(2013) 08 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42808 of 2013

Avnish Kumar Garg APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2013) 9 ADJ 105 : (2014) 2 ALJ 355 : (2013) 101 ALR 359 : (2014) 4 AWC 3789 : (2013) 121 RD 178

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Dhirendra Kumar Srivastav, for the Appellant;

Judgement

Arun Tandon, J.—This writ petition has been filed for quashing of the orders dated 5.1.2011 and dated 1.2.2013 passed by Assistant Commissioner (Stamps), Ghaziabad as well as the order passed by the Commissioner, Meerut Division, Meerut in Appeal No. 61 of 2012-13. Under the order dated 15.1.2011 the Assistant Commissioner (Stamps), Ghaziabad has held that there was a deficiency of stamp duty on the lease-deed executed by U.P. State Industrial Development Corporation Limited, Ghaziabad in favour of the petitioner dated 24.10.2008. The petitioner was also saddled with penalty of Rs. 8,91,420/- alongwith interest @ 1.5%. It has been held that the deed in question was not the first lease of the property by UPSIDC. Therefore, the petitioner was not entitled to the benefit of the exemption as claimed. This order of the Assistant Commissioner (Stamps) was sought to be recalled by the petitioner by making an application on 19.10.2012 i.e. after more than 1 year and 10 months, on the plea that the proceedings u/s 47A had been decided ex parte. The Assistant Commissioner (Stamps) has rejected the recall application vide order dated 1.2.2013. It has been recorded that despite sufficient notice the petitioner did not submit any objection in the proceedings u/s 47A. The order was a well reasoned order and no case for recall was made out.

2. Against the order dated 15.1.2011 of the Assistant Commissioner the

petitioner filed an appeal being Appeal No. 61 of 2012-13 before the Commissioner, Meerut Mandal, Meerut u/s 56 of the (Indian) Stamps Act. The appeal filed by the petitioner has been rejected after recording that the proceedings u/s 47A were decided vide order dated 15.1.2011. The recall application was made after 1 year and 10 months. After the recall application was dismissed the present appeal was filed against the order dated 15.1.2011 alongwith an application u/s 5 of the Limitation Act for condoning the delay. It has been held that the appeal was hopelessly barred by limitation and explanation provided was unsatisfactory.

3. This Court may at the very outset record that from the copy of the memo of appeal (Annexure 10 to the present writ petition) it is apparent that the petitioner did not challenge the order of the Assistant Commissioner, Ghaziabad dated 1.2.2013 in his appeal, he had only challenged the order dated 15.1.2011. It is with reference to the said appeal that the order dated 4.7.2013 has been passed by Commissioner, Meerut Mandal, Meerut.

4. This Court in order to do substantial justice with the petitioner provided an opportunity to him to demonstrate as to what was the error in order of Commissioner (Stamps), Ghaziabad, wherein it has been held that the petitioner was not entitled to the benefit of exemption as per the Government order dated 9.7.2008 and as to how the deed in question was the first lease by the UPSIDC of the property.

5. Counsel for the petitioner referred to the lease-deed and submitted that there was no recital in the lease that it was second or third deed in respect of the same plot by UPSIDC, however, he further contended that he was entitled to exemption from stamp duty under the Government order dated 30.9.2010 even if the Government order dated 9.7.2008 is found to be inapplicable on the ground that the lease in question was not the first lease of the property by UPSIDC.

6. This Court will examine the claim of the petitioner with reference to both the Government orders in detail hereinafter.

7. It is appropriate to first record the facts as they exist on record of the petition and are not in dispute. Plot No. 180, Industrial Area, Kavi Nagar, Sector-17, Ghaziabad was leased out by UPSIDC in favour of one Prem Chand son of Rai Bahadur for the first time on 20.5.1971 for a period of 90 years, this was the first lease of the property in question by UPSIDC (hereinafter referred to as the ''first lease'').

8. The second lease of the same plot was executed by UPSIDC in favour of M/s. Ghaziabad Footwear Private Limited on 4.1.1990, this was for a period of 71 years i.e. the balance period hereinafter referred to as the ''second lease'').

9. The third lease of the same property was executed by UPSIDC in favour of the petitioner Avnish Kumar Garg on 24.10.2008 for the balance period of 52 years.

A copy of the lease-deed is Annexure 1 to the present writ petition. There is a rubber stamp affixed on 1st and 2nd page of the lease-deed which mentions the period of lease as 52 years.

10. However, in clause 1 at page 27 of the lease it is mentioned that the lease is for a term of 90 years from 30th day of August 2008.

11. Reference may also be had to the document enclosed as Annexure 1. This is a letter of Regional Manager, UPSIDC, Ghaziabad dated 6.7.2013 which mentions that on the date of execution of the lease in favour of the petitioner i.e. on 4.10.2008 as per the report of the Junior Engineer dated 9.6.2008 there were following constructions standing on the plot:

(a) Office Block 18.6 mtr x 4.2 mtr

(b) Work Shed 27.30 mtr x 18.60 mtr and 27.30 mtr x 99.35 mtr

12. Thus, there were standing constructions on a total area of 841.56 square meters on the date of execution of the lease dated 24.10.2008.

13. In the said factual background, this Court shall now examine the applicability of the Government orders on the basis whereof exemption from stamp duty is being claimed by the petitioner.

14. The first Government order is dated 9.7.2008. This Government order provides for exemption from the payment of stamp duty to the following extent:

to transfer an immovable property first time in favour of a person to the extent of the amount of duty chargeable on the amount that exceeds the amount of consideration equal to the amount or value of the rent reserved for first ten years and the amount or value of such fine or premium or advance as set forth in the lease.

15. From the simple reading of said Government order it is apparently clear that it exempts the deeds, from levy of stamp duty to the extent indicated, in respect of lease executed by various corporation and authorities of the State including the UPSIDC, Ghaziabad subject however, to the condition that it should be the first lease of the property in question.

16. As already noticed above, the lease executed in favour of the petitioner of plot No. E-180, Industrial Area, Kavi Nagar, Sector-17, Ghaziabad was the third lease of the same plot.

17. Therefore, the petitioner is not entitled to the benefits of the said Government order dated 9.7.2008.

18. So far as the Government order dated 30.9.2010 is concerned it extends the benefits of the Government order dated 9.7.2008 in respect of deeds executed between 1.4.2008 to 31.3.2009 irrespective of the fact that the deed was the first lease of the property or not provided two other conditions were satisfied:

I. the deed had been executed between the period mentioned above i.e. from 1.4.2008 to 31.3.2009.

II. If constructions had been raised on the property, then the officer of the concerned institution is required to issue a certificate, indicating the details of the construction raised on the property and that a transfer deed of such construction has also been executed.

19. The Government Order therefore, stipulates an obligation upon the officer of the institution concerned, in the facts of the case UPSIDC, to issue a certificate giving the details of constructions already raised over the property which is subject-matter of 2nd or 3rd lease and that a transfer deed has been separately executed in respect of the standing constructions.

20. From the document at page 37 of the paper book dated 6.7.2013 enclosed by the petitioner himself it is admitted on record that on the date the 3rd lease of the property in his favour was executed by UPSIDC constructions to the extent of 841.56 square meters were standing on the plot in question.

21. The officer concerned i.e. the Regional Manager has issued the certificate to that extent but has deliberately not disclosed as to whether any lease was executed in respect of constructions standing as required under the Government order dated 30.9.2010.

22. The petition is also silent on that count and it is not the case of the petitioner that any transfer deed qua the constructions which were standing on the plot had been executed.

23. This Court therefore has no hesitation to record that the petitioner has not satisfied the requirements of Government order dated 30.9.2010 so as to avail the exemption provided thereunder. His plea for such exemption must also fail.

24. Normally this would have brought these proceedings to an end but this Court while sitting in the present jurisdiction has noticed that a large number of writ petitions have been filed before this Court by lease holders of plots, leased out by UPSIDC for exemption from stamp duty as per the Government order dated 9.7.2008 on the ground that it is the first lease of the plot in question by UPSIDC.

25. The Court has been informed that only those leases, where the term is of 90 years are the first lease. In all other leases where the term is less than 90 years it is either 2nd or 3rd lease. This can be ascertained from the deed itself. It is however, admitted that none of the deeds mention that as to whether it is the 1st, 2nd or 3rd deed of lease qua the plot.

26. In my opinion, a situation has been created by UPSIDC wherein the lease holders are given a false pretext to avail the exemption from the stamp duty under the Government Orders referred to above.

27. For the Revenue Authorities under the Stamps Act it has become difficult to ascertain as to whether the conditions of the Government order dated 9.7.2008

were satisfied or not.

28. Similarly, where construction had been raised over the plot after first lease it has not been so disclosed in the subsequent lease-deeds nor any certificate as required by the Government Order dated 30.9.2010 has been issued by the concerned authority of UPSIDC.

29. Such deliberate non disclosure of material facts in lease-deed executed by the UPSIDC clause for benefit of exemption from stamp duty under the Government orders dated 9.7.2008 and 30.9.2010, as the case may be, have been set up.

30. The officers of the corporation of the State have acted in a manner detrimental to the interest of public exchequer. This must be brought to an end. This Court therefore, directs as follows:

(A) In all future lease-deeds to be executed by UPSIDC it shall be indicated by the Regional Manager that the lease is the first lease of plot in question or not and as to how many lease-deeds had been earlier executed qua the same plot with full details.

(B) Where constructions have been raised after execution of the first lease the Regional Manager shall himself issue a certificate disclosing the extent of construction and shall also certify as to whether a separate transfer deed in respect of constructions has been executed, a copy of the other transfer deed shall be enclosed alongwith the certificate.

(C) In pending proceedings qua deeds executed between 1.4.1998 to 31.3.1999 before authority u/s 47A or in appeal u/s 56A or before the High Court the Regional Manager, UPSIDC shall file his affidavit indicating as to whether the deed in dispute is 1st, 2nd or 3rd deed of the plot in question or not.

(D) The Secretary, Revenue is directed to hold an enquiry as to in respect of how many lease-deeds executed by UPSIDC between 1.4.1998 to 31.3.1999 benefit of exemption from stamp duty has been granted under the Government order dated 9.7.2008 and dated 30.9.2010 illegally. The responsible officer of UPSIDC must be proceeded with departmentally. The loss caused to the State must be recovered from the officer responsible. The details of the deeds which were 2nd or 3rd deeds of the same plot shall be furnished by the Regional Manager to the Secretary within 2 months from today so that the Secretary may obtain necessary record from the Revenue Authorities of Ghaziabad for ascertaining the exact loss which has been caused.

31. Writ petition is dismissed with a direction that a compliance report shall be submit by the Secretary within 4 months with the Registrar General of this Court. Copy of this order may be issued to the Standing Counsel for necessary information to the Secretary concerned.

