(2013) 05 MP CK 0074

In the Madhya Pradesh High Court

Case No : W.P. No. 1977/2013

Kamal Jain APPELLANT

Vs

Collector of Stamps District Gwalior RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Citation : (2013) 3 MPJR 21

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sujoy Paul, J.

This petition filed under Article 227 of the Constitution of India challenges the order of Board of Revenue dated 6.8.2012 whereby the Board has rejected the revision of the petitioner and affirmed the order of Collector of Stamps dated 21.7.2011.

The brief facts necessary for deciding the matter are as under:--

1 The petitioner entered into an agreement to sale dated 22.12.2009 of some immovable property of a sum of Rs. 100/- and the consideration was fixed for Rs. 10 lakhs. On this basis Civil Suit was instituted in the Civil Court. In the proceedings before the Civil Court, the Court impounded the said agreement and sent it to the Collector of Stamp. The agreement is placed as Annexure P-3 by the petitioner. The Collector of Stamp, in turn started the proceedings and issued notices to the parties. He passed the impugned order dated 21.7.2011 thereby declared the market value of the property as Rs. 10 lakhs Rs. 10,000/- were directed to be paid as stamp duty. Since petitioner had already paid Rs. 100/- on stamp duty, the petitioner was directed to pay Rs. 9900/- on stamp duty + Rs. 99,000/- as penalty. This order was put to test in revision before the Board of Revenue. The Board of Revenue by impugned order dated 6.8.2012 rejected the revision and affirmed the order of Collector. Shri Bharadwaj, learned senior

counsel with Shri Anvesh Jain Advocate submits that both the authorities, Collector and Board of Revenue have erred in overlooking the fact that the power to impose penalty upto ten times of the deficit stamp duty is the maximum penalty and it can be done in rare cases. It is stated that such discretion in the matter of imposition of penalty should be exercised in a judicious manner. He submits that discretion means a discretion in accordance with law and there is no unfettered discretion with the Collector to impose penalty.

2. By placing reliance on earlier orders passed by the Board of Revenue (Annexure P-6) dated 2.1.2012, it is stated that the Board on earlier occasion, passed a different order in the similar factual foundation, whereas in the case of petitioner took a different view which is impermissible in law. Lastly, it is argued by learned senior counsel that judicial discipline requires that the authorities should pass order which has some uniformity and consistency on similar issues. He relied on certain judgments in this regard.

3. Criticizing the order Annexure P-2 wherein it is mentioned that the report was sent on 19.7.2011 it is argued that as per the order sheets it is clear that the report was received on 21.7.2011 only, the date when the Collector passed the final order. He submits that the petitioner''s valuable right of defence is taken away. He relied on the following judgments:--

(i) Umesh Kumar Sharma Vs. Rajaram Jat and Another, .

(ii) U.P. Power Corporation Ltd. Vs. Rajesh Kumar and Others, .

(iii) Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, .

(iv) Balkrishna Bihari Lal Vs. Board of Revenue, M.P. and Others, .

4. Per contra, Shri Raghavendra Dixit, supported the order and submits that the order passed is within the four-corners of law and, therefore, it cannot be termed as order passed without authority of law. In absence thereof, no interference is warranted merely because another view is possible. He supported the orders Annexure P-1 and P-2.

5. I have heard the learned counsel for the parties and perused the record.

6. The petitioner has assailed the impugned order of Board of Revenue on two grounds. The first ground is that in the proceedings before the Collector, the petitioner was not given adequate, reasonable and sufficient opportunity. I have perused the revision filed by the petitioner u/s 56 of the Indian Stamps Act (Annexure P-5). In para 5 to 10 the petitioner has specifically pleaded that he has not been given sufficient opportunity in consonance with the principles of natural justice and audi alteram partem.

7. The second ground is that the order of the Board is discriminatory in nature. In Surendra Kumar Sharma v. State of M.P. (Annexure P-6) dated 2.1.2012, the said authority interfered with the penalty and in the present case did not do the same but while doing so no reasons are assigned.

8. So far the first ground is concerned, I find that there is no iota of discussion about this aspect in the order of Board of Revenue. In other words, the impugned order dated 6.8.2012 shows that the aforesaid aspect i.e., question of providing adequate opportunity to the petitioner before the Collector was not even touched by the Board of Revenue. The Board of Revenue, in my opinion, had a legal obligation to address itself on the aforesaid facet. For this reason, the order is liable to be interfered with.

9. A Full Bench of this Court in Balkrishna (supra) opined as under:- Turning now to the sixth question, the powers of the Collector u/s 40 of the Stamp Act are discretionary in respect of imposition of penalty. There are no provisions in the Stamp Act to guide his discretion. That being so, the general principle of law, that discretion must be exercised according to reason and justification must be followed.

A Division bench of this Court in Umesh Kumar Sharma Vs. Rajaram Jat and Another, considered the difference between Section 38 and 40 of Stamp Act, it is held that Section 38 requires the Court to recover the duty and ten times penalty and nothing less than that whereas Section 40 authorizes the Collector (Stamps) to recover the duty, so also recover penalty which shall not exceed ten times the amount of proper duty. The discretion given to the Collector (Stamps) u/s 40 is to impose any amount of penalty, which should not necessarily be ten times, it can be less than that. If this judgment is read conjointly with the Full Bench judgment in Balkrishna (supra), it will be clear that it was not mandatory on the part of the Collector to impose ten times penalty. It was open for him to exercise his discretion by applying general principle that the discretion should be exercised reasonably and in accordance with law. However, neither the Collector nor the Board has assigned any reason while imposing ten times penalty. However, in Annexure P-6, the Board has assigned reason for setting aside ten times penalty. Thus, in my opinion, the Board has mechanically passed the impugned order without examining aforesaid aspect about quantum of penalty. The order of Board needs to be interfered with for the reasons stated above. Accordingly, the impugned order of Board (Annexure P-1) dated 6.8.2012 is set aside. The matter is remitted back to the Board to reconsider it in the light of aforesaid and pass orders in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the case. Petition is allowed to the extent indicated above. No cost.

