

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(S.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

Writ Petition No.6254/2012

Gyanprakash Vs. State of M.P. and others

Writ Petition No.6275/2012

Vijay Kumar Vs. Board of Revenue and others

Writ Petition No.6276/2012

Sureshchandra Vs. Board of Revenue and others

Writ Petition No.6277 /2012

Ashwini Kumar Vs. Board of Revenue and others

Writ Petition No.6278/2012

Yogendra Vs. Board of Revenue and others

Writ Petition No.6279/2012

Brajmohan Vs. Board of Revenue and others

Writ Petition No.6280/2012

Smt. Kanta Vs. Board of Revenue and others

Writ Petition No.6281/2012

Smt. Manorama Vs. Board of Revenue and others

Writ Petition No.6282/2012

Smt. Ayodhyabai Vs. Board of Revenue and others

Writ Petition No.6283/2012

Sachidanand Vs. Board of Revenue and others

Writ Petition No.6289/2012

Smt. Kamla Vs. Board of Revenue and others

Writ Petition No.6290/2012

Sureshchandra Vs. Board of Revenue and others

Writ Petition No.6291/2012

Smt. Mohinibai Vs. Board of Revenue and others

Writ Petition No.6292/2012

Subhash and another Vs. State of MP and others

Writ Petition No.6293/2012

Smt. Madhu Vs. Board of Revenue and others

Writ Petition No.6294/2012

Dharmadas Vs. Board of Revenue and others

Writ Petition No.6295/2012

Ram Gopal Vs. Board of Revenue and others

Writ Petition No.6296/2012

Balmukund Vs. Board of Revenue and others

Writ Petition No.6297/2012

Rajendra Kumar Vs. Board of Revenue and others

Writ Petition No.6298/2012

Shivlal Vs. Board of Revenue and others

Writ Petition 3No.6299/2012

Jagmohan Vs. Board of Revenue and others

Writ Petition No.6300/2012

Ashish Vs. Board of Revenue and others

Writ Petition No.6301/2012

Lalchand Vs. Board of Revenue and others

Writ Petition No.6302/2012

Ramswarup Vs. Board of Revenue and others

Writ Petition No.6303/2012

Ravi Kumar and another Vs. Board of Revenue and others

Writ Petition No.6304/2012

Rajendra Prasad Vs. Board of Revenue and others

Writ Petition No.6305/2012

Sunil and another Vs. Board of Revenue and others

Writ Petition No.6306/2012

Nand Kishore Vs. Board of Revenue and others

Writ Petition No.6307/2012

Narayan Vs. Board of Revenue and others

Writ Petition No.6308/2012

Ravindra Kumar Vs. Board of Revenue and others

Writ Petition No.6309/2012

Shantilal and another Vs. Board of Revenue and others

Writ Petition No.6310/2012

Jayshiv Vs. Board of Revenue and others

Writ Petition No.6311/2012

Smt. Yashodabai Vs. Board of Revenue and others

Writ Petition No.6312/2012

Smt. Ratna Vs. Board of Revenue and others

Writ Petition No.6313/2012

Narendra Kumar Vs. Board of Revenue and others

Writ Petition No.6314/2012

Smt. Gayatri Vs. Board of Revenue and others

Writ Petition No.6315/2012

Smt. Sangeeta Vs. Board of Revenue and others

Writ Petition No.6316/2012

Smt. Krishnabai Vs. Board of Revenue and others

Writ Petition No.6317/2012

Atmaram Vs. Board of Revenue and others

Writ Petition No.6318/2012

Smt. Radha Vs. Board of Revenue and others

Writ Petition No.6319/2012

Lalsingh Vs. Board of Revenue and others

Writ Petition No.6320/2012

Sushri Vijaylaxmi Vs. Board of Revenue and others

Writ Petition No.6321/2012

Smt. Shakuntla Vs. Board of Revenue and others

Writ Petition No.6322/2012

Smt. Rajesh Vs. Board of Revenue and others

Writ Petition No.6323/2012

Sanjay Vs. Board of Revenue and others

Writ Petition No.6324/2012

Smt. Shakuntla Vs. Board of Revenue and others

Writ Petition No.7398/2012

Smt. Manju Vs. Board of Revenue and others

Shri C.L. Yadav learned senior counsel with Shri O.P. Solanki, learned counsel for the petitioner.

Shri Rahul Sethi learned counsel for the respondent/State.

Shri Sunil Yadav learned counsel for respondent no.5.

Whether approved for reporting :

ORDER

(Passed on 19/4/2018)

This order will govern disposal of WP Nos. 6254/12, 6275/12, 6276/12, 6277/12, 6278/12, 6279/12, 6280/12, 6281/12, 6282/12, 6283/12, 6289/12, 6290/12, 6291/12, 6292/12, 6293/12, 6294/12, 6295/12, 6296/12, 6297/12, 6298/12, 6299/12, 6300/12, 6301/12, 6302/12, 6303/12, 6304/12, 6305/12, 6306/12, 6307/12, 6308/12, 6309/12, 6310/12, 6311/12, 6312/12, 6313/12, 6314/12, 6315/12, 6316/12, 6317/12, 6318/12, 6319/12, 6320/12, 6321/12, 6322/12, 6323/12, 6324/12 & 7398/12, since it is jointly stated by counsel for the parties that all writ petitions involve same issue in identical facts situation.

2/ For convenience the facts have been noted from WP No. 6254/2012.

3/ This writ petition has been filed by petitioner challenging the order dated 31st August 2010 passed by Collector of Stamps as affirmed by order dated 1/2/2011 in appeal by the Commissioner and the order dated 18th January 2012 in Second appeal by board of revenue.

4/ The case of petitioner is that petitioner was allotted plot no. 1498 Sudama Nagar Indore by respondent no. 4 in the year 1984 which is a registered society. The area of plot is 30 X 50 =1500 sq.ft. and price paid by petitioner was Rs. 11,001/-. Further case of petitioner is that after allotment of plot, the petitioner himself constructed house thereon in the year 1985 and on account of some legal complications, the registered instrument in respect of plot was not executed by the society and after obtaining permission for registration by respondent no. 4 society the instrument for registration was executed on 10/11/2009. But the Registrar had taken objection that value of the property was not correctly stated in the instrument therefore, the matter was referred to the Collector of Stamps under Section 47-A of Indian Stamp Act. The Collector of Stamps vide order dated 31st August 2010 has held that the stamp duty will be calculated on the basis of value of the plot and construction raised thereon and has further held that market value will be determined in reference to the date of execution of instrument. Accordingly the Collector of Stamp determined the market value at Rs. 16,81,000/- and treating construction to be more than 20 years old granted 10% exemption and calculated the stamp duty of Rs. 1,59,695/- and after deducting the stamp duty of Rs. 1050 already paid, he demanded the balance stamp duty of Rs. 1,58,645/-.

5/ The first appeal preferred by petitioner has been dismissed by the Commissioner vide order dated 1/2/2011 by affirming the order of Collector of Stamp and second appeal has also been dismissed by the Board of Revenue vide order dated 18th January 2012.

6/ Learned counsel for petitioner submits that stamp duty is payable on the value of the property as on the date of allotment i.e. the price paid by petitioner to the society. He further submits that petitioner himself has constructed the house after allotment of plot therefore, value of the house cannot be taken into account for the purpose of calculating stamp duty. He has further submitted that identical writ petition being WP No. 1556/06 has already been decided by this court vide order dated 15/1/2008 and said writ petitioner has been held liable to pay the stamp duty on the basis of price paid to the society for allotment of plot.

7/ As against this learned counsel for respondents have supported the impugned orders.

8/ Having heard the learned counsel for parties and on perusal of the record it is noticed that the first issue raised by petitioner relates to determination of relevant date for calculating the value of the property for the purpose of payment of stamp duty.

9/ The contention of counsel for petitioner is that the date of allotment of plot in the year 1984 is the relevant date whereas the contention of respondent is that date of execution of instrument i.e. 10/11/09 is the relevant date for ascertaining the market value.

10/ Explanation to Section 47A of Indian Stamp Act, 1899 inserted by MP Act 30 of 1997 w.e.f. 15/11/1997 in clear terms provides that:

“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.”

11/ A bare reading of the aforesaid explanation reveals that date of execution of the instrument is the relevant date for estimating the market value of the property i.e. the price, such property would fetch if sold in the open market on that date.

12/ Similar issue had come up before this court in the matter of **Smt. Harvinder Kaur and others Vs. State of MP and others reported in AIR 2007 MP 86** wherein the agreement was executed on 28/8/1978 and the date of tendering the documents was around 1997, this court has held that:

“11. From perusal of the said section, it is clear that Registrar can demand additional stamp duty whenever he is of the opinion that market value put forth in the document is not truly set forth in the instrument. Said section, nowhere indicates that the Registrar can exercise said power only in case of fraud or evasion of stamp duty. The object of registration is not only to prevent the evasion of stamp duty but to provide authority to the execution of document.

12. After perusing the aforesaid judgments in the case of Sub-Registrar, Kodad Town and Mandal (AIR 1998 AP 252) (supra), S.P. Padmavathi (supra) and Smt. Shantidevi Prasad (AIR 2001 Pat 161) (supra), I find that said judgments are based on interpretation of Section 47-A of the Act as applicable in their respective states. So far as State of Madhya Pradesh is concerned, the position is made clear by explanation of Section 47-A of

the Act, which was inserted by MP Act 30 of 1997 which came into effect from 15/11/1997. Said explanation read 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.

From reading of said explanation, it is clear that for the purpose of Indian Stamp 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.”

13/ Having regard to the aforesaid, I am of the opinion that no error has been committed by the Collector of Stamps and appellate authorities in holding that market value of the property will be determined in reference to the date of execution of the instrument.

14/ The next issue is as to whether while determining the market value, only the value of the plot which has been allotted by the society is to be taken into account or the value of the house which according to petitioner has been constructed by him after allotment, could also be taken into account.

15/ Section 3 of the Stamp Act deals with the instrument chargeable with duty. Instrument has been defined under Section 2 (14) of the Act to include every document by which any right or liability is or purported to be created, transferred, limited, extended, etc. Similarly Section 2(10) of the Act defines conveyance to include a conveyance on sale and every instrument by which property, whether moveable or immovable

is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. A perusal of the relevant provision of the Act reveals that the stamp duty is payable on the value of the property which is subject matter of transfer in the instrument.

16/ Supreme court in the matter of **State of UP and others Vs. Ambrish Tandon and another reported in AIR 2012 SC 1140** in a case where the owner was claiming the house to be residential property whereas the Collector of stamps was treating the land as commercial has held that nature of user is relatable to date of purchase and it is relevant for the purpose of calculation of stamp duty.

17/ This court also in the circumstances which are identical to the present case in the matter of **State of MP Vs. M/s Godrej G.E. Appliances Ltd and others reported in 2008 RN 414**, where the sale deed was executed for open land and 68 sq.ft. old construction, has held that market value cannot be determined on five storied building and duty has to be paid on transfer affected by instrument, by holding that:

“6. In my opinion this approach of the Collector and Commissioner was illegal, misconceived and contrary to law with regard to the imposition of duty of stamp. It is well settled in law that duty has to be paid on a transfer effected by the instrument and not on the basis of intentions or assumption of parties to the sale deed in question. In the present case what is transferred is the open land only, there is nothing in the sale deed to indicate that the so called five storied building or superstructure said to be existing over the land is also transferred by the sale deed in question.”

18/ Counsel for petitioner has also placed reliance upon circular No. 1245/तकनीकी/2006 Bhopal dated 30th June 2006 issued by Mahanirikshak Panjiyan MP to the effect that if after allotment of plot the construction has been raised by allottee then stamp duty is payable only on the value of the plot. Though this circular is in respect of allotment by government and semi-government institutions but it reflects position of law in respect of charging of stamp duty on such instruments.

19/ Having examined the impugned order, I am of the opinion that petitioners have been held liable to pay the stamp duty at the market rate on the value of land as also house constructed thereon. The sale deed in question clearly mentions that allottee had constructed house on the plot, but the impugned order reveals that petitioner's plea in this regard has been rejected without any justifiable reason and without holding any enquiry in this regard. The fact disclosed in the sale deed either should have been accepted by the authorities or if authorities intended to reject it, they should have assigned due and proper reason.

20/ It has been pointed out that similar contention of another allottee in WP No. 1656/06 in case of **Smt. Gangabai and another Vs. Board of Revenue and others** has already been allowed by the Coordinate Bench by judgment dated 15/1/2008 by setting aside the orders of Collector, Commissioner and Board of Revenue and remanding the matter back to the Collector (Stamps) Indore for consideration of the controversy afresh.

21/ For the reasons assigned aforesaid, the impugned orders of Collector, Commissioner and Board of Revenue cannot be

sustained and are hereby set aside and the matter is remanded back to the Collector of Stamps for fresh decision in respect of subject matter of transfer in the instrument, after giving an opportunity of hearing and conducting the enquiry, if required, in accordance with law. The signed order be placed in the record of WP No. 6254/2012 and copy whereof be placed in the record of connected writ petitions.

C.c. as per rules.

(Prakash Shrivastava)
Judge

BDJ