(1997) 02 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4946 of 1984

Gauri Farm Equipments and Others — APPELLANT

Vs

State of Punjab and Another — RESPONDENT

Date of Decision : 19-02-1997

Acts Referred:

Citation : (1997) 116 PLR 604 : (1997) 3 RCR(Civil) 673

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : R.N. Narula, for the Appellant; Amarjit Singh, DAG, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—The petitioners are lessees of industrial plots from Punjab State Small Industries Corporation, Chandigarh, for a period of 99 years. The Corporation executed the Lease Deeds in favour of the petitioners for the said period on a stamp paper of Rs. 3/- each and got them registered in the year 1976 and 1978. The possession of the plots were delivered to the petitioners during 1975 and 1977. In the year 1981, the second respondent i.e. Tehsildar, Ludhiana issued notices to the petitioners to pay the deficit stamp duty on the Lease Deeds executed by the Corporation in favour of the petitioners. Questioning the said notices, the Ist petitioner and some others filed CWP No. 3732 of 1981. The said writ petition was dismissed on 18.8.1981 with a direction to the petitioners to approach the concerned authority for appropriate relief. Thereafter the petitioners made a representation to the 2nd. respondent who directed the lessees to deposit the balance of the stamp duty. Thereupon some of the petitioners filed Civil Writ Petition No. 4429 of 1981 which was disposed of on 16.10.1981 on the statement of the learned Assistant Advocate General, Punjab, to the effect that the Director of Industries has recommended to the State Government that stamp duty be not realised on this transaction of lease and pending decision on the same, the State Government will not insist to recover the stamp duty. Accordingly, the writ petition was dismissed as premature. Thereafter the petitioners also made a representation to the Government, but of no avail. Thereafter the 2nd. respondent initiated proceedings for collecting deficit stamp duty and issued the impugned notices vide Annexures P-4 and P-5 which are challenged in this writ petition.

2. The only point that is to be decided in this writ petition is whether the State Govt. has got the power to collect the deficit stamp duty on the Lease Deeds executed by the Corporation in favour of the Petitioners. The procedure for the collection of stamp duty on documents which were either not stamped or insufficiently stamped, was provided in Chapter IV of the Indian Stamp Act which deals with instruments not duly stamped. Section 33 of the Indian Stamp Act provides that every person having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of Police before whom any instrument chargeable, in his opinion, with duty is produced or comes in the performance of his functions, shall if it appears to him that such instrument is not duly stamped, impound the same. Thus Section 33 empowers any person before whom the document was produced in evidence to impound the same." Section 35 of the Act makes the instruments not duly stamped inadmissible in evidence. Proviso to Section 35 of the Act empowers the authority to admit such document in evidence if a penalty amounting to 10 times of the proper duty has been paid. Section 38 of the Act provides how to deal with instruments which have been impounded and no penalty has been paid u/s 35 of the Act. Thus a reading of these provisions clearly makes out that an unstamped document or insufficiently stamped document if it is produced before any authority as a piece of evidence can be impounded and stamp duty and penalty can be levied on such duty only when such document has been produced before the authority which is empowered to receive the same in evidence. At the time when the above said Lease Deeds were registered i.e. in 1976 and 1978 there was no provision in the Stamp Act which enabled the Government to recover the stamp duty payable on such documents. Therefore, to avoid non-payment of stamp duty and in order to collect proper stamp duty, the State Legislature introduced Section 47-A in the Stamp Act by way of amendment by Punjab Act 2 of 1980. Under the said provisions, the Collector is empowered to examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration and the duty payable thereon, but Section 47-A has no application to the facts of the present case. The said Section was introduced only in the year 1980. As the documents in question were registered in the years 1976 and 1978, Section 47-A of the Indian Stamp Act has no application to the facts of the present case. I am, therefore, of the opinion that the notices issued to the petitioners for payment of the Stamp duty on the Lease Deeds are not proper and in accordance with law. Therefore, the petitioners are entitled to get the refund of the stamp duty paid on receiving the impugned notices from the Tehsildar, to avoid coercive steps being taken for collecting the same.

3. The writ petition is, therefore, allowed and the impugned notices Annexure P4

and P-5 are quashed and the respondents are directed to refund the amounts collected under the notices issued by the Tehsildar within three month from today. However, this order does not preclude any authority before whom the Lease Deed was produced for any purpose as evidence to impound the same and to collect the proper stamp duty and penalty. There will be no order as to costs.

