(2014) 03 CAL CK 0058

In the Calcutta High Court

Case No : Writ Petition No. 10406 (W) of 2007

Akhtar Ahmed	APPELLANT
Vs	
The State of West Bengal and Others	RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:
Stamp Act, 1899 — Section 47(3) 47(A)(3) 9(1)

Citation : (2014) 03 CAL CK 0058

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Soumen Dutta and Mr. Subhas Jana, for the Appellant; Kalimuddin Mondal, Advocate for the State, for the Respondent

Final Decision : Dismissed

Judgement

Sambuddha Chakrabarti, J.—By this writ petition the petitioners have inter alia prayed for a writ in the nature of Mandamus commanding the respondents to cancel, quash and/or rescind the order dated March 13, 2007 passed by the Deputy Inspector General of Registration and for other reliefs. The case of the petitioner inter alia is that on July 19, 1995 an agreement for sale was executed between Sk. Nazrul Islam and others as vendors and Akhtar Ahmed as purchaser for the purpose of executing a sale deed in respect of a certain property. The price fixed for the landed property was Rs. 40 lacs. It may be mentioned that Akhtar Ahmed was the predecessor-in-interest of the present petitioners and on his death his legal heirs have been brought on record. He made an application before the District Registrar, Purba Midnapore for presentation of the agreement before the Additional District Sub-Registrar, Contai-I for registration. The Additional District Sub-Registrar, Contai-I issued a letter to the District Registrar, Purba Midnapore requesting him to accept the application forwarded therewith. The District Registrar subsequently passed an order allowing the prayer of the petitioner for presenting the document in question for the purpose of admission to registration. Stamp duty was assessed on the valuation of the property and the same was paid through bank draft. The petitioner raised an objection to the valuation of the property made by the Additional District Sub-Registrar, Contai-I before the Inspector General of Registration. The said authority reduced the amount of valuation of the property in question and the total stamp duty to be paid by the petitioner was fixed at Rs. 8,59,624/-. Thus, the deficit stamp duty to be paid was Rs. 5,39,574/-.

2. The petitioner claims that as per the notification dated October 31, 2006 the benefit of rebate of 40 percent n the stamp duty is admissible to those who submitted the document for registration after July, 2005. According to him, since the petitioner presented the document for the purpose of registration in the month of March, 2006 the petitioner is entitled to get the benefit of rebate. He even a wrote a letter to the concerned authority expressing his willingness to pay the entire amount of stamp duty by December 31, 2006 for the purpose of registration of the document in question only to get the benefit of rebate of 40 percent. of the stamp duty and he also pursued the same to get the benefit of 40 percent rebate. But they declined to accept the said amount of stamp duty.

3. Subsequently he made an application before the Additional District Sub-Registrar, Contai-I on December 29, 2006 ventilating his grievances. But he declined to accept the stamp duty and consequently the petitioner has been deprived of the rebate of 40 percent. by virtue of the government notification. According to the petitioner the authority had failed to appreciate that the government notification has been issued for extension of the benefit of rebate to persons who had presented their deeds before the concerned authority for the purpose of registration within July, 2006. According to him he has a right to get the benefit of rebate of 40 percent. of the total stamp duty but due to arbitrary and whimsical act on the part of the concerned authority he has been deprived of that benefit.

4. Being aggrieved by the stand taken by the said respondents the petitioner had moved a writ petition earlier which was disposed of by this court by a judgement and order dated February 19, 2007 giving liberty to the petitioner to file a fresh representation before the respondent No. 3 ventilating his grievances within a fortnight from the date of the order and if such representation was received by the appropriate respondents by the time fixed by the court the said authority was directed to consider the same and to dispose of it in accordance with law.

5. Pursuant to the same the petitioner made a representation before the appropriate authority in terms of the court''s order. In reply the petitioner was informed that the prayer could not be granted as the authority was not vested with the power to grant relaxation payable under the Indian Stamp Act. The petitioner was, however, directed to appear before the appropriate authority on March 23, 2007. The petitioner appeared before the appropriate authority. The Deputy Inspector General of Registration, Range-V, Midnapore intimated the petitioner by an order dated March 13, 2007 that the question of granting the benefit of remission of stamp duty as per the government order did not come

within the purview of Section 47(3) of the Indian Stamp Act and as such the Deputy Inspector General of Registration had no authority to act in the matter.

6. As stated before this order has been assailed in this writ petition. He says that the government notification was issued to extend the relief relating to relaxation of 40 percent. of the stamp duty to the persons who have presented the deed in question for the purpose of registration within July, 2006. He was all through willing to pay the entire amount on the valuation of the property within the time limit to get the relaxation of 40 percent. but the authority declined to accept the said amount.

7. The respondents have not filed any affidavit-in-opposition despite being given an opportunity to file the same. It was, however, submitted by Mr. Kalimuddin Mondal, the learned advocate for the state that the registering authority had assessed the market value of the instrument at Rs. 1,41,48,000/-. The petitioner made an objection which was disposed of by the Deputy Inspector General of Registration, Range-V, Midnapore. The valuation was reassessed at 1,07,45,030/-. Therefore, the deficit stamp duty that the petitioner was required to pay was Rs. 5,39,574/-. This order was passed on December 27, 2006 but the petitioner did not pay the deficit stamp duty by December 31, 2006.

8. It was further submitted by Mr. Mondal that a notification was published on September 1, 2006 by the Government of West Bengal, Finance Department, whereby the government was pleased to remit 40 percent. of the registration fees. This notification was initially valid up to September 30, 2006, subsequently time was extended to December 31, 2006. Mr. Mondal justified the order passed by the Deputy Inspector General of Registration, Range-V, Midnapore on the ground that the question of granting the benefit of remission of stamp duty as per the government order did not come within the purview of Section 47(3) of the Indian Stamp Act and as such the Deputy Inspector General had no authority to act in this matter. According to the respondents in terms of Section 9(1) of the Stamp Act, the Government of West Bengal is the appropriate authority so far as this case is concerned. The respondents submitted that the petitioners'' appeal was considered and they got a remission of stamp duty and registration fees on the market value was granted and the market value was reassessed. The case was thereafter disposed of on December 27, 2006. The petitioner could not deposit the stamp duty by December 29 after the value was reassessed by the appellate authority. Mr. Mondal submitted that December 30 and 31, 2006 were the gazetted holidays of the state government.

10. With reference to Section 9(1) of the Stamp Act the Deputy Inspector General (Registration), Midnapore has no power to reduce or remit the stamp duties. Sections 47(A)(3) empowers him only to review the matter of over valuation or under valuation when it is not truly assessed by the registering authority.

11. The petitioner has assailed the order impugned in the writ petition on the

ground that Section 47(3) of the Stamp Act provided that where the concerned person does not make payment of the stamp duty as required under sub-section (2) within the time specified in the notice issued under that sub-section the registering authority was required to refer the matter to such authority and in such manner as may be prescribed for determination of the market value of the property which is the subject-matter of such instrument and the proper stamp duty payable thereon. According to the petitioner he was willing to pay the amount by the time limit but the authority declined to accept the said amount as there was a gross lacunae on the part of the authority. Therefore, Section 47(3) has no application to the facts of this case.

12. After hearing the learned advocates for the parties and after going through the order impugned I do not find any infirmity in the order passed by the appropriate authority. By a notification published on September 1, 2006 by the Finance Department of the Government of West Bengal 40% of the registration fees was remitted. Such notification was initially valid till September 30, 2006 and was subsequently extended till December 31, 2006. Market value was reassessed on December 27, 2006 at Rs. 1,07,45,300/-. The petitioner did not deposit the stamp duty by December 31, 2006 after the market value was reassessed by the appellate authority. Therefore, the petitioner missed the chance and he was not entitled to the said reemission thereafter. Mr. Mondal, the learned advocate for the respondents submitted that the petitioner had not deposited the said amount by December 31, 2006. The whole purpose of the Government was to earn some revenue. This not having been done by the petitioner he is not entitled to the reliefs anymore.

13. In such view of it I find no merit in the writ petition and the same is hereby dismissed.

14. There shall, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.