

V.N. Devadoss vs Chief Rev. Control Officer-Cum-Ins.& ... on 8 May, 2009

Author: Arijit Pasayat

Bench: Mukundakam Sharma, D.K. Jain, Arijit Pasayat

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3411 OF 2009
(Arising out of SLP (C) No. 3920 of 2007)

V.N. Devadoss

..Appellant

Versus

Chief Revenue Control Officer-cum-Ins.
and Ors.

..Respondents

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Madras High Court in appeal filed under Section 47-A of the Indian Stamp Act, 1899 (in short the 'Act'). The appeal was filed against the order passed by Chief Revenue Control Officer-cum-Inspector General of Registration, Chennai in proceedings Pa.Mu.No.22947/NI/2005 dated 8.2.2006 confirming the order of the District Revenue Officer (Stamps), Office of the District Collector, Chennai in proceedings Na. K.C. Pa.244/2004/A4 dated 11.4.2005.

3. The controversy lies within a very narrow compass.

According to the appellant, an extent of 60.86 acres of land comprised in S. Nos. 330, 338, 473, 552 etc. situate at Ambattur Taluk, Tiruvallur District, which was previously owned by Dunlop India Limited, a Public Limited Company. The said Company became a sick industry and was declared so

under the Provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (in short '1985 Act') Consequent to such declaration, for the purpose of rehabilitation, surplus properties and assets belonging to the said company were sought to be disposed of by the statutory authorities under the said Act such as Board For Industrial and Financial Reconstruction (BIFR) and Appellate Authority for industrial and Financial Reconstruction (AIFR) by forming an Asset Sales Committee (ASC) consisting of members such as representatives of IDBI, Debenture Holders, Government of West Bengal and Special Director of BIFR. In compliance with the guidelines issued by the statutory authorities (BIFR & AIFR), the ASC made publications in Newspapers about its proposal to sell the above mentioned 60.86 acres of lands and invited tenders in sealed covers from interested persons. The appellant submitted his tender along with others and his offer of Rs.24,34,40,000/-, at the rate of Rs.40 lakh per acre, was the highest. Accordingly, his tender was accepted by the ASC as well as by the statutory authorities. The company was granted permission to execute the sale deed in favour of the appellant.

It is the further case of the appellant that on receipt of the entire sale consideration of Rs.24,34,40,000/- from him, the said company executed a sale deed dated 17.06.2004, registered as Document. No.6939/2004 on the file of the Sub Registrar, Ambattur. The sale is not in between two private individuals, on the other hand, it is a sale in consonance with the conditions laid down under the 1985 Act. In such circumstances, one could visualize that there could be no question of any possibility of under valuation of the property warranting the proceedings under Section 47-A of the Act. Further, the sale was found to be valid in WP No.25962 of 2004 filed by the Dunlop Factory Employee's Union.

A reference was made by the Sub Registrar, Ambattur, to the second respondent District Revenue Officer (DRO) in respect of the sale transaction, based on which, the second respondent initiated proceedings under Section 47-A of the Act resulting in issuance of notice dated 18.08.2004 in Form No.1 of Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (in short 'Rules'), calling upon the appellant to state his objections with regard to fixation of the market value of the property at Rs.154,69,88,168/- as against the sum of Rs.24,34,40 000/- for which sum, the property was purchased; and to show cause as to why he should not be called upon to pay the balance stamp duty of a sum of Rs.10,42,83,856/-.

Apart from explaining and setting out the circumstances under which he purchased the property, the appellant also questioned the jurisdiction of the authorities to invoke Section 47-A of the Act. It is the specific case of the appellant that without affording personal hearing, the second respondent by order dated 11.04.2005, confirmed the market value of the land as Rs.465/- per sq. ft. and called upon him to pay the additional stamp duty. Aggrieved by the order of the second respondent, the appellant preferred an appeal before the first respondent on 13.04.2005. On 08.02.2006, the first respondent rejected his appeal, confirming the market value of the property as Rs.465/per sq. ft. The first respondent also directed the appellant to pay interest at the rate of 2% per month towards the demand made by the authorities. Aggrieved over the same, the appellant filed the appeal before the High Court under Section 47-A (10) of the Act.

The High Court took the view that it was not a case of sale by the government or a transaction between the government organizations/bodies. It was held that statutory authorities like BIFR and AIFR acted as facilitators and, therefore, it was held that there was no scope for a different view to be taken regarding the market value and for this limited purpose the matter was remanded to the original authority for passing an appropriate order.

4. Learned counsel for the appellant submitted that the aforesaid view of the High Court is clearly erroneous. It was a case where the sale was conducted under the orders of the statutory authority i.e. BIFR. There are several instances, it is submitted, where the official liquidator is involved to take a decision in the matter of acceptance of the bid made.

5. Learned counsel for the respondents on the other hand submitted that the High Court is correct in holding that it was essentially not a matter between State or a party and the role of the BIFR is that of mediator.

6. To appreciate the rival stands Section 47-A and Rules 3 and 4 of Rules need to be noted. The said rules have been framed in exercise of powers conferred under Sections 47-A and 75 of the Act. Rule 4 and Section 47-A so far as relevant read as follows:

"47-A. Instruments of conveyance etc. undervalued how to be dealt with -

(1) If the registering officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance, exchange, gift, release of benami right or settlement has reasons to believe that the market value of the property of which is the subject matter of conveyance, exchange, gift, -release of benami right or settlement, 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.

(2) On receipt of a reference under subsection (1), the Collector shall, after giving the parties a reasonable opportunity of being heard 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 conveyance, exchange, gift, release of benami right or settlement, 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.

(3) The Collector may, suo motu or otherwise, within five years from the date of registration of any instrument of conveyance, exchange, gift, release of benami right or settlement, not already referred to him under sub-section (1), call for the examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami, right or settlement, and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such

property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the persons liable to pay the duty:

Provided that nothing in this subsection shall apply to any instrument registered before the date of commencement of the Indian Stamp (Tamil Nadu Amendment) Act, 1967.

(4)

(5) Any person aggrieved by an order of the Collector under sub-section (2) or sub section (3), may appeal to such authority as may be prescribed in this behalf. All such appeals shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.

(6)

(7)

(8)

(9)

(10) Any person aggrieved by an order of the authority prescribed under subsection (5) or the Chief Controlling Revenue Authority under sub-section (6) may, within such time and in such manner, as may be prescribed by rules made under this Act, appeal to the High Court."

"Rule 4: Procedure on receipt of reference under Section 47A:

(1)

(2)

(3)

(4) After considering the representations, if any, received from the person to whom notice under sub-rule (1) has been issued, and after examining the records and evidence before him, the Collector shall pass an order in writing provisionally determining the market value of the properties and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order."

7. A bare perusal of the rules make the position clear that sub-Rule (4) enumerates procedure on receipt of reference under Section 47-A. Rule 5 speaks about the principles for determination of market value. Sub-clause

(a) refers to lands; (b) house sites; (c) buildings and (d) properties other than lands, house sites and buildings. Sub-Sections (1) and (3) of Section 47-A clearly reveal the intention of the Legislature that there must be a reason to believe that the market value of the property which is the subject matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed 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 under value the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, 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.

8. In the instant case the factual scenario shows that the vendors of the appellant i.e. M/s Dunlop India Limited became a sick industry and was declared so under the provisions of 1985 Act. Consequent upon such declaration, surplus properties and assets belonging to the said company were disposed of on the basis of orders passed by BIFR and AIFR by forming an Assets Sales Committee. The appellant submitted that his tender alongwith others and his offer of Rs.24.34 crores approximately was the highest, and the same was accepted by the Assets Sales Committee and also by the statutory authorities. The company was granted permission to execute the sale deed in favour of the appellant.

9. Stand of the State is that what has been disclosed is clearly a sale value and the same cannot be termed as market value. There is fallacy in this argument.

10. Market value is a changing concept. The explanation to sub-Rule (5) makes the position clear that value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale in the open market and bids were invited. That being so, there is no question of any intention to defraud the revenue or non disclosure of the correct price. The factual scenario as indicated above goes to show that the properties were disposed of by the orders of BIFR and AIFR and that too on the basis of value fixed by ASG. The view expressed by the Assets Sales Committee which consisted of members such as representatives of IDBI, Debenture Holders, Government of West Bengal and Special Director of BIFR. That being so, there is no possibility of any under valuation and, therefore, Section 47-A of the Act has no application. It is not correct as observed by the High Court that BIFR was only a mediator.

11. Sale has been defined under Section 54 of the Transfer of Property Act, 1882 (in short the 'TP Act'). Although the Act has not included the definition of sale, Section 2(10) of the Act defines conveyance as including a conveyance on sale, every instrument and every decree or final order of any Civil Court by which property whether immovable or moveable or any estate or interest in any property is transferred to, or vested in or declared to be of any other person, inter vivos, and which

is not otherwise specifically provided for by Schedule I or Schedule 1-A, as the case may be.

12. On the facts of the case it cannot be said that Section 47-A has any application because there is no scope for entertaining a doubt that there was any under valuation. That being so, the High Court's order is clearly unsustainable and is set aside. The registration shall be done at the price disclosed in the document of conveyance. There is no scope for exercising power under Section 47-A of the Act as there is no basis for even entertaining a belief that the market value of the property which is the subject matter of conveyance has not been truly set forth with a view to fraudulently evade payment of proper stamp duty.

13. The appeal is allowed. There will be no order as to costs.

.....J. (Dr. ARIJIT PASAYAT)J. (D.K. JAIN)
.....J. (Dr. MUKUNDAKAM SHARMA) New Delhi, May 08, 2009