**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No. 1505 OF 2011**

**ORDER:**

This civil revision petition, under Article 227 of the Constitution of India, is filed by the respondents in CMA No.11 of 2006 on the file of Principal Senior Civil Judge, Vijayawada, whereby the learned Senior Civil Judge set aside the proceedings No.E1/MV/47-A/656/2002 dated 30.05.2003 passed by the District Registrar and Collector.

The parties will hereinafter be referred to as the petitioners and the respondent, for convenience.

The respondent purchased the property from his vendor for valuable consideration of Rs.2,20,00,000/- on 12.06.2002, got prepared the sale deed on a stamp paper worth Rs.36,96,640/- payable on the instrument, presented the deed for registration with the second petitioner/ Sub-Registrar, Patamata, Vijayawada. The second petitioner calculated stamp duty payable on the instrument on market value of Rs.2,73,81,500/-. After few weeks, a notice by the second petitioner /Sub-Registrar was issued on 05.08.2002 levying stamp duty in pursuance of the Memo of the District Registrar G1/458/2002 for valuing the property under commercial category, kept the document pending in CS No.1999 of 2002 and referred the matter to the first petitioner, thereupon he issued proceedings No.E1/MV/47-A/656/20002 dated 30.05.2003.

Aggrieved by the proceedings issued by the first petitioner, the respondent preferred an appeal under Sub-Sections 4 and 5 of Section 47-A of the Indian Stamp Act, 1989 (for short 'the Act') before the Principal Senior Civil Judge, Vijayawada, on various grounds.

Upon hearing argument of both the counsel, the learned Principal Senior Civil Judge, Vijayawada, set aside the proceedings under challenge arriving at a conclusion that the respondent purchased the property from M/S. Salute Travels Private Limited represented by its Managing Director, Smt.Garlapati Ratnamanjari, w/o.Lakshmana Swamy, within the boundaries shown in the schedule. It is situated in the Municipal Ward No.28/3 within the limits of Municipal Corporation and there is no reference about the location in the sale deed that the property is situated in a commercial locality and that the petitioners did not produce any document in support of their contention that the property is situated in a commercial locality, thereby concluded that the property was rightly valued by the purchaser and set aside the order.

Aggrieved by the order dated 30.04.2009 in CMA No.11 of 2006, the present revision is filed under Article 227 of the constitution of India on various grounds.

The main contention of the petitioners is that the appellate court did not consider the guidelines issued in G.O.Ms. No.35, Finance and Housing dated 27.02.1997 and Circular and merely because there was no reference of location of the property in a commercial locality in the sale deed, the appellate court set aside the order. It is evident from the material on record that the building purchased by the respondent herein was used for running educational institution. In such case, fixation of market value by the District Registrar and Collector based on the instructions of the Government is legal. But the appellate authority failed to consider the material on record with reference to the illegality and committed an error in setting aside the proceedings issued by the first petitioner and prayed to set aside the same.

During hearing, the learned Government Pleader for Arbitration while reiterating the grounds raised in the revision petition contended that the property purchased by the respondent is in commercial locality, pointed out that the appellate court, in one paragraph, even without considering whether the property is situated in commercial locality or not, concluded that in the absence of any material that the property is situated in a commercial locality, the order cannot be sustained and the same is liable to be set aside. The conclusion arrived by the appellate court is erroneous and prayed to set aside the order passed by the appellate court exercising jurisdiction under Article 227 of Constitution of India.

Whereas, Sri. V.Hari Haran, learned counsel for the respondent, would contend that fixation of market value based on the surmises and issuing the proceedings cannot be sustained and the petitioners/ District Registrar and Sub-Registrar shall fix the market value based on the circumstances prevailing on the date of registration, not based on the future potential value or development. Therefore, market value on the date of registration if taken into consideration, the order passed by the petitioners is *prima facie* illegal. In support of his contention placed reliance on **Maddula Nagasiromani and Maddula Ramakrishna Rao v.**

**Subordinate Judge and Ors.**[1] On the strength of the principle laid down in the above judgment, the counsel for the respondent prayed for dismissal of the revision petition confirming the order passed in CMA No.11 of 2006.

Considering the rival contentions, perusing the material available on record, the point that arise for consideration is,

> "**Whether fixation of market value is on the basis of use of the property to which it is put to on the date of purchase or location of the property and its surroundings are the relevant factors? If not, mere failure to make a reference about the commercial location in the sale deed is sufficient to set aside the proceedings No.E1/MV/47-A/656/2002 dated 30.05.2003 issued by the first petitioner/ District Registrar and Collector?**

**POINT:**

Section 47-A of the Act was introduced by A.P. Act 22 of 1971 with effect from 16.08.1975 and substituted by A.P. Act 8 of 1998 with effect from 01.05.1998 whereby certain procedure is fixed for fixation of market value of the property while presented for registration. 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

[1] 1995(1) ALT 60

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.

The procedure prescribed for fixation of market value by the Collector under Section 47-A of the Act is provided under Clause (6) of the Section which is extracted hereunder for better appreciation:

> **"(6) For the purposes of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch if sold in the open market on the date of execution of any instrument referred to in sub-section (1) (vide A.P. Act 8 of 1998 w.e.f. 01.05.1998)."**

The prime consideration for fixation of fair market value is the property fetch if sold in the open market on the date of execution of the instrument.

The object of introducing this provision is only to protect the revenue of the Government as the purchaser in most of the case are not setting forth the true value of the property for which they purchased. The State Government also passed certain rules to prevent undervaluation of instruments under the A.P. Stamp (Prevention of under Valuation of Instrument) Rules 1975 conferred power on the state under the provisions of the Stamp Act.

Undoubtedly, power is conferred on the Sub-Registrar to keep the instrument pending when it is presented for registration and to refer the matter to the Collector under the provisions of the

Act, for determination of the market value of the property. But the Sub-Registrar himself initially valued the property and determined stamp duty payable and accordingly instrument is valued and document was engrossed on the stamp papers as determined by the Sub-Registrar in this case. However, on presentation it was kept pending exercising power under Section 47-A of the Act making reference to the District Collector for determination of market value.

The District Collector passed the impugned proceedings assessing the market value as if the property is commercial property, as it was used previously for running educational institution. On challenge, the appellate authority set aside the proceedings on the ground that there was no reference that this property was situated in a commercial locality. Failure of the purchaser to make a mention about the location of the property use to which it was put earlier can never form the basis to arrive at such a conclusion by the appellate authority and at best the value of the property shall be determined on sub-clause (6) of Section 47-A of the Act, not on the basis of the recitals of the document.

When the question, whether Sub-Registrar can keep the document presented before him for registration pending and referred the matter to the Collector for determination of the market value of such property and the duty payable thereon, came up before this court in **Sub-Registrar v. M.Damodar Reddy**[2], wherein it was held that the market value of the property is what the

[2] 1997(5) ALT 187 (DB)

property would fetch in open market on the date of execution of the instrument.

Similarly, the market value of the land ought to be determined by the Collector keeping in view its current usage and not the one reflected in Revenue Record for the year. Therefore, the court cannot ignore the provisions of Clause (6) of Section 47-A of the Act and further the Sub-Registrar has necessarily to satisfy himself before registering a document that the market value of the property is truly stated in the instrument presented before him vide **Vidyanagar Housing Co-op. Society Ltd., v. State of A.P.**[3]

In the present case, the Collector under the Act assigned reasons for arriving at such conclusion for fixing the market value prevailing on date as a commercial property, but the appellate court did not consider the reasons set forth in the proceedings issued by the first petitioner. On receipt of reference from the Sub-Registrar, the Collector (District Registrar) to whom the power is delegated issued Form-II notice to the respondent/ Managing Director of M/s.Nalanda Estate Private Limited, who in turn submitted its objections contending that the value arrived by the District Registrar on the following grounds:

> ***i) Basically the area, where the building is located is categorized as Residential area by the Zonal Regulation of Vijayawada Municipal Corporation, vide their endorsement No.RCC/582/2002 dated 23.08.2002. The Commissioner, Municipal Corporation, Vijayawada issued a copy to the Secretary and Correspondent of Nalanda Academy of Science and Technical Education on the above lines on the categoration of the area as 'Residential'.***
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> ***ii) The building is not utilized for any commercial activity. The building is used for running a school (that too recognized by Government of Andhra Pradesh) promoted and managed by***

[3] 1995(1) ALT 620

***Nalanda Academy of Science and Technical Education A registered society with registration No.SOC-245 of 1990 under Society Act XXI of 1860. The society is a social service and non-profit making body.***

***iii) No lease agreement is in place at present. However a consolidated amount of Rs.1,00,000 per annum is collected from the society towards maintenance charges. Hence this arrangement can not be treated on commercial proposition.***

***iv) The sale consideration was Rs.220 lacs, whereas the Registration Department calculated the value as Rs.2,73,81,500 duly considering the cost of construction for the total plinth area and rate of the site under Residential category. There is no justification in re-categorizing the area as commercial for this transaction purpose. That too after completing all registration formalities.***

***v) The Vijayawada Municipal Corporation assessed the annual rental on the property as Rs.7,41,204, vide their property assessment notice No.26309 dated 11.07.02. Where as Rs.3,81,64,392 which indicates the annual rent on the property is as Rs.21,20,244. The indicated rent quoted by Registration Authorities is too high to the real assumption.***

***vi) Even if the property is categorized as commercial the valuation is supposed to be done by reducing the rate from floor to floor, the way we go up. But here the registration authority applied uniform rate and arrived the figure as Rs.382 lacs from Rs.274 lacs, thereby increasing the rate by 39.38% on the original value of the property, which is abnormal.***

The District Registrar categorized the subject matter of the property as commercial based on the recitals of the document where the property was described as M/s.Nalanda Estates Private Limited a company registered under the Companies Act vide Regd. No.1-34257 of 2000, dated 13.04.2000. The said reference itself is sufficient to conclude that the property is being transferred under the Companies Act and it is not for educational institution. Mere fact that where the building is located is categorized as residential area by the Vijayawada Muncipal Corporation, does not entitle the benefit of residential area extended to commercial purposes.

The Commissioner and Inspector General of Registration and Tamps Circular Memo No. MVI/20955/201 DATED 21.08.2001. The petitioner is a company and the educational institution is being run in the building and it is classified as commercial as per the Circular Memo and the objections of the respondent herein was not sustained by the District Registrar and fixed the market value as commercial.

The appellate court totally ignored the reasons mentioned in the proceedings, more particularly, at page 3 of the proceedings and the recitals in the document so also the purpose to which the building is put to use. Therefore, the order passed by the appellate authority is erroneous on the face of it. When the Collector assigned reasons, which is *sine qua non* for application of mind so as to test the validity of the order passed by the quasi judicial authority. But the appellate authority did not consider the reasons mentioned in the proceedings and based on surmises the court set aside the order.

This court, while deciding the same situation in **District Registrar & Collector u/s.47A Kurnool v. Sri Vasavi Seva Sangam, Nandyal Town**[4] held that a perusal of Section 47-A shows that it is only the market value which is to be determined and that the potential value based on nature of land and future possibility of using the land as house sites is irrelevant.

But in the present case the property was classified as commercial in view of circular memo referred above and the

[4] 2013(2) ALD 619

property is being used for commercial purpose as on the date of presentation of document for registration and execution.

In a similar situation, this court in **K.Upendra and another v. State of A.P.**[5] held that when the Collector not only relied on his personal observation but also relied on documents, it cannot be said that the determination of stamp duty suffers from any perversity, which is a finding of fact. It cannot be challenged by a way of writ under Article 226 of Constitution of India.

Thus, viewed from any angle, it is the duty of the Collector to take into consideration of the value that the property would fetch if sold in market value, but based on other circumstances, the Collector concluded that the property is classified as commercial one and it is being used for educational institution which is commercial that may not be a consideration. However, the Collector has to exercise power within the parameters laid down under Section 47-A(6) and determine the value of the property.

Learned counsel for the respondent while contending that the future potentiality cannot taken into consideration for determination of the stamp duty while exercising power under Section 47-A of the Act by the Sub-Registrar or the Collector. To support his contention, he placed reliance on **Maddula Nagasiromani and Maddula Ramakrishna Rao v. Subordinate Judge and Ors.** (1st supra) wherein the Apex court held that the price at which the transaction was concluded between the petitioner and his vendor being at arms length generally denotes the market value by itself, unless there is evidence to show that

[5] 2003(4) ALD 1

the said value was either a fancy price or a concession granted because of certain relationship between the parties to the transaction. When value shown which was in conformity with the valuation of the adjacent lands in the same Registrar's Office, represented the market value of the land as agricultural land on that date and does not require to be revalued under Section 47-A of the Stamp Act. The valuation of property based on the reasonable opinion of the sub-registrar treating the property as commercial is illegal and set aside the order while exercising original jurisdiction under Article 227 of the Constitution of India.

In **State of U.P. and Ors., v. Ambrish Tandon and Anr.[6],** the Apex court held, at paragraph 8, as follows:

> ***"The impugned order of the High Court shows that it was not seriously disputed about the nature and user of the building, namely, residential purpose on the date of the purchase. Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. Though the matter could have been considered by the Appellate Authority in view of our reasoning that there was no serious objection and in fact the said alternative remedy was not agitated seriously and in view of the factual details based on which the High Court has quashed the order dated 27.09.2004 passed by the Additional District Collector."***

Thus in view of the law declared by this court and the Apex court the use of the property in future for commercial purpose or is not at all relevant for determining the market value. The Collector while exercising jurisdiction under Section 47-A of the Act assessed the market value based, his opinion so also based on the

[6] 2012(2) ADJ 545

use of the property on the Collector is expected adhere to Clause (6) of Section 47-A of the Act and determine the value of the property as on the date of its execution of instrument presented before the Sub-Registrar. The appellate court did not consider any rules pertaining to the transaction of the value of the property by the Sub-Registrar or Collector under the Stamp Act and did not determine even the market value of the property. Therefore, the order of the appellate authority is erroneous on the face of record. As such the order is liable to be set aside. More over the Collector for the purpose of Section 47-A of the Act did not determine the fair market value of the property, confining himself to clause (6) of Section 47-A of the Act. Therefore, the proceedings issued by the second petitioner/ Sub-Registrar under challenge and reasons assigned therein appears to be artificial. In such circumstances, this court while exercising power under Article 227 of the Constitution of India can set aside the order while directing the first petitioner/ District Registrar & Collector for the purpose of Section 47-A of the Act to determine the fair market value, keeping in mind Clause(6) of Section 47-A of the Act.

In view of my foregoing discussion, the order dated 30.04.2009 in CMA No.11 of 2006 passed by the Principal Senior Civil Judge, Vijayawada, is hereby set aside while remanding the matter to the first petitioner/ District Registrar & Collector for the purpose of Section 47-A of the Act to determine fair market value, keeping in mind Clause (6) of Section 47-A of the Indian Stamp Act, 1899, within three months from the date of receipt of a copy of this order. On such determination the respondent herein is directed to deposit the stamp duty payable, if any, and on such deposit of stamp duty, the second petitioner/ Sub-Registrar is directed to register the document.

Accordingly, the Civil Revision Petition is allowed. No costs.

Miscellaneous petitions, if any, pending in this CRP shall stand closed.

**M.SATYANARAYANA MURTHY, J**

**Date:29.06.2017**
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