THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.3373, 3404 and 3608 of 2016

COMMON ORDER :

Heard the Government Pleader for Arbitration, for the petitioners in the Revisions and Sri Y. Chandrasekhar, for the respondent in all the Revisions.

2. The respondent had purchased on 30.06.2008 from M/s. A.C.C. Limited 213.33 Sq.yds., 7316.57 Sq.yds and 19253.55 Sq.yds. under three separate sale deeds being Document Nos.2830 of 2012, 2831 of 2012 and 7343 of 2012 in various Survey Nos. in Moosapet Village, Balanagar Mandal, Ranga Reddy District.

3. In the first sale deed, the respondent assessed the market value at Rs.9389/- per sq.yd.; in the second sale deed, it assessed the market value at Rs.4,100/- per Sq.yd.; and in the third sale deed, it assessed the market value at Rs.4,414/- per sq.yd.

4. When the above documents were presented on 16/17.07.2008 before the Sub-Registrar, Balanagar, Ranga Reddy District (2nd petitioner in each of the C.R.P.s), he referred the same to the District Registrar and Collector (1st petitioner in the C.R.P.s) under Section 47-A of the Indian Stamp Act, 1899 **(for short, 'the Act')** by giving them pending document nos.116/2008, 117/2008 and 217/2008 contending that as per Market Value Guidelines Register maintained by him, the Market value of the three properties covered by the three documents has to be Rs.20,000/- per Sq.yd.

5. On receipt of the reference from the 2nd petitioner, the 1st petitioner issued notice to the respondent on 14.03.2012 under Rule (4) of the A.P. Stamp (Prevention of Undervaluation of Instruments) Rules, 1975.

6. The respondent gave the following response to the three notices:

"(1) The property is purchased from M/s.ACC Limited, a professionally managed company and the sale consideration is truly set forth and there is no under valuation of the property.

(2) The property is situated on 30' wide road. All along the boundary of the property, the property is shadowed by the Moosapet flyover which has permanently denied access to the main road. We have to pass only through a 30' wide road which is also terminating with still narrow road.

(3) The Sub-Registrar has applied market value of Rs.20,000/- which is applicable to 250' wide National Highway Road. The application of Rs.20,000/- to a 30' wide road is a gross injustice.

(4) High tension lines are passing through our property. There are two towers one passing from west to east and another from east to north direction. No construction activity can be taken up underneath the high-tension lines as per the electricity act and municipal bye-laws, as a result considerable land is lost.

(5) Added to our misfortune an extent of 1500 square yards is occupied by a drainage canal which is passing through the land, as such the extent of the land on either side of the nala has to be kept vacant unutilized. Further at the end of the nala further land has to be left for the drainage water to go out of the land. While undertaking constructions also a buffer zone has to be created on either side of the nala. Therefore, almost two Acres of land will be going waste without any proper utilization."

7. By separate proceedings No.2113/47-A/2008/116, No.2113/47-A/2008/117 and No.2113/47-A/2008/217 dt.16.06.2012, the 1st petitioner fixed the market value of the first bit of property covered by the pending document no.116/2008 at Rs.20,000/- per Sq.yd. and for the other two bits of properties covered by pending document nos.117/2008 and 217/2008 at Rs.16,000/- per Sq.yd.

Finding of 1st petitioner Re: First bit of 213.33. sq.yds

8. The 1st petitioner held that the first bit of property of 213.33 Sq.yds. is located on the 250' wide National Highway Road; on its northern side, some commercial activities are found such as hotels, general stores, etc.; and the sub-Registrar (2nd petitioner) applied market value of Rs.20,000/- per Sq.yd., which is applicable to 250' wide road National Highway rightly. He also observed that he had examined factors like past transactions, market value fixed in the past period, situation of the land, utility of lands, potentiality and the factor of construction for determining under Section 47-A of the Act, the market value at Rs.20,000/- per Sq.yd.

9. He did not deal with the plea of the respondent that the property is situated on 30' wide road and all along the boundary of the property, it is shadowed by the Moosapet flyover which has permanently denied access to the main road and the purchaser has to pass only through a 30' wide road which is also terminating with still narrow road; that applying rate of Rs.20,000/- per Sq.yd. to such land is unjust; that high tension lines pass through the property and two towers one passing from West to East and another from East to North direction are located in the property and no construction activity can be taken up underneath the high tension lines and considerable land is lost. He also did not consider the plea of the respondent that 1500 Sq.yds. is occupied by a drainage canal which is passing through the land and on its either side land has to be kept vacant and un-utilized and a buffer zone has to be created on either side of the nala and thus almost two acres of land would be wasted.

Finding of 1st petitioner Re: bits of 7316.57 Sq.yds. and 19253.55 Sq.yds

10. In regard to the other two bits of 7316.57 Sq.yds. and 19253.55 Sq.yds. covered by pending document nos.117/2008 and 217/2008, he observed that they are located on 30' wide service road abutting to the Moosapet flyover; prior to the construction of the flyover, the property was located on the 250' wide road, but after construction of flyover, it has lost the character of main road property and has become a sub-lane property; two high tension lines, one passing from West to East direction and another from East to North direction pass through the properties; these lines are permanent in nature and no construction activity can be taken underneath them and the property underneath the high tension lines is lost permanently; a sewerage nala is passing through these properties flowing from upper areas of Bharathnagar and flowing towards Sanathnagar which is of permanent nature and cannot be closed, and a buffer zone has to be created all along the nala; and so the purchaser loses a large extent of land. He therefore observed that for these reasons property value has depreciated considerably and it is unreasonable to apply market value of Rs.20,000/- applicable to 250' wide road National Highway since it is situated on the 30' wide service road and the rate of Rs.16,000/- per Sq.yd. would be proper.

11. He directed respondent to pay deficit stamp duty on the said basis on the three pending documents.

The decision in C.M.A.s 5, 6 and 4 of 2012 of the Civil Court

12. Respondent paid the same under protest and challenged it in C.M.A.s 5, 6 and 4 of 2012 before the Principal Senior Civil Judge, Ranga Reddy District, at L.B. Nagar under sub-Section (4) of Section 47-A of the Act.

13. By three separate orders dt.06.11.2015, the three CMAs were allowed by the said Court, and the three orders passed by the 1st petitioner on 16.06.2012 in No.2113/47-A/2008/116, No.2113/47-A/2008/117 and No.2113/47-A/2008/217 were set aside.

14. In its orders, the Principal Senior Civil Judge observed that there is no discussion in the counter filed by the petitioners before her on what basis the 1st petitioner fixed the market value at Rs.16,000/- per Sq.yd. and at Rs.20,000/- per Sq.yd.; that only if the land is developed, market value can be fixed at Rs.20,000/- per Sq.yd. if it faces N.H. 9; but when the land is facing 30' internal road and not N.H.9 and there are two high tension lines and a drainage canal, fixation of market value at Rs.20,000/- Sq.yd. is unreasonable. It also noted that the petitioners admitted that entire land frontage is covered up by a flyover and there is no chance of utility of the entire land for making constructions.

15. It observed that the vendor is a reputed company and there is no chance of reduction of market value. It also observed that the plea of the petitioners that there is a case against the respondent under the Urban Land (Ceiling and Regulation) Act, 1976 is not supported by any material.

16. It relied on the decision of the Allahabad High Court in **Smt. Kailash Rani vs. State of Uttar Pradesh**[1] and observed that there is an obligation on the District Registrar while exercising powers under Sec.47-A of the Act to find out the correct market value of the property by taking into consideration oral and documentary evidence produced by the parties, but this was not done; and merely depending on market value guidelines issued by the Committee under Ex.R.1, the 1st petitioner has passed orders ignoring the utility of the land and its location. It therefore held that the orders passed by the 1st petitioner are liable to be set aside.

<u>The plea of the Petitioners in the CRPs.</u>

17. Challenging the same, these Revisions are filed.

18. The learned Government Pleader for Arbitration sought to contend that the respondent and its vendor suppressed facts and deliberately tried to mislead the sub-Registrar about the location of the

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[1] A.I.R. 2014 Allahabad 154

three bits of properties which are contiguous with each other and tried to show the portion closest to the road of 150' as a smaller bit of 213.33 Sq.yds. and the other two bits as located behind it and having lesser value; and this amounts to playing fraud on the State. He contended that the Principal Senior Civil Judge erroneously interfered with the orders passed by the 1st petitioner and the said orders cannot be sustained.

19. He also stated that petitioners had filed applications I.A.No.1 of 2019 in each of three CRPs with copy of a sale deed dt.30.6.2008, another sale deed dt.31.8.2009 and a Circular memo No.MV5/55/2008 dt.30-1-2008 and prayed that the said documents be considered by the Court. According to him, these documents support the plea of the petitioners.

20. The said I.A.s, are allowed and the said documents are also considered in this order.

<u>The Contentions of the respondent</u>

21. The counsel for respondent supported the orders passed by the Principal Senior Civil Judge and contended that it was the duty of the registering officer to prove that there was in fact undervaluation, that the registering officer cannot merely adopt guidelines framed by the Committee, but has to arrive at the market value on the basis of evidence. He contended that the registering officer has to give a specific finding that there was a deliberate and fraudulent undervaluation of the subject of the transfer with a view to evade payment of proper stamp duty and there must be material in support of the said allegation. He also contended potentiality of the land cannot be taken into account by the 1st petitioner at all as he had done. Lastly he contended that the jurisdiction under Article 227 of the Constitution of India is a limited jurisdiction and this Court cannot substitute it's valuation until and unless the valuation given by the respondent in the sale deeds is found to be wholly perverse and unrealistic.

THE POINTS FOR CONSIDERATION

22. In view of the above contentions, the following questions arise for consideration in these Revisions :

> *(a) What are the parameters for exercise of power by the District Registrar under Section 47-A of the Act ?*
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> *(b) Whether the 2nd petitioner and 1st petitioner had followed the said parameters while passing the orders dt.17/18.07.2008 and 16.06.2012 respectively in regard to the three sale deeds presented for registration by the respondent ?*
>
> *(c) Whether the order passed by the Principal Senior Civil Judge in C.M.A.Nos.4, 5 and 6 of 2012 setting aside the orders of the 1st petitioner warrant any interference under Article 227 of the Constitution of India ?*

Point (a) :

23. To the extent relevant for our purpose, Section 47-A states :

> ***"47-A. Instruments of conveyance, etc., under-valued how to be dealt with:***
>
> *(1) Where the registering officer appointed under the Registration act, 1908 (Central Act 16 of 1908), 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 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 :

Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned.

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving the parties an opportunity of making their representation and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of such instrument and the duty as aforesaid.

Provided that no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducting the amount already deposited by him :

Provided further that where after the determination of market value by the Collector, if the stamp duty borne by the instrument is found sufficient, the amount deposited shall be returned to the person concerned without interest.

… … …

(6) 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 any instrument referred to in sub-Section (1) :

… …"

24. In **Sagar Cements Ltd. vs. State of Andhra Pradesh**[2], a learned Single Judge of the A.P High Court held that the above provision states where the registering authority has reason to believe that the market value of the property has not been truly set forth in the instrument, he may defer registration and refer the matter to the Collector; that the belief contemplated by the sub-section should be formed by the registering authority; that it must be a reasonable belief based upon relevant material; values stated in Basic Value Register lack any statutory sanction and cannot bind the registering officer or the parties who present documents for registration; normally consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion; *for attracting Section 47-A it is not enough to show that consideration stated in the instrument of sale, etc. is less than the prevailing market value*; and *it must be further shown that it is a case of undervaluation.*

25. This was followed by a Division Bench of the Andhra Pradesh High Court in **Mohd. Abbas Shafi vs. Sub-Registrar, Khairatabad**[3]. The Bench reiterated that there must be existence of material on the basis of which opinion can be formed by the registering officer that the market value or the consideration was not correctly furnished in the instrument, and an enquiry can be done by him to collect the material. It observed that a Registering Officer

[2] (1989) 3 A.L.T. 677
[3] (1996) 3 A.L.T. 976 (D.B.)

cannot take the view that he will refuse to register a document because the document does not correspond to the valuation as per the Basic Value Register and he must do some more exercise to collect some other materials which has to be taken into account *in addition* to the basic value register for him to properly take the view that the document does not represent the correct valuation. It held that the spot inspection report produced before it showed that registered officer fixed valuation on the basis of the Basic Value Register maintained in his office, but the said Register cannot be the basis for fixing the valuation of properties.

26. The decision in **Sagar Cements Ltd** (2 Supra) was approved by the Supreme Court in **Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad, A.P. and others**[4]**.** The Supreme Court held that Basic Value Register maintained by the registering authority for collection of stamp duty has no statutory foundation for determination of market value under Section 23 of the Land Acquisition Act, 1894 and Section 47-A of the Stamp Act does not confer power on the Government to determine market value of an entire area, region or block.

27. A Three-Judge Bench of the Supreme Court in **V.N. Devadoss vs. Chief Revenue Control Officer-cum-Inspector and others**[5] reiterated that procedure under Section 47-A cannot be routinely followed in respect of each and every document of conveyance

[4] (1994) 4 S.C.C. 595
[5] (2009) 7 S.C.C. 438

presented for registration without any evidence to show lack of bonafides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the Revenue. It observed that the basis for exercise of power under Section 47-A of the Act is *willful undervaluation of the subject of the transfer with fraudulent intention to evade payment of proper stamp duty.*

28. In **R. Sai Bharathi v. J. Jayalalitha**[6], the Supreme Court again reiterated:

> *"22. The guideline value has relevance only in the context of Section 47-A of the Indian Stamp Act (as amended by T.N. Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an area. It is open to the registering authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guideline valuation as the last word on the subject of market value. This position is made clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. The said Explanation reads as follows:*
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> *"Explanation.—The 'guidelines register' supplied to the officers is intended merely to assist them to ascertain prima facie, whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price. Such entries will not foreclose the enquiry of the Collector under Section 47-A of the Act or fetter the discretion of the authorities concerned to*

[6] (2004) 2 SCC 9

satisfy themselves on the reasonableness or otherwise of the value expressed in the documents."

23. *This Explanation also will have to be read in conjunction with Explanation to Section 47-A of the Indian Stamp Act (as amended by T.N. Act 24 of 1967) which reads:*

"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 Chief Controlling Revenue Authority or the High Court, 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 of conveyance, exchange gift, release of benami right or settlement."

24. *This scheme of the enactment and the Rules contemplate that guideline value will only afford a prima facie basis to ascertain the true or correct market value, undue emphasis on the guideline value without reference to the setting in which it is to be viewed will obscure the issue for consideration. It is clear, therefore, that guideline value is not sacrosanct as urged on behalf of the appellants, but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies. In any event, therefore, if for the purpose of the Stamp Act guideline value alone is not a factor to determine the value of property, its worth will not be any higher in the context of assessing the true market value of properties in question to ascertain whether the transaction has resulted in any offence so as to give a pecuniary advantage to one party or the other."*

29. Thus the market value guidelines are not sacrosanct and are only a guiding factor.

30. In **Collector and District Registrar, Registration and Stamps Department, Hyderabad and other Vs. A.Mahita and another**[7] , it was held:

[7] (2004) 6 ALT 623

> *"5. … The Sub-Registrar referred the matter to the Collector under Section 47-A of the Indian Stamp Act. The Collector proceeded to evaluate the property taking into account the book value for the area published in G.O.Ms.No.380 dt.16-8-1996. The same value cannot be applied to the areas abutting the main road and those in the slum areas. Such an unqualified assumption of the value of the property is not at all provided for under the Stamp Act, or the rules made thereunder. The value of the property depends much on its location, the facilities extended to it, and its extent. It cannot be denied that a property may secure fairly a high price in view of strategic and important location, and another item of property in the same locality may not fetch the same price, on account of the lack of facilities and unhygienic surroundings etc. If the value of the property as notified by the Government is blindly applied, in a given case it may end up in the registration charges being equal to, or more than the actual consideration of the property. The Stamp Act provides for necessary enquiries to be caused to ascertain the value of the property for the purpose of fixation of stamp duty. The lower appellate Court discussed the matter from the proper perspective. Hence, no interference is called for, with it."*

31. In **State of U.P. v. Ambrish Tandon**[8], the Supreme Court held that nature of user which is relatable to the date of purchase is only relevant for the purpose of calculation of stamp duty under Section 47-A of the Stamp Act and not the user of the property for a different purpose at a later point of time. It held :

> *"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."*

[8] (2012) 5 SCC 566

32. In **District Registrar and Collector and the Sub-Treasury Officer Vs. Vasavi Seva Sangham**[9], I have followed the above decision and held that market value of property is determined under sub-Section (6) of Section 47-A on basis of *prevailing value* based on the nature of land and not on *future possibilities.* I also followed the judgment of this Court in **Maddula Naga Siromani and M.Ramakrishna Rao Vs. Subordinate Judge, Kovvur and others**[10].

33. In **Smt.Kailash Rani** (1 supra), the Allahabad High Court held:

> *"14. It is evident that two fold statutory obligation has been laid upon Collector. First of all it has to find out, whether the value set forth in the instrument by the parties is not a true market value and thereafter it has to proceed by application of its own mind following the procedure laid down in 1997 Rules to determine as to what is the true market value of property which is the subject matter of the instrument in question. The onus lies upon the Collector to determine the true market value and he cannot rely on the default or failure on the part of parties to lead evidence in his favour.*
>
> *15. Such proceedings, without observing the requirement of statute, are nothing g but amounts to a sheer harassment to public at large and in particular the person who actually suffer due to such whimsical order passed by authorities. A serious statutory duty has been cast upon respondents but instead of doing justice with their statutory requirement, in a totally indiscreet, left or right manner, the authorities are passing unmindful, arbitrary orders, whereby not only large public is being harassed by it also results in burdening the Courts through such litigation otherwise could have been avoided.*

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[9] Order dt.17-12-2012 in C.R.P.No.2173 of 2007
[10] 1996(1) ALT 335

The suggestions made by learned counsel for the petitioners that entire proceedings have been conducted for reasons other than bonafide, also does not appear to be wholly unfounded."

34. Thus the following principles can be culled out from the above decisions:

(a) Ordinarily the Registering Officer shall accept the consideration stated in the document as representing the true market value, unless there is clear material before him to hold that the parties to the document have deliberately under-stated the consideration with a view to avoid stamp duty;

(b) Section 47-A requires the Registering Officer to form a reasonable belief based upon relevant material that the market value of the property has not been truly set forth in the instrument and only then he can refer the matter to the Collector;

(c) Any market value guidelines framed by the Revenue Department cannot take away the power and function vested in the Registering Authority;

(d) The Basic Value Register prepared by the Government lacks any statutory sanction and cannot bind the Registering Officer or parties who present documents for registration and that, at the most, it can be treated as a guideline, a relevant material by the Registering Officers;

(e) For the purpose of satisfying himself whether the market value or the consideration has been correctly furnished in the instrument or not, the Registering Officer may also make enquiries;

(f) A Registering Officer cannot take the view that he will refuse to register a document because the document does not correspond to the valuation as per the basic value register; he must do some more exercise to collect some other materials, which have to be taken into account, in addition to the basic value register, for him to properly take the view that the document does not represent the correct valuation;

(g) The basis of exercise of power under Section 47-A of the Act is willful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty; and it cannot be routinely invoked in respect of each and every document of conveyance presented for registration without any evidence to show *lack of bona fides* of the parties to the document by attempting fraudulently to undervalue the subject of the conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the Revenue;

(h) The Collector cannot rely on the default or failure on the part of the parties to lead evidence and the onus is on the Collector to determine the true market value;

(i) What is relevant to be considered while determining the market value of the any property for purpose of calculation of stamp duty and registration charges is the price which it would fetch if it were to be sold in the open market on the **date** of execution of the instrument which is presented before the registering authority in respect of that property and potential value of the lands and future possibilities of its development are irrelevant.

Point (b) :

35. In all the three Revisions in relation to each of the documents presented for registration before the 2nd petitioner, it is mentioned in the orders of the District Registrar (1st petitioner) that reference was made under Section 47-A of the Act by the Sub-Registrar as the *parties to the document had not accepted the value appearing in the market value guidelines and that according to the 2nd petitioner, the market value of the property as per Market Value Guidelines Register maintained by him is Rs.20,000/- per Sq.yd.*

36. Ex.R.1 which is marked in the Court of the Principal Senior Civil Judge in the CMAs by the petitioners is the Form-I *'Rectification of Anomalies proposed Market Value Guidelines (Urban / Rural properties) of the Sub-Registrar's Office, Kukatpally'*, w.e.f. 01.02.2008. According to the Government Pleader for Arbitration, a Circular Memo No.MV5/55/2008 dt.30.01.2008 was issued by the Office of the Commissioner and Inspector General of Registration and Stamps, A.P., Hyderabad on the basis of which

Ex.R.1 was approved , though this Memo was not filed before the Principal Senior Civil Judge, Ranga Reddy District. This is filed as additional material papers by him.

37. Ex.R.1 states as under :

Name of the village	Block Nos.	Classi-fication	Existing Value as per Basic Register per Sq.yd w.e.f. 1.8.2007	Pro-posed Rate	% of enhance-ment	Remarks
KUKATPALLY	1 TO 42	NH9 facing	16,600	20,000	14%	
	7	Commercial Muskipet IDL Road & Godowns	7,150	8,500	19%	
	2	Goods Shed Road	7,150	8,500	19%	
	9	Commercial – PR Nagar Main Road	7,150	8,500	19%	
	9	Commercial – Radha Krishna Nagar	7,150	8,500	19%	

38. Thus, the only basis for the reference made by the Sub-Registrar (2nd petitioner) to the District Registrar (1st petitioner) under Section 47-A is that the respondent and its vendor had not accepted the value appearing in the Market Value Guidelines.

39. As held in **R. Sai Bharathi** (6 supra), the guideline value is a rate fixed by the authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty; that the guideline value fixed is not final but only a *prima facie* rate prevailing in an area; and it is open to the registering authority as well as the person seeking registration to prove the actual market value of the property. It held that the authorities cannot regard the guideline valuation as the last word on the subject of market value, that the guideline value is not sacrosanct, but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies. So the 2nd petitioner cannot treat the guideline market value as sacrosanct and proceed to refer it under Sec.47-A to the Collector.

40. The 2nd petitioner also did not say that he had any reason to believe that there was deliberate and fraudulent undervaluation of the property with a view to evade payment of proper stamp duty.

41. As held by the Division Bench of the Andhra Pradesh High Court in **Mohd. Abbas Shafi** (3 supra), it is not permissible for the Sub-Registrar to refuse to register a document only because the document does not correspond to the valuation as per the Basic Value Register and there must be some more exercise to collect some other materials in addition to the Basic Value Register for him to take the view that the document is not representing the correct valuation. Obviously, there is no such material available with the 1st petitioner. As a routine procedure, it appears that the 1st petitioner had invoked Section 47-A without any evidence to show lack of bona fides of the parties that they have fraudulently undervalued the property with a view to evade stamp duty to cause loss of revenue, which is prohibited as per the decision of the Supreme Court in **V.N. Devadoss** (5 supra).

42. Therefore, the 2nd petitioner, merely on the basis of the market value guidelines mentioned in Ex.R.1, cannot invoke Section 47-A and make a reference to the 1st petitioner.

43. Courts have cautioned that Market Value of property is a changing factor and will depend on various circumstances and matters relevant to the consideration, and normally the consideration stated as the market value in a given instrument brought for registration shall be taken to be correct unless circumstances exist which suggest fraudulent evasion, i.e., it must be shown that it is a case of undervaluation.

44. The Madras High Court in **Collector of Nilgiris vs. Mahaveer Plantations Ltd**[11] had held that Market Value Guidelines are intended merely to assist the sub-Registrars to find out *prima facie* whether the market value set forth in the instruments had been set forth correctly and they are not intended as a substitute for market value or to foreclose the enquiry by the Collector which he is under a duty to make under Section 47-A of the Act, when once a reference comes to him from the registering authority. It held that the Collector, under Section 47-A, cannot shirk his responsibility of determining the market value by adopting the guidelines, nor can he fix the market value without proper materials and evidence to support it. It held that

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[11] A.I.R. 1982 Madras 138

the very idea of an enquiry contemplated by Section 47-A and the detailed procedure prescribed in the Rules is that the Collector's findings must be verifiable evidence.

45. Coming to the orders of the 1st petitioner passed on 16.06.2012, he mentions that he has fixed the market value at Rs.20,000/- per Sq.yd. in regard to the extent of 213.33 Sq.yds. covered by pending Document No.116/2008 and Rs.16,000/- per Sq.yd. in regard to 7316.57 Sq.yds. covered by pending Document No.117/2008 and 19253.55 Sq.yds. covered by pending Document No.217/2008 after examining *past transactions, market value fixed in the past period, situation of the lands, utility of lands and the potentiality and factor of construction*.

46. When specifically questioned by the Court as to which past transactions were taken into account by 1st petitioner, the Government Pleader could not mention any such transaction. In fact, before the Principal Senior Civil Judge in the CMAs, no evidence of any past transaction in the vicinity of the subject land was filed by the petitioners. Thus, no past transactions were considered by the 1st petitioner.

47. Potentiality of the land cannot be taken into account while exercising power under Sec.47-A of the Act as held in **Sri Vasavi Seva Sangham** (9 supra) and only price which it would fetch if it were to be sold in the open market on the **date** of execution of the instrument alone is relevant. Potential value and future possibilities are not relevant.

48. Therefore, the 1st petitioner could not have taken into account potentiality of the land in arriving at the market value for the purpose of levy of stamp duty on the documents presented for registration by the respondent and this also vitiates the order of the 1st petitioner.

49. Also, Ex.R.1 mentions that land facing N.H.9 would have a market value of Rs.20,000/- per Sq.yd.

50. Though the 1st petitioner in his order dt.16.06.2012 in proceedings No.2113 / 47-A / 2008 / 116 dt.16.06.2012 in respect to the 213.33 sq.yds. covered by pending Document No.116 / 2008 stated that the said property is located on the 250' wide National Highway road, the Government Pleader fairly stated that N.H.9 is not located near the three bits of land which were sold to the respondent by its vendor; and there is no 250' wide National Highway road adjacent to the three bits of land which are covered by the three documents presented by the respondent, though in the grounds of Revision such a plea was raised.

51. When the 1st petitioner in the other two orders passed by him on 16.06.2012 with regard to the 7316.57 sq.yds. and 19253.55 sq.yds. stated that they are located on 30' wide service road, and also noticed existence of high tension lines, sewerage nala in the land, he could not have referred to the Ex.R.1 rate of Rs.20,000/- per Sq.yd. for N.H.9

facing property and fixed the market value on that basis, because that would not be a comparable rate at all.

52. The Government Pleader further sought to rely on another sale deed dt.30.06.2008 executed by M/s. A.C.C. Cement Ltd. for 901.98 sq.yds. in favour of the respondent and contended that stamp duty at Rs.20,000/- per Sq.yd. was collected for the said document bearing No.4185/08. This document was registered by the Sub-Registrar, Kukatpally and is in relation to land in Sy.No.753 (Part), 754 (Part), 755 (Part) and 756 (Part) of Kukatpally Village, whereas the property which is subject matter of these revisions is located in Sy.No.287 (Part), 286 (Part) and 287 (Part) of Moosapet Village. This document therefore cannot be taken into account at all because property is located in a different Revenue village.

53. The Government Pleader also sought to rely on a sale deed Doc.No.3098 / 09 dt.31.08.2009 between third-parties in relation to a house in an area of 549.70 Sq.yds. at Kukatpally Village, but no survey number is mentioned in the said sale deed. This transaction, being more than one year after the sale transactions of 30.06.2008 which are subject matter of these three Revisions, cannot also be taken into account.

54. Therefore, I hold that the 2nd petitioner and 1st petitioner did not follow parameters for exercise of power under Section 47-A of the Act while passing the orders dt.17/18.07.2008 and 16.06.2012 respectively in regard to the three sale deeds presented for registration by the respondent.

55. Point (b) is answered accordingly in favour of the respondent and against the petitioners.

Point (c) :

56. I will now consider point (c) which is as under :

"Whether the order passed by the Principal Senior Civil Judge in C.M.A.Nos.4, 5 and 6 of 2012 setting aside the orders of the 1st petitioner warrant any interference under Article 227 of the Constitution of India ?"

57. The Principal Senior Civil Judge in her order noted that the 1st petitioner's counter filed in the C.M.A. did not disclose on what basis he fixed the market value at Rs.16,000/- per Sq.yd. when the property is facing towards 30' internal road and not facing N.H.9 and contains high tension wires and a sewerage nala / drainage canal; and that taking into account the market value of Rs.20,000/- per Sq.yd. for land facing N.H.9 as the benchmark is unreasonable when the frontage of the entire land is covered up by the Moosapet flyover.

58. The Government Pleader has not been able to show that any error of jurisdiction has been committed by the Principal Senior Civil Judge in setting aside the orders dt.16.06.2012 passed by the 1st petitioner in regard to the three parcels of land for which sale deeds were presented by the respondent.

59. As held in **State of M.P. and another vs. P.B. Menon and others**[12], jurisdiction under Article 226 / 227 is limited to errors of jurisdiction and the High Court cannot interfere with the orders passed by the Court below unless it is wholly perverse or unrealistic.

60. The orders passed by the Principal Senior Civil Judge in C.M.A.s 4, 5 and 6 of 2012 on 06.11.2015, in my opinion, do not suffer from any error of jurisdiction and cannot also be said to be perverse or unrealistic, and therefore, cannot be interfered with in exercise of the limited jurisdiction conferred on this Court under Article 227 of the Constitution of India.

61. Point (c) is answered accordingly.

62. Accordingly, the Civil Revision Petitions are dismissed with costs of Rs.5,000/- each payable by petitioners to the respondent; and the amount of excess stamp duty collected by the petitioners from the respondent pursuant to the orders passed by the 1st petitioner shall be refunded to the respondent by the State of Telangana, rep.by it's Principal Secretary, Revenue department, Secretariat Buildings, Hyderabad which is *suo motu* impleaded as 3rd petitioner in the CRPs, within two (02) months from the date of receipt of copy of the order with interest at the rate of 7% per annum from the date of such collection from the respondent till date of payment to the respondent.

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[12] A.I.R. 2004 M.P. 117

63. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.04.2019
Vsv/Ndr/*