

Har Devi Asnani vs State Of Rajasthan & Ors on 27 September, 2011

Author: A. K. Patnaik

Bench: A. K. Patnaik, R. V. Raveendran

1.

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 8325 OF 2011

(Arising out of SLP (C) NO. 20964 OF 2010)

Smt. Har Devi Asnani

..... Appellant

Versus

State of Rajasthan & Others

..... Respondents

WITH

CIVIL APPEAL No. 8326 OF 2011

(Arising out of SLP (C) NO. 17233 OF 2010)

J U D G M E N T

A. K. PATNAIK, J.

Leave granted.

2. The appellant purchased Plot No. A-7 situated in the Housing Scheme No.12, Ajmer Road, Jaipur, of Krishna Grah Nirman Sahakari Samiti Limited by a registered Sale Deed dated 16.05.2007 for a consideration of Rs.18 lacs. The Sale Deed was executed on a stamp duty of Rs.1,17,000/-. The Sub-

Registrar, SR IV, Jaipur, did not accept the valuation made in the Sale Deed and appointed an Inspection Officer to inspect the plot purchased by the appellant and determined the value of the land at Rs.2,58,44,260/-. The Additional Collector (Stamps), Jaipur, served a notice under the Rajasthan Stamp Act, 1998 (for short 'the Act') to the appellant on 07.07.2008 to appear before him on 19.09.2008 and to show-cause why prosecution against the appellant should not be initiated for concealing or misrepresenting facts relating to the valuation mentioned in the Sale Deed resulting in evasion of stamp duty. The appellant filed a reply stating therein that the plot of land purchased by her under the Sale Deed was allotted to her for residential purposes and was not meant for commercial use and that the sale price was paid entirely by a cheque. The appellant also stated in her reply that adjacent to the plot purchased by her, Plot Nos.A-3 near Scheme No.12, Roop Sagar, had been sold by a registered Sale Deed on 16.12.2006 and another Plot No.A-38, near Scheme No.12, Roop Sagar, at a price less than the price in the Sale Deed dated 16.05.2007 under which she had purchased Plot No.A-7 in Housing Scheme No.12.

Along with the reply, the appellant had also furnished copies of the two Sale Deeds of the adjacent Plot Nos.A-3 and A-38 in Scheme No.12. In the reply, the appellant requested the Additional Collector (Stamps) to drop the recovery proceedings. The Additional Collector (Stamps) heard the appellant and in his order dated 20.07.2009 held after considering the Site Inspection Report that the determination made by the Sub-Registrar at Rs. 2,58,44,260/- was correct and that the appellant was liable to pay deficit stamp duty of Rs.15,62,880/-, deficit registration charges of Rs.7,000/- and penalty of Rs.120/- totalling to a sum of Rs.15,70,000/- and accordingly made the demand on the appellant and directed recovery of the same.

3. Aggrieved, the appellant filed SB Civil Writ Petition No.12422 of 2009 before the Rajasthan High Court challenging the order dated 20.07.2009 of the Additional Collector (Stamps), Jaipur. A learned Single Judge of the High Court, however, dismissed the Writ Petition by order dated 21.10.2009 holding that the appellant had a remedy against the order of the Additional Director by way of a revision before the Board of Revenue and as there was an alternative and efficacious remedy available to the appellant, there was no just reason for the appellant to invoke the extra-

ordinary jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. The appellant then filed D.B. Civil Appeal (Writ) No.1261 of 2009 before the Division Bench of the High Court, but by order dated 22.03.2010 the Division Bench of the High Court held that there was no error or illegality apparent on the face of the record in the order dated 21.10.2009 passed by the

learned Single Judge and that the appeal was devoid of any merit and accordingly dismissed the appeal. Aggrieved, the appellant has filed Civil Appeal arising out of S.L.P. (C) No.17233 of 2010.

4. In the meanwhile, the appellant filed a separate Writ Petition D.B. Civil Writ Petition No.14220 of 2009 in the Rajasthan High Court challenging the constitutional validity of the proviso to Section 65(1) of the Rajasthan Stamp Act, 1998 (for short 'the Act'), which provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of fifty percent of the recoverable amount. The ground taken by the appellant in the writ petition before the High Court was that unless the appellant deposited fifty percent of the total amount of Rs.15,70,000/- towards deficit stamp duty, registration charges and penalty, the revision petition of the appellant would not be entertained and the appellant was not in a position to deposit such a huge amount as a condition for filing the revision. The appellant accordingly contended before the High Court that the pre-condition of payment of fifty percent of the recoverable amount for entertaining a revision petition was arbitrary, unreasonable and unconstitutional.

The Division Bench of the High Court, however, held in its order dated 16.11.2009 that the constitutional validity of the proviso to Section 65 (1) of the Act had been examined by another Division Bench of the High Court in M/s Choksi Heraeus Pvt. Ltd., Udaipur v.

State & Ors. [AIR 2008 Rajasthan 61] and the proviso to Section 65 (1) of the Act had been held to be constitutionally valid. The Division Bench relying on the aforesaid decision in M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors. (supra) dismissed the Writ Petition by order dated 16.11.2009. The appellant has filed the Civil Appeal arising out of S.L.P. (C) No.20964 of 2010 against the order dated 16.11.2009 of the Division Bench in D.B. Civil Writ Petition No.14220 of 2009.

5. For appreciating the contentions of the learned counsel for the parties, we must refer to Section 65 of the Act.

Section 65 of the Act is quoted hereinbelow:

"65. Revision by the Chief Controlling Revenue Authority (1) Any person aggrieved by an order made by the Collector under Chapter IV and V and under clause (a) of the first proviso to section 29 and under section 35 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision of such order:

Provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of fifty percent of the recoverable amount. (2) The Chief Controlling Revenue Authority may suo moto or on information received from the registering officer or otherwise call for and examine the record of any case decided in proceeding held by the Collector for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of the proceedings and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

6. Learned counsel for the appellant submitted that although sub-section (1) of Section 65 of the Act confers a right on a person to file a revision against the order of the Collector, the proviso to Section 65(1) of the Act renders this right illusory by insisting that the revision application shall not be entertained unless it is accompanied by a satisfactory proof of the payment of fifty percent of the recoverable amount. He submitted that the proviso to Section 65(1) of the Act is therefore unreasonable and arbitrary and violative of Article 14 of the Constitution and should be declared constitutionally invalid. He cited the decision of this Court in *Mardia Chemical Ltd. and Others vs. Union of India and Others* [(2004) 4 SCC 311] in which the provision requiring pre-deposit of 75% of the demand made by the bank or the financial institution in Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been held to be onerous and oppressive rendering the remedy illusory and nugatory and constitutionally invalid.

7. Learned counsel for the appellant submitted that assuming that the proviso to Section 65(1) of the Act is constitutionally valid where the valuation adopted by the Additional Collector or Collector and the consequent demand of additional stamp duty are unreasonable and exorbitant, the alternative remedy of revision after deposit of 50% of the exorbitant demand is not efficacious, and affected party should be able to move the High Court under Article 226 of the Constitution. In support of this submission, he cited the decision of this Court in *Government of Andhra Pradesh and Others vs. P. Laxmi Devi* [(2008) 4 SCC 720]

8. Learned counsel for the respondents, on the other hand, submitted that a revision or an appeal is a right conferred by the statute and the legislature while conferring this statutory right can lay down conditions subject to which the appeal or revision can be entertained and that there is nothing unreasonable or arbitrary in the proviso to Section 65(1) of the Act requiring deposit of 50% of the recoverable amount before the revision application is entertained. He argued that the proviso to Section 65(1) of the Act is in no way illusory and is only a provision to ensure that the stamp duty demanded is recovered in time and is not held up because of the pendency of the revision.

In support of his submission, learned counsel for the respondent relied on the decisions of this Court in *The Anant Mills Co. Ltd. vs. State of Gujarat and others* [(1975) 2 SCC 175]; *Seth Nand Lal and Another vs. State of Haryana and Others* [1980 (supp) SCC 575]; *Vijay Prakash D. Mehta and Another vs. Collector of Customs (Preventive), Bombay* [(1988) 4 SCC 402] and *Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation of the City of Ahmedabad and Others* [(1999) 4 SCC 468].

9. Learned counsel for the respondents submitted that the decision of this Court in *Mardia Chemical Ltd. and Others vs. Union of India and Others* (supra) declaring the provision of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requiring deposit of 75% of the demand as constitutionally invalid does not apply to the facts of the present case. He submitted that in *Mardia Chemical Ltd. and Others* (supra) this Court clearly held that the amount of deposit of 75% of the demand is at the initial proceedings itself when the

bank or the financial institution makes its demand on the borrower and the requirement of deposit of such a heavy amount on the basis of one-sided claim of the bank or the financial institution at this stage, before the start of the adjudication of the dispute, cannot be said to be a reasonable condition. He submitted that in the instant case, the first adjudicatory authority is the Collector and only after the Collector determines the amount of stamp duty payable on the documents, the affected party has a right of revision under Section 65(1) of the Act. He further submitted that the requirement of 50% of the amount determined by the Collector at the stage of filing of the revision is therefore not a requirement at the initial stage but a requirement at the revisional stage and the decision of this Court in *Mardia Chemical Ltd. and Others vs. Union of India and Others* (supra) is distinguishable from the facts of the present case.

10. We need not refer to all the decisions cited by the learned counsel for the parties because we find that in *Government of Andhra Pradesh and Others vs. P. Laxmi Devi* (supra) this Court has examined a similar provision of Section 47-A of the Stamp Act, 1899, introduced by the Indian Stamp Act (A.P. Amendment Act 8 of 1998). Sub-

section (1) of Section 47-A, introduced by Andhra Pradesh Act 8 of 1998 in the Indian Stamp Act, is extracted hereinbelow:

"47-A. Instruments of conveyance, etc. how to be dealt with-(1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon.

Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned."

Under sub-section (1) of Section 47-A quoted above, a reference can be made to the Collector for determination of the market value of property and the proper duty payable thereon where the registering officer has reason to believe that the market value of the property which is the subject-

matter of the instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties. The proviso of sub-section (1) of Section 47-A, however, states that no such reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned. This proviso of

sub-section (1) of Section 47-A was challenged before the Andhra Pradesh High Court by P. Laxmi Devi and the Andhra Pradesh High Court held that this proviso was arbitrary and violative of Article 14 of the Constitution and was unconstitutional. The Government of Andhra Pradesh, however, filed an appeal by special leave before this Court against the judgment of the Andhra Pradesh High Court and this Court held in para 18 at page 735 of [(2008) 4 SCC 720] that there was no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by the Andhra Pradesh Amendment Act 8 of 1998 and that the amendment was only for plugging the loopholes and for quick realisation of the stamp duty and was within the power of the State Legislature vide Entry 63 of List-II read with Entry 44 of List-III of the Seventh Schedule to the Constitution. While coming to the aforesaid conclusions, this Court has relied on *The Anant Mills Co. Ltd. vs. State of Gujarat and others* (supra), *Vijay Prakash D. Mehta and Another vs. Collector of Customs (Preventive), Bombay* (supra) and *Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation of the City of Ahmedabad and Others* (supra) in which this Court has taken a consistent view that the right of appeal or right of revision is not an absolute right and it is a statutory right which can be circumscribed by the conditions in the grant made by the statute. Following this consistent view of this Court, we hold that the proviso to Section 65(1) of the Act, requiring deposit of 50% of the demand before a revision is entertained against the demand is only a condition for the grant of the right of revision and the proviso does not render the right of revision illusory and is within the legislative power of the State legislature.

11. We also find that in the impugned order the High Court has relied on an earlier Division Bench judgment of the High Court in *M/s Choksi Heraeus Pvt. Ltd., Udaipur v.*

State & Ors. (supra) for rejecting the challenge to the proviso to Section 65(1) of the Act. We have perused the decision of the Division Bench of the High Court in *M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors.* (supra) and we find that the Division Bench has rightly taken the view that the decision of this Court in the case of *Mardia Chemical Ltd. and Others vs. Union of India and Others* (supra) is not applicable to the challenge to the proviso to Section 65(1) of the Act inasmuch as the provision of sub-section (2) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requiring deposit of 75% of the demand related to deposit at the stage of first adjudication of the demand and was therefore held to be onerous and oppressive, whereas the proviso to Section 65(1) of the Act in the present case requiring deposit of 50% of the demand is at the stage of revision against the order of first adjudication made by the Collector and cannot by the same reasoning held to be onerous and oppressive. In our considered opinion, therefore, the proviso to Section 65(1) of the Act is constitutionally valid and we are therefore not inclined to interfere with the order dated 16.11.2009 in D.B.CWP No.14220 of 2009. The Civil Appeal arising out of S.L.P. (C) No.20964 of 2010 is therefore dismissed.

12. We are, however, inclined to interfere with the order dated 21.10.2009 of the learned Single Judge of the High Court in SB Civil Writ Petition No.12442 of 2009 as well as the order dated 22.03.2010 of the Division Bench of the High Court in D.B. Civil Appeal (Writ) No.1261 of 2009. The learned Single Judge of the High Court and the Division Bench of the High Court have taken a view that as the appellant has a right of revision under Section 65(1) of the Act, the writ petition of the appellant challenging the determination of the value of the land at Rs.2,58,44,260/-

and the demand of additional stamp duty and registration charges and penalty totaling to Rs.15,70,000/- could not be entertained under Article 226 of the Constitution. The learned Single Judge of the High Court and the Division Bench of the High Court have not considered whether the determination of market value and the demand of deficit stamp duty were exorbitant so as to make the remedy by way of revision requiring deposit of 50% of the demand before the revision is entertained ineffective. In *Government of Andhra Pradesh and Others vs. P. Laxmi Devi (supra)* this Court, while upholding the proviso to sub-section (1) of Section 47-A of the Indian Stamp Act introduced by Andhra Pradesh Amendment Act 8 of 1998, observed:

"29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Articles 14 of the Constitution vide *Maneka Gandhi vs. Union of India* [(1978) 1 SCC 248]. Hence, the party is not remediless in this situation."

13. In our view, therefore, the learned Single Judge should have examined the facts of the present case to find out whether the determination of the value of the property purchased by the appellant and the demand of additional stamp duty made by the appellant by the Additional Collector were exorbitant so as to call for interference under Article 226 of the Constitution.

14. We, therefore, allow the appeal arising out of S.L.P. (C) No.17233 of 2010, set aside the order passed by the learned Single Judge of the High Court in SB Civil Writ Petition No.12442 of 2009 and the order passed by the Division Bench of the High Court in D.B. Civil Appeal (Writ) No.1261 of 2009 and remand the writ petition back to the High Court for fresh consideration in accordance with law. No costs.

.....J. (R. V. Raveendran)J. (A. K. Patnaik) New Delhi, September 27, 2011.
