(2010) 05 AHC CK 0327

In the Allahabad High Court

Case No : W.C. No. 26107 of 2010

Gopal Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Citation : AIR 2010 All 144 : (2011) 3 AWC 2594

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Supplementary affidavit filed, is taken on record.

2. Petitioner is said to have acquired rights in half portion of house No. 292 area 140.42 sq. metres vide document dated 23.8.2010. The said document on reference was subjected to determination of deficient stamp duty. The Additional District Magistrate, Finance & Revenue treated the said document to be a lease of more than 30 years in determining the deficiency in stamp duty vide order dated 30.11.2003. The said order has been upheld vide order dated 26.12.2009 in revision preferred by the Petitioner.

3. The submission of the learned Counsel for the Petitioner is that by the said document Petitioner has only purchased rights in the superstructure and the land on which it stands belongs to the cantonment and the same has not been transferred. In this connection he has placed reliance upon the information supplied to him under the Right to Information Act on 14th May 2010, Annexture to the supplementary affidavit.

4. There is no dispute that the land on which the superstructure exists is the land of the cantonment which is owned by Government of India. It appears that the said land was given on an old grant and during the course of time constructions were raised on it. Finally, under the document in question the superstructure has been transferred in favour of the Petitioner who is in possession and use of not

only the superstructure but also the land underneath. The transfer of the superstructure by the document in question does not either expressly or impliedly discloses any intention of removing or carrying away of the superstructure severing it from the land. The Petitioner cannot occupy and use the superstructure without possessing the land also. There cannot be a superstructure/building without land and therefore, land becomes part of the superstructure/building and the two are not separable unless there is stipulation to remove the superstructure. Thus, transfer/lease of land along with the superstructure is inherent. In this view of the matter, the document in question is a composite document of transfer of superstructure and lease of the land for indefinite period with ownership continuing with the Government of India. The Petitioner has very cleverly devised to transfer only the superstructure on its value so as to evade stamp duty on the land component of it.

5. It is settled legal position that anything attached or permanently fastened to land goes with the land. In Dan Singh Bisht Vs. Firm Janki Saran Kailash Chander Dhampur, this Court ruled that where trees are sold to be cut and removed within a reasonable time, it would amount to sale of movable property and not lease. The antithesis of it is where there is no intention of cutting and removing the trees in making the sale, it would be a lease.

6. In one another case reported in V. Kalpakam Amma Vs. Muthurama Iyer Muthurkrishna Iyer and Another, it was held that where there is lease of a building such lease would normally take the site also, unless the same is excluded specifically in the lease deed.

7. In the instant case no intention has been expressed in the document in question for removing the superstructure from the land concerned. It has also not been provided therein that the Petitioner would not occupy and use the land or that it stands excluded from his use along with the superstructure.

8. In this view of the matter the document in question though transfers the superstructure but in substance it impliedly leases the land also and as such is a composite document of transfer and lease. Accordingly, Petitioner is not only liable to pay stamp duty on the sale consideration of the superstructure but also on the lease of the land which is chargeable under Article 35(a)(vi) of Schedule I-B of the Act.

9. Therefore, I am of a firm opinion that the authorities below have not committed any error of law in determining the deficiency in the payment of stamp duty by charging the document as a lease also.

10. Lastly, learned Counsel for the Petitioner submitted that the imposition of penalty of Rs. 60,000/- is very heavy and excessive. The authorities in such cases do have a power to impose penalty but not without assigning proper reasons. In the instant case no reasons have been assigned. Therefore, in the interest of justice, the penalty imposed is reduced to half only.

11. The writ petition is devoid of merit and as such is dismissed except for reducing the penalty imposed as aforesaid and to that extent the impugned orders stand modified accordingly.