(2003) 05 AHC CK 0142

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22065 of 2003

Gopal Krishna Pathak APPELLANT

Vs

State of U.P.& Ors. RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:

Citation : (2003) 05 AHC CK 0142

Hon'ble Judges : Ashok Bhushan, J

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard counsel for the petitioner and learned standing counsel. Both the counsels have agreed that the writ petition be disposed of at this stage.

2. By this writ petition the petitioner has prayed for quashing the order dated 952003 passed by Chief Controlling Revenue Authority by which the revision of the petitioner has been dismissed as not maintainable. Counsel for the petitioner has contended that the revision was filed against the order dated 30 112002 passed by Assistant Commissioner Stamps. The counsel for the petitioner submitted that in the revision an application was filed for accepting the revision without certified copy of the impugned order dated 30112002. An affidavit has also been filed along with the said application in which it has been stated that on an enquiry he came to know that the record has been sent in pursuance of letter of the Special Secretary, Kar and Nibandhan Anubhag, U.P. Administration, Lucknow hence he is unable to obtain certified copy of the order. The counsel for the petitioner contended that Chief Controlling Revenue Authority without considering the said application has rejected the revision as not maintainable.

3. I have considered the submission of the counsel for the petitioner and perused the record.

4. The Chief Controlling Revenue Authority has rejected the revision as not maintainable on the ground that the petitioner has not been able to file certified

copy of the impugned order dated 30112002. Copy of memo of revision filed before the Chief Controlling Revenue Authority and application dated 752003 has been annexed along with the writ petition as Annexures9 and 10 to the writ petition. In the application dated 752003 the petitioner has prayed that the revision be accepted and the stay application be heard without certified copy of the impugned order dated 30112002. In the affidavit filed along with the said application, it has been stated that the petitioner against the order dated 30112002 had filed a writ petition No. 17103 of 2003 before the High Court which was disposed of on 2442003. Copy of judgment of this Court dated 2442003 is also annexed as Annexure8 to the writ petition which shows that the writ petition was filed against the order dated 30112002 and the order dated 2982002 passed by the Assistant Commissioner Stamp. This Court disposed of the writ petition by the following order:

?In view of the facts of the present case, it is appropriate that petitioner be allowed fifteen days time to file revision before the Chief Controlling Revenue Authority. It will be open to the petitioner to also file an application for interim relief before the Chief Controlling Revenue Authority. For a period of fifteen days, the recovery proceedings against the petitioner shall be kept in abeyance. It is, however, made clear that further proceedings in recovery shall be in accordance with the order of Chief Controlling Revenue Authority.

The writ petition is disposed of with the aforesaid direction.?

5. The petitioner in the affidavit dated 752003 has stated that the certified copy of the impugned order was annexed to the writ petition and when the revisionist tried to obtain another certified copy then he came to know that on a complaint made of the Presiding Officer enquiry has been set up and the record has been sent to the administration in pursuance of the letter of Special Secretary, Kar & Nibandhan Anubhag, U.P. Administration, Lucknow. On stating the aforesaid fact it was stated that the revision be accepted without certified copy of the impugned order. The Chief Controlling Revenue Authority without considering the application dated 752003 and the affidavit giving reasons for not filing the certified copy, has rejected the revision as not maintainable. However, sufficient reasons were given by the petitioner for not filing the certified copy of the order along with the revision. The Chief Controlling Revenue Authority without adverting to the said reasons has mechanically rejected the revision. Under Section 56 of the Indian Stamp Act the power exercisable by a Collector under Chapter IV and V are subject to control of the Chief Controlling Revenue Authority. In view of the facts and circumstances of the present case there was no lack of power with the Chief Controlling Revenue Authority in summoning the original record of the Assistant Commissioner Stamp. The counsel for the petitioner has stated that uncertified copy of the order dated 30112002 was filed along with the revision.

6. From the facts brought on the record of the writ petition it is clear that the petitioner has filed certified copy of the order dated 30112002 before this Court

in writ petition No. 17103 of 2003 and this Court has permitted the petitioner to approach the Chief Controlling Revenue Authority within fifteen days and it also granted interim protection to the petitioner for fifteen days. In view of the aforesaid facts the Chief Controlling Revenue Authority has taken, too, technical view of the matter in rejecting the revision of the petitioner as not maintainable. The order dated 952003 passed by the Chief Controlling Revenue Authority cannot be sustained and is hereby quashed. The respondent No. 1 is directed to consider the revision filed by the petitioner on merit and also consider the stay application filed by the petitioner in accordance with law.

7. The writ petition is allowed accordingly.

