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the deceased bring a succession certificate, they cannot execute the decree. The ruling in the said case of the Karnataka High Court is distinguishable on facts because both the decree-holders had died before executing the decree. Moreover, the provisions of Indian Succession Act were not interpreted vis-a-vis the provisions of Order 21 rule 15 of the Code. In view thereof the rule of law laid down by the Karnataka High Court is inapplicable to the facts of the instant case.

(7) For the reasons recorded above, this revision petition deserves to be allowed. The order under revision is consequently quashed by accepting this petition. The petitioners are entitled to execute the decree and they be disbursed the amount of compensation in accordance with their share and law. Since delay has already been caused in executing the decree, the Additional District Judge is directed to proceed with the execution expeditiously. Since ticklish question of law had arisen in the instant case, there will be no order as to costs.

P.C.G.

Before I. S. Tiwana and G. R. Majithia, JJ.

CHAMKAUR SINGH & ANOTHER,—Petitioners.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 7360 of 1988.

May 18, 1990.

Indian Stamp Act, 1899—S. 47-A—Registration Act, 1908—S. 68—Collector issuing guidelines to Registering authorities—Such guidelines fixing minimum price of different kinds of land—validity of such guidelines—Whether the Collector had power to issue such guidelines.

Held, that a reading of S. 47-A makes it manifestly clear that the Registering Officer as well as the Collector have to perform, if not a judicial, at least a *quasi-judicial* function in determining or in estimating the price of the properties, subject-matter of a particular transaction as if the property is being sold in "open market"

on the date of the execution of the instrument relating to such transfer. As per sub-section (1) it is only while registering the instrument of transfer that the Registering Officer has to take his independent decision as it is to be founded on "reason to believe" that the property has been under-valued or the ostensible consideration is not the real or genuine consideration. It is only after reaching this conclusion that he may refer the matter to the Collector for the determination of the value of the property or the genuineness of the consideration, as the case may be. (Para 2)

Held, that the instructions hardly leave anything open to the Registering Officer and the Collector to determine the estimated value or price of the property, which is subject-matter of a particular transaction. Further, these run counter to the mandate of law contained in the last lines of the explanation: "If sold in the open market on the date of execution of the instrument relating to the transfer of such property." We are, therefore, clearly of the opinion that these so called guidelines could neither be issued under S. 47-A of the Indian Stamp Act nor are these in consonance with the same. Rather these just run counter to the language and intentment of the said provision. We are further of the opinion that no guidelines can possibly be issued or laid down for controlling the *quasi-judicial* decision of a particular functionary or authority under a particular statute.

(Para 2)

Petition under Article 226/227 of the Constitution of India praying that;

- (a) a writ in the nature of certiorari for quashing of Annexure P-1, P-1/A, dated 8th August, 1988 passed by the Respondent No. 2 or to issue writ of mandamus directing the Respondents to register the sale deed by keeping the order Annexure P-1, P-1/A in abeyance or to issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case be issued.
- (b) That the record of the case may kindly be summoned for the perusal of this Hon'ble Court.
- (c) that prior service of notice on Respondents may kindly be dispensed with.
- (d) That the 'filing of the certified copy of Annexure P-1, P-1/A may kindly be exempted.
- (e) that the cost of the petition may kindly be awarded to the petitioners.

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It is further prayed that the operation of the impugned order Annexure P-1, P-1/A may kindly be stayed during the pendency of this writ petition.

Milkiat Singh Advocate, for the Petitioner.

M. L. Sarin, Addl. A.G. Pb. with Miss Jaishree Thakur, Advocate.
for the Respondents.

JUDGMENT

I. S. Tiwana, J.

(1) Learned counsel for the parties are agreed that the facts stated and contentions raised in this petition are fairly representative of the facts and contentions raised in the 40 connected civil writ petitions Nos. 7662, 8550, 9856, 9905, 10032, 11822 of 1988; 1506, 4733, 5131, 8021, 15841, 10327, 15081, 15090 to 15093, 15447 to 15449, 16047, 16206, 16208, 16802 of 1989; and 142 to 144, 262, 274, 1560, 1728, 1729, 2844, 4012, 4013, 4358, 4390, 4543, 4153 and 5996 of 1990, and these deserve to meet the same fate as of this petition. Facts are as follows :—

(2) The petitioners agreed to purchase 2½ acres of land, situated in village Kahangarh Bhutana, Tehsil Samana, District Patiala, from Rupinderjit Singh son of Inder Singh, for a sum of Rs. 50,000 and for the said purpose the requisite non-judicial stamp papers were purchased by them on August 10, 1988. The sale deed, however, could not be executed and registered in view of the fact that on the same day instructions styled as 'guidelines' dated August 4, 1988 were received by the Sub Registrar (Tehsildar) Samana from the Collector (Deputy Commissioner-cum-Registrar), Patiala, laying down the floor or the minimum prices of different kinds and qualities of land on the basis of their situation or location for purposes of registration of instruments relating to transferring of any property. Copy of these guidelines is Annexure P.1 As per the same, rates vary from Rs. 13,000 per acre to Rs. 2,000 per square yard. Since guidance with respect to different classes of land and properties falling within the jurisdiction of Sub Registrar, Samana, were inadvertently omitted in Annexure P.1 the Collector issued fresh instructions dated August 8, 1988 (copy Annexure P.1/A) specifying therein that Chahi and Nehri types of land within the jurisdiction of Sub Registrar, Samana.

would be rated at Rs. 35,000 per acre. In the instant case we are not concerned with other types of land. These guidelines purport to have been issued under section 47-A of the Indian Stamp Act as introduced,—*vide* Punjab Act No. 21 of 1982. Stand of the petitioners is that these instructions or guidelines are neither covered by the above noted provision of law nor are referable to any other legal source of authority and thus are wholly arbitrary and without jurisdiction. As against this, the respondents plead that :—

“The impugned circulars contain guidelines for the use of Sub Registrar and indicate the minimum valuation of Chahi and other lands to avoid evasion of stamp duty. It is denied that in view of the guidelines circulated by the Collector, Patiala, the petitioners were unable to execute sale deed and get it registered. These circulars do not debar the parties from execution of the sale deed and getting the same registered in accordance with the procedure laid down under the law. The circulars are in consonance with the spirit and provisions of law. The relevant provisions of law on the point are contained in section 47-A of the Indian Stamp Act, 1982 (Punjab Act No. 21 of 1982).

...

Since stamp duty and registration fee are both chargeable on *ad valorem* basis, there is a tendency among parties to conveyance deeds to depress the value of property or consideration paid therefor as cited in the conveyance deed.”

According to the respondents, it is to meet this situation that the present guideline have been issued. In order to sustain this plea a pointed reference has been made to the following paragraphs of these guidelines by Mr. M. L. Sarin, learned Additional Advocate General :—

“These floor prices will act only as guidelines to the Sub Registrars and the Sub Registrar is free to invoke section 47-A if he is *quasi-judicially* satisfied that the value of the property in a particular transaction is *higher than the prescribed rate* and has not been so rated etc. in the document. In other words, these prices are only the minimum prices prescribed.

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In case any party insists that the consideration money in respect of the property is lower than the prescribed rates owing to some incumbrances etc. *then the only remedy available to the party would be to get the document impounded and place its case before the Collector under section 47-A of the Indian Stamp Act, 1899, who would pass an order on merits.*"
(Emphasis supplied).

It is thus evident from the above noted pleas that all that needs to be settled in this case is as to whether the above noted guidelines, which to our mind for all practical purposes are in the form of a command, are referable to any legal source of authority? As per the stand of the respondents, as already pointed out, these have been issued in accordance with the provisions of section 47-A of the Indian Stamp Act. The relevant part of this section reads thus:—

- (1). If the Registering Officer appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), while registering any instrument relating to the transfer of any property, *has reason to believe that the value of the property or consideration, as the case may be, 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 value of the property or the consideration, as the case may be, and the proper duty payable thereon.*
- (2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard *and after holding an enquiry in such manner as may be prescribed by rules under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.*

... ..
Explanation :—For the purpose of this section, 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, if sold in the open market, on the date of execution of the instrument relating to the transfer of such property."
(Emphasis supplied).

A combined reading of the above noted provisions makes it manifestly clear that the Registering Officer as well as the Collector have to perform, if not a judicial, at least a *quasi-judicial* function in determining or in estimating the price of the properties, subject-matter of a particular transaction as if the property is being sold in "open market" on the date of the execution of the instrument relating to such transfer. As per sub-section (1), it is only while registering the instrument of transfer that the Registering Officer has to take his independent decision which essentially is a *quasi-judicial* decision as it is to be founded on "reason to believe" that the property has been under-valued or the ostensible consideration is not the real or genuine consideration. It is only after reaching this conclusion that he may refer the matter to the Collector for the determination of the value of the property or the genuineness of the consideration, as the case may be. As per the so-called guidelines, the relevant part of which has already been reproduced above, what is left open to the Registering Officer (Sub Registrar) is that he would refer the matter to the Collector only if he finds that the value of the property in a particular transaction "is higher than the prescribed rate." It is thus implicit that he would not register the document if the value of the property in question is stated to be lower than the prescribed rate. In other words, he would not accept a rate lower than the one prescribed in the guidelines as the true or genuine consideration or value of the property as envisaged by sub-section (1) of section 47-A. According to the guidelines he would refer the matter to the Collector only if he forms the opinion that the property should be rated at a rate still higher than the one mentioned in these guidelines. These guidelines, therefore, completely take away the jurisdiction of the Sub Registrar to reach any *quasi-judicial* decision with regard to the valuation or the consideration for the transfer of a particular property falling within his jurisdiction. Further,—*vide* these instructions the onus of proving that the real or genuine price of the property sold or transferred is less than the rate prescribed, is shifted on to the parties to the transactions. In such a situation it is made incumbent on any party to the transaction to get the document impounded and to refer the matter to the Collector for his decision. Besides this being contrary to the language and content of section 47-A of the Indian Stamp Act, it is not clear as to how the party has "to get the document impounded" or how is it enjoined upon the Sub Registrar to impound the document. Similarly, the jurisdiction of the Collector under sub-section (2) of section 47-A is jeopardised. As per the same, he, on a reference, has to hold an enquiry in such

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manner as may be prescribed by the rules under the Act for determining the true value or consideration on which the stamp duty has to be paid. This enquiry and determination of the value has essentially to be an independent, fair and quasi-judicial decision of the Collector in the light of the facts established before him. He cannot possibly record any stereotyped or mechanical conclusions in this regard. The natural effect of the instructions which are sought to be mellowed down as guide-lines is that the same would bind the Collector even more than the Sub Registrar or the Registering Officer appointed under the Registration Act, he being author of the same. It is, therefore, abundantly clear that these guide-lines completely run contrary to the plain language and intendment of sub-sections (1) and (2) of section 47-A. If we may say so, these instructions clearly nullify and obliterate the explanation added to this section. The instructions hardly leave anything open to the Registering Officer and the Collector to determine the estimated value or price of the property, which is subject-matter of a particular transaction. Further, these run counter to the mandate of law contained in the last lines of the explanation: "if sold in the open market on the date of execution of the instrument relating to the transfer of such property". The true intendment of these instructions or their binding nature is clearly brought out in some of these cases where the learned counsel for the petitioners referred to similar instructions issued by different Collectors pertaining to their respective districts. In one such case, i.e., Annexure R.2 to the written statement in C.W.P. No. 15090 of 1989 (*Bagga Singh v. State of Punjab and others*), Collector Kapurthala, while conveying the instructions to the Sub Registrars in his district, has recorded that "The Chairman ordered that no registry should be done where the amount of consideration is less than the approved prices of land". We are, therefore, clearly of the opinion that these so-called guide-lines could neither be issued under section 47-A of the Indian Stamp Act nor are these in consonance with the same. Rather these just run counter to the language and intendment of the said provision. We are further of the opinion that no guide lines can possibly be issued or laid down for controlling the quasi-judicial decision of a particular functionary or authority under a particular statute. We think it appropriate to make reference to the following observations of their Lordships of the Supreme Court in *Chief Settlement Commissioner, Punjab and others v. Om Parkash and others* (1), made in the context of paragraph 17 of Tarlok

(1) A.I.R. 1969 S.C. 33.

Singh's Land Resettlement Manual, which was equated to executive or administrative instructions :—

“The notion of inherent or autonomous law-making power in the executive administration is a notion that must be emphatically rejected. With all its defect delays and inconveniences men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations. In our constitutional system, the central and most characteristic feature is the concept of the rule of law which means, in the present context the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court. The rule of law rejects to conception of the Dual State in what governmental action is placed in a privileged position of immunity from control by law. Such a notion is foreign to our basis constitutional concept.”

These observations, to our mind, aptly apply to the case in hand.

(3) At one stage, while finding it difficult to sustain the above noted instructions or guide-lines in the context of section 47-A of the Indian Stamp Act, Mr. Sarin, learned Additional Advocate General, sought to urge that in view of sub-section (2) of section 68 of the Registration Act, the Registrar is competent to issue any or general order to the Sub Registrar, commanding the latter to perform his duties in accordance with the same as the functioning of the latter is under the superintendence and control of the Registrar in whose district the office of the Sub Registrar is situated. Mr. Sarin, however, to our mind, while submitting so, omits to notice the language of sub-section (2) of the said section which lays down that the Registrar can only issue an order which is “consistent with this Act” and that order has again to be with reference to a particular act or omission committed by the Sub Registrar. Mr. Sarin, however, is not able to refer to any provision of the Registration Act under which the Collector can issue order or directions of the type as contained in Annexures P.1 and P.1/A. On the contrary, as has been ruled by this Court in *Siri Krishan Jindal v. Registrar (Deputy Commissioner) District Patiala and*

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others (2), and the apex Court in *Himalaya House Co. Ltd, Bombay v. Chief Controlling Revenue Authority* (3), the Registrar has no power to determine the market value of the property sold in order to assess the chargeability of the stamp duty on the same. Similarly, prior to the incorporation of section 47-A in the Stamp Act, there was no provision in that Act to empower the revenue, the Collector or the Registering Officer to make an independent enquiry about the value of the property conveyed or make for determining the stamp duty chargeable. We, therefore, find this stand of Mr. Sarin to be equally meritless.

(4) It is hardly necessary to say in the light of the well established aspect of rule of law that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative authority. (See *Rai Sahib Raw Jawaya Kapur and others v. The State of Punjab* (4), *State of Madhya Pradesh and another v. Thakur Bharat Singh* (5), *Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi and others* (6), *Bennet Coleman and Co. v. Union of India* (7), and *Naraïndas Indurkhyia v. The State of Madhya Pradesh and others* (8).

(5) For the reasons recorded above, we conclude that the instructions Annexures P.1 and P.1/A in the instant case, and similar instructions/guide lines impugned in the connected cases as issued by different Collectors for their respective districts in the State of Punjab, are totally without jurisdiction and void. The authorities Registration Act are directed to perform their duties in accordance with those statutes by ignoring the guide-lines/instructions referred to above. The petitioners are also held entitled to costs at the rate of Rs. 1,000 in each case.

S.C.K.

- (2) A.I.R. 1982 Punjab and Haryana 266.
- (3) A.I.R. 1972 S.C. 899.
- (4) A.I.R. 1955 S.C. 549.
- (5) A.I.R. 1967 S.C. 1170.
- (6) A.I.R. 1967 S.C. 1836.
- (7) A.I.R. 1973 S.C. 106.
- (8) A.I.R. 1974 S.C. 1232.