(2006) 05 AHC CK 0177

In the Allahabad High Court

Jayanti Nagar Sahkari Awas Samiti APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Stamp Act, 1899 — Section 33, 40, 56

Citation : (2006) 4 AWC 3767

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Devi Prasad Singh, J.—In the present writ petition since purely a legal question has been raised, hence with the consent of parties, I proceed to decide the present writ petition finally at admission stage.

2. Petitioner is a cooperative housing society engaged in a business relating to construction and sale of houses, plots and flats to the needy persons.

3. The land in question measuring 10 Biswa was purchased by the petitioner by registered sale deed dated 16.6.1992. Exemption from payment of stamp duty was claimed by the petitioner being a cooperative society. The State Government had issued an order dated 12.7.1990 withdrawing the exemption granted to the housing societies in payment of stamp duties. Against the withdrawal of exemption from payment of stamp duty, a bunch of writ petitions was filed in this Court. All the writ petitions including the Writ Petition No. 3114 of 1991 was dismissed by this Court as is evident from the impugned orders.

4. After dismissal of the writ petition, the opposite parties have proceeded ahead to recover the stamp duty. On account of deficiency in stamp duty the Sub-Registrar has referred the controversy to the Additional Commissioner, Lucknow Division, Lucknow, who by impugned order dated 29.1.2005 held that in pursuance to provisions contained in Section 33 read with Section 40A(4)(ii) of the Stamp Act, petitioner is liable to pay deficient, stamp duty to the tune of Rs.

25,665. A penalty of Rs. 513 was also imposed by the Additional Commissioner (Stamp). A copy of the order passed by the Additional Commissioner (Stamp) has been filed as Annexure-2 to the writ petition.

5. Feeling aggrieved with the impugned order passed by the Additional Commissioner (Stamp), petitioner preferred an appeal u/s 56(1)(A) of Stamp Act before the Divisional Commissioner, Lucknow. The appeal preferred by the petitioner has been dismissed by the Divisional Commissioner vide order dated 28.2.2006 with the finding that since the writ petitions including the Writ Petition No. 3114 of 1991 were dismissed by this Court and in view of the Government order exemption from stamp duty is not permissible, hence, petitioner is liable to make payment of deficiency in stamp duty.

6. While assailing the impugned order, the learned Counsel for the petitioner Sri Rajesh Kumar Pathak has submitted two folds of argument. Firstly, the argument of learned Counsel for the petitioner is that the land was purchased as agricultural land, hence no stamp duty can be imposed treating it for the housing purposes in view of law laid down by this Court in a case in Maya Foods and Vanaspati Ltd., Allahabad Vs. Chief Controlling Revenue Authority (BR), Allahabad and others, . Hon''ble single Judge of this Court in the case of M/s. Maya Foods and Vanaspati Ltd. Company (supra) held that while assessing the market value of the property the stamp duty should not be assessed on the basis of its future use in pursuance to power conferred u/s 40A of the Stamp Act.

7. The learned Counsel for the petitioner submits that power to impose penalty in pursuance to provisions contained in Section 33 read with Section 40 of the Stamp Act may be available, in case, the Sub- Registrar himself detects the deficiency of stamp and send his recommendation to the Stamp Collector. It has been further submitted by the petitioner''s counsel that Section 47A was added by amendment and became operational from 1.9.1998. The other argument of the petitioner''s counsel is that since in the present case the controversy was held up in this Court under writ jurisdiction, opposite parties should not have been imposed penalty while deciding the deficient stamp duty.

8. Admittedly, Section 47A was added in the statute vide notification came into effect from 1.9.1998. Since the sale deed was executed in the year 1992, obviously being the controversy of earlier date, i.e., prior to 1.9.1998, the Additional Commissioner (Stamp) was not authorised to impose penalty. Moreover, there is one another reason, why penalty should not be imposed by the Additional Commissioner (Stamp). At the initial stage when the sale deed was produced before the Sub-Registrar, the petitioner had claimed exemption from the payment of stamp duty on the ground that matter was sub Judice before this Court in pending writ petitions and in view of interim order passed by this Court it was not necessary for the petitioner to pay the stamp duty. Accordingly petitioner was not at fault by not paying the stamp duty at the time of execution of the sale deed. Accordingly no penalty should have been imposed by the Additional Commissioner (Stamp) while passing the impugned order,

under the power conferred by Section 33 read with Section 40A or even u/s 47A. Power to impose penalty vesting in the competent authority should be exercised only for Justifiable reason for example when there is deliberate attempt on the part of Vendee or Vendor, as the case may be, to not to pay the stamp duty or there is some concealment of fact or the action of a party suffers from extraneous reasons, in the present case there was no deliberate attempt on the part of the petitioner in not making the payment of stamp duty in view of the interim order passed by this Court. Accordingly, the finding recorded by the two authorities seems to be unreasonable and arbitrary in nature.

9. Now coming to second limb of argument advanced by the learned counsel for the petitioner is that no stamp duty should be levied keeping in the view the future use of property. The argument seems to be misconceived keeping in view the facts and circumstances of the present case. In the present case petitioner and alike persons have approached this Court and claimed exemption from the stamp duty on the ground that they have been involved in construction and sale of houses, flats or plots for the use of needy peoples. Government order dated 15.7.1990 withdrawing the exemption was impugned in a bunch of writ petitions. At the face of record the purpose of purchase of land in question was of commercial nature. The immediate purpose of the said land in question was to utilize the same for the construction of houses or to sale the same to needy person by way of plotting or by way of construction of houses. When the land was purchased and transferred by way of registered sale deed for construction of houses or commercial use, may be an agricultural land, then stamp department has got right to impose stamp duty treating it a commercial land or a land purchased for housing purposes. The facts of the present case are entirely different than what was before this Court in the case of M/s. Maya Foods and Vanaspati Ltd. Company (supra).

10. In case petitioner and alike persons while approaching this Court in first round of litigation claim exemption from stamp duty being purchased by a cooperative society for housing purpose then the defence of "Future Use Principle" as per Maya Food and Vanaspati Ltd. Company (supra) shall not be available. In the writ petition it has not been stated that when the sale deed was executed or the land was purchased it was for the agricultural purposes. While interpreting word ''future use'', we should keep in mind that the principle of "Future Use" may not be used to circumvent the statutory provisions. The future use means at the time of execution of sale deed the Vendee had purchased the land bona Jidely for the agriculture purposes indicating its use in the sale deed. The change of the nature of land immediately or within reasonable period for housing or commercial purposes by a Vendee cannot be treated as the land purchased for agricultural purposes. The principle of "future use" shall not be applicable in such situation. Undoubtedly, in case, after lapse of reasonable period the nature of land is changed or acquires more values or importance then in such situation, it shall not be lawful on the part of the Stamp department to impose penalty or charge stamp duty with different finding, than the material

which was available on record at the time of execution of sale deed.

11. In view of above the writ petition deserves to be allowed in part. A writ in the nature of certiorari is issued quashing the impugned orders dated 28.2.2006 and 29.1.2005 passed by opposite party Nos. 2 and 3 as contained in Annexures-1 and 2 respectively to the writ petition to the extent it relates to imposition of penalty by the competent authorities with natural consequence No order as to costs.

