**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**
**WPC No.5180 of 2009**

State of Chhattisgarh, Through Secretary, Govt. of Chhattisgarh, Department of Commercial Taxes (Registration) D.K.S. Bhawan, Mantralaya, Raipur (CG)

---- Petitioner

Versus

1. Board of Revenue, Chhattisgarh, Bilaspur (CG) (Circuit Court, Raipur)
2. M/s. Papusha World (Tumdibod) Through Partner P.K. Seth, S/o. Shri V.C. Seth, R/o Nehru Nagar, Bhilai, Tahsil & District Durg (CG)
3. Shri Ravilal Patel, S/o Shri L. Patel, Attorney for Navin Bhai and another, R/o. Durg (CG)

---- Respondents

And

**WPC No.5182 of 2009**

State of Chhattisgarh, Through its Secretary, Government of C.G., Department of Commercial Taxes (Registration) D.K.S. Bhawan, Mantralaya, Raipur (CG)

---- Petitioner

Versus

1. Board of Revenue, Chhattisgarh, Bilaspur, Circuit Court, Raipur, through its Registrar
2. M/s. Papusha World, Tumdibod Through Partner P.K. Seth, S/o. Shri V.C. Seth, R/o Nehru Nagar, Bhilai, Tahsil & District Durg (CG)
3. Shri Ravilal Patel, S/o Shri L. Patel, Attorney for Navin Bhai and another, R/o. Durg (CG)

---- Respondents

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| For Petitioner | : | Mr.Shashank Thakur, G.A. |
| For Respondents | : | None present |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

29/1/2018

1. Since common question of law and fact is involved in these writ petitions, they are heard together and are being disposed of by this common order.
2. Respondent No.3 herein-Ravilal Patel has sold the subject land in favour of respondent No.2 by way of two sale deeds and deeds were executed on 23.3.2001 and produced for registration on

10.7.2001 and 23.7.2001 respectively. The Sub-Registrar, Rajnandgaon finding that market value of the subject property has not been stated properly referred the matter to the Collector of Stamps, Rajnandgaon. The Collector of Stamps, Rajnandgaon registered the case on 12.7.2001 and 24.7.2001 respectively and passed a detailed order on 12.11.2002 holding that additional stamp duty of ₹ 27,388/- and ₹ 41132 respectively is required to be paid by respondent No.2. Feeling aggrieved against the said order, respondent No.2 herein preferred a revision before the Board of Revenue under Section 47-A(4) of the Indian Stamp Act, 1899 (hereinafter called as “the Act of 1899”). The Board of Revenue vide impugned order allowed the revision and set aside the order passed by the Collector of Stamps, Rajnandgaon. Questioning that order, these writ petitions have been filed by the petitioner herein.

**3.** Mr.Shashank Thakur, learned Government Advocate for the petitioner/State, would submit that the Board of Revenue is absolutely unjustified in holding that since sale deed has been registered and thereafter reference has been made, therefore, the Collector of Stamps was not empowered to proceed under Section 47-A (1) of the Act of 1899, therefore, the order of the Board of Revenue is liable to be set aside.

**4.** No one has appeared on behalf of the respondents.

**5.** I have heard learned counsel for the petitioner, perused the impugned order and documents with the writ petition.

**6.** Section 47-A of the Act of 1899 has been inserted by way of the State amendment with effect from 15.5.1975 which states as under:-

“**<u>47-A. Instruments undervalued how to be dealt with</u>**.-(1) If the Registering Officer appointed under the Registration Act, 1908 (No.XVI of 1908), while registering any instrument finds that the market value of any property which is the subject matter of such instrument has been setforth less than the minimum value determined in accordance with any rules under this Act, he shall before registering such instrument refer the same to the Collector for the determination of the market value of such property and the proper duty payable thereon.

(1-A) Where the market value as setforth in the instrument is not less than the minimum value determined in accordance with any rules under this Act, and the Registering Officer has reason to believe that the market value has not been truly setforth in the instrument, he shall register such instrument and thereafter refer the same to the Collector for determination of market value of such property and proper duty payable thereon.

(2) On receipt of reference under-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner, as may be prescribed, 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.

(3) the Collector may suo motu within five years from the date of registration of any instrument, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as the correctness of the market value of the property which is the subject-matter of any such instrument and the duty payable thereon and, if after such examination, he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty.

Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Madhya Pradesh Amendment) Act, 1975

(3-A) For the purpose of inquiries under this Section, the

> Collector shall have the power to summon and enforce the attendance of witnesses including the parties to the instrument, or any of them and to compel the production of documents by the same means ans so far as may be in the same manner, as is provided in the case of civil Court under the Code of Civil Procedure, 1908 (Central Act No. V of 1908).
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> (4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may in the prescribed manner appeal against such order to the Commissioner, who may either himself decide the appeal or transfer it to the Additional Commissioner of the Division.
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> (5) Any person aggrieved by an order passed in appeal under sub-section (4) may by the prescribed manner appeal against such order to the Chief Controlling Revenue Authority, Madhya Pradesh.
>
> (6) Every first and second appeal shall be filed within thirty days from the date of the communication of the order against which the appeal is filed, along with a certified copy of the order to which objection is made and shall be presented and verified in such manner as may be prescribed:
>
> Provided that in computing the period aforesaid, the time requisite for obtaining a copy of the order appealed shall be executed."

**7.** A careful perusal of the aforesaid provisions would show that the Registering Officer under the Act is empowered to refer the matter to the Collector, if he has reason to believe that the market value of the property has not been truly set forth in the instrument he shall before registering such document, refer the document for determining the market value of such property.

**8.** Full Bench of the Madhya Pradesh High Court in the matter of **Komalchand Vs. State**[1] has formulated two questions in which first question is relating to this case, therefore, only question No.1 is noticed which reads as under:-

> "(1) Whether after the registration of a document the registering authority can hold an enquiry regarding the

1 1965 JLJ 656

> value of the property covered by the deed and call upon the executant to pay the deficit stamp duty ?”

Full Bench has held that the registering authority after registration cannot enquire as to the value of the property covered by the document and deficit stamp duty cannot be ordered to be paid and answered the first question as under:-

> “5. For these reasons, our answer to the first question is that after registration of the 'Takseemnama' on 1st October 1956 the registering authority had no power to hold an enquiry regarding the value of the property covered by the deed and call upon the executant to pay the deficit stamp duty. This answer to the first question renders it unnecessary for us to answer the second question.”

**9.** Judgment rendered by the Full Bench of the Madhya Pradesh High Court in **Komalchand** (supra) has been followed with approval in **State of M.P Vs. Martandsingh Ju Deva, Rewa**[2]. Para 3 of the report states as under:-

> “3. The learned Member has rightly observed that the questions as to whether after registration the Sub-Registrar could make a reference or not is concluded by the Full Bench of this Court in Komalchand Jain and another v. State of Madhya Pradesh and in view of this, in our opinion, no question remains for which a reference could be made to this Court. A perusal of the order passed by the learned Member of the Board of Revenue, therefore, clearly indicates that there is nothing in the order of reference which may require the decision of this Court under section 57(1) of the Stamp Act.”

**10.** In the light of principle of law laid down by the Madhya Pradesh High Court in the aforesaid judgments (supra), if the facts of the present case are examined, it is quite vivid that the registering authority after presentation of the case finding that market value of the property has not been properly set forth in the

2 1984 JLJ 328

instrument referred the matter to the Collector of Stamps, Rajnandgaon and the Collector of Stamps registered the case under Section 47-A(1) of the Act of 1899 (State amendment) and determined the correct stamp duty payable to respondent No.2, which has been interfered by the Board of Revenue on the ground that after registration of the instrument, no enquiry can be made by the registering officer/Collector of Stamps, which is factually incorrect.

**11.** In the instant case, admittedly, before registration of the instrument in question, the matter was referred by the registering authority to the Collector of Stamps for determination of proper stamp duty, therefore, the Board of Revenue was absolutely unjustified in holding that the matter could not have been taken by the Collector of Stamps.

**12.** In the result, the order passed by the Board of Revenue dated 14.10.2008 is hereby set aside and that of the order of the Collector of Stamps, Rajnandgaon is hereby restored.

**13.** The writ petitions are allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-