(2016) 11 AHC CK 0161

In the Allahabad High Court

Case No : C.M.W.P. No. 52937 of 2016

Aruna Singh APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 07-11-2016

Acts Referred:

Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 — Rule 7, Rule 9

Citation : (2017) 2 ADJ 624 : (2017) 1 AllWC 322 : (2017) 121 ALR 580 : (2017) 134 RD 296 : (2017) 1 RJ 104

Hon'ble Judges : Ran Vijai Singh, J.

Bench : Single Bench

Advocate : Shambhavi Nandan, Advocate, for the Petitioner; C.S.C, for the Respondents

Final Decision : Allowed

Judgement

Ran Vijai Singh, J. - Heard Sri Shambhavi Nandan, learned counsel for the petitioner and learned standing counsel for the State-respondents.

2. By means of this writ petition, prayer has been made to issue writ of certiorari quashing the orders dated 18.1.2016 passed by Assistant Commissioner Stamp, Varanasi in Stamp Case No. 437Ma/2013-14 (D-2014147000228, State v. Aruna Singh) in a proceeding under section 47A(3) of the Indian Stamp Act, 1899 (in short the Act) as well as order dated 5.10.2016 passed by the Commissioner, Varanasi Division, Varanasi in Revision No. C-2016140000953 of 2016 (Smt. Aruna Singh v. State of U.P.).

3. Vide order dated 18.1.2016, the Assistant Commissioner has found deficiency of stamp duty of Rs. 2,99,900/- for deed in question, which is gift deed. While doing so he has also imposed penalty of the same amount along with 1.5% interest per month. Whereas by the subsequent order dated 5.10.2016, revision filed by the petitioner against the order dated 18.1.2016 has been dismissed.

4. While assailing the impugned orders, learned counsel for the petitioner

contends that no notice was ever served upon the petitioner and the impugned order dated 18.1.2016 has been passed without there being any version of the petitioner. He also states that the petitioner has taken specific ground in the revision that the notice was never served upon her but the revisional authority has dismissed the revision without considering the ground taken by the petitioner in it.

5. For appreciating the controversy it would be appropriate to quote the relevant portion of the order dated 18.1.2016 on which Assistant Commissioner has proceeded ex parte and passed the impugned order.

"fu;ekuqlkj bl U;k;ky; esa okn iathd`r dj] foi{kh dks mlds }kjk ys[ki= esa vafdr fd;s x;s fuokl LFkku ij iathd`r Mkd }kjk fnukad 26-03-2014 dks uksfVl izsf"kr dh x;h] tks fnukad 16-04-2014 dks fcuk rkehy U;k;ky; dks okil izkIr gqbZ] ftl ij ;g vafdr Fkk fd izkIrdrkZ ?kj ij mifLFkr ugha gSA blds mijkUr yxkrkj 17 frfFk;ksa esa i{kdkj U;k;ky; ds le{k mifLFkr ugha gqvk] blfy, i{kdkj dks fnukad 20-05-2015 dks iqu% uksfVl tkjh dh x;hA blds mijkUr iqu% vuojr :i ls yxHkx 10 frfFk;kWa fu/kkZfjr dh x;h] ijUrq izfri{k U;k;ky; ds le{k viuk i{k izLrqr djus gsrq mifLFkr ugha gqvkA bl izdkj Li"V gS fd izfri{k dks izkd`frd U;k; dk ikyu djrs gq, lquokbZ dk ;qfDr;qDr ,oa i;kZIr volj iznku djrs gq, yxHkx 30 frfFk;kWa fu/kkZfjr dh x;hA ,slh fLFkfr esa vko'';d gS fd okn dk fopkj.k xq.k&nks"k ds vk/kkj ij fd;k tk;sA"

6. From the perusal of the aforesaid order it is apparent that on the first round notice was sent through registered post but it had returned back without there being any service and thereafter 17 dates were fixed but the petitioner did not appear. Again notice was issued on 20.5.2015 and thereafter too on 10 dates the petitioner did not appear. This was made basis for proceeding with the case ex parte, noting that the petitioner did not file her reply.

7. It is contended by learned counsel for the petitioner that at no point of time the petitioner was served with the notice therefore neither she could appear nor file her reply.

8. For appreciating the controversy it would be appropriate to go through the Rule 7 and 9 (d) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997, which read as under :

7. Procedure on receipt of a reference or when suo motu action is proposed under Section 47-A. (1) On receipt of a reference or where action is proposed to be taken suo motu under Section 47A, the Collector shall issue notice to parties to the instrument to show cause within thirty days of the receipt of such notice as to why the market value of the property set forth in the instrument and the duty payable thereon be not determined by him.

(2) The Collector may admit oral or documentary evidence, if any, produced by the parties to the instrument and call for and examine the original instrument to satisfy himself as to the correctness of the market value of the subject-matter of

the instrument and for determining the duty payable thereon.

(3) The Collector may-

(a) Call for any information or record from any public office, officer or authority under the Government or a local authority;

(b) Examine and record the statement of any public officer or authority under the Government or the local authority; and

(c) Inspect the property after due notice to parties to the instrument.

(4) After considering the representation of the parties, if any, and examining the records and other evidence, the Collector shall determine the market value of the subject-matter of the instrument and the duty payable thereon.

(5) If, as a result of such inquiry, the market value is found to be fully and truly set forth and the instrument duly stamped according to such value, if shall be returned to the person who made the reference with a certificate to that effect. A copy of such certificate shall also be sent to the Registering Officer concerned.

(6) If, as a result of inquiry, the instrument is found to be undervalued and not duly stamped, necessary action shall be taken in respect of it according to relevant provisions of the Act.

9 Service of notices, etc.- All notices, orders and other documents required to be served upon any person shall be deemed to be duly served :

(a) ?..........

(b) ?..........

(c) ?..........

(d) in any other case, if it is addressed to the person, to be served, and

(i) is given or tendered to him or his authorised agent, or

(ii) is sent by registered post to that person, or

(iii) if such person cannot be found and notice or order or the document sent to him through registered post is received back undelivered, is affixed on some conspicuous part of his last known place of residence or business, or is given or tendered to some member of his family.

9. From the bare reading of Rule 7 (1), it is apparent that after receipt of a reference or in a suo motu proceeding under Section 47A, the Collector is obliged to issue notice to the parties to the instrument to show cause within thirty days of the receipt of such notice as to why the market value of the property set fourth in the instrument and the duty payable thereon be not determined by him. Rule 9 talks about the service of notice upon the company, firm, public body or corporation and a person. So far as service of notice upon an individual is

concerned, in view of Rule 9 (d) (iii) as quoted, herein, above it is apparent that if a person cannot be found and notice or order or the document sent to him through registered post is received back undelivered, is affixed on some conspicuous part of his last known place of residence or business, or is given or tendered to some adult member of his family, the notice shall be deemed to be served. I am of the view that if notice is sent through registered post and concerned person did not meet, in that eventuality, it had to be affixed on some conspicuous part of his last known place of residence or business or is given or tendered to some adult member of his family. The deeming service of notice cannot be said to be sufficient service, unless it is affixed, as indicated herein above, or tendered to some adult member of his family or it did not return for thirty days.

10. Here in this case from the perusal of the impugned order, it transpires that earlier notice was sent on 26.3.2014 which has returned on 16.4.2014 without service as the petitioner was not available in the house. Thereafter again notice was issued on 20.5.2015 but from the perusal of the order it does not transpire that from which source notice was sent. Whether it was sent through registered post or by ordinary post or through some other sources.

11. It had been the categorical case of the petitioner that the notice was never served upon her. I find from the perusal of the impugned order that the Assistant Collector has nowhere recorded a finding that even after service of notice the petitioner did not appear before the authority and file her reply, therefore, in absence of any finding regarding service of notice the order impugned, in my considered opinion, shall be treated to be ex parte order.

12. It is settled law that a quashi judicial order which leads to civil consequences cannot be passed arbitrarily without notice to the other-side therefore it was incumbent upon the authority concerned to provide adequate opportunity of hearing before passing any order prejudicial to the interest of the person against whom, the order has been passed.

13. In the result, the writ petition succeeds and is allowed. The impugned order dated 18.1.2016 passed by Assistant Commissioner Stamp, Varanasi is hereby quashed. The petitioner is granted six weeks time for filing reply to the notice issued by the respondent on the showing the receipt of the deposit of Rs. 50,000/ before the authority concerned.

14. The amount so deposited shall be subject to further orders passed in the case. In case proceeding is dropped, amount shall be returned to the petitioner along with 7% interest. In case some deficiency is found that amount may be adjusted while making the deficiency good.