NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 306 of 2010

1. State of Chhattisgarh through the Collector, Durg, CG
2. State Of Chhattisgarh Through The Under Secretary, Ministry Of Commercial Tax/registration, DKS Bhawan, Raipur CG

---- Petitioners

Versus

1. C.G. Board Of Revenue, Bilaspur (Circuit Court, Raipur (CG) through the Registrar
2. Ashok Kumar Baghela,
3. Manoj Kumar Baghela,

   (Both sons of Shri Balram Bhai Baghela)
4. Smt. Vijya Ben Baghela, W/o Shri Balram Bhai Baghela, R/o Arya Nagar, Durg, Distt.-Durg CG
5. Supreme Associates India Pvt. Ltd. Through the Director, Shri Prakash Jaiswal S/o Shri Ramashre Jaiswal, R/o 43/7, Nehru Nagar West, Bhilai, District – Durg (CG)

---- Respondents

For Petitioner	:	Shri Alok Bakshi, Addl. A.G.
For Respondents 2 to 4	:	Shri Gyan Prakash Shukla, Advocate
For Respondent No.5	:	Shri Ravindra Agrawal, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

30/01/2020

This petition, under Article 226 read with Article 227 of the Constitution of India, is preferred against order dated 20/07/2009 passed by the Board of Revenue, constituted as an appellate authority, in the matter of determination of market value of the property which has been sold by respondents 2 to 4 in favour of respondent No.5 under registered sale deed dated 30/03/2006.

2. Quintessential facts necessary for decision of issue involved in the writ petition are that vide sale deed dated 30/03/2006, land admeasuring 875 sq. mts. situated in Shivnath Complex Vistaar Yojna, Bhilai, G.E.Road was sold by respondents 2 to 4 in favour of respondent No.5 for a consideration of Rs.12,24,000/-. The document of sale indicates stamp duty payable as Rs.1,20,900/-. The registering authority having reason to believe that the subject matter of sale has been undervalued, referred the matter for determination of true market value to the Collector, Stamps. The Collector, Stamps held enquiry in exercise of his powers under Section 47-A of the Stamp Act. The enquiry culminated in passing of order dated 25/02/09 by which, the Collector came to the conclusion that as per his consideration, which included the present value as per the market guidelines, market value of the property estimated as Rs.74,11,250/- on which, stamp duty of Rs.7,31,860/- is payable. This order was assailed before the Board of Revenue. The Board of Revenue, however, came to the conclusion that proper enquiry has not been made, opportunity of hearing has not been afforded, purchaser has not been afforded opportunity to lead evidence and on these considerations, the Board of Revenue set aside the order passed by the Collector, Stamps, holding that the market value of the property, as stated in the sale deed by the parties appears to be the correct value. It is this order which has been challenged before this Court in this petition.

3. Learned Additional Advocate General, assailing legality and validity of the order of the Board of Revenue, would argue that the order of the Board of Revenue suffers from serious jurisdictional flaw and error in as much as that despite there being proper service of notice on the respondents, it has been held, contrary to records, that proper opportunity was not afforded. Next submission is that the Board of Revenue ignored to take into consideration the complete records of proceedings before the Collector, Stamps in recording that proper procedure was not followed and determination of market value is based only on the ground that the property is commercial and

adjacent to G.E. Road, without getting any spot inspection done and without allowing the seller and purchaser to offer their comments and then apply the guideline rates. His next submission is that the perversity in the order is reflected from the fact that having held that proper enquiry was not held or proper opportunity was not afforded, which according to him, is factually incorrect, instead of remanding the matter to subordinate authorities, the Board of Revenue proceeded to mechanically accept the market value of the property as declared by the seller and purchaser. He would argue that the Collector has duly applied his mind to all relevant consideration and thereafter, taking into consideration the guideline rates also, determined the market value.

4. Per contra, learned counsel for respondents 2 to 4 would submit that he sold the property to respondent No.5 for a valuable consideration based on actual sale price. According to him, he was not served with any notice by the Collector, Stamps, though notices were served on respondent No.5. It is also submitted that in the matter of determination of market value, relevant provisions of law were not applied in its true letter and spirit by the Collector, Stamps.

5. Learned counsel for respondent No.5, the purchaser, supporting the order passed by the Board of Revenue, would submit that in the present case, the purchaser ought to be afforded proper opportunity of hearing as it is not only mandated by the provisions of the Act and Rules made therein but also because it was necessary towards making a proper enquiry with regard to true market value of the subject property. He would next submit that the order sheets recorded by the Collector do not record any satisfaction by him, based on perusal of any service report that the seller and purchaser were duly served with the notices. He would further submit that the finding of the Board of Revenue that the seller and purchaser were not properly afforded opportunity of hearing, is based on appreciation of material

on record which could not be assailed in this petition under Article 227 of the Constitution of India. Further submission is that even for the sake of arguments, it is accepted, though not admitted by the respondent, despite notice, did not appear to place any material to dispute the valuation as per the market guideline, it was incumbent under the law for the Collector, Stamps to hold necessary enquiry of all relevant considerations as per statutory mandate of Rule 5 of the Indian Stamp Act (Chhattisgarh Prevention of Undervaluation of Instruments) Rules, 1975 (for short 'the Rules of 1975') read with provisions contained in the Chhattisgarh Preparation and Revision of Market Value Guideline Rules, 2000 (for short 'the Rules of 2000'). The Collector, Stamps, it is contended, mechanically accepted the market guideline, without holding any proper enquiry and therefore, in any case, order of the Collector, Stamps is not sustainable in law. In support of his submission, learned counsel for respondent No.5 has placed reliance upon decision of this Court in the case of **State of Chhattisgarh v. Chhattisgarh Board of Revenue, Bilaspur and ors., AIR 2012 CG 34** and **State of Chhattisgarh v. Board of Revenue, Bilaspur and ors., AIR 2014 CG 188.**

6. I have heard learned counsel for the parties and perused the records.

7. It is not in dispute that the property in question was sold vide sale deed dated 30/03/2006 in favour of respondent No.5 and in the sale deed, sale consideration was mentioned as Rs.12,24,000/- and for the purposes of stamp duty, payable as Rs.1,20,900/-. It is also not in dispute that the registering authority had referred the matter under Section 47-A of the Stamp Act to the Collector, Stamps for determination of true market value. The order of the Collector, Stamps passed on 25/02/2009 states that though, both the seller and purchaser were issued notices, which were served upon them, they did not appear before the Collector, Stamps nor produced any evidence and therefore, they are proceeded ex-parte. Before the

Board of Revenue, it appears, the purchaser alone filed an appeal and amongst various grounds, had also raised a ground that it was not afforded proper opportunity of hearing. The Board of Revenue, in the impugned order dated 20/07/2009, has made a passing reference in penultimate paragraph that unless the parties are given opportunity to lead evidence, no conclusion could be drawn as to why there was difference between the report submitted by the Patwari and the Sub-Registrar. In paragraphs 1 to 4, the Board of Revenue has only considered the facts of the case and submission made by both the parties. In paragraph 5, the Board of Revenue has examined the contention and records as also the validity of the order passed by the Collector, Stamps. Nowhere in paragraph 5 of the order, the Board of Revenue has recorded any categoric finding that the seller or purchaser were not served with the notice. Without recording any specific finding, it proceeded on assumption that the seller and purchaser were not afforded opportunity to lead evidence. This part of the order has been seriously assailed by the State. In the petition, it has been specifically pleaded in para 8.4 that notice for date of hearing were served upon respondents 2 to 4 and notice of date of hearing as 25/05/2008, 19/06/2008 and 27/11/2008 were served and despite service of notice, they did not appear. In para 9.4 of the ground also, it has been stated that notices were served upon respondent 5 for several dates of hearing but he did not appear. Copies of the notice of service report are collectively annexed as Annexure P/4. Annexure P/4 shows acknowledgment of service of notice and signature appended thereon.

The petitioner having come out with a specific case that notices were duly served upon respondent No.5, respondent No.5 was required to specifically meet out such assertion and documents in support of assertion on affidavit made by the petitioner in the petition. However, reading of the averments made in the return filed by respondent No.5 shows that respondent No.5 has not seriously disputed those averments made in the writ petition, much less disputed the service acknowledgment filed as Annexure P/4 along with the petition. The averments made in paragraphs 11 and 13 of the return of respondent No.5, to say the least, are blissfully vague and evasive. While denying the averments made in para 8.4, it is stated “Collector, Stamps had proceeded with the case without giving proper opportunity of hearing and leading evidence to the answering respondent.” Similarly, in paragraph 13 also, it has been averred in denial - “It is respectfully submitted that since notices have not been issued and served properly and the order has been passed by the Collector of Stamps, Durg, without giving proper opportunity of hearing........” Specific ground taken in para 9.4 of the petition has not been adverted to specifically but in para 15 of the return, respondent No.5 has averred - “In view of the submissions in presiding paragraphs, no ground as mentioned by the petitioner are made out.”

In the return, the acknowledgment of service filed along with the petition have not been disputed. There is not a single averment in the return that acknowledgments of service are fabricated documents and that the acknowledgment do not bear signature of respondent No.5 or his agents. Respondent No.5 has maintained surreptitious silence.

8. Considering the pleadings of the parties, in so far as issuance of notice on respondent No.5 is concerned, upon due consideration, I am of the view that the plea taken by respondent No.5 that it was not properly served, is merely an afterthought ground and has no legs to stand. The Board of Revenue, acted in absolute perversity in proceeding on assumption that the seller and purchaser were not afforded opportunity to lead evidence. This goes against specific finding recorded by the Collector, Stamps in its order dated 25/02/2009. Therefore, the order of the Board of Revenue, on the aspect of affording opportunity of hearing, is wholly unsustainable in law.

9. The reason which were recorded by the Board of Revenue in its order to arrive at the conclusion that the order passed by the Collector was not sustainable in law,

was that there is some discrepancy in the return submitted by the Patwari and that of the Deputy Registrar. However, what were those discrepancies, whether such discrepancies are material and have important bearing on the issue with regard to determination of market value of the property, has nowhere been considered, much less referred to. Further, the Board of Revenue has recorded a finding that for determination of market value, it has not followed the procedure established by law only on the basis that the Collector, Stamps did not get spot inspection done nor invited the seller and purchaser to offer their comments and then to consider the matter on the basis of guidelines relating to market value. This finding again is perverse and contrary to the records because the list is placed on record, spot inspection report prepared by Sub-Registrar and submitted before the Collector, Stamps which contained many relevant considerations with regard to location of the property and other relevant considerations. Therefore, the finding that there was no spot inspection, is without perusal of the records of the Collector, Stamps.

10. The Collector, Stamps was under no legal obligation to require the parties to again issue notice for the purposes of spot inspection once, despite service of notice, the seller and purchaser did not appear before it. The aforesaid consideration leaves this Court to draw an inference that in exercise of its appellate jurisdiction, the Board of Revenue acted in very perfunctory manner and its findings are mere figment of imagination rather than based on material on record. Number of decisions have been cited before this Court by learned counsel for the respondent in order to assist this Court to apply principles and the law applicable in the matter of determination of market value.

11. 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.

12. 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.
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> 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.
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> 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.
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> 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 under-valuation 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."

13. 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 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).
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> 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."

14. 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 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 :
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> (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
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> (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."

15. 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:
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> > "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.
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> (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.
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> 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."

16. Applying the aforesaid decisions to the present facts and circumstances, if the order passed by the Collector, Stamps on 25/02/2009 is examined, it is found that the Collector, Stamps, in order to determine the market value of the property, has not confined its consideration to the guidelines alone. It has taken into consideration

various aspects including the location of the property, nature of activity in which the property is situated, though it is adjacent to main road, it's prime location and that three roads are abutting the plot from different sides. After taking into consideration the peculiar feature, guideline rates prepared under the Rules of 2000 and taking into consideration that the purchaser and seller have not come out with any specific evidence to establish that the true market value of the property should be determined at rate lower than rate notified under the guidelines framed under the Rules of 2000, it cannot be said that the Collector, Stamps, while determining the market value, committed any illegality. No material has been placed before this Court even in these proceedings by the respondent that the property is not situated in ward no.18 but in ward No.6. Further, it could not be established that the report submitted before the Collector, Stamps by the Deputy Registrar was factually incorrect on other counts which needed another enquiry. On facts of the present case, it cannot be said that either provisions contained in Section 47-A of the Stamp Act or the Rules of 1975 were violated. This Court has already concluded in earlier paragraphs that respondent No.5 / purchaser (appellant before the Board of Revenue) was also duly served with notices. Therefore, the finding recorded by the Board of Revenue on all aspects, suffers from gross perversity and patent illegality both on factual and legal aspect and therefore, cannot be sustained. The order passed by the Board of Revenue is, therefore, set aside and the petition is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Deepti