(2016) 04 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 105/2010 in Civil Writ Petition No. 1327/08

Kuri Chand — APPELLANT

Vs

DIG (Stamps) Udaipur and Others — RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:
Rajasthan Stamp Act, 1998 — Section 51, Section 65

Citation : (2016) 04 RAJ CK 0003

Hon'ble Judges : Sangeet Lodha and Kailash Chandra Sharma, JJ.

Bench : Division Bench

Advocate : Dhanesh Saraswat, for the Appellant; Narendra Singh Rajpurohit, Deputy Government Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. This intra-court appeal is directed against the order dated 2.7.08 passed by the learned Single Judge of this Court in S.B. Civil Writ Petition No. 1327/08, whereby the writ petition preferred by the appellant questioning the legality of the order dated 30.12.06 passed by the Collector (Stamp), Circle Udaipur, accepting the reference made by the Sub-Registrar, Dungarpur and creating the liability of deficient stamp duty, registration charges and penalty against the appellant quantified at Rs. 3,40,000/-, stands dismissed on the ground of availability of alternative remedy of revision under Section 65 of the Rajasthan Stamp Act, 1998 (for short ''the Act of 1998'').

3. The relevant facts are that the appellant purchased a residential land vide sale deed dated 01.07.04 for consideration of Rs. 50,001/-, which was submitted for registration before the Sub-Registrar, Dungarpur. The Sub-Registrar valued the property at Rs. 11,64,120/- as against the sale consideration of Rs. 50,001/- disclosed in the sale deed. The stamp duty and the registration charges payable,

assessed as per the valuation of the property made by the Sub-Registrar, were deposited by the appellant and the sale deed was returned to him after due registration. Later, the appellant was served with a notice dated 30.7.05 issued by the Sub-Registrar, Dungarpur, stating therein that as per ICP inspection, it is found that the value of the property subject matter of the sale deed is Rs. 33,95,350/- and accordingly, the stamp duty, registration charges payable thereon come to Rs. 3,73,489/- and Rs. 35,000/- respectively. Accordingly, the appellant was informed that the deficient stamp duty Rs. 2,45,429/- and registration charges 13,350/- be deposited within a period of three days, failing which the matter shall be referred to the Collector (Stamp).

4. The notice was responded to by the appellant by way of reply disputing the valuation made and taking the stand that the land in question is residential land and the valuation sought to be made on the basis of the intended land use for commercial purpose in future, is absolutely baseless.

5. On failure of the appellant to deposit the amount as directed, the Sub-Registrar, Dungapur made reference to the Collector (Stamp), Circle, Udaipur. The Collector (Stamp) vide order dated 30.12.06 while recording the absence of the appellant, proceeded to assess the deficient Stamp Duty at Rs. 3,20,126/-, Registration Charges Rs. 13,350/- and Penalty Rs. 6524/- and accordingly, directed the appellant to deposit Rs. 3,40,000/-.

6. Aggrieved by the order passed by the Collector (Stamp) as aforesaid, the appellant preferred a writ petition before this Court, which stands dismissed by the learned Single Judge by the order impugned, on the ground of availability of alternative remedy of revision under Section 65 of the Act of 1998.

7. Learned counsel appearing for the appellant submits that the reference was made by the Tehsildar, straightaway without considering the stand of the appellant giving him an opportunity of hearing and calling for the original instrument from the appellant. Learned counsel would submit that the appellant was never served with notice and the order impugned has been passed by the Collector (Stamp) taking proceedings ex-parte against the appellant without giving him an opportunity of hearing, in gross violation of principle of natural justice. Learned counsel would submit that the order impugned passed by the Collector (Stamp) is a non-speaking order inasmuch as, while passing the order and creating a huge liability against the appellant, no reasons have been recorded justifying the assessment of the deficient stamp duty. Learned counsel submitted that it was obligatory on the part of the Collector (Stamp) to pass a speaking order. Learned counsel submitted that since the order impugned has been passed by the Collector (Stamp) in gross violation of the principles of natural justice, the availability of alternative remedy which is not efficacious, should not come in the way of the appellant and the learned Single Judge has seriously erred in dismissing the writ petition on the ground of availability of alternative remedy.

8. On the other hand, the counsel appearing for the respondents submitted that since the appellant did not appear pursuant to the notice issued, the Collector (Stamp) was absolutely justified in taking proceedings against the appellant ex-parte. Learned counsel submitted that the deficient stamp duty, registration charges and penalty, have been assessed by the Collector (Stamp) inasmuch as, on the basis of the inspection made, it was found that the value of the property is much more than the value assessed by the Sub-Registrar and therefore, the same cannot be faulted with.

9. We have considered the rival submissions and perused the material on record.

10. It is pertinent to note that in the first instance, when the sale deed in question was presented by the appellant for registration before the Sub-Registrar, Dungarpur, the value of the property as disclosed in the sale deed was not believed to be correct and the Sub-Registrar after due inquiry, assessed the value of the property at Rs. 11,64,120/- as against Rs. 50,001/- disclosed in the sale deed. It is to be noticed that the notice issued by the Sub-Registrar before making the reference was contested by the appellant by filing a reply thereto, but it appears that without considering the reply filed by the appellant contesting the proposed reference, straightaway reference was made by the Sub-Registrar to the Collector (Stamp) whereas, as per mandate of provisions of sub-section (2) of Section 51, where any instrument is undervalued and not duly stamped is registered, the Registering Authority is required to call for the original instrument from the party and after giving the party liable to pay stamp duty an opportunity of being heard and recording the reasons in writing and furnishing copy thereof to the party shall impound it and on failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall for the purposes of the said section, shall be deemed to be original of such instrument and send it to the Collector for taking action under sub-section(3). No such exercise appears to have been taken by the Sub Registrar before making the reference, as aforesaid. Be that as it may, even the Collector (Stamp) also does not appear to have extended a reasonable opportunity of hearing to the appellant as per the mandate of provisions of sub-section(3) of Section 51. Though, the order impugned makes a reference of the notice being issued to the appellant, but, there is nothing on record suggesting that the same was duly served upon the appellant. In any case, before determining the market value of the property and the deficient duty including the penalty payable, the Collector (Stamp) was required to make an enquiry in the prescribed manner to determine the market value. A perusal of the order impugned reveals that no such enquiry worth the name was made by the Collector (Stamp) and while recording the absence of the appellant, accepting the market value of the property as proposed by the Sub Registrar and determined the deficient duty, registration charges and penalty, by merely recording its ipse dixit, which as a matter of fact, is in excess of the deficient duty and registration charges, as determined by the Sub Registrar, while making the reference. In the considered opinion of this court, the order impugned in the writ petition passed by the

Collector (Stamp) without recording any reasons, justifying the levy of deficient stamp duty, registration charges and penalty, is a cryptic and non speaking order, which is not sustainable in the eyes of law.

11. Coming to the question of availability of statutory remedy of revision available to the appellant, suffice it to say that apparently, the order impugned has been passed by the Collector (Stamp) in most perfunctory manner in gross violation of the relevant provisions of the Act of 1998 and elementary principles of natural justice and therefore, with utmost respect, in our considered opinion, the learned Single Judge, was not correct in non suiting the appellant on the ground of availability of remedy of revision under the provisions of Section 65 of the Act of 1998.

12. In the result, the special appeal succeeds, it is hereby allowed. The order impugned dated 2.7.08 passed by the learned Single Judge is set aside. The writ petition is allowed. The order impugned in the writ petition dated 30.12.06 passed by the Collector (Stamp), Circle, Udaipur, is set aside. The matter shall stand remanded to the Collector (Stamp), Circle Udaipur, for passing the order afresh, after holding an enquiry in the prescribed manner and extending a reasonable opportunity of hearing to the appellant, in accordance with law. The parties shall appear before the Collector (Stamp) Circle Udaipur, on 4.5.16. No order as to costs.

