*** and ***Baiju Singh (supra)***, wherein it was held that the amended section 47A of the Act is not retrospective in its operation and the stamp duty on the document of transfer shall be assessed and payable according to the valuation given in the agreement for sale, unless the authorities came to the conclusion the valuation given therein has not been rightly set forth in the instrument tendered for registration. The learned Single Judge by his order dated 3.4.2006 while making reference to Division Bench expressed his views as follows:

“.....The law directs that such stamp shall be paid on the market value of the property as on the date of presentation of the instrument for registration”.

15. The matter was accordingly placed before a Division Bench which approved the view taken by the learned Single Judges in the case of ***Shanti Devi Prasad (supra)*** and ***Baiju Singh (supra)*** and quashed the impugned notice by which the petitioner was directed to pay stamp duty on the current market value of the land as on the date of presentation of sale deed for registration.

16. The petitioner submits that the respondents erred in assessing



the stamp duty payable and the valuation of subject matter of sale on its current market value on the date of presentation of sale deed as instant case is identical to that of ***Brij Nandan Singh*** (*supra*) as well as ***Shanti Devi Prasad*** (*supra*). In his case also, the vendor after executing the sale deed resiled from registering it before the Registering authority. He was constrained to file suit for specific performance, which was decreed by a Court of competent civil jurisdiction and consequently in its compliance, the document was presented for registration by respondent no.10, the wife of the original vendor. Thus the respondents ought to have charged the stamp duty on the market value of the property on the date of execution of sale deed in the year 1994 as held in above three cases and not on the date of presentation of the instrument for registration. On his part, the petitioner was always ready to pay the balance consideration money to have the document registered. However, the same remained a distant possibility due to recalcitrant and evasive tactics of the original vendor, and on his death, his wife, the respondent No.10.

17. The petitioner submits that he should not be made to pay the stamp duty by calling upon him to pay on the basis of current market value of the property for circumstances beyond his control. He relies upon paragraph 7 of the Division Bench judgment rendered in the case of ***Brij Nandan Singh*** (*Supra*). The relevant extract of which is quoted hereinbelow:

“7. The impugned notice seeks to raise the question of determination and payment of appropriate stamp duty on the



*basis of the current market price as on the date of presentation of the instrument. This question was raised in the case of **Smt. Shanti Devi Prasad vs. State of Bihar** (supra) and we agree with the decision rendered in that case. It appears to me that it would not be right to strain the person, liable to pay the stamp duty, by calling upon him to pay on the basis of the current market value of the property, **for circumstances beyond his control**. In the present case, if the vendor had not resiled from the agreement and had accepted the balance of the consideration money and executed the instrument of conveyance as per the agreement for sale, the petitioner would have paid the court-fee as on the date of presentation of the document, way back in 1987. He would not have been forced to pay at the higher rate because the other part to the agreement did not fulfill his obligations under it. He should also not be required to pay at the higher rate because of the tardy pace at which civil litigations in India proceed. The suit of 1988 has been decreed in 2003, and the first appeal is still pending in this Court. If this were permitted, then it is a possible situation that the petitioner may be required to pay at the market rate prevailing at the time of disposal of the first appeal pending in the Court. Are we permitted to take judicial notice of the position that the pending first appeal in this Court may take another two decades to be decided”.*

18. In nut shell, the case of petitioner is that when a sale deed is registered on the basis of a decree passed in a suit for specific performance and the plaintiff is not responsible for the prevalent litigation, then the value on the date of agreement is alone relevant for stamp duty and not the value on the date of execution of the sale deed pursuant to order of the Court.

19. On the other hand, learned counsel appearing for the State submits that none of the three judgments referred to by the petitioner would be of any help to him, as in aforementioned cases the agreements were executed prior to 1988 amendment which vested power with

registering authority to take into consideration the market value of the property while registering any instrument.

20. I have heard counsel for the parties.

21. All the three cases on which the petitioner has placed reliance have two common features; (a) the agreement was executed prior to 1990 amendment and (b) in all the three cases, the vendor evaded to register the sale deed, as a consequence suit for specific performance of contract was brought against them which were decreed. The Indian Stamp Act, 1899 as it stood prior to 1990 was silent on the issue as to the date, the stamp duty would be applicable.

22. The Indian Stamp Act, 1899 was amended by Bihar Act 15 of 1988, which brought significant changes. It inserted Section 47A which for the first time vested power with the Registering Authority, if he has reasons to believe, that the market value of the property had not been rightly set forth in the instrument to refer the matter to the Collector for its proper determination of its market value, after registration of such instrument. Section 47A was partially amended by Bihar Act 8 of 1991 effective from 29.11.1991, which vested power with the Registering Officer to refer such matter to the Collector even prior to registration of the document while admitting such instrument, where market value of the property has not rightly set forth in the instrument.

23. It would appear from bare reading of the Section 47A that the market value of the property which is subject matter of instrument is to



be decided on the date of presentation of such instrument for registration. This is the reason that in the case of ***Shanti Devi Prasad (supra)*** which is a leading case on the issue, the learned Single Judge concluded in paragraph 22 that section 47A of the Act as amended by Bihar Amendment Act, 1988 shall have no application in respect of a document presented for registration pursuant to a decree of specific performance of agreement executed prior to coming into force of the mandate provisions of the Act (underlining is mine for emphasis). While coming to the aforesaid conclusion, the learned Single Judge observed that the amended Act would not have retrospective effect. Para 18 of Shanti Devi Prasad case is quoted herein below:

”18. It is well known cardinal principle of law that every statute which takes away or impairs vested rights acquired under the existing laws, or creates a new obligation or imposes a new duty in respect of past transaction must be presumed to be intended not to have retrospective effect. Applying the said principle, I am of the view that when the court execute a sale deed on the basis of a decree passed in a suit for specific performance and plaintiff was not responsible for the prolonged litigation, then the value on the date of agreement alone is relevant for stamp duty and not the value on the date of execution of the sale-deed by the Court”.

24. The Division Bench while approvingly quoting paragraph 18 of the judgment in the case of ***Shanti Devi Prasad (supra)*** reproduced above, too observed that the provision has not been given retrospective effect. Paragraph 9 of the judgment of the Division Bench rendered in the case of ***Brij Nandan Singh (supra)*** is quoted herein below:

“9. As stated hereinabove, the agreement for sale was entered

into on 25.7.1987. The unamended Section 47(1) which came into force with effect from 31.8.90, and the amended provision as it stands today came into force on 22.11.1991. The provision has no retrospective effect for the reasons assigned in the judgment in **Shanti Devi Prasad** (supra). Paragraph-18 of which is relevant and reproduced hereinbelow for the facility of quick reference:-

“18. It is well known cardinal principle of law that every statute which takes away or impairs vested rights acquired under the existing laws, or creates a new obligation or imposes a new duty in respect of past transaction must be presumed to be intended not to have retrospective effect. Applying the said principle, I am of the view that when the court execute a sale deed on the basis of a decree passed in a suit for specific performance and plaintiff was not responsible for the prolonged litigation, then the value on the date of agreement alone is relevant for stamp duty and not the value on the date of execution of the sale deed by the Court”.

(underlining is mine for emphasis)

25. The petitioner submits that Section 47A can be exercised mainly if the registering authority had reasons to believe that the market value of the property had not been rightly set forth in the instrument with a view to fraudulently evade proper stamp duty. Furthermore, mere lapse of time between the date of agreement and the execution of document will not be the determining factor that the document is undervalued and such circumstances by itself is not sufficient to invoke the power under section 47A of the Act, unless there is a lack of bonafide and fraudulent attempt on the part of the parties to under value the subject of transfer. He placed reliance on paragraph 11 of the judgment in the case of **Brij Nandan Singh** (supra), which is quoted herein below:

“11. For the reasons stated above, we agree with the

*statement of law summarized in paragraph 19 of the judgment in **Shanti Devi Prasad** (supra) and is reproduced herein below for ready reference:*

“19. As stated above, power under Section 47A of the Act can be exercised when the Registering Officer has reasons to believe that the market value of the property, which is the subject matter of conveyance, has not been rightly set forth with a view to fraudulently evade payment of the proper stamp duty. Mere lapse of time between the date of agreement and the execution of document will not be the determining factor that the document is under valued and such circumstances by itself is not sufficient to invoke the power under Section 47A of the Act unless there is lack of bona fide and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty.”

26. The observations made either in the case of **Shanti Devi Prasad** (supra) or **Brij Nandan Singh** (supra) on which the petitioner has placed heavy reliance, would not be of any help to him as those were rendered in the case of agreements executed prior to 1988 amendment. In the case in hand, the sale deed was executed in the year 1994, much after coming into effect Bihar Amendment, being Bihar Act 15 of 1988 and Bihar Act 8 of 1991.

27. It is true that the vendee for no fault of his own would have to pay a higher stamp duty, but at the same time one cannot loose sight of the fact that the value of the property too has increased manifold. The value of the property has been assessed by the respondents as Rs.50,47,500/- on the date of presentation of the document for registration in the year 2005,as against the consideration amount of

Rs.3,50,000/- valued at the time of execution of agreement of sale deed on 20.1.1994 by the petitioner himself. The price of the property has increased 15 times, whereas the stamp duty liable to be paid on its current value has only correspondingly increased.

28. The petitioner would not be entitled for relief, for yet, one more reason. The case of the petitioner that the conveyance should not be valued at its present market rate particularly, where the instrument is presented for registration pursuant to a decree of specific performance of contract as the vendee should not be allowed to suffer on account of delaying tactics of the vendor, would also not be sustainable in view of the failure to take resort to provisions of Registration Act itself. Section 23 of the Registration Act states that subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless the same is presented within four months from the date of its execution. Section 23 of the Act is quoted herein below:

“23. Time for presenting documents.- Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final”.

29. Section 34 relates to enquiry before registration by the registering officer. It states that no document shall be registered under

this Act, unless the persons executing such document, or their representatives, assigns or agents authorized appear before the Registering officer within the time allowed for presentation. Section 34(1) of the Act is quoted herein below:

“34. Enquiry before registration by registering officer.- (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26. Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered”.

30. Section 71 of the Registration Act states that every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for the same. Section 72 provides an appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution. In other words, the appeal would lie to Registrar from orders of Sub-Registrar refusing to register the documents where the execution of sale deed is not denied. Section 75 which is very relevant in the context states that if the Registrar finds that the document has been executed and the said requirements have been complied with, he shall order the document to be registered by

the registering authority. Section 75 of the Act is quoted herein below:

"75. Order by Registrar to register and procedure thereon.-

(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) xx xx xx

31. In the present case, the instrument was admittedly been executed in the year 1994 on which date section 47A was applicable and the Registrar could have exercised his powers under that provision. In case, if the vendor was not ready to present the instrument for registration in the year 1994 or within four months as stipulated in section 23 of the Registration Act, the petitioner had the remedy under various provision of the Registration Act e.g. sections 34, 71, 72 and 75. No step had been taken by the petitioner in the present case. Though, the suit has been filed for specific performance of contract, the execution of the sale deed stands as an accomplished fact. In view of the matter, the submission on behalf of the petitioner that he should not be burdened with the stamp duty qua prevailing market value of the property is devoid of merit as the petitioner himself has omitted to take available legal recourse under the Registration Act for registration of the instrument. Moreover, section 47A empowers the registering authority to take into consideration the

market value of the property “while registering any instrument”. There is nothing in the said provision requiring the registering authority to take into notice the date of execution of the instrument and assess/form opinion of the market value of the property accordingly save as provided under section 23 of the Registration Act.

32. Situated thus and in view of the discussions made above, I am of the view that the value of the property is to be assessed on the current market value or could be shifted to the date when decree for specific performance of agreement was passed by the court of competent Civil court. Nonetheless, the Court at the same time is inclined to grant an opportunity to the petitioner to rebut the claim of the respondents that the market value of the property, assessed on the date of presentation was much less than Rs.50,47,500/- as assessed by the Circle Officer in his enquiry report. In case any such representation is filed, respondent No.5 would duly consider the same within a period of three months from the date of its filing.

33. With the aforesaid observations and directions, this writ application stands disposed of.

(Samarendra Pratap Singh, J)

Md. Jamaluddin Khan

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