S/L. 4.
27.08.2019
MNS

Calcutta High Court
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction

WPA 172 of 2019

Anugrah Construction Private Limited
Vs.
The Inspector General of Registration (IGR) and others

Mr. Jagriti Singh,
Mr. Rajesh Agarwal,
Mrs. Nisha Gupta

...for the petitioner.

Mr. Subir Kumar Saha,
Mr. Bikramaditya Ghosh

...for the respondents.

The petitioner has come up with the present writ petition with a grievance that the registering authorities unilaterally and arbitrarily changed the proposed user of the suit premises in the assessment of valuation for the purpose of stamp duty, thereby deviating from the proposed user as put in by the petitioner itself in the concerned column of the assessment application, and reassessing the stamp duty payable on the basis of such arbitrarily altered proposed user, over which the petitioner had no control.

Learned counsel for the petitioner argues that no such discretion is available with the registering authority to anticipate that the petitioner would not use the property for the purpose put in the 'proposed use' column and to base its assessment of valuation on the basis of such apprehension.

Learned counsel for the petitioner cites in this regard a judgment reported at ***2011 0 Supreme (Madras) 2990 (M/s. Thyrocare Technologies Limited by Director A. Sundararaju Vs. the Sub Registrar, Madukkarai, Comibatore & Others)*** in support of the proposition that the stamp duty can only be determined on the basis of the land use recorded by the State in the revenue records and the mere fact that the land is in close proximity to a residential land will not make an agricultural land into a residential land, nor can the authority determine the stamp duty of an agricultural land treating the said land as a house site.

The learned single Judge, in the cited judgment, also relied on a judgment of the Supreme Court, wherein it was held that the question of future potential of the land-in-question cannot be the determining factor for determination of the market value for the purpose of stamp duty payable under the Stamp Act.

Learned counsel for the petitioner next cites a judgment reported at ***AIR 2016 Calcutta 357 (Chandramallika Suppliers Private Limited & Another. Vs. the State of West Bengal & Others),*** which discussed the entire scheme of the "CORD" software introduced by the Government of West Bengal for the purpose of assessment of stamp duty and seamless registration of documents.

By placing reliance on the said judgment, learned counsel argues that it is well-settled that the market value of a land includes within its definition its potential value and meaning of the word potential as discussed therein has to be as per the column having the heading "proposed land use".

It is argued on the basis of the said judgment that the information provided by an applicant under the said column is mandatorily required by the registering officer for the purpose of determination of the market value as provided under Clause 16B of the Indian Stamp Act,1899.

As such, it is submitted that the registering authority cannot arbitrarily change the proposed use of the land for the purpose of assessing the stamp duty payable.

On the other hand, learned counsel appearing of the respondents cites the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2010.

It is argued on the basis of the proviso to Rule 3 thereof that the provisions, providing guidelines for assessment of market value, were not applicable to the computerized system of registration (CORD) software.

It is submitted that Rules 3A to 3E of the said Rules indicate the yardsticks of assessment and determination of market value of immovable property.

Also relying on Rule 5A of the said Rules, learned counsel for the respondents argues that if the collector, on receipt of any information or after random checking of deeds selected through the CORD system or suo motu within five years from the date of registration of any instrument registered in CORD software system, has reason to believe that the market value of the property which is the subject matter of such instrument has not been truly generated from the CORD software, has the power to inspect the property and ancillary powers of enquiry in order to pass a decision on such assessment.

Apart from such remedy, it is argued by the respondent, it was also available before the petitioner to approach the collector under Section 31 of the Indian Stamp Act, 1899 for an adjudication as to proper stamp duty, against which adjudication there was a further remedy of an appeal.

As such, the only option, according to the respondents, for the petitioner, was either to present the documents-in-question for registration with the assessment as done by the respondent authorities or to approach the collector under Section 31 or wait for a challenge under Rule 5A of the 2010 Rules.

It is further submitted on behalf of the respondents that under Section 47A, as per the West Bengal amendment, of the Indian Stamp Act, 1899, where the registering officer appointed under the Registration Act, 1908, while registering any instrument as specified therein, has reason to believe that the market value of the property, which is the subject matter of any such instrument, has not been truly set forth in the instrument presented for registration, he may, after receiving such instrument, ascertain the market value of the property which is the subject matter of such instrument in the manner prescribed and compute the proper stamp duty chargeable on the market value so ascertained and thereafter he shall, notwithstanding anything to the contrary contained in the Registration Act, 1908 in so far as it relates to registration, keep registration of such instrument in abeyance till the condition referred to in sub-section (2) or sub-section (7), as the case may be, is fulfilled by the concerned person.

Learned counsel for the respondents also places reliance on the West Bengal Registration Rules, 1962, in particular Rule 123 and its sub-rules, to exhibit the scheme of verification by a registering officer for the purpose of registering a document and assessment of market value of the property-in-question.

It is submitted that, under Rule 3E, the registering officer may call for documents in respect of assessment of market value.

Learned counsel further submits that, under Section 27 of the Indian Stamp Act, there is a provision that the consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. As such, it is argued on behalf of the respondents that in the event the applicant for registration or assessment of stamp duty does not place the true facts in respect of factors determining assessment of stamp duty, it was the duty and within the power of the registering authority to put in the proper determinants in place and for making the assessment as per such altered factors.

However, there is nothing in any of the statutes and rules placed on behalf of the respondents, which gives the registering authority the unilateral power to arbitrarily change the purpose of use of the land, proposed by the applicant.

All the relevant rules indicate that the information furnished by the applicant, as regards the proposed use of the land, to be sacrosanct, at least for the purpose of assessment of stamp duty.

Undoubtedly, it is for the registering authority to take into consideration all the relevant determinants and yardsticks, on the basis of the land usage in the neighbourhood, as well as prior transactions in respect of the land-in-question, while assessing the market value. However, the registering authority could not change the goal posts and alter the proposed user as suggested by the applicant itself, for making such altered proposed user as a basis of assessment. The registering authority's power is only confined to proceeding on the premise of the information as to proposed user, as provided by the applicant itself, and the only leeway provided to the registering authority is to arrive at such assessment on the basis of such proposed user and other relevant yardsticks. However, it is entirely beyond the power and jurisdiction of the registering authority to alter the proposed purpose as incorporated in the relevant columns by the applicant itself, as done in the present case.

It is, however, always open to the registering authority to reopen its assessment of stamp duty and also for the collector to do so, either *suo motu* or on information received from any interested party, including the registering authority itself, to re-visit the assessment of stamp duty at a later stage as well.

Hence, there is no dearth of remedies for the registering authority or the State to review the stamp duty and to claim such re-assessed balance stamp duty from the party seeking registration, in case of any erroneous assessment. However, needless to mention, the applicant for registration would have the right of hearing on such assessment and also the right to challenge such assessment, as provided in law.

In such view of the matter, the action of the registering authority in the instant case, changing the proposed user of the land sought to be registered, was palpably illegal and has to be struck down.

Accordingly, W.P.A. No. 172 of 2019 is disposed of by directing the respondent no. 4 to register the property-in-question on the basis of the initial valuation arrived at by the registering authority on the basis of the proposed land use as furnished by the petitioner, as annexed at pages 16 to 19 of the present writ petition, as expeditiously as possible, subject to full payment of such stamp duty by the petitioner.

It is made clear that it would be open to either of the parties to question the final assessment, if necessary, at a later stage in accordance with law.

There will be no order as to costs.

Let photostat certified copies of this order, if applied for, be made available to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)