

(2012) 06 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No : 16646 of 2012

Bommaji Danam

APPELLANT

Vs

The District Collector, Prakasam District at Ongole, The District Registrar and Collector, Under Section 47 of Indian Stamp Act, The Sub-Registrar, Registration and Stamps Department, Cumbum, Prakasam District and The Dy. Collector (Flying Squad) Registration and Stamps Department

RESPONDENT

Date of Decision : 07-06-2012

Acts Referred:

Citation : (2012) 5 ALD 239 : (2012) 4 ALT 567

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A.V. Sivaiah, for the Appellant; GP For Revenue Respondent Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy

1. The petitioner intended to purchase an extent of Ac.3.22 cents of land in Survey Nos. 143 and 144/1 of Kandulapuram Village, Cumbum Mandal, Prakasam District from one Mr. Shaik Abdul Ravoof. The sale deed executed on 28.09.2005 was presented for registration before the Sub-Registrar, Cumbam, 3rd respondent herein. Stamp duty of Rs. 6,390/- and registration charges of Rs. 355/- were paid. The 3rd respondent felt that the stamp duty paid on the document is inadequate. He referred the matter u/s 47A of the Indian Stamp Act (for short "the Act") to the District Registrar, Ongole. The latter in turn issued notice, dated 19.04.2007 to the petitioner requiring him to explain as to why the deficit stamp duty of Rs. 3,02,205/- and registration charges of Rs. 16,790/- be not levied on him. The petitioner states that on receipt of the show cause notice, he submitted a representation. Before any order was passed by the District Registrar, Ongole, a new District of Registration for Markapur was created and

the file was transmitted to the District Registrar, Markapur, 2nd respondent herein. He passed an order dated 01.02.2008 confirming the facts and figures mentioned in the show cause notice.

2. The petitioner filed C.M.A.No. 3 of 2009 in the Court of Senior Civil Judge, Markapur. The appeal was dismissed on 15.03.2012 confirming the order dated 01.02.2008 passed by the 2nd respondent. Hence, this writ petition.

3. Sri A.V. Sivaiah, Learned Counsel for the petitioner submits that the show cause notice was issued by the 1st respondent, whereas the impugned order was passed by the 2nd respondent without taking any further steps. He contends that when the file was transmitted to the 2nd respondent, he ought to have issued an independent notice and given an opportunity to the petitioner. He submits that the lower appellate Court did not take into account the serious defect that occurred in the proceedings.

4. Learned Government Pleader for Revenue on the other hand submits that the 2nd respondent passed the order duly taking into account, not only the facts that are reflected in the records but also by making a spot inspection.

5. The sale deed presented by the petitioner before the 3rd respondent was not registered on entertaining a doubt as to the adequacy of the stamp duty. The petitioner paid the stamp duty by treating it as agricultural land. The 3rd respondent entertained a doubt and referred the matter to the District Registrar, Ongole u/s 47A of the Act. The show cause notice was issued to the petitioner on 19.04.2007. The petitioner states that a representation was made requesting the District Registrar, Ongole to furnish the basis, on which the additional stamp duty was demanded.

6. While the matter was pending consideration, a new District for the limited purpose of the Act was created with the Headquarters at Markapur and accordingly, the matter was transmitted to the 2nd respondent. The 2nd respondent passed order on 01.02.2008. A perusal of the same discloses that he proceeded on the assumption that the petitioner did not submit any reply to the show cause notice, dated 19.04.2007. Once the matter was transmitted to him, the 2nd respondent ought to have issued notice to the petitioner before deciding the same. Even the spot inspection conducted by him was without notice. When huge financial obligation is imposed upon the petitioner, the 2nd respondent was under obligation to put him on notice.

7. The petitioner preferred an appeal before the civil court. The curious part of it is that while the 2nd respondent took the view that the petitioner did not respond to the show cause notice at all, the lower appellate Court proceeded on the assumption that the petitioner submitted his explanation and the same was taken into account. Neither the order passed by the lower appellate Court nor the one passed by the 2nd respondent can be sustained in law.

8. Therefore, the writ petition is allowed and the orders dated 01.02.2008 and

15.03.2012 are set aside. The matter is remanded to the 2nd respondent for fresh consideration and disposal within four weeks from the date of receipt of a copy of this order, after issuing notice to the petitioner. The miscellaneous petition filed in this writ petition also stands disposed of. There shall be no order as to costs.