

RAJASTHAN HIGH COURT

Shanti Lal

Vs.

Collector

S.B. Civil Writ Petition No. 3433 of 1990

(K.S. Rathore, J.)

05.08.2002

ORDER

K. S. Rathore, J.

1. This present petition is directed against the order dated 30-12-1989 passed by Collector, *Dholpur* under Section 47A of the Indian Stamp Act, 1899 by which the Collector, *Dholpur* assessed the value of the property as 1.5 lacs and the petitioner is directed to pay the balance stamp duty of Rs. 19,785/-, Registration Fee of Rs. 536 and penalty of Rs. 10/- totaling amount of Rs. 20,331/-.

2. Two shops belongs to Shri Lallu Gopal Singh. These shops were mortgaged in favor of the petitioner by a registered mortgage deed. The mortgage was usufructuary in nature. Possession of both the shops was given to the petitioner by the Mortgagor.

3. Thereafter, these shops were agreed to be sold to the petitioner for a consideration of Rs. 8,000/- on 10-5-1959 and also agreed to execute the sale deed. Sri Lallu Gopal Singh has taken Rs. 235/- as an earnest money from the petitioner. Since pursuant to the agreement the registration was not made in favor of the petitioner, the petitioner filed a suit for specific performance which was decreed vide judgment dated 28-7-1965 by Civil Judge, *Dholpur* and it was directed that Sri Gopal Singh should execute the sale deed of the shops in favor of the petitioner.

4. The order dated 28-7-1965 of Civil Judge, *Dholpur* has been challenged by Sri Gopal Singh in appeal and same was dismissed by the Addl. District and Sessions Judge, *Dholpur* vide his judgment and decree dated 11-8-1970.

5. The shops were rejected in the name of the petitioner. After taking consideration of Rs. 8,000/- adjusting the amount of Rs. 2,000/- as mortgage money and Rs. 700/- and its interest due to bond of Rs. 235/- as earnest money and thus the petitioner made full and final payment of balance amount of Rs. 4,365/- at the time of registration.

6. The matter was referred by the Sub-Registrar, *Dholpur* to the Collector, *Dholpur* on the ground that the properties were shown to be sold in the year 1965 for Rs. 8,000/- whereas the registration has been effected on 5-12-1988. In the reference it was also mentioned that the value of the properties as on the date of the registration, which was transferred in the year 1965, is about Rs. 3,09,672/-.

7. The Collector, *Dholpur* decided the matter vide its order dated 30-12-1989 which is under challenge in this writ petition.

8. Learned counsel for the petitioner submits that learned Collector *Dholpur* while passing the order dated 30-12-1989 has not cared to examine the provisions of Section 47-A of the Indian Stamps Act 1899. He also referred the provisions of Section 47-A sub-rule (1). Learned counsel for the petitioner further submits that while deciding the reference made by the Sub-Registrar *Dholpur* the Collector *Dholpur* has not cared to examine the judgment passed in the original suit filed by the petitioner wherein the Civil Judge, *Dholpur* has arrived at this conclusion that the value of the shop was of Rs. 8,000/- and judgment dated 28-7-1965 has been upheld by the Addl. District and Sessions Judge, *Dholpur* vide its judgment dated 11-8-1970. Pursuant to these judgments the shops were registered in the name of the petitioners.

9. Without considering these facts, the Collector, *Dholpur* has passed the order dated 30-12-1989 contrary to the provisions of Section 47-A sub-rule 1 and also contrary to the judgment passed by the Civil Court.

10. Learned counsel appearing on behalf of the State submits that this petition is not maintainable because the petitioner has not availed of the alternative efficacious remedy which was available to him and directly approached to this Court. This petition deserves to be dismissed only on this count alone . Petitioner should have moved before the Board of Revenue prior to filing this writ petition and admittedly the petitioner has not availed of this remedy.

11. Learned counsel for the petitioner Mr. G.K. Garg in support of his argument placed

reliance on the judgment reported in *Satyam Properties v. State of Raj*¹ and judgment reported in *State of Rajasthan v. Maharaja Shri Karni Singh Ji*² wherein this Court has held that the Collector had no jurisdiction to launch an inquiry into the value of the land. He could, however, proceed to hold an inquiry as to whether consideration has been truly set forth in the instrument or not, but proceeding to hold an inquiry regarding the valuation of the land, was uncalled for and was without authorities and jurisdiction.

12. Learned counsel for the petitioner further placed reliance on the judgment of the Division Bench of Madras High Court reported in *S.P. Padmavathi v. State*³ of *Tamil Nadu* wherein Division Bench of Madras High Court has held that mere lapse of time between the date of agreement and the execution of the document will not be the determining factor that the document is undervalued and such circumstances by itself is not sufficient to invoke the power Section 47-A of the Act, unless there is lack of bona fides and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty.

13. Similar view has been taken by the Calcutta High Court in the case of *Anglo American Direct Tea Trading Co. Ltd. v. State of Madras* reported in⁴

14. Having heard the rival submissions of the learned counsel for the parties and after careful perusal of the material available on record as well as relevant Section 47-A sub-rule (1) and also carefully examined the judgments referred before me.

15. Upon careful reading of the judgment, which is under challenge in this writ petition, dated 30-12-1989 passed by the Collector, *Dholpur*, reveals that Collector *Dholpur* is of the view that since registration was made in the year 1965 and at the time of decision the prevailing rate of two shops in question is about Rs. 1.5 lacs whereas the stamp duties were paid considering the value of the shops of Rs. 8,000/- each, but has not cared to examine the value Rs. 8,000/- which has been settled by the Civil Court in the suit for specific performance and same has been upheld by the Addl. District and Sessions Judge, *Dholpur*.

16. The ratio decided by this Hon'ble Court in the case of *Satyam Properties v. State of Raj* (supra) and also held by the Madras High Court as well as Calcutta High Court, I am fully convinced that the judgments referred hereinabove are squarely covered with

the present controversy.

17. The order dated 30-12-1989 certainly requires interference by this Court. The order passed by the Collector *Dholpur* is in violation of Section 47-A sub-rule (1) and in violation of principle laid down by the various High Courts as discussed hereinabove.

18. So far as the preliminary objection raised by the learned counsel for the State, that since the petitioner has got alternative efficacious remedy and without availing alternative efficacious remedy this petition is not maintainable and should be rejected only on this count alone is concerned since the present matter is already admitted on 23-11-1990 by this Court and is fixed for final hearing at this stage. In view of the facts, I do not deem it proper to consider the preliminary objections raised by the counsel appearing on behalf of State.

19. In the facts and circumstances of the case, order passed by the Collector *Dholpur*, dated 30-12-1989 is herewith set aside and the writ petition stands allowed with no order as to costs.

Petition allowed.

Cases Referred.

1. W.L.C. 2002 (Raj) (UC) 313
2. 1983 RLR 93
3. AIR 1997 Mad 296
4. AIR 1984 Cal 174