

## **Ramesh Chand Bansal & Ors vs District Magistrate/Collector ... on 11 May, 1999**

**Equivalent citations: AIR 1999 SUPREME COURT 2126, 1999 AIR SCW 1873, 1999 ALL. L. J. 1547, (1999) 3 ALLMR 674 (SC), 1999 (2) UJ (SC) 1035, 1999 UJ(SC) 2 1035, (2001) 42 ALL LR 18, 2000 (2) ALL CJ 1233, 1999 (3) ALL MR 674, 1999 (3) LRI 411, 1999 (5) SCC 62, (1999) 4 JT 469 (SC), 1999 (7) SRJ 86, (1999) 4 ANDHLD 51, (1999) 36 ALL LR 742, (1999) 5 ANDH LT 26, (1999) 3 SCALE 636, (1999) 2 CURLJ(CCR) 449, (1999) 2 LANDLR 626, (1999) 3 ALL WC 2431, (1999) 5 SUPREME 443, (1999) 3 ICC 594, (1999) REVDEC 499**

**Bench: A.P.Misra, N.Santosh Hegde**

PETITIONER:

RAMESH CHAND BANSAL & ORS.

Vs.

RESPONDENT:

DISTRICT MAGISTRATE/COLLECTOR GHAZIABAD & ORS.

DATE OF JUDGMENT: 11/05/1999

BENCH:

A.P.Misra, N.Santosh Hegde

JUDGMENT:

MISRA, J.

The short question raised is: whether the Collector while exercising powers under sub-Rule (a) of Rule 340-A of the U.P. Stamp Rules, 1942 framed under the Indian Stamp Act had the competence while fixing circle rates to enhance such rate by 20 per cent for the next year in question? The appellants, in other words, have challenged circular dated 29th November, 1991 which became effective from 1st December, 1991 under which the rate chargeable in Village Surajpur of revenue villages located in Tehsil Dadari area is fixed as under:

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Prescribed rate on Prescribed rates on Road per sq.mt. road (beyond 100 Mts.) per sq.mt.

1. Surajpur Residential Plots 600.00 400.00 2.

Surajpur Commercial Area Plots 750.00 300.00 3. Surajpur Commercial Plots 3000.00 2500.00  
Note:

All the costs shown in the above inventory will automatically be deemed increased by 20% after one year. {Emphasis supplied} The appellants had challenged the note by which the rate was deemed to increase by 20% after one year.

The appellants purchased agricultural land through registered sale deed. The sale consideration being less than the aforesaid circle rate, the appellants had to pay the additional stamp duty which they have paid. The Registering Authority after registering the same instead of returning the sale deed sent the same to Additional District Magistrate (Finance and Revenue) under Section 47-A of the Indian Stamp Act who issued show-cause notice to the appellants for the enhanced payment of stamp duty. The difference sought to be recovered was not between the value shown in the sale deed and the said circle rate but the rate which is enhanced to 20% as per the note in the said circle rate. Dispute in this case is only with respect to this enhancement of 20%. The appellants instead of replying to the said show- cause, filed a writ petition before the High Court, for quashing the said circular and the impugned notice and for returning the sale deed already registered ignoring 20% enhancement. The High Court dismissed the writ petition holding the said circular to be within the competence of the Collector. Aggrieved by the said decision the present appeal has been filed.

The said circular issued under the aforesaid sub-rule

(a) of Rule 340- A of the U.P. Stamp Rules, 1942, is quoted hereunder:

(a) Every Collector shall biennially supply to the District Registrar and such other officers as the State Government may specify, a copy of the statement, showing classification of soil, circle rate and average price of land appertaining to each such classification situate in every pargana, corporation or local party of his district.

Mr. Manoj Swarup, learned counsel for the appellants, submits that the Collector could only fix the circle rate composite for two years but not different rates by splitting for two different years and even if it could, the note to the impugned circular enhancing the rate for the next year by 20% is conjectural, arbitrary and beyond the powers of the Collector. He made strong reliance on the word biennially in the aforesaid Rule which would mean a rate to be for a period of two years, the Collector cannot fix different rates for two different years. In reply, Shri A.K. Goel, learned Additional Advocate General for the State, repelling this submits that under this no duty is cast upon the Collector to fix a single or inflexible rates for two years. It is for the Collector to determine the price of the land which he may determine either for each year or for both year. He submits that the Collector fixed the rate on the basis of material before him including the enhancement of 20% for the next year. If there be materials on the record indicating the trend of rise in prices of land every year, the enhancement indicated for the next year in question cannot be said to be either arbitrary or

beyond the powers vested in the Collector. In the present case, neither the vires of the Rule nor lack of material before the Collector to fix the price is challenged. The challenge is confined to the power of enhancement for the next year in question as has been done in this case by increasing the rate by 20%.

The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is matter for common knowledge in order to escape such duty by unfair practice, many a time under valuation of a property or lower consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds are on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast on authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village; from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is likely value of such property in that area. In its absence it would be very difficult for such Registering Authority to assess the valuation of such instrument. It is to give such support to the Registering Authority the Rule 340-A is introduced. Under this Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area concerned. This is merely a guideline which helps the Registering Authority to assess the true valuation of a transaction in an instrument. This gives him material to test prima facie whether description of valuation in an instrument is proper or not. Under Section 47- A introduced by the UP Act XI of 1969 conveys how a Registering Authority is to deal in case where there is divergence in the valuation between what is described in an instrument and in the circle rate. The relevant sub-sections 1,2 and 3 of Section 47-A are quoted hereinbelow:

47-A. Instruments of conveyance etc., if undervalued, how to be dealt with. - (1) If the market value of any property which is the subject of any instrument of conveyance, exchange, gift, settlement, award or trust, as set forth in such instrument is less than even the minimum value determined in accordance with any rules made under this Act the registering officer appointed under the Indian Registration Act, 1908, shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) Without prejudice to the provisions of sub- section (1), if such registering officer while registering any instrument of conveyance, exchange, gift, settlement, award or trust, has reason to believe that the market value of the property which is the subject of conveyance, exchange, gift, settlement, award or trust, 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.

(3) On receipt of a reference under sub-section (1) or sub-section (2) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which

is the subject of conveyance, exchange, gift, settlement, award or trust 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.

Sub-section (1) provides, in case valuation described in an instrument is less than the minimum value determined in accordance with the said rule then such officer shall refer it to the Collector for ascertainment of the market value of such property, for levying proper duty on such instrument. Sub-section (2) is without prejudice to sub-section (1). Similarly, under it if the registering officer believes that the market value of the property described in an instrument has not been truly set forth, he may, after registering such instrument refer the same to the Collector for determination of true market value of such property. So, we find both under sub-sections (1) or (2) where the value described in such instrument is less than the minimum value fixed under the Rules or even otherwise if such registering officer under sub-section (2) has reasoned to believe that the market value of the property has not been truly set forth he may refer the matter to the Collector for true ascertainment of its market value. On receipt of such reference by the Collector under sub-section (3) he issues notice to the concerned party and after giving such party reasonable opportunity of being heard, may be after holding an enquiry determine the market value of such property. Reading Section 47-A with the aforesaid Rule 340-A it is clear that the circle rate fixed by the Collector is not final but is only a prima facie determination of rate of an area concern only to give guidance to the Registering Authority to test prima facie whether the instrument has properly described the value of the property. The circle rate under this Rule is neither final for the authority nor to one subjected to pay the stamp duty. So far sub-sections (1) and (2) it is very limited in its application as it only directs the Registering Authority to refer to the Collector for determination in case property is under valued in such instrument. The circle rate does not take away the right of such person to show that the property in question is correctly valued as he gets an opportunity in case of under valuation to prove it before the Collector after reference is made. This also marks the dividing line for the exercise of power between the Registering Authority and the Collector. In case the valuation in the instrument is same as recorded in the circle rate or is truly described it could be registered by Registering Authority but in case it is under valued in terms of sub-section (1) or sub-section (2), it has to be referred and decided by the Collector. Thus, the circle rate, as aforesaid, is merely a guideline and is also indicative of division of exercise of power between the Registering Authority and the Collector.

Reverting to the submission for the appellants that enhancement by 20% for the next year in question to be beyond the power of the Collector under Rule 340-A as he could only fix one circle rate in a span of two years, we find no merit in it. Under the said Rule Collector has to supply biennially to the District Registrar a copy of the statement recording circle rate and average price of land etc. in every pargana, corporation or local body of his district. The supply of biennially statement would only mean supplying such statement once in two years but while supplying that statement there is no inhibition either under this Rule or any other Rule or under the Act nor any pointed out which restricts the Collector to give such rate differently for two years. The restriction, if any, is that such statement shall only be supplied once in two years. If there be any material in possession of the Collector clearly indicating a regular pattern of increasing percentage of the prices of land every year then to that extent if he in his biennially statement refers to such increase for the following years it cannot be said that the Collector lacks competence to exercise such power. As we

have said, this assessment by the Collector is only prima facie and is not final and is open to both the Authorities or person seeking registration to prove to the contrary the actual market value of such property. This circle rate in no way effects any party when finally determining its value. In the present case, the vires of this Rule is not under challenge nor there is any challenge that there was no such material before the Collector to enhance for subsequent year by 20 per cent. We do not find any such ground raised nor appellants could point out any raised before the authorities concerned. On the contrary, learned counsel for the State submits that there was sufficient material before the State showing the trend of increase in land prices during the relevant years in question to sustain the fixation of 20% enhanced price for the next year in question.

In State of Punjab & Ors.Vs. Mohabir Singh & Ors., 1996 (1) SCC 609, it was held:

The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be predetermined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated. It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Section 47- A. It would thus be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself, before registering the document, whether the true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under sub-section (1) of Section 47-A, he registers the document. Thereafter, he should make a reference to the Collector for action under sub-sections (2) and (3) of Section 47-A. Accordingly, we hold that the offending instructions are not consistent with sub-section (1) of Section 47-A. It would, therefore, be open to the State Government to revise its guidelines and issue proper directions consistent with the law.

This was a case under the amended Punjab Act, 1982 in which sub-sections 1,2 and 3 of Section 47-A are similar to sub-sections 2,3 and 4 of Section 47-A of the U.P. Act. Only sub-section (1) of the U.P. Act is different under which it directs the Registering Authority to refer the matter to the Collector in case the description of the value in the instrument is less than even the minimum value determined under the Rules.

For the aforesaid reasons, we do not find any merit in the submission. Accordingly, we hold the impugned circular and the notice to be valid. Notice has already been issued to the appellants and they have an opportunity to contest the valuation prima facie fixed under the said circular and to prove to the contrary in the proceedings before the Collector. Hence, for all the aforesaid reasons, the present appeal is devoid of any merit and, accordingly, dismissed. Costs on the parties.