(2007) 08 BOM CK 0037

In the Bombay High Court

Case No : S.R. No. 1 of 1994

Kara Bhima APPELLANT

Vs

Chief Controlling Revenue Authority RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:
Bombay Stamp Act, 1958 — Article 36, 39, 53, 56, 9

Citation : (2008) 3 BomCR 910

Hon'ble Judges : Mehta D.A., J;Meena Y.R., J;Dave A.S., J

Bench : Full Bench

Advocate : A.R. Thacker, for the Appellant; Sunit Shah, G.P., for the Respondent

Judgement

Mehta D.A., J.—The Chief Controlling Revenue Authority, Gujarat State has referred the following two questions u/s 56 of the Bombay Stamp Act, 1958 (the Act):

S(1) Whether the said instrument Titled as Deed of Simple Mortgage executed on dt. 7.12.1985 and presented for Registration with Sub-Registrar, Manavdar on dt. 7.12.85 bearing Serial No. 317 is liable to stamp duty under Article 36 of Schedule-I to the Bombay Stamp Act, 1958, read with Government Notification dt. 2.7.1970. (Annexure ''E'')

OR

(2) Whether the said instrument falls within the scope full remission granted inter-alia to the instruments of Mortgage under Government R.D. Notification No. GHM-79/108/-M-STP-1479/2288-Hdt. 23.3.1979 (Annexure-''B'').

2. The applicant, an individual, had applied to Bank of India, Dungarpur Branch, Taluka District Junagadh for a loan of Rs. 9,80,000/- for the purchase of Air Compressors, Drilling Rods and other Accessories under Agricultural Finance Scheme. Upon being granted the said financial facility, the parties had entered into an agreement through an instrument termed as "Simple Mortgage Deed".

The said instrument was presented for registration with Sub-Registrar, Manavdar on 7.12.1985 bearing Sr. No. 317. Admittedly, no stamp duty has been paid on the instrument.

3. During inspection by the Accountant General, Ahmedabad of the Sub-Registrar''s Office, Manavdar an audit issue was raised that the instrument in question is not entitled to get the benefit of exemption under Government Order No. G.O.R.D. No. GHM/79-108-M-STP-1479/2288-H dated 23.3.1979. The Sub-Registrar, Manavdar therefore sent the instrument to the Deputy Collector, Stamp Duty Valuation Organisation, Junagadh for taking necessary action in the matter.

4. The Deputy Collector, Stamp Duty Valuation Organisation, Junagadh acting under the provisions of Section 39 of the Act, after hearing the applicant, directed the applicant to pay deficit stamp duty to the tune of Rs. 98,000/- together with the penalty quantified at Rs. 1,96,000/- in exercise of powers u/s 39(i)(b) of the Act.

5. The applicant challenged the said order dated 15.9.1989 by way of Revision Application u/s 53(i) of the Act before Chief Controlling Revenue Authority, Ahmedabad (the respondent Authority). The respondent Authority after hearing the applicant partially allowed the Revision Application and modified the order of the Deputy Collector, Stamp Duty Valuation Organisation, Junagadh, directing the applicant to pay deficit stamp duty of Rs. 49,000/- together with penalty of Rs. 49,000/- i.e. totalling to Rs. 98,000/-. The applicant has challenged the said order by way of the present reference. It is the case of the applicant that the case of the applicant is governed by Notification dated 23.3.1979 and the applicant is entitled to benefit of total exemption from payment of stamp duty. As against that, according to respondent authority Notification dated 23.3.1979 is only in respect of instruments relating to loans and advances, loans and mortgages, cash credit of over draft, bonds, agreements of pawn or pledge and letters of hypothecation executed by the farmers for agricultural and land development purposes in favour of all commercial banks including the State Bank of India etc. But the instrument executed by the applicant is towards loan obtained for purchase of Air Compressors, Drilling Rods and other Accessories and hence the instrument cannot be governed for the purpose of agricultural and land development.

6. Heard the learned Advocate appearing on behalf of the applicant and the Government Pleader appearing on behalf of the respondent authority. Both of them have reiterated the respective contentions recorded in the statement of case.

7. The principal dispute thus is as to whether the instrument in question falls within the scope and meaning of the instrument which is entitled to full remission under Government Notification dated 23.3.1979; or whether the said instrument is liable to bear stamp duty under Article 36 of Schedule-I to the Act read with Notification dated 2.7.1970? To appreciate the controversy it is necessary to

reproduce Notification dated 23.3.1979 which reads as under:

In exercise of the powers conferred by Clause (a) of Section 9 of the Bombay Stamp Act, 1958 (Bom. LX of 1958) and in supersession of Government Orders, Revenue Department Nos. (i) GHM-76/108-M-STP-2274-134297-H dt. 23rd March, 1976; (ii) GHM-76/109/M-STP-2274/134297-H dt. the 23rd March, 1976; (iii) GHM-78-227-N-STP-I 476/58247-H dt. the 10th July, 1978; (iv) GHM-78-228-M-STP/1476/ 58247-H dt. the 10th July, 1978, the Government of Gujarat hereby remits with effect on and from the 1st April, 1979 in the whole of the State of Gujarat, the duty chargeable under the said Act, on instructions, whether attested or not, in respect of transactions, relating to loans and advances, loans and mortgages, cash credit or overdraft bonds, agreements of pawn or pledge and letters of hypothecation executed by the farmers for agricultural and land development purposes in favour of all Commercial Banks including the State Bank of India and its subsidiaries and Co-operative Banks and Co-operative Societies registered under the Gujarat Co-op. Societies Act, 1961 (Guj. X of 1962) (G.O.R.D. No. GHM-79/108/M-STP-14 79/2288-H dt. 23/3/1979).

8. On a plain reading of the aforesaid Notification it becomes clear that any instruments in respect of transactions, relating to loans and advances, loans and mortgages, cash credit or overdraft bonds, agreements of pawn or pledge and letters of hypothecation executed by the farmers for agricultural and land development purposes in favour of all Commercial Banks etc. are entitled to remission of the entire duty chargeable under the Act with effect on and from 1.4.1979.

9. There is no dispute as to the fact that the applicant had applied for loan to Bank of India, Dungarpur Branch, Taluka District Junagadh and for such purposes executed instrument on 7.12.1985. In the preamble it is stated thus:

Whereas:

i. The Mortgagor is the absolute owner of the lands bearing Survey No. 229, 247/2, 254, 285 Hissa Nos. 303P, 338P, 246P together with the buildings and structures standing thereon situate at the Village Kothadi of Tehsil/Taluka Manavadar, District Junagadh and more particularly described in the Schedule hereunder written, free from all encumbrances and claims by third parties.

ii. The Mortgagor, being in need of a loan of Rs. 9,80,000/- (Rupees Nine lacs eighty thousand only) [Please fill up the purpose of the loan]for purchase of Air Compressors Drilling Rods and other Accessories under Agricultural Finance Scheme has requested the Mortgagee to lend and advance the said sum of Rs. 9,80,000/- which the Mortgagee has agreed to do, upon having the repayment thereof with interest accrued thereon secured to it in the manner hereinafter appearing.

10. Condition No. 12 of the covenant reads thus:

S12. The Mortgagor doth hereby covenant with the Mortgagee as follows:

(a) That the said sum of Rs. 9,80,000/- shall be utilised by the Mortgagors for the purpose of:

i) for purchase of Air Compressors Drilling Rods and other Accessories.

and for no other purpose whatsoever.

11. Therefore, it becomes clear that the loan is granted by Bank of India under Agricultural Finance Scheme towards purchase of Air Compressors, Drilling Rods and other Accessories, and the applicant mortgagor is duty bound to utilise the loan only for the said purpose and no other purpose whatsoever. Use of the Air Compressors, Drilling Rods and other Accessories in case of the applicant who is a farmer can only be for the purpose of drilling a bore-well for the purpose of irrigation in the process of carrying on agricultural activities.

12. Thus, it is apparent that the loan was availed of by applicant farmer for agricultural and land development purposes because a bore-well would go to increase the utility of agricultural land by ensuring round the year irrigation. In other words, the loan has been utilised for agricultural and land development purposes only. The instrument in question therefore fulfills the condition stipulated in Notification dated 23.3.1979.

13. In the facts and circumstances of the case, the second question referred to this Court is answered in the affirmative i.e. in favour of the applicant and against the respondent authority. The instrument in question falls within the scope of complete remission granted to instrument of mortgage under Government Notification No. G.O.R.D. No. GHM-79/108/M-STP-1479/2288-H dated 23.3.1979.

14. In light of the answer to question No. 2, the answer to question No. 1 is obviously in the negative. The instrument in question is not liable to stamp duty under Article 36 of Schedule I to the Act and Notification G.N.R.D. No. GHM.2260/M/STP/1070/H dated 2.7.1970 (Annexure-E) cannot be made applicable to the instrument in question.

15. The Reference stands answered accordingly and is disposed of with no order as to costs.