(2016) 10 AHC CK 0166

In the Allahabad High Court

Case No : Misc. Single No. 1697 of 2003

Kamla APPELLANT

Vs

Commissioner Devipatan Division, Gonda RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 33, Section 47A, Section 56(I-A)

Citation : (2017) 134 RD 834

Hon'ble Judges : Devendra Kumar Upadhyaya, J.

Bench : Single Bench

Advocate : M.A Khan, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Devendra Kumar Upadhyaya, J.—Heard Sri Mohiuddin Khan, learned counsel for the petitioner and learned Standing Counsel appearing for the State-respondents.

This petition seeks to challenge the order dated 29.10.2002, passed by the Additional District Magistrate (Finance & Revenue), Bahraich whereby the deficiency of stamp duty to the tune of Rs. 1,08,930/- has been found in respect of a sale deed said to have been executed in favour of the petitioner on 10.01.1996 relating to certain area of plot No. 1251, situate in Village Kalwari, Pargana Charda, Tehsil Nanpara, District Bahraich.

2. The petitioner has also challenged another order dated 20.03.2003, passed by the Additional District Magistrate (Finance & Revenue), Bahraich whereby restoration application moved by the petitioner was rejected.

3. The petitioner thereafter appears to have preferred an application under Section 56(1-A) of the Indian Stamps Act, which too has been dismissed by the Commissioner, Devi Patan Region, Gonda by means of order dated 17.05.2003. This order passed by the Appellate Authority is also under challenge.

4. The instrument in question is said to have been executed on 10.01.1996 whereby certain portion of the land belonging to Khasra Plot No. 1251 was sought to be transferred in favour of the petitioner by Sri Bhagauti. It appears that on a complaint made by one Sri Nizamuddin, a report was submitted by Sub- Registrar, Nanpara on which a case was registered. The petitioner was issued a notice, however, as per recital made in the impugned order passed by the Additional District Magistrate (Finance & Revenue) on 29.10.2002, despite service of the notice, the petitioner did not appear before him which led the Additional District Magistrate (Finance & Revenue) to pass an ex parte order.

5. I have perused the impugned order passed by the Additional District Magistrate (Finance & Revenue) on 29.10.2002, according to which the land which was sought to be transferred through the instrument in question was used as Abadi land and also for brick kiln. It has also been recorded by the Additional District Magistrate (Finance & Revenue) that on the land there existed two tress, one that of Pakar and other Gulmohar tree. The Additional District Magistrate (Finance & Revenue) has, thus, concluded that the land sought to be transferred by the instrument in question was used for residential and commercial purpose and accordingly valuation has been done at the rate of Rs. 25/- per sq. ft.

6. Based on the aforesaid facts, the learned Additional District Magistrate (Finance & Revenue) by the impugned order has imposed the deficiency to the tune of Rs. 1,08, 930/- and the deficiency in the registration fee of Rs. 1,715/-. The Additional District Magistrate (Finance & Revenue) by the impugned order has also imposed penalty of deficiency in stamp duty found by him.

7. The sole basis of impugned order dated 29.10.2002 passed by the Additional District Magistrate (Finance & Revenue) is the report submitted by the Tehsildar, Nanpara which is said to have been received on 30.08.2001. Admittedly, the aforesaid report submitted by the Tehsildar dated 30.08.2001 was never supplied to the petitioner.

8. Even if it is presumed that the petitioner was served with the notice of registration of the case against him under Section 47A/33 of the Indian Stamps Act and despite service of notice he did not appear, respondents cannot deny that the report of the Tehsildar dated 30.08.2001 was never provided to the petitioner so as to give him an opportunity to rebut the same. In the entire order passed by the Additional District Magistrate (Finance & Revenue), no other material has been relied upon.

9. The aforesaid aspect of the matter relating to non-supply of the report of the Tehsildar dated 30.08.2001 has not been considered even by the Appellate court. It is well settled law that any order by which any pecuniary liability is found on a person, the same can be passed only in conformity with the principles of natural justice. The principles of natural justice would require that any material on which the order adversely effecting the person is based needs to be suppled to the person concerned so as to enable him to rebut the said document/material.

10. In the instant case, the sole basis of the impugned order passed by the Additional District Magistrate (Finance & Revenue) is the report of the Tehsildar dated 30.08.2001 and admittedly copy thereof was never supplied to the petitioner so as to enable him to file any objection thereto or to rebut the said report. Thus, I have no hesitation to conclude that the impugned order by the Additional District Magistrate (Finance & Revenue) dated 29.10.2002 has been passed in fragrant violation of the principles of nature justice. The Appellate Authority has also not taken into account the aforesaid legal aspect which has resulted in valuable right to put forth his defence.

11. In view of the discussions made herein above, the writ petition deserves to be allowed.

12. Accordingly, the writ petition is allowed. The order dated 29.10.2002, passed by the Additional District Magistrate (Finance & Revenue), Bahraich, as is contained in Annexure No.3 to the writ petition, the order dated 20.03.2003, passed by the Additional District Magistrate (Finance & Revenue), Bahraich, as is contained in Annexure No.4 to the writ petition and the order dated 17.05.2002, passed by the Commissioner, Devi Patan Region, Gonda, as is contained in Annexure No. 5 are hereby quashed.

13. The recovery proceedings initiated pursuant to the impugned orders, if any, against the petitioner are also quashed.

14. The matter is remitted to the Stamp Collector/Additional District Magistrate (Finance & Revenue), Bahraich/appropriate authority for decision afresh. The appropriate authority shall furnish true copy of the report dated 30.08.2001 submitted by the Tehsildar, Nanpara to the petitioner. The petitioner shall be at liberty to file his reply and contest the said report submitted by the Tehsildar. The entire exercise under this order shall be concluded within a period of four months from the date of production of certified copy of this order before the appropriate authority.

15. There will be no order as to costs.