(2005) 04 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8557 of 2005

G. Dayakar APPELLANT

Vs

District Registrar, Registration Office and Another RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:
Stamp (Andhra Pradesh Amendment) Act, 1986 — Section 41, 41A
Stamp Act, 1899 — Section 41A, 42, 42(1), 42(2)

Citation : (2005) 4 ALD 228 : (2005) 2 APLJ 160

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Y. Koteswar Rao, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—The case of the petitioner is that he purchased a semi-finished flat bearing No. 102, Dwaraka Maayi Apartments, on Plot No. 16, 23/A, in Sy. No. 8, Ferozguda, Hyderabad under a registered sale deed No. 299/01 dated 22.1.2001 from the owner and the developer and since there was a typographical error while mentioning the number of the flat, in the registered sale deed, Flat No. 202 was typed instead of Flat No. 102, the owner and developer executed a Rectification Deed and got it registered on 8-6-2001, and that he was surprised to receive Notice No. 5418/1A/2004 dated 22-12-2004 from the first respondent calling upon him to pay deficit stamp duty of Rs. 30,420/- on or before 5-1-2005, as per the provisions of the Indian Stamp Act, 1899 (for short ''the Act'').

2. The contention of the learned Counsel for the petitioner is that since the deed is only a Rectification Deed, it is not required to be stamped as a sale deed and contends that in any event, since the notice dated 22-12-2004, issued by the first respondent, impugned in this petition, is issued u/s 41A of the Act, petitioner is entitled to a show-cause notice before any order is passed against

him and since no such show-cause notice is given, the impugned order is liable to be set aside.

Section 41-A of the Act reads as under:

"41-A Recovery of Stamp Duty not levied or short levied:--(1) Whereafter the commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1986, any instrument chargeable with duty has not been duly stamped and registered by any Registering Officer by mistake and remarked as such by the Collector or any audit party, the Collector may, within five years from the date of registration serve a notice on the person by whom the duty was payable requiring him to show-cause why [the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty:]

Provided that where the non-payment was by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the Collector may within ten years from the date of registration serve a notice on such person to show-cause why [the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty.]

(2) The Collector or any officer specially authorised by him in this behalf shall, after considering the representation if any, made by the person on whom notice is served under Sub-section (1), determine by an order, [the amount of duty and the penalty] due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount as determined. On payment of the [amount] the Collector shall add a certificate u/s 42.

(3) Any person aggrieved by an order under Sub-section (2) may prefer an appeal before the [Chief Controlling Revenue Authority] Andhra Pradesh, Hyderabad within three months from the date of such order.

(4) Any [amount] payable under this section shall be recovered as an arrear of land revenue].

3. As per the notification dated 2.7.1987, issued by Commissioner of Survey, Settlements and Land Records, A.P., District Registrar, Audit District Registrars and Assistant District Registrars have been appointed as Collectors to exercise powers u/s 41-A of the Indian Stamp (Andhra Pradesh) Amendment Act, 1986. Hence, the jurisdiction of the first respondent to issue the impugned notice cannot be doubted. But, since the said section mandates a show-cause notice being issued prior to the passing of any order, first respondent was in error in not issuing a show-cause notice to the petitioner before passing the impugned order. For that reason alone, the impugned notice is liable to be set aside. In fact, in Kotha Kota Ramprasad and Ors. v. The District Registrar, Srikakulam, 1996 (4) ALD 301 : 1998 (2) An.WR 331, a similar notice was set aside and a direction

was given to dispose of the case according to the procedure prescribed u/s 41 of the Act.

4. In the circumstances, the order impugned is set aside. First respondent shall issue a show-cause notice to the petitioner u/s 41-A of the Act and consider the representation of the petitioner on the show-cause notice and pass appropriate orders, in accordance with law.

5. Accordingly, the writ petition is allowed. No costs.