
(2001) 02 MP CK 0038
In the Madhya Pradesh High Court
Case No : Writ Petition No.1228/97

Daryanamal

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Stamp Act, 1899 — Section 49(5), 50, 50(1), 50(3)

Citation : (2001) 3 MPHT 135 : (2001) 2 MPLJ 303

Hon'ble Judges : S.P. Shrivastava, J;R.B. Dixit, J

Bench : Division Bench

Advocate : Shri Ramji Sharma, for the Appellant; Shri K.B. Chaturvedi, Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Heard the learned counsel for the petitioner. Perused the record.

A sale-deed in respect of a house was executed by Patiram Kushwah in favour of the petitioner for a consideration of Rs. 1,14,000/-on 11-7-1995. The instrument of sale-deed was executed on the general stamp papers of the value of Rs. 14,250/-. The general stamp papers were purchased on 10th July, 1995.

In the aforesaid sale-deed, the vendor had in equivocal terms staled that he had received the entire sale consideration agreed upon and had also handed over possession of the property to the vendee which was the subject-matter of the sale-deed.

It is not disputed that the aforesaid sale-deed could not be presented for registration with the result that the transfer remained ineffectual in law.

On 15th September, 1995, the vendee, the present petitioner moved an application praying for the refund of the amount for which the general stamp papers had been purchased after deducting the commission. Along with the application, all the general stamp papers on which the sale-deed had been

executed were annexed. In the aforesaid application, it was also indicated by the vendee that the vendor was not getting registered the sale-deed, therefore, the stamp papers had ceased to be of any use.

The Collector of Stamps, Gwalior vide his order dated 13-11-1995 rejected the aforesaid application being of the view that this case fell within the ambit of Section 49(d)(5) of the Stamps Act and the limitation, therefore, for entertaining such an application had to be taken as only two months and since the application had been filed on 15th September, 1995 i.e., five day after the expiry of the limitation prescribed, it was not possible to grant refund as prayed for.

The petitioner feeling aggrieved by the aforesaid order challenged the same before the Board of Revenue, which in its turn endorsing the view taken by the Collector of Stamps, dismissed the revision vide the impugned order.

Being aggrieved, the petitioner has now approached this Court seeking redress praying for the quashing of the orders passed by the Collector of Stamps as well as the Board of Revenue and for a direction requiring them to refund the value of the stamps after taking the commission etc.

It may be noticed that before the Board of Revenue, the petitioner had placed reliance upon the executive instructions issued by the State Govt. whereunder taking into account the instances where the time limit prescribed had operated as a serious hardship and where even without any fraudulent motive, holders of spoiled or useless stamps were sometimes unavoidably prevented from applying for refund or renewal within the prescribed period and so could not under the provisions of the Act, obtain any relief under the Act, the State Govt. had delegated the power to deal with applications for the renewal or the refund to the value of spoilt or useless non-judicial stamps, made within a period of two years from the date of the purchase of stamps or from the date on which the stamps were spoilt or rendered useless, to Collectors. It was further provided that in all such cases while ordering refund or granting the renewal, reasons thereof, must be recorded in his own hand and the stamps, for which the allowance was claimed, shall be destroyed by the officer sanctioning the refund or renewal.

The Board of Revenue under its impugned order had come to the conclusion that in the facts and circumstances of the present case, the provisions of Section 49(d)(5) stood attracted and, therefore, as envisaged u/s 50 clause (1) of the Act, the Limitation for claiming a refund had to be taken as only two months, as held by the Collector of Stamps. So far as the executive instruction was concerned, the Board of Revenue was of the view that though the instruction had been issued by the State Govt. but it could not be demonstrated as to under what authority the said executive instructions had been issued and in any view of the matter, the executive instructions could not nullify the statutory provisions and, therefore, could not come to the rescue of the petitioner.

The learned counsel for the petitioner has strenuously urged that taking into consideration the facts as brought on record, the present case could not be

deemed to have been covered u/s 49(d)(5) of the Stamps Act so as to attract provisions of Section 50 clause (1) thereof.

The relevant portion of Section 49(d)(5) reads as follows :

"49. Allowance for spoiled stamps.-- Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector, may, on application made within the period prescribed in Section 50 and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned namely ;--

*** ***(d) the stamp used for an instrument executed by any party thereto which-

*** ***(5) by reasons of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

*** ***(5) by reasons of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

*** ***(5) by reasons of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

Section 50 of the Stamp Act however is to the following effect:--

"50. Application for relief u/s 49 when to be made.-

The application for relief u/s 49 shall be made within the following periods, that is to say,--

(1) in the case mentioned in clause (d) (5), within two months of the date of the instrument;

(2) in the case of a stamped paper on which no instrument has been executed by any of the parties, thereto, within six months after the stamp has been spoiled;

(3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed: Provided that,--

(a) when the spoiled instrument has been for sufficient reasons sent out of India, the application may be made within six months after it has been received in India;

(b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument."

A perusal of Section 49(d)(5) referred to hereinabove indicates that the basic requirement for attracting the aforesaid provisions was the reason of the refusal of any person to act under the instrument. In a case where there was no refusal

by any party to act under the terms of the instrument, there could be no occasion for applying Section 49(d)(5). It may be noticed that Section 49(d)(5) operates in the different situations enumerated therein, but in the present case, we are concerned with the refusal of any person to act under the instrument because the other contingencies referred to in the aforesaid provisions are not relevant for the purpose of this case. In the present case, it is not disputed that the instrument in question was a sale-deed. Under the terms of the sale-deed, nothing was left for the executor of the sale-deed to be done under the terms and conditions subject to which the property was being transferred. There could be no occasion for assuming "refusal to act" under the terms of the instrument by the parties to the instrument.

The vendor had left nothing to be done by himself inasmuch as he had received the sale consideration agreed upon and had put the transferee in possession of the property. In the aforesaid situation, the view of the Board of Revenue to the effect that the provisions of Section 49(d)(5) stood attracted in the facts and circumstances of this case, is not at all sustainable.

In the aforesaid circumstances, it may also further be noticed that Section 50 sub-clause (1) is in fact an exception to the general rule of six months stipulated in sub-clauses (2) and (3) thereof. Clause (d) (5) of Section 49 of the Act relates to refusal of any person to act under the terms of the instrument for example the refusal of power of attorney or agent to act under the instrument. In the present case, nothing was left to be done by the executor of the sale-deed and therefore there could be no occasion for any refusal to act under the instrument in question.

Taking into consideration the facts and circumstances as brought on record, the present case clearly fell within the ambit of Section 50 clause (3) of the Act wherein the period of limitation was prescribed as six months. The application filed by the petitioner, therefore, could not be rejected on the ground that it was presented beyond the prescribed period of limitation.

So far as the executive instructions relied upon by the petitioner¹ is concerned, suffice it to say that no administrative act or fiat can destroy or annul a statutory provision. A mere executive instruction or administrative order can not have the effect of nullifying the statutory provisions contained in the Act prescribing the limitation in regard to the entertaining of the application for the refund. The view of the Board of Revenue to the effect that the executive instruction sought to be relied upon could not come to the rescue of the petitioner is not liable to be disturbed. However, the finding that the application seeking refund was liable to be rejected as having been filed much beyond the prescribed period of limitation is not at all sustainable in law.

In view of what has been indicated above, this writ petition succeeds in part. The impugned orders passed by the Collector of Stamps and the Board of Revenue, copies whereof have been filed as Annexures P-9 and P-10 in the petition, are

quashed with the direction to the Collector of Stamps, respondent No. 2, to consider the claim of the petitioner and finally dispose of the application for the same filed by the petitioner for the refund of the amount in question on merits in accordance with law and in the light of the observations made hereinabove.

There shall however be no order as to costs.

Writ Petition partly allowed.