

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 2198 of 2011**

- State Of Chhattisgarh through Sub-Registrar, Bilaspur (CG)

---- **Petitioner****Versus**

1. Chhattisgarh Board Of Revenue, Bilaspur through its Registrar
2. Smt. Sangeeta Mishra W/o Shri B.N.Mishra, R/o Marmada Nagar Chowk, Mangla Road, Bilaspur, Tah. And District – Bilaspur
3. Shri Kanhaiyaram (dead)
 - 3.A. Smt. Kanti W/o Shri Parmeshwar Pandey, D/o Late Kanhaiyaram R/o. Village – Maro, P.S. Nandghat, Chouki Maro, Tah. - Nawagarh District – Bemetara (CG)
 - 3.B. Smt. Shanti, W/o. Shri Ashok Sharma, D/o. Late Kanhaiyaram R/o. Ameri, Shanti Nagar, Bilaspur,

Permanent Address – Village – Mew, Tah. Pamgarh, District Janjgit – Champa (CG)

---- **Respondents**

For Petitioner/State	:	Shri Alok Bakshi, Addl. A.G.
For Respondent No.2	:	None.
For Respondents 3 (A) and 3 (B)	:	Shri Bharat Rajput, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****06/02/2020**

This petition, under Article 227 of the Constitution of India is preferred against order dated 10/12/2009 passed by the Board of Revenue by which, the Board of Revenue has set aside the order passed by the Collector, Stamps in the matter of determination of market value of the subject property under sale deed dated 06/05/2008.

2. Land admeasuring 4.30 acres situated at village – Sakri, Tahsil - Takhatpur, District – Bilaspur was sold by the deceased Kanhaiyaram in favour of respondents 1 and 2 for a consideration of Rs.4 lakhs. The registering authority, having reason to believe that the market value was understated, reference was made to the Collector, Stamps under Section 47 of the Stamp Act for determination of market value. The Collector, Stamps, thereafter, conducted enquiry, obtained reports with regard to the location, nature, value and other utilization of the land in its present state and thereafter, passed an order determining market value as Rs.43,52,500/- and also gave its ruling with regard to payment of stamp duty of Rs.2,72,050/-.

3. Aggrieved by the said order, the purchaser / respondent No.2 preferred an appeal before the Board of Revenue. The Board of Revenue set aside the order of the Collector, Stamps and upheld the market value as recited in the sale deed primarily on the consideration that the Collector, Stamps had mechanically accepted the guideline rates.

4. Learned Additional Advocate General would submit that the order of the Board of Revenue suffers from gross perversity as it completely misread the order passed by the Collector, Stamps. Referring to the consideration of the Collector, Stamps in its order, it is submitted that the Collector, Stamps has not rested its consideration on the market guideline rates alone. The Collector, Stamps has taken into consideration the average per hectare rate of lands in the year 2006-2007, 2007-2008 and 2008-2009 in Village – Sakri. He would further contend that the Collector, Stamps himself got the spot inspection conducted in which, the nature of the land, whether it was irrigated or unirrigated, accessibility and other relevant considerations including its access to the main market, educational institution etc. was taken into consideration and finally, the rate was arrived at. Merely because the market value has been arrived at on a higher side, it cannot be said that determination is mechanical.

5. None appeared for respondent No.2.
6. Learned counsel for respondent No.3 representing the seller submits that the property was sold on a fair market value.
7. I have heard learned counsel for the parties and perused the records.
8. In the case of **AIR 2012 CG 34** (supra), this Court has examined the statutory scheme of Section 47-A of the Stamp Act and Supreme Court decision in the case of **State of Punjab v. Mohabir Singh etc. etc. 1996 (1) SCC 609** and **Trideshwar Dayal v. Maheshwar Dayal, 1990 (1) SCC 357**.
9. Upon consideration of factual aspect and applying the legal position as adumbrated in various decisions placed before the Court, it was held -
 - “20. As held by the Supreme Court in **Mohabir Singh's case** (supra) and **R. Sai Bharathi's case** (supra), guidelines are the basis for assessing prima facie true or correct market value and not sacrosanct. In the present case, the Collector of Stamps was required to examine the true or correct market value and for the purpose of such enquiry / examination, aforesaid Guidelines may be used, but not as a conclusive.
 21. As held by the Supreme Court in the matter of **Trideshwar Dayal** (supra), the Collector of Stamps is authorized to examine the correctness of the valuation of property and for the same, the Collector of Stamps was required to conduct a detailed enquiry. In the present case, the Collector of Stamps has not conducted detailed enquiry and has not provided complete opportunity to both the parties.
 22. As held by the Supreme Court in the matter of **V.N.Devodoss** (supra), the basis for exercise of power under

Section 47-A of the Act is willful under valuation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty. Deliberate undervaluation of the property by itself is not fraudulent intention.

23. As held by the Supreme Court in the matter of Ramesh Chand Bansal (supra), the Collector of Stamps is empowered to assess different values shown in biennially statement recording circle rate. As held by the High Court of Punjab & Haryana in the matter of Mohali Club (supra), the registering authority can refer the matter after registration of the document to the Collector of Stamps, if he has reason to believe that there is deliberate undervaluation and reference is not a mechanical act but the Registering Officer should have a basis for coming to prima facie finding that there is an undervaluation.”

10. In a subsequent decision in the case of **AIR 2014 CG 188** (supra), the statutory scheme again came up for consideration with particular reference to the provisions contained in Section 47-A of the Stamp Act as also Indian Stamp Act (Chhattisgarh Prevention of Undervaluation of Instruments) Rules, 1975 (for short 'the Rules of 1975'). On facts, that was a case relating to house site. Upon examination of the statutory scheme of the Rules of 1975, this Court observed as below -

“10. The Collector, Stamps, therefore, while undertaking the exercise of determination of market value is required to apply its mind by taking into consideration relevant factors as specifically enumerated in clauses (i) to (vi) of clause (b) of Rule 5 with the authority to exercise discretion in terms of provisions contained in clauses (vii) & (viii).

11. The first sub-clause under clause (b) obliges the Collector, Stamps to take into consideration the general value of the house sites in the locality. The other clauses relate to its proximity with road, railway station, bus route, market, shops and amenities

available including development activities, local rates municipal and other taxes to which such house sites may be subject and valuation of site with reference to taxation records of the local authorities concerned.”

11. In a recent decision in the case of **State of Chhattisgarh v. Saurabh Agrawal** (WPC No.6662/2007) decided on 28/08/2019, the scheme of Stamp Act, Rules of 1975 and the Chhattisgarh Preparation and Revision of Market Value Guideline Rules, 2000 (for short 'the Rules of 2000') came up for consideration in the light of various judicial pronouncement of this Court and the Supreme Court. The considerations elaborated in the aforesaid decision comprehensively deal with the scheme of the Act and Rules, obligation of the Collector, Stamps in the light of various decisions, as below -

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. compiled 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."

12. The law laid down by the Supreme Court in various judicial pronouncement, touching upon the duties and functions as also nature and scope of interference of the Collector, Stamps while determining market value as enjoined upon it under Section 47-A of the Stamp Act also noticed as below -

“21.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.

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 Vs. 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.

(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.”

In that case, the defects in exercise of jurisdiction by the Collector, Stamps and the Board of Revenue were noticed as below -

“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.”

13. Applying the aforesaid decisions to the present facts and circumstances of the case, if the order passed by the Collector, Stamps is looked into, it is clear that the Collector, Stamps has not arrived at the market value relying mechanically upon the guidelines. While the guidelines have been referred to as also relevant considerations towards determination of market value of the disputed property, nevertheless, the Collector, Stamps has taken into consideration other aspects either enhancing or diminishing the market value of the land. The order of the Collector shows that in order to determine the market value, the Collector has taken into consideration the average per hectare rate of the lands in the year 2006 -2007, 2007-2008 and 2008-2009 in village – Sakri. Further, the Collector also got spot inspection

conducted in order to find out the nature of land, whether it was irrigated or un-irrigated and also what is the mode and extent of access to the land and other relevant considerations and its proximity and its access to the main market, educational institution etc. The order of the Collector also shows that some other considerations were also before it that the land is '*Matasi Padat-Bhata*' and presently not irrigated nor having any crops and also that there is not enough development activities as also distance from the main road. It would, thus, be seen that the Collector has not ignored to take into consideration the material which was placed before it upon spot inspection which contained information regarding the land. It is only after taking into consideration all the aspects of the matter that the Collector determined the market value. The Board of Revenue, however, recorded a factually incorrect finding in para 7 of its order that the Collector, Stamps determined the market value only on the basis of guidelines. This finding, apparently, is perverse. It was on this basis that the Board of Revenue proceeded to re-examine the matter and arrived on its own conclusion. Therefore, the order passed by the Board of Revenue is unsustainable in law and therefore, set aside and that of the Collector, Stamps is restored. The petition is, accordingly, allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge