

1 Writ Appeal No.83/2007

High Court of Madhya Pradesh
Bench at Gwalior

**DIVISION BENCH : Hon.Shri Justice Sanjay Yadav &
Hon.Shri Justice Vivek Agarwal**

Writ Appeal No.83/2007

State of M.P. Appellant

Vs.

M/s. Godrej G.E. Appliance
Ltd. & Anr. Respondents

Shri Pratip Visoriya, learned Govt. Advocate for the
appellant/State.

Shri Mahesh Goyal, learned counsel for respondent No.1.

Shri S.D.Singh Bhadauria, learned counsel for respondent
No.2.

Whether approved for Reporting :

J U D G M E N T
(Delivered on this 31st day of July, 2019)

Per Justice Vivek Agarwal :

This Writ Appeal has been filed by the State being aggrieved by order dated 4.4.2006 passed by the learned Single Judge in Writ Petition No.750/2002. It raises a short question as to whether the Collector of Stamps was justified in passing an order demanding additional stamp duty on account of under valuation of the property set forth in the sale-deed.

2. It is submitted by the learned counsel for the State that in the present case, an agreement to sell was effected between

respondent No.1 and respondent No.2 on 17.12.1991 whereby it was agreed to sell a parcel of land contained in survey No.447 admeasuring 7426 sq.ft. situated at 21-A, Ravi Nagar, Gwalior. It is submitted that sale-deed was executed on 16.4.1993 suppressing actual valuation of the property on the date of transfer of such property in the name of the vendee thereby evading stamp duty.

3. When this fact was brought to the notice of the Collector of Stamps, he issued a show-cause notice to the vendor and vendee and after giving an opportunity of hearing to them, so also to file evidence, passed order dated 8.4.1994 holding that on the date of transfer of property in favour of the vendee through registered sale-deed a structure stood erected on the said property after taking all necessary permissions in the name of the vendor and such structure was erected by one Mobha Builders, and therefore, on the date of registration of sale-deed correct valuation was not mentioned in the deed of sale as is mandated under the provisions of Section 27 of the Indian Stamp Act, and therefore, exercising his authority under Section 47-A(3), impugned order was passed directing the vendee to pay stamp duty on excess valuation of the instrument which was admittedly undervalued as per the

provisions contained in M.P. Prevention of Undervaluation of Instruments Rules 1975.

4. This order was put to challenge before the Commissioner, Gwalior Division, Gwalior, which affirmed the order of Collector of Stamps vide order dated 15.11.1994, Annexure P/5, but this matter was taken to Board of Revenue by respondents No.1 and 2, when vide order dated 31st July, 1995, Board of Revenue set aside the orders of Collector of Stamps and the order of Commissioner, Gwalior Division, Gwalior.

5. State being aggrieved of such order passed by the Board of Revenue challenged said order before the High Court by filing Writ Petition No.1951/96. Vide order dated 16.11.98 learned Single Judge set aside the order passed by Board of Revenue and remanded the matter back to the Board of Revenue with a direction that Board of Revenue shall hear the parties afresh and give a specific finding of fact in the light of the observations mentioned hereinabove after taking into consideration the entire material on record in accordance with law.

6. Learned counsel for the State submits that on remand learned Board of Revenue instead of framing questions

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germane to the controversy i.e. as to the valuation of the property on the date of execution of sale-deed, groped into irrelevant facts like whether construction was carried out by Godrej Company prior to actual transfer with the permission of the vendor or whether the receipt of payment contains a clause of handing over of possession of the said property in favour of the vendee and whether vendor had given permission to obtain all necessary sanctions for construction of building in his name. It has also dealt with the issue of permission from income tax department and has hypothetically concluded that since time was taken to obtain permission from the income tax department, therefore, the vendee was not left with any option, but to carry on construction on the piece of land agreed to be purchased from the vendor. This order passed by the Board of Revenue was again put to challenge in Writ Petition No.750/2002 wherein learned Single Judge also erred in not framing an appropriate question as to the aspect of undervaluation of the property in violation of the mandate of Section 27 of the Stamps Act and dealt with peripheral issues ignoring the core issue and dismissed the writ petition filed by the State. It is submitted that reliance on the judgment of this Court in the case of **SRF**

Ltd. vs. State of M.P. & Ors. as reported in **2005(1) M.P.L.J. 481** is also misplaced inasmuch as issue involved in the case of SRF Ltd. is not in the teeth of Section 27 of the Stamp Act and is not relevant to the facts of the present case.

7. It is submitted by learned counsel for the State that Allahabad High Court in the case of **Shri Abdul Waheed & Ors. Vs. U.P. State** as reported in **AIR 2003 Allahabad 220** answered similar contentions raised therein by the counsel for the petitioner which have been reproduced in para 5, which are as under :

“5. Learned counsel representing the petitioners has raised following three contentions :

(i) It is the option of the vendor and vendee to sell only the land leaving out the building standing on the land and in such an event it is the value of the land, alone which is to be examined for the purposes of determining the stamp duty payable on the sale deed.

(ii) On the facts of this case the building was not standing on the land at the time of sale deed and the finding to that effect recorded by the subordinate authorities suffers from an error of law.

(iii) the reference under Section 47-A could not have been made by the Sub-Registrar after the sale deed had been registered and therefore all consequential proceedings are vitiated.”

While dealing with such contentions in para 13, the Court answered issue No.1 as under :-

“13. Thus the law appears to be that every

instrument of transfer must truly set forth the entire property which, from the point of view of practical considerations, is the subject matter of transfer. Therefore where a structure is standing on land, the land alone can not be transferred without the structure unless before transferring the structure is removed. However, the converse may not be correct, as it may be possible to transfer the structure alone without transferring the land. “

This answer squarely covers the controversy in the present case.

8. Learned counsel for the appellant/State also places reliance on the decision of the Supreme Court in the case of **Suraj Lamp and Industries Private Ltd. vs. State of Haryana and another** as reported in (2012) 1 SCC 656 wherein it has been held that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. Therefore, scope of an agreement to sell is different from an actual sale-deed as has been held in the case of **Suraj Lamp (supra)** referring to the judgment of the Supreme Court in the case of **Narandas Karsondas v. S.A.Kamtam and Anr.** as reported in (1977) 3 SCC 247, where it has been held that it is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the

absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. Thus, it is submitted that value of the property is to be seen on the date of transfer i.e. the execution of the sale-deed and this aspect has been overlooked by the Board of Revenue as well as learned Single Judge.

9. Learned counsel for respondent No.1 Shri Mahesh Goyal in his turn submits that it was respondent No.1- M/s, Godrej G.E. Appliance Ltd. which had entered into an agreement to sell and obtained possession of the land so contracted to be purchased. Thereafter all the permissions were obtained in the name of the vendor and contract was given to Mobha builder to whom money was paid by respondent No.1, and therefore, respondent No.1 is not liable to pay stamp duty on the money spent by them in erecting a structure on the land sought to be purchased after entering into an agreement to sell.

10. Learned counsel for respondent No.1 has placed reliance on a judgment of the Supreme Court in the case of **Sanjeev Lal and others vs. Commissioner of Income Tax, Chandigarh and Anr.** as reported in **(2015) 5 SCC 775** and submitted that for the purpose of capital gains it has been held

that since execution of agreement to sell extinguishes some right of vendor in capital asset as after such execution, he cannot sell the property to someone else, therefore, execution of agreement to sell also creates some right in favour of vendee and he can get sale-deed executed in his favour by enforcing specific performance of agreement. Placing reliance on such judgment, it is submitted that since vendee had attained certain rights by virtue of execution of agreement to sell, therefore, issue of valuation of property on the date of execution of the sale-deed becomes secondary and loses its relevance.

11. After hearing arguments of learned counsel for the parties and going through the record, the issue which is germane to the controversy has been aptly paraphrased by Allahabad High Court in the case of **Shri Abdul Waheed** in para 13 supra.

12. As per the provisions contained in Section 27(1) of the Indian Stamp Act it is incumbent on the parties to the instrument to set forth in instrument, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable.

13. Sub-section (2) of Section 27 of the India Stamp Act

provides as under :-

“(2) In the case of instrument relating to immovable property chargeable with an ad valorem duty on the market value of the property, and not on the value set-forth, the instrument shall fully and truly set-forth the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property, the local rates, municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act.”

14. Section 47-A provides for a mechanism to deal with undervalued instrument. Section 47A(2) & 47A(3) reads as under :

“47-A. Instruments undervalued how to be dealt with.

(1)

(2) On receipt of a reference under sub-section (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, determine the market value of the property which is the subject matter of such instrument 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, within five years from the date of registration of any instrument not already referred to him under sub-section (1), call for and 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 any such instrument and the duty payable thereon and if after such examination, he has reason to believe that the market value of such 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 person liable to pay the duty:

Provided that nothing in this sub-section shall apply to any instrument registered prior to the date of the commencement of the Indian Stamp (Madhya Pradesh Amendment) Act, 1975.”

15. In view of the provisions contained in Section 27, the issue in regard to value of the property alone is to be examined for the purpose of determining stamp duty on the sale-deed. There is no dispute that a super-structure was standing on the land contracted to be purchased on the date of execution of the sale-deed and valuation of such super-structure has not been taken into consideration while executing such sale-deed whereas it was part of the land contracted to be purchased and its valuation was ingrained in the valuation of the property sought to be conveyed by the registered sale-deed. Therefore, as per the provisions contained in Section 27, it was incumbent upon the vendor and the vendee to have disclosed this fact in the instrument of transfer and also pay stamp duty as per the valuation.

16. All the arguments put forth by learned counsel for the respondent as to obtaining all permissions etc. can be aptly answered in terms of the judgment in the case of **Suraj Lamp (supra)** which categorically lays down proposition of law that

a transfer of immovable property by way of sale can only be by a deed of conveyance (sale-deed). In the absence of a deed of conveyance (duly stamped and registered as required by law) no right, title or interest in an immovable property can be transferred.

17. As far as law laid down in the case of **Sanjeev Lal and others (supra)** is concerned, it is a case of purposive construction of a fiscal statute wherein Supreme Court has held that purposive interpretation should be given to provisions of Income Tax Act. In that case, the Supreme Court has referred to Section 2(47) of the Income Tax Act, 1961 wherein term transfer has been defined and intention of the legislature has been described in para 23 in the following terms:-

“23. In addition to the fact that the term “transfer” has been defined under Section 2(47) of the Act, even if we looked at the provisions of Section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, the intention of the Legislature is to give him relief in the matter of payment of tax on the long term capital gain. If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under Section 54 of the Act, the Legislature does not want him to be burdened with tax on the long term capital gain and therefore, relief has been given to him in respect

of paying income tax on the long term capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief.”

Thus, when law laid down in the case of **Sanjeev Lal and others (supra)** is examined, it has a contextual purposive interpretation in terms of the provisions contained in the Income Tax Act which are not applicable in the present case in view of specific provisions contained in Section 27 and 47-A of the India Stamp Act. Therefore, as has been held in the case of **Vinayak Dattatraya v. Hasanali Haji Nazarali** as reported in **AIR 1961 MP 6** “the real question as to whether the Allahabad view that in Article 33 the words “as set forth” refer to “value” and not to property is correct, has been answered as undoubtedly it is. Otherwise, the significance of as will be missed. It is not property “set forth”, but “value ... as set forth”, the rule of proximity being broken by the preposition “as”.” In the present case, in terms of the language used in Section 27, it is the market value of the property which affects the chargeability of an instrument, and therefore, Collector of Stamps has not exceeded his jurisdiction in determining the market value of the property on the date of execution of the sale-deed as per Section 27 and

then proceeding with his authority under Section 47-A(3). These aspects having been glossed over by the Board of Revenue and learned Single Judge, resultantly writ appeal is allowed. The order passed by learned Single Judge is set aside and the order of Board of Revenue is quashed. Order passed by the Collector of Stamps is upheld. The appellant/ State of Madhya Pradesh and its functionaries are at liberty to recover the amount of deficit stamp duty and the penalty imposed.

In above terms, appeal is disposed of.

Parties to bear their own cost.

(Sanjay Yadav)
Judge

(Vivek Agarwal)
Judge

ms/-