AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.6662 of 2007

State Of Chhattisgarh Through The Collector Of Stamps, Ambikapur, District - Surguja Chhattisgarh **---- Petitioner**

Versus

Sourabh Agrawal, S/o Shri Ramesh Chandra Agrawal, R/o Chopdapara, Ambikapur, District - Surguja C.G. ....**Respondent**

For Petitioner/State	:	Mrs. Fouzia Mirza, Additional A.G. and Mr. Sanjay Kumar Agrawal, G.A.
For Respondent	:	Mr. Raghvendra Pradhan, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28.08.2019

Heard.

1. This petition, under Article 227 of the Constitution of India, is preferred against order dated 25.05.2007 passed by the Board of Revenue, by which, the order dated 05.05.2006 passed by the Collector of Stamps in the matter of determination of market value of the property, being subject matter of transaction of gift deed dated 27.08.2004, was set aside.

2. The relevant facts of the case, briefly stated, are that one Ramesh Kumar Agrawal, maternal uncle of respondent Sourabh Agrawal, executed a gift deed in favour of respondent on 27.08.2004, by which, he gifted an open land admeasuring 1144.70 sq.mtr. situated in Khasra No.950/2, 951/2 & 950/3 in the city of Ambikapur. For the purposes of Court fee, the market value of the property was stated in the document as Rs.19,75,000/- and on this claimed market value, stamp duty and registration fee was paid. Three days thereafter, another transaction of gift was made by the same person i.e. Ramesh Kumar Agrawal on 31.08.2004, in favour of his sister Geeta Agrawal, mother of Sourabh Agrawal, by which, he gifted a strip of land

admeasuring 86.90 sq.mtr. situated in Khasra No.951/2 & 952/2. The market value for the purposes of stamp duty and registration was stated as Rs.19,80,000/-. In the first gift deed dated 27.08.2004, the land was shown to be situated in Imlipara ward, whereas, in the second gift deed dated 31.08.2004, the location of the land was described as Deviganj road.

3. A complaint was however, later on, made to the Collector of Stamps that an attempt has been made to undervalue the land which was subject matter of gift transaction dated 27.08.2004. The complaint was that the market value of the property was deliberately undervalued to evade payment of stamps duty and registration fee in accordance with the then existing rates. On the complaint, the Collector of Stamps, assumed jurisdiction under Section 47-A(3) of the Indian Stamps Act, 1899 (for short 'the Act of 1899'), as amended under the State amendment. Various authorities like Nazul Officer, Revenue Officer were directed to submit report. A Notice was issued to Sourabh Agrawal. The Collector finally passed an order holding that the market value of the property was undervalued. According to the Collector of Stamps, the land was situated on Deviganj Road and therefore, the market value of residential plots were required to be applied and as the land was situated behind the main road, 10% reduction was also permissible and thus, according to the Collector of Stamps, true market value of the property was Rs.1,94,22,570/- on which stamp duty of Rs.19,17,982/- and registration fee of Rs.1,55,554/- was leviable.

4. The aforesaid order, to the utmost prejudice of respondent donee of gift, an appeal was preferred before the Board of Revenue. The Board of Revenue held that the property was situated in Imlipara ward No.16/31 and as per the guidelines, the rate per square metre would be 1175. On this basis, the Board of Revenue set aside the order passed by the Collector of Stamps. As the stamp duty and registration fee was paid by the respondent on the basis of 2115 per sq.mtr. at the time of registration, no further liability for payment of stamp duty or fee was imposed on respondent.

5. Aggrieved by the aforesaid order, the State has filed this petition assailing legality and validity of the order passed by the Board of Revenue.

6. Learned Additional Advocate General argued in extenso and submitted that the order passed by the Board of Revenue is completely perverse, against the provisions of law and without making due and proper enquiry on the basis of approved rates under the provisions of Madhya Pradesh/Chhattisgarh Preparation and Revision of Market Value Guideline Rules, 2000 (for short 'the Rules of 2000'). It is argued that the Board of Revenue adopted an incorrect approach by assessing the market value on the basis of certain guidelines which were not in accord with the guidelines approved by the Central Valuation Board, a statutory authority constituted under the Rules of 2000. It is argued that the Board of Revenue applied proposed rates guidelines as provisionally prepared by the District Valuation Committee. Learned State counsel further argued that the approach of the Board of Revenue was fundamentally flowed inasmuch as, for the purposes of assessing market value, the Board of Revenue was required to look into the market value guidelines as published by the Central Valuation Board (Annexure P/4). The Collector, based on these guidelines, estimated the market value of the property, whereas, the Board of Revenue adopted the proposed market value guidelines, as prepared by the District Valuation Committee. It is also submitted that, in fact, while coming to the conclusion that the property is situated in Imlipara Ward No.16/31, report of Revenue Officer referred to in the report dated 05.08.2006 has been completely omitted from consideration. It is argued that the report dated 05.08.2006 clearly stated that the property under transaction dated 27.08.2004 has to be treated as situated on Deviganj road and on that basis, the market value of the property was required to be assessed. It is next submitted that the Collector has arrived at the market value taking into consideration the guidelines of the Central Valuation Board and all other considerations which could not be disturbed by the Board of Revenue by taking into consideration irrelevant and unsubstantiated material both with regard to the location of the plot and the approved rates.

7. On the other hand, learned counsel for the respondent would argue that the Collector, swayed by the fact that Ramesh Kumar Agrawal had divided his property in two parts and one nearer to Deviganj Road admeasuring 86.90 sq. mtr was gifted to sister Geeta vide gift deed dated

31.08.2004 and the back part of the remaining property was gifted to his nephew Saurabh vide a gift deed dated 27.08.2004, drew an inference that it was a case of evasion of stamp duty and registration fee, whereas, according to the approved guidelines applicable wardwise, the guideline rates were 2115/- per sq. mtr. for ward No.16/31 of Imlipara. Reliance placed on Central Valuation Board Guidelines Annexure P/4 before this Court is liable to be rejected because this was never brought to the notice of the Board of Revenue nor the Board of Revenue had an opportunity to examine on factual aspects as to whether the rate applied by the Board of Revenue were duly approved or the rates were subject to guidelines Annexure P/4. Therefore, it cannot be said that the order suffers from any jurisdictional error so as to warrant interference under Article 227 of the Constitution of India. Further submission of learned counsel for the respondent is that as far as the finding with regard to the location of the property is concerned, it is essentially a finding of fact and before the Collector, as well as before the Board of Revenue, number of reports were placed and those spot inspection report prepared by different authorities were minutely scrutinized and finding of fact was recorded regarding the plot being situated in ward No.16/31 of Imlipara and accordingly, the Board of Revenue applied the guidelines of the District Valuation Committee which was actually filed before the Collector of Stamps and filed before the State, itself, which bears stamping that the same has been approved by the Board.

8. Stamp Duty is leviable under the provision of the Act of 1899. Section 3 of the Act of 1899 provides for the instruments which are chargeable with stamp duty. The instruments and the basis for charging stamp duty is provided in the Schedule appended to the Stamp Act. Article 33 of the Schedule which relates to gift provides as below:

"**Gift, instrument of,** not being a settlement (No.58) or Will or Transfer(No.62)	The same duty as a Conveyance (No.23) for a market value equal to the market value of the property which is the subject matter of gift."

9. According to the aforesaid Article relating to gift, stamp duty would be the same as leviable on a conveyance as per Article 23 for a market value equal to the market value of the property which is the subject matter of gift. Article 23 provides as below :

"23. Conveyance, not being a transfer	Seven and half per cent.

charged or exempted under No.62 irrespective of the market value of the property which is the subject matter of conveyance

of such market value:
Provided that if the total amount of the duty payable is not a multiple of fifty paise, it shall be rounded off to the nearest rupee half of a rupee or over being counted as one rupee and less than half of a rupee being disregarded."

10. Thus, in the matter of a gift deed, seven and half per cent of the market value would be the Stamp Duty leviable under the law.

11. Section 47-A of the Act of 1899 [as stated under the State amendment applicable to the State of MP now CG], the 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 the instrument. This is clear from the explanation appended to Section 47-A of the Act of 1899 which reads as under :

> **"Explanation –** For the purpose 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 the instrument."

12. Under the Act, there is no specific formula of assessing the market value but it has been left in the hands of the Collector or the Appellate Authority to estimate the market value.

13. For the purposes of laying down guidelines of the market value, the State framed Rules in the year 1975 known as Indian Stamp Act (MP/CG Prevention of Undervaluation of Instruments) Rules, 1975 (for short the Rules of 1975"), in exercise of powers conferred by Section 75 read with Section 47-A of the Indian Stamps Act. The aforesaid Rule laid down the scheme relating to determination of market value. According to this Rule, all relevant considerations for the purposes of estimating market value are required to be taken into consideration by the competent authority. The principles for determination of market value are laid down in Rule 5 of the Rules of 1975. Rule 5 of the Rules of 1975 contains a very exhaustive provision comprehending relevant consideration in the matter of determination of the market value of a property. Rule 7 of the Rules of 1975

provides for determination of market value and order that may be passed by the Collector. It reads as below :

> **"7. Order determining the market value** -(1) the Collector shall :
> (i) after considering the objections and representations received in writing from the person to whom notice under sub-rule (2) of Rule 4 has been issued and those urged at the time of the hearing.
> (ii) after examining the records before him; and
> (iii) after a careful consideration of all the relevant factors and evidence placed before him, pass an order, determining the market value of the properties and the duty payable on the instrument, communicate the order to the parties and take steps to collect the difference in the amount of stamp duty, if any.
> (2) A copy of the order shall be forwarded to the Registering Officer concerned for his record."

14. In course of time, the State came out with another Rule known as Rules of 2000 wherein, a statutory scheme of laying guideline of the market value was laid down. This Rule envisages proposal with regard to market value to be prepared by the District Valuation Committee. The function of the District Valuation Committee as specified under Rule 4(2) of the Rules of 2000 is as below :

> **"4(2).** The District Valuation Committee shall perform the following functions:-
> (a) collect information on property values and property trends which would be compiled in the form of primary data along with the existing data.
> (b) analyse the proposed values in forms I, II and III, as the case may be, alongwith other information received from the Sub District Valuation Committee and the information collected in the respect to construction rates, actual rates of the properties etc. complied in the form of primary data and to fix the provisional values.
> (c) Send the provisional values for approval of Central Valuation Board and to issue the market value guidelines for different areas on approval.

15. It is clear from the aforesaid provision that the District Valuation Committee is required to propose provisional values and send the same for approval of the Central Valuation Board and to issue market value guidelines for different areas on approval.

16. Rule 3(2) of the Rules of 2000 lays down the function required to be performed by the Board which is as below :

> **“3(2).** The Board shall perform the following functions-
> (a) receive information/data of property transactions entered by the District Valuation Committee along with the provisional rates for analysis and final approval;
> (b) evolve norms for fixation of market values in respect of valuation of lands buildings and various kinds of interests in the immovable property.”

17. A conjoint reading of the provisions contained in Rule 4(2) and Rule 3(2) of the Rules of 2000 with regard to the duties and functions which the District Valuation Committee and the Central Valuation Board are required to perform, it is clear that the proposal has to be initiated by the District Valuation Committee and it is required to be approved by the Board. It is only when these guidelines are approved by the Board that they become statutory guidelines under the Rules of 2000.

18. These guidelines which are framed under the Rules are, however, not final nor take away the power of the Collector of Stamps or the Appellate Authority to make necessary enquiry to estimate the market value of the property in question. The provision contained in Rules of 1975 cast a duty on the Collector to make necessary enquiry to arrive at estimated market value of the property. As has been noticed herein above, explanation appended to Section 47-A of the Act of 1899 confers jurisdiction on the Collector to estimate the market value of the property. In estimating the market value of the property, the market value guidelines, as are framed under the Rules of 2000, provides an important and relevant input. Nevertheless, the statutory obligation cast on the Collector under Rule 5 of the Rules of 1975 is not abdicated. In other words, whenever a matter relating to determination of market value of a property is brought before the Collector under Section 47-A of the Act of 1899, the Collector is required to make proper determination in accordance with law. The guidelines, in such case, provide a relevant input. However, the Collector's jurisdiction or for that matter, any other function, towards determination of market value is not mechanical so as to say that they have to only look into the approved market value guidelines published under the Rules of 2000 and assess the market value of the property. The statutory function of assessment of market value is required to be performed in accordance with the provision contained in the statutory scheme of the Rules of 1975, particularly, taking into

consideration all relevant aspects as specified in Rule 5 thereof. It has to be stressed, at this stage, that the guidelines are not the only material in assessing the market value of the property. The guidelines are only one of the relevant material and not the only material for the purposes of assessment of the market value of the property. The decision will have to be ultimately taken by not only taking into consideration the statutory guidelines of market value but also all other relevant factors mentioned in Rule 5 of the Rules of 1975.

19. In the present case, this Court finds that not only the Collector but the Board of Revenue both have acted contrary to the scheme of the provision of the Act and the Rules framed thereunder namely; the Rules of 1975 and the Rules of 2000.

20. As far as the Collector of Stamps is concerned, it appears that it has taken into consideration certain guidelines and nothing more. When the matter was taken before the Board of Revenue what the Board of Revenue seems to have done is that after having identified the location of the property that it is situated in Ward No.16/31 of Imlipara, it has confined his consideration only to the statutory guidelines as contained in the market value in proforma No.1 Referable to Rule 7 of the Rules of 2000 by the District Valuation Committee.

21. Learned Additional Advocate General has made a submission that the Central Valuation Board had approved a different market value as contained in Annexure P/4. I however, find that this issue was not raised before the Board of Revenue. The Board of Revenue did not have any occasion to find out as to which is the correct approved rate laid down by the Central Valuation Committee. Be that as it may, in view of the above consideration, it is found that whether it be the Collector or the Board of Revenue they have confined their consideration in the matter of assessment of market value only to certain guidelines and nothing more. At this stage, it would be apposite to refer to two decisions of the Supreme Court with regard to the jurisdiction of the Collector of Stamps in the matter of assessing the market value of the property. In the case of **State of Punjab and others Vs. Mohabir Singh and Others, 1996(1) SCC 609**, examining

the scheme of the Stamp Act applicable in the State of Punjab and Haryana, as amended while State amendment, which is para-material Section 47-A of the Indian Stamps Act, 1899 is applicable in the State of Chhattisgarh, it was held:

> "**4**. Sub-section (1) of Section 47-A empowers the Registering Officer, while registering any instrument relating to the transfer of any property, if he has reasons to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, after registering such instrument, to refer the same to the Collector for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon. It would, therefore, be clear that the Registering Authority has to satisfy himself that value of the property or the consideration for it has not been truly set forth in the instrument. He may make a reference to the Collector in accordance with the provisions of sub-section (2) of Section 47A. Before making reference, he is required to register the document and he is not empowered to withhold the registration. Such a registration, of course, will be subject to the determination of the true market value prevailing in the locality though the value mentioned in the instrument for such registration under sub-section (1) of Section 47-A was not conclusive.
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> **5.** The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be predetermined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated. It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Section 47A."

22. In another decision in the case of **Ramesh Chand Bansal and others V. District Magistrate/Collector Ghaziabad and others, 1999(5) SCC 62,** again the aforesaid principles were reiterated by the Hon'ble Supreme Court as below :

> **"5.** The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is matter for common knowledge that in order to escape such duty by unfair practice, many a time undervaluation of a property or lower consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds is on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast on authority to properly

ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, the Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village; from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is the likely value of such property in that area. In its absence it would be very difficult for such registering authority to assess the valuation of such instrument. It is to give such support to the registering authority the Rule 340-A is introduced. Under this the Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area concerned. This is merely a guideline which helps the registering authority to assess the true valuation of a transaction in an instrument. This gives him material to test prima facie whether the description of valuation in an instrument is proper or not. Under Section 47-A introduced by the UP Act 11 of 1969 conveys how a registering authority is to deal in case where there is divergence in the valuation between what is described in an instrument and in the circle rate. The relevant sub-sections (1), (2) and (3) of Section 47-A are quoted hereinbelow:

> "47-A. Instruments of conveyance etc., if undervalued, how to be dealt with. - (1) If the market value of any property which is the subject of any instrument of conveyance, exchange, gift, settlement, award or trust, as set forth in such instrument is less than even the minimum value determined in accordance with any rules made under this Act the registering officer appointed under the Indian Registration Act, 1908, shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.
>
> (2) Without prejudice to the provisions of sub- section (1), if such registering officer while registering any instrument of conveyance, exchange, gift, settlement, award or trust, has reason to believe that the market value of the property which is the subject of conveyance, exchange, gift, settlement, award or trust, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.
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> (3) On receipt of a reference under sub-section (1) or sub-section (2) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject of conveyance, exchange, gift, settlement, award or trust 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."

Sub-section (1) provides, in case valuation described in an instrument is less than the minimum value determined in accordance with the said rule then such officer shall refer it to the Collector for

> ascertainment of the market value of such property, for levying proper duty on such instrument. Sub- section (2) is without prejudice to sub-section (1). Similarly, under it if the registering officer believes that the market value of the property described in an instrument has not been truly set forth, he may, after registering such instrument refer the same to the Collector for determination of true market value of such property. So, we find both under sub-sections (1) or (2) where the value described in such instrument is less than the minimum value fixed under the rules or even otherwise if such registering officer under sub- section (2) has reason to believe that the market value of the property has not been truly set forth he may refer the matter to the Collector for true ascertainment of its market value. On receipt of such reference by the Collector under sub-section (3) he issues notice to the party concerned and after giving such party reasonable opportunity of being heard, may be after holding an enquiry determine the market value of such property. Reading Section 47-A with the aforesaid Rule 340-A it is clear that the circle rate fixed by the Collector is not final but is only a prima facie determination of rate of an area concerned only to give guidance to the registering authority to test prima facie whether the instrument has properly described the value of the property. The circle rate under this Rule is neither final for the authority nor to one subjected to pay the stamp duty. So far sub-sections (1) and (2) are concerned they are very limited in their application as they only direct the registering authority to refer to the Collector for determination in case the property is undervalued in such instrument. The circle rate does not take away the right of such person to show that the property in question is correctly valued as he gets an opportunity in case of undervaluation to prove it before the Collector after reference is made. This also marks the dividing line for the exercise of power between the registering authority and the Collector. In case the valuation in the instrument is same as recorded in the circle rate or is truly described it could be registered by registering authority but in case it is undervalued in terms of sub-section (1) or sub-section (2), it has to be referred to and decided by the Collector. Thus, the circle rate, as aforesaid, is merely a guideline and is also indicative of division of exercise of power between the registering authority and the Collector.

23. It needs to be mentioned that in the aforesaid decisions also, the Supreme Court was considering the scheme of the enactment as applicable in the State of UP, as amended vide State amendment. The provision under Section 47-A of the Act of 1899 of the said State is pari-materia the provision contained in Section 47-A of the Act of 1899, as applicable in the State of Chhattisgarh.

24. In view of the aforesaid two decisions, it is no longer *res integra* and it is well settled legal position that the guidelines only serve as one of the relevant considerations for the Collector of Stamps or the Appellate Authority in the matter of assessing market value of the property. Nevertheless, this guidelines are not final nor binding on the competent authority. In its application to the State of the Chhattisgarh, perforce provision contained in

Rule 5 of the Rules,1975, the competent authority is required to make an enquiry and take into consideration various relevant factors before coming to any conclusion regarding the estimated market value of the property, being the price which such property would have fetched, or would fetch, if sold in the open market on the date of execution of the instrument.

25. Therefore, in the considered opinion of this Court, the exercise undertaken by the authority including the Board of Revenue suffers from patent illegality and irregularity. The very basis of valuation, engrafted in various statutory scheme under the Rules of 1975 was neither taken into consideration by the Collector nor by the Board of Revenue and both of them confined their considerations on completely erroneous assumption of legal position as if they are bound by the market value guidelines issued by the Central Valuation Board and were not required to make any further enquiry on relevant aspect as contemplated under the Rule 5 of the Rules of 1975. The order of the Board of Revenue as also the Collector, therefore, both are bad in law and cannot be sustained and the same are set aside.

26. The Collector of Stamps shall hold a proper enquiry into the matter in the light of the observations made by this Court, after affording due opportunity to the respondent and in accordance with the provision contained in Section 47-A of the Rules of 1975 and the Rules of 2000. By way of abundant caution, it is also to be mentioned that the Collector of Stamps shall also make factual enquiry as to what was the approved rate laid down by the Central Valuation Board as on the date of transaction i.e. on 27.08.2004. After making such enquiry, fresh order shall be passed in the matter by the competent authority i.e. the Collector of Stamps.

27. The petition is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Rekha