(2005) 07 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition No''s. 5888 of 2001 (MS)

Laxmi Prapannacharya APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:
Stamp Act, 1899 — Section 2(18), 2(22), 2(24), 22(4), 4

Citation : AIR 2006 Utt 7 : (2005) 2 RD 442 : (2006) 1 UC 436 : (2005) 2 UD 511

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Pramod Belwal, for the Appellant;

Judgement

Rajesh Tandon, J.—By the present writ petition, the petitioner has sought a writ of certiorari quashing the orders dated 18-4-1995 and 21-6-1993 by which the petitioner was directed to pay deficit stamp duty.

2. Briefly stated notice was issued to the petitioner u/s 47A of the Stamp Act, for realisation of the deficit stamp duty on a trust deed executed in respect of a property situated at Tilak Marg, Rishikesh and belonging to Mahant Ashok Prapanna of temple of Bharat Ji Maharaj. The petitioner objected for realisation of stamp duty on the ground that on 31-3-1992 trust was constituted and there is a temple over the land. The petitioner has submitted that the trust deed dated 31-3-1992 is not a settlement of property but it is a simple trust deed and is not amenable to the stamp duty.

3. The counsel for the petitioner has raised two points:

(1) That the document dated 31-3-1992 being a trust deed cannot amount to settlement.

(2) The market value assessed Rs. 400/-per sq. metre for the land and Rs. 1500/-per sq. metre for the building is wholly illegal.

4. The "settlement" has been defined u/s 2(24) of the Indian Stamp Act, as under:

(24) ''settlement''-- ''settlement'' means any non-testamentary disposition in writing of movable or immovable property made--

(a) In consideration of marriage;

(b) For the purpose of distributing property of settler among his family, or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(c) For any religious or charitable purpose; and includes an agreement in writing to make such a disposition and where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust, or otherwise the terms of any such disposition.

5. From the above definition it will appear that any non-testamentary disposition in writing of movable or immovable property for any religious or charitable purpose shall be recorded as a ''settlement''. The stamp duty is payable on a ''settlement'' in accordance with Article 58. True stamp duty payable on a ''settlement'' is same as bond (No. 15) for a sum equal to the amount or value of the property settled:

6. The Apex Court in the case Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, has defined the transfer of property as under:

In this case we are not dealing with a deemed gift. Therefore we need not consider the scope of Section 4. Before an act can be considered as a gift as defined, there must be a transfer of property by one person to another. "Person" is defined as including a Hindu undivided family in Section 2(xviii). Section 2 (xxii) says that "property" includes any interest in property movable and immovable. Section 22(iv) defines "transfer of property" thus ;

Transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing includes--

(a) the creation of a trust in property;

(b) the grant or creation of any lease, mortgage, charge, easement, license, power, partnership or interest in property;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.

7. Referring to the above judgment of the Apex Court in the case The Chief Controlling Revenue Authority Vs. Banarsi Dass Ahluwalia, , a Special Bench of Delhi High Court has held as under:

The expression ''settlement'' has originated in the English law of real estate. Historically, ''settlement'' was a device adopted by the English landed gentry to order the future destiny of their lands and to prevent them from being sold out of their family. The creation of a settlement determined the tenure by which an estate or interest in land may be held. An estate or interest, prescribed the length of time for which a person was entitled to hold land such as, free simple (virtually for every) or in Tail (for as long as he and his descendants lived), for life or for a period of years. Formerly, the capacity of a land owner at common law to create future interests was restricted only to the simplest forms of settlement. This was liberalized by coming into vogue of the device of trust which enabled the creation of equitable estate. The equitable estate was a pliable instrument that could be moulded into suitable forms to extend the modes of dealing with property, i.e. of settlement. From its inception, therefore, ''settlement'' has a larger ambit than "trust". This is reflected in the definition of''settlement'' in Section 2(24) of the Stamp Act which includes instruments made "whether by way of declaration of trust or otherwise". In fact, ''settlement'' may be of other kinds than those specified in Section 2(24). They can also be made differently such as by "Will". They are excluded from the definition of Section 2(24).

8. The counsel for the petitioner has argued that it will not amount to transfer of the property. This argument has been rejected by the Special Bench of Delhi High Court on the ground that it is made for a charitable purpose and even it is made by way of a trust, it is a charitable trust and the word ''disposition'' as used in Section 2(24) has a wide connotation and it is not restricted to a transfer as such. Therefore, the question No. 1 is decided against the petitioner.

9. So far as the second question of valuation is concerned since the valuation of the land and building for which ''settlement'' has been formed was done by the authority concerned on the basis of presumption and surmises and had not calculated the value of the property in dispute on the basis of evidence, therefore, both the orders are liable to be quashed.

10. In 2004 ACJ 402 Sho Prakash Gupta v. State of U.P. 2000 (18) LCD 1203 Aniruddha Kumar v. Chief Controlling Revenue Authority, U. P. a Division Bench of the Allahabad High Court has held that the stamp duty has to be paid in accordance with the market rate on the date when the deed was executed. It has been held as under:

It is well settled that market value of the property has to be determined with reference to the date on which the document is executed. Market value as such keeps on varying and changing. Any subsequent improvement or change in the nature or user of the land which may result into enhancement of the market value of the property is not to be taken into account and it is only the value of the property on the date of execution of the document that is to be considered for the purpose of determination of proper stamp duty payable on the instrument.

11. So far as the penalty is concerned the revisional Court has rightly waived the same.

12. In view of the aforesaid facts and circumstances the findings of the Collector as well as the revisional Court are confirmed with regard to payment of stamp duty treating the document as ''settlement''.

13. So far as the valuation of the property in dispute is concerned the findings of both the courts are quashed.

14. The matter is sent back to the Collector (Stamps), Dehradun for a fresh assessment of the market value of the property at the time of execution of the deed, on the basis of evidence led by both the parties. Parties shall be at liberty to adduce fresh evidence, if so desires.

15. Accordingly the writ petition is partly allowed. No order as to costs.

