(2014) 04 AHC CK 0210

In the Allahabad High Court

Case No : Writ-C No. 34195 of 2001

Amarjeet Kaur APPELLANT

Vs

Commissioner RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Stamp Act, 1899 — Section 33

Citation : (2014) 125 RD 285

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : H.P. Dube, Advocate for the Appellant; C.B. Yadav, Advocate for the Respondent

Judgement

@DELETEUPPERDATA

Sudhir Agarwal, J.—Heard Sri H.P. Dube, learned Counsel for the petitioner and learned Standing Counsel for the respondents. The writ petition is directed against the order dated 23.8.1993 passed by Assistant Commissioner (Stamps), Saharanpur whereby the sale deed dated 26.2.1988 executed by petitioner has been held to suffer deficiency of stamp of Rs. 45,995/- and, therefore, penalty has also been imposed to the extent of Rs. 21,005/- and, thereagainst, petitioner''s revision has also been dismissed by Commissioner, Saharanpur Mandal, Saharanpur vide judgment dated 10.7.2001.

2. It is contended that Assistant Commissioner has held that valuation of property has been determined in accordance with Government Orders No. S.R.-3494/Gyarah-90 dated 23.11.1990 and S.R.-9/Gyarah-90 dated 3.1.1991 and the judgment of Apex Court in Administrator General of West Bengal Vs. Collector, Varanasi, , though the sale deed is dated 26.2.1988 when both these aforesaid Government orders, referred to in the impugned orders, did not exist and, therefore, determining market value of property in question in view of aforesaid Government orders, which came into existence subsequently, is wholly illegal. It is also submitted that there was nothing on record to show that

aforesaid Government orders even otherwise are retrospective in effect so as to cover the sale deeds already executed.

3. Learned Standing Counsel could not show as to how subsequent Government Orders dated 23.11.1990 and 3.1.1991 would cover the sale deed executed on 26.2.1988. The impugned orders, therefore, relying on Government orders, issued subsequently, cannot sustain.

4. Even otherwise, so far as penalty is concerned, there was no provision in the statute in 1988 so as to empower the Assistant Commissioner to impose penalty while determining deficiency of stamp duty under section 33/47-A of Indian Stamp Act, 1899. The law is now well settled that in respect to case arises before enactment of Act No. 38 of 2001 earlier there was no provision for penalty and, therefore, imposition of penalty is patently without jurisdiction. A Full Bench of this Court in Girjesh Kumar Srivastava and another Vs. State of U.P. and others, , held that in absence of any provision authorizing Collector to impose penalty, the same cannot be imposed.

The Full Bench, referred to above, approved earlier Division Bench judgment of this Court in Kaka Singh Vs. The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another, . This has been reiterated in a recent Full Bench judgment in Ramesh Chandra Srivastava Vs. State of U.P. and Others, .

5. In view of above, the writ petition is allowed. The impugned orders dated 23.8.1993 and 10.7.2001 are hereby quashed. No costs.