Mukesh Kumar Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Dec-02-1998

Reported in : 1999(2)AWC1314

Judge : B.K. Roy and ;R.K. Singh, JJ.

Acts : Uttar Pradesh Stamp Rules, 1942 - Rules 300, 340 340A, 341; Indian Stamp Act, 1899 - Sections 3. 27, 27(2), 47A and 47A(1); Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959; Uttar Pradesh Municipalities Act, 1916; Uttar Pradesh Town Area Act, 1914

Appeal No. : C.M.W.P. No. 13510 of 1993

Appellant : Mukesh Kumar

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : B.B. Paul, Adv.

Judgement :

B.K. Roy and R.K. Singh. JJ.

1. The prayer of the petitioner is toquash the circle rates dated 22.12.1990 and 28.11.1992 prescribed by the Collector, Muzaffarnagar as contained in Annexures 2 and 3 and strike down Rule 340A of U. P. Stamp Rules. 1942. The cause of

action is based on the fact that the petitioner and others are desirous to sell their lands which being of very poor quality, at the rate of Rs. 2,000 to Rs. 5,000 per bigha in order to establish their livelihood. The Collector, Muzaffarnagar in exercise of his powers under Rule 340 has put his land in the range of Rs. 200 to Rs. 300 per square metres whereas in 1990, it was at the rate of Rs. 60 per sq. metres.

2. On 23.4.1993, the Bench before which this writ petition was placed had passed the following order :

'Learned standing counsel is granted one month's time for filing counter-affidavit. Rejoinder-affidavit may be filed within three weeks thereafter.

Until further orders, respondent will register provisionally the documents to be presented by the petitioner for taking Stamp Duty as disclosed by the petitioner or the circle rate dated 12.12.1990 whichever is higher on petitioner's furnishing bank guarantee for the deficit of the difference of amount what is stated above and the amount fixed by the circle rate dated 28.11.1992.

Sd. A.P. Misra, J.

Sd. S.N. Saxena, J.23.4.1993'

3. Sri B.B. Paul, learned counsel for the petitioner contended that this is really a public interest litigation and Rule 340A being contrary to the legislative mandate not only ultra vires the provisions of the Indian Stamp Act but being unreasonable, unjust and unfair is also unconstitutional and accordingly be struck down when no counter has been filed.

4. Rule 340A in question, which has been quoted in paragraph 8 of the writ petition, reads thus :

'340A. (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 the average price of land appertaining to each such classification situate in every pargana, corporation or local body of his district.

(b) The District Registrar shall supply copies of the statement mentioned in the preceding para to the Sub-Registrars under his control and also forward a copy of the same to the inspector General of Registration, Uttar Pradesh.

(c) Every Registering Officer shall cause a copy of the above statement to be affixed outside the registration office.'

5. The aforementioned rule has been referred to in the writ petition as Rule 300 presumably on account of some confusion.

6. Rule 340 of our U. P. Rules reads thus :

'340. In the case of an instrument of conveyance, exchange, gift, settlement, award or trust relating to immoveable property chargeable with an ad-valorem duty on the market value of the property, the following particulars shall also be fully and truly given in the instrument in addition to the market value of the property in compliance with sub-section (2) of Section 27 of the Indian Stamp Act as amended in its application to Uttar Pradesh.

(1) In case of land :

(a) included in the holding of a tenure holder, as defined in the law relating to land tenures :

(i) the Khasra number and area of each plot forming part ofthe subject matter of the instrument ;

(ii) whether irrigated or unirrigated ;

(iii) if under cultivation, whether do-fasali or otherwise ;

(iv) land revenue or rent whether exempted or not and payable by such tenure holder ; and

(v) classification ofsoil, supported incase of instrumentsexceeding Rs.10,000 in value bythe certified copiesof extracts fromrelevant recordissued inaccordance withlaw.

(b) being land other than referred to in clause (a) the assumed annual rent/land revenue of rent revenue free, grain rented and unrented land ;

(c) being non-agricultural and situate within the limits of any local body constituted under the U. P. Nagar Mahapalika Adhiniyam. 1959, U. P. Municipalities Act, 1916 or U. P. Town Area Act. 1914, as the case may be, the area of the land in square metres with the average price per square metre prevailing in the locality in which the land is situate on the date of the instrument,

(2) In case of grove or garden :

(a) the nature, size, number and age of trees ;

(b) annual recorded land revenue or where the grove is not assessed to any revenue or is exempted from it, the annual rent and/or premium if let out, otherwise, the annual average of income which has arisen from it during the three years immediately preceding the date of the instrument.

(3) In case of building :

(a) total covered area and open land, if any in square metres ;

(b) number of storeys and area of each storey in square metres :

(c) whether Pacca or Kachcha ;

(d) actual annual rent or assumed annual rent ;

(e) annual rent assessed by any local body and the amount of house tax payable thereon, ifany.'

7. In this context, it is also necessary to remember Rule 341 of the Rules which reads thus :

'341. For the purpose of payment of stamp duty, the minimum market value of immovable property forming the subject of an instrument of conveyance, exchange, gift, settlement, award or trust referred to in Section 47A(1) of the Act, shall be deemed to be not less than that as arrived on the basis of the multiples given below :

(i) Where the subject is land :

(a) in case of Bhumidhari 800 times the land revenue ;

(b) in case of Sirdari land 400 times the land revenue ;

(c) where the land is not assessed to revenue but net profits have arisen from it during the three years immediately preceding the date ofthe instrument 25 times the annual average of such profits ;

(d) where the land is not assessed to revenue and no profits have arisen from it during the three years immediately preceding the date of the instrument 400 times the assumed annual rent ;

(e) where the land is non-agricultural and is situate within the limits of any local body referred to in clause (c) of sub-rule (i) of Rule340 equal to the value worked out on the basis of the average price per square metre, prevailing in the locality on the date of the instrument.

(ii) Where the subject is grove or garden :

(a) If assessed to revenue the value of the land shall be worked out in the manner laid down in Rule 341 (i) (a) and the value of the trees standing thereon shall be worked out according to the average price of the trees of the same Size, and age prevailing in the locality on the date of the instrument :

(b) If not assessed torevenue or is exemptedfrom it, the valuethereof shall bedetermined at 20 timesthe annual rent plus thepremium or 20 times ofthe annual average ofincome which hasarisen during the threeyears immediatelypreceding the date ofinstrument and thevalue of the treesthereon shall bedetermined inaccordance with Rule341 (ii) (a) ;

(iii) Where the subject is building :

(a) where the building is assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants 25 times the actual or assessed annual rent value, whichever is higher as the case may be ;

(b) where the building is not assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants 25 times the actual or assumed annual rental value, whichever is higher as the case may be.

8. In Smt. Amina Begum v. Collector, Etawah and others, C.M.W.P. No. 23237 of 1987, decided On 19.7.1993, a Division Bench of our Court where vires of Rules 340A and 341 of the Stamp Rules was challenged held as follows :

'The submission made by the learned counsel has no force being fully covered by a decision of the Apex Court rendered in Himalaya Ltd. v. Chief Controlling Revenue, AIR 1972 SC 899, wherein akin to the facts of the instant case, i.e., introducing amendments in the Stamp Act were made by various other States and considering relevant provisions of the Constitution, 246. Schedule VII, List III, Entry 44 and List 2. Entry 63 and the provisions of the Stamp Act, i.e., Sections 3, 27, 47A and considering overall provisions, the Apex Court ruled that valuation of consideration for the conveyance constitute by market value of the property by amendment is valid being within the legislative competence. Thus, the case as set out by the petitioner that Rules 340A and 341 arc violative of Section 47A of the Indian Stamp Act as amended by the State of U. P., and ultravires, has no force. It is also neither arbitrary nor unconstitutional in any manner, and, therefore, average price of the land issued by respondent No. 1 under Rule 340 vide impugned rate of schedule dated 31.10.1987, cannot be said to be unjustified.'

9. Earlier, a Division Bench of this Court in Kaka Singh v. Additional Collector, 1986 ALJ 49, had already considered the vires of Rule 341, which is the substantive Rule, and held that it provides guidelines and are not binding on the persons who produces any instrument or the State and it was enacted for the purpose of ascertaining market value for the purposes of imposition of stamp duty and they give an opportunity to contest to a person who intends to contest the market value fixed.

10. We do not find in the impugned Rule any unreasonableness, unjustness, unfairness, contrary to the legislative mandate or as unconstitutional. In fact, Mr. Paul could not show us as to how the impugned Rule is violative of any section of the Act or any Article of the Constitution. We, therefore, reject the solitary submission made by Mr. B.B. Paul and we, too, hold Rule 340A as intra wires and dismiss this writ petition. However, we make no order as to cost.

11. The office is directed tohand over a copy of this order to Sri P.K. Bisaria, learned standing counsel for its intimation to the authority concerned within a week for a follow up action.