(2008) 12 AHC CK 0273

In the Allahabad High Court

Case No : Writ Petition (M/S) No. 1098 of 2006, WITH Writ Petition (M/S) No. 1097 of 2006 and Writ Petition (M/S) No. 1099 of 2006

Alok Aggarwal APPELLANT

Vs

State of Uttaranchal and two others RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : (2008) 12 AHC CK 0273

Hon'ble Judges : B.S.Verma, J

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. Since the controversy involved in all the three writ petitions is similar, therefore, for the sake of convenience, all these petitions are being decided by this common order.

3. All the three writ petitions have been filed for a writ of certiorari quashing the order dated 29102001 passed under Section 47A of the Indian Stamps Act, 1899 (for short the Act) by the respondent no.3 (Up Zila Adhikari/Sub Divisional Officer, Haridwar) as well as the order dated.2172005 passed under Section 56 of the Act by the respondent no. 2 (Commissioner, Garhwal Division, Camp Dehradun) in revisions filed by the petitioners.

4. Relevant facts giving rise to the present writ petitions, in brief are that the U.P. Avas Evam Vikas Parishad (for short Parishad) had executed separate sale deeds in favour of the petitioners, which have been annexed as Annexure8 to each writ petition. The plot area of the sale deed in each case has been used for house construction. In the sale deed, averment was made to the effect that the conveyance deed is being executed on the land owned by the Parishad. Although it is not disputed as well as there is a reference in the deed also that there existed constructed houses on the plot at the time of execution of sale deed and

the same were constructed under self financing scheme.

5. The background, in short, is that initially the land belonged to the Bharat Heavy Electricals Limited, Haridwar (BHEL). The land was taken back from the B.H.E.L. by the State Government and land measuring 185 Acres was transferred to the Parishad, out of which in 62 Acres of land, houses were to be constructed for solving the residential problems of the B.H.E.L. employees.

6. The sale deeds were registered in the office of Sub Registrar Haridwar. Reference was made under Section 47A of the Act by the Sub Registrar. Notices were issued to the petitioners by Up Zila Adhikari/S.D.O. Haridwar. Objections have been filed by the petitioners, wherein it is stated that the houses were constructed under the selffinancing scheme, which was floated by B.H.E.L. Sahkari Grih Nirman Samiti, Ranipur. The Parishad was to charge only the cost of the plots from the petitioners and the Parishad was not the owner of the houses at the time of execution of saledeed, the land belonged to the Parishad, which was transferred in favour of the petitioners by separate sale deed in each writ petition (Annexure8).

7. The learned Up Zila Adhikari on the basis of the report of Tehsildar calculated the value of the land as per circle rate plus the cost of construction, i.e. value of the house separately and by order dated 29102001 it was ordered that deficient stamp duty be realized from the petitioner plus registration fee along with penalty.

8. Aggrieved by the order impugned, the petitioners preferred revision separately before the Commissioner, Garhwal Division, Camp Dehradun. The learned Commissioner by his common order dated 2172005 dismissed the revisions on the ground that on the date of execution of sale deed, there were houses existing on the land. If the houses were constructed subsequent to the date of execution of sale deed under the selffinancing scheme, then the petitioners were entitled to the benefit of stamp duty. Recall application was also filed to review the order. That application too was rejected, these writ petitions.

9. The only controversy to be decided in these writ petitions by this Court is whether the petitioners are liable to pay the stamp duty including other registration charges on the constructed house, which was constructed under selffinancing scheme.

10. Having heard learned counsel for the parties and having perused the record, this fact is not disputed at any stage by the State that these houses are constructed under the selffinancing scheme. The land belonged to the Parishad, which was conveyed in favour of the petitioners through sale deed vide Annexure8.

11. Learned counsel for the petitioners has contended that since the houses owned by the petitioners are constructed under the selffinancing scheme, the petitioners are not liable to pay stamp duty on the value of construction of

houses. Learned counsel for the petitioners in support of his argument has relied upon the Division Bench judgment of Allahabad High Court in the case of Smt. Vrinda Gujarati and others Vs. Bareilly Development Authority and others, wherein in paragraph no. 25 the Allahabad High Court has held as under :

?25. It has been contended by the counsel for the petitioner that there is extreme harshness regarding the barges of registration fee for execution of instrument for convening the title of the petitioners. Since the scheme is of selffinancing nature and the petitioners contribute the entire money for the construction of the house in all reasonable and fairness, the registration fee should be charged on the price of land and not on the price of the house and to this extent we issue order that the registration fee is only payable and chargeable on the price of the land as the entire construction cost is contributed by the petitioners.?

12. Learned counsel appearing on behalf of the State, Brief Holder Sri Sudhir Kumar has contended that as per provisions of Sections 3 and 8 of the Transfer of Property Act, if all things attached to the earth have been transferred along with the transfer of land, the petitioners are liable to pay the stamp duty on the constructions also. Learned State counsel has contended that the learned Up Zila Adhikari as well as learned Commissioner has rightly passed the order to realize the deficient stamp duty and penalty from the petitioners. He has placed reliance upon the judgment of Allahabad High Court, Lucknow Bench in the case of Vishwas Nath and others Vs. Ramraj and others [AIR 1991 Allahabad 193] wherein it has been observed that there may be a presumption that when land is transferred all things attached to the earth, such as trees and shrubs, are also transferred along with the land in view of the provisions of Sections 8 and 3 of the Act. But there can be no presumption in a case vice versa. Thus, transfer of trees will not by itself justify the inference that the land was also transferred. The ratio of the judgment cannot be disputed. But this case law is not at all applicable for the simple reason that the houses are constructed under the self financing scheme.

13. Learned counsel for the State in the course of arguments has also contended that the Division Bench judgment of Allahabad High Court in the case of Smt. Vrinda Gujarati and others (supra) does not help the petitioners because the provisions of the Stamps Act were not considered therein and only registration fee chargeable was considered in the judgment.

14. I have perused paragraph no. 25 of the said judgment. The contention of the petitioner in that writ petition was that there was extreme harshness regarding barges of registration fee for executing of instrument for convening the title of the petitioner.

15. The Division Bench of the Allahabad High Court after considering the point that the houses were constructed under self financing scheme issued the order that registration fee is only chargeable on the price of the land and not on the

price of the house as the entire construction cost is contributed by the petitioners.

16. The interpretation in its entirely would be seen by reading the contention of the petitioners, which was accepted by the Court. To my mind, the words registration fee used in the judgment shall construe registration charges including the stamp duty payable on the cost of the land/construction.

17. In view of the Division Bench judgment of the Allahabad High Court in the case of Vrinda Gujarati (supra), the stamp duty was payable only on the price of land. It is not disputed from the side of the respondentState that the petitioners have already paid the stamp duty on the price of the land at the time of execution of saledeeds. The learned Up Zila Adhikari as well as learned Commissioner Garhwal Division fell into manifest error of law in not considering the fact that these houses were constructed from the money which was contributed by the petitioners under the selffinancing scheme. Therefore the petitioners cannot be saddled with the imposition of deficit stamp duty and penalty on the cost of construction of houses.

18. So far as the contention raised by the State that the stamp duty was not paid on the saledeed by the petitioner as per circle rate of the land is concerned, it would suffice to mention that circle rate is not applicable in case the document is executed by the Parishad. The stamp duty is payable on the plot area on the basis of sale consideration. Moreover, the Sub Registrar did not raise any such objection to this effect. This contention of the State too falls to the ground.

19. In the result, the writ petitions deserve to be allowed. The impugned orders passed by the authorities below are liable to be set aside.

20. All the three writ petitions are allowed. The impugned orders passed by Up Zila Adhikari/Sub Divisional Officer, Haridwar and the Commissioner, Garhwal Division, Camp Dehradun (Annexure Nos. 1 and 2 respectively) are set aside. Costs easy.