(2007) 07 AHC CK 0214

In the Allahabad High Court

Manoj Kumar Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:
Stamp Act, 1899 — Section 56

Citation : (2007) 4 AWC 3696

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—One Gorakhnath Jaiswal was a judgment debtor. Appeal filed by him was also dismissed, the matter thereafter was taken to the Hon''ble Supreme Court. During the pendency of the SLP orders were issued by the Hon''ble Supreme Court directing return of the money which Gorakhnath Jaiswal had withdrawn during the pendency of the proceedings. The amount was 34 lacs. The Hon''ble Supreme Court on 22.03.1999 issued following directions:

In so far as the property to Gorakhnath Jaiswal is concerned, we direct Gorakhnath Jaiswal to appear in person or through Pairokar before the District Judge, Ghazipur, on the date fixed by him for auction of the property so as to assist the Court in identifying the property to enable it to be put to auction in terms of the earlier orders of this Court.

2. Accordingly the property of Gorakhnath was put to auction for realization of the money under orders of the Hon''ble Supreme Court.

3. In the auction so held no one participated. The matter came up for consideration before the Hon''ble Supreme Court on 30.07.1999. When the offerers received by Gorakhnath privately were Drought to the knowledge of the Court, the Hon''ble Supreme Court on 30.07.1999 passed the following orders;

From the report submitted by the District Judge, Ghazipur it appears that when the properties of Goraknath Jaiswal were sought to be put to auction, no person appeared to participate in the auction on the appointed date and time. Learned Counsel for Gorakhnath Jaiswal submits that nobody had probably appeared because of water logging and rain etc. Learned counsel states that some private parties have agreed to buy portions of the land and he has received six drafts in the sum of Rs. 50.000/-, 25,000/- 2,25,00/-, 2,25,000/-, 25,000/- and 25,000// totalling Rs. 5,15.000/- and that those drafts are in the name of the Registrar of the Supreme Court, We grant him the permission. This fact shall be brought to the notice of the District Judge, Ghazipur, before who Gorakhnath Jaiswal shall appear in person or through counsel in the week commencing 9th August, 1999 when further orders shall be obtained from the District Judge. Ghazipur with regard to the balance property etc.

4. Accordingly the matter was considered by the District Judge, Ghazipur on 11.10.1999 and orders were passed. The relevant part of this order reads as follows:

The remaining land has to be sold to satisfy the said amount. The parties before me admit and agree that there are private buyers who are ready to purchase the remaining land. They also have requested that sale by that way as done earlier may be permitted. The permission is granted The plaintiff''s side has to arrange the sale to private persons and submit the drafts of the relevant amounts in this Court within a month. The Hon''ble Supreme Court may be informed accordingly.

5. It is admitted to the petitioner that certain portion of the land belonging to the Gorakhnath Jaiswal has been purchased privately in pursuance to the permission granted by the District Judge as quoted herein above. In order to evade payment of stamp duty the petitioner did not submit any document for its registration qua the transfer of the property.

6. With the help of the order of the District Judge dated 11.10.1999 an application for mutation in record qua the property sold was made.

7. This mutation application has been treated as an instrument and on the value of the property transferred, stamp duty has been demanded. The Collector Gghazipur under his order dated 06.11.2004 determined Rs. 85,040/- as the stamp duty payable and further Rs. 1,70,000/- was imposed as fine.

8. Vide order dated 24.5.2003 the petitioner made an application for recall of the order on the ground that it was ex parte. He thereafter made an application for transfer of the proceedings before Inspector General, Ghazipur, The application was allowed and the matter was transferred to the Court of Collector Stamp.

9. The Collector Stamp vide his order dated 06.11.2004 re-affirmed the demand after affording opportunity to the petitioner.

10. The petitioner filed an appeal u/s 56(1) of the Indian Stamp Act which was numbered as Appeal No. 18 of 2004. The Appeal has also been dismissed under the order of the Commissioner dated 24.1.2006. These orders are being

questioned on the following ground:

(a) The sale of the property has been effected with the. permission of the Court and, therefore, no stamp duty is payable(b) Even otherwise stamp duty can be demanded only on the value of the transaction as recorded and not on the market value of the property in view of Article 18 of Schedule 1-B to the Indian Stamp Act as applicable in the State of Uttar Pradesh.

(c) Lastly it is contended that property has been purchased through court auction, therefore, no stamp duty can be demanded. In support thereof Counsel for the petitioner has also placed reliance upon the judgment of the Supreme Court reported in Municipal Corporation of Delhi Vs. Pramod Kumar Gupta,

11. I have heard counsel for the parties and have gone through the records of the case.

12. The contentions raised on behalf of the petitioner are totally misconceived. From the orders of the Hon''ble Supreme Court as well. as that of the District Judge quoted above it is apparently clear that the effort made by the Court to put the property of Gorakhnath Jaiswal to public auction did not fructify. Therefore, Gorakhnath Jaiswal privately received offers for sale of his property.

13. The Supreme Court considering the request of Gorakhnath Jaiswal granted such permission for private sale. No public auction has taken place. The permission granted by the Supreme Court as well by the District Judge for sale of property of Gorakhnath Jaiswal through private negotiations cannot be termed as a sale by public auction through court of law. The contention raised on behalf of the petitioner is, therefore, rejected.

14. This Court records that the purchase of the property by the petitioner is only through private negotiation and on instruments recording such sale stamp duty is to be charged in accordance with the.. Indian Stamp Act.

15. So far as Article 18 of Schedule I-B to the Indian Stamp Act is concerned, it is worthwhile to refer to the language of the said Article for ready reference Article 18 is being quoted below:

18. Certificate of Sale-(in respect of each property put up as a separate lot and sold), granted to the purchaser of any property sold by public auction by a Court, or by an officer authority or body empowered under any law, for the time being in force, to sell such property by public auction and grant the certificate.

16. From the aforesaid Article it is apparently clear that purchaser of a properly through public auction alone is covered under the said Article. The sale certificate issued in favour of a purchase through public auction by the Court of Law/ Authority alone is to be charged with stamp duty provided by Article 18 of Schedule 1-B. It is admitted on record that no sale certificate was ever issued in favour of the petitioner nor he had purchased the property by public auction. Therefore, in the opinion of the Court Article 18 of Schedule 1-B would have no

application. Not all sales effected with the permission of the Court like the one in the facts of the present case are covered by Article 18 of Schedule 1-B. The contention on behalf of the petitioner is, therefore, rejected.

17. So far as the judgment of the Hon''ble Supreme Court reported in Municipal Corporation of Delhi Vs. Pramod Kumar Gupta, is concerned reference may be had to paragraph 4 of the judgment wherein the issue as to what will constitute an instrument for the purposes of levy an stamp duty has been explained with reference to the definition of ''instrument'' as contained in the Indian Stamp Act. The Hon''ble Supreme Court has held that a certificate under Order 21 Rule 94 of the CPC cannot be termed as instrument therefore, held such certificate cannot be subject matter of the Indian Stamp Act. No certificate has been issued in favour of the petitioner by any Court of law in the facts of this case. The said judgment does not support the case of the petitioner and is clearly distinguishable.

18. Since the petitioner had not presented any document qua transfer of the title over the property in question and made an application with the help of the order of the Courts suggesting a transfer by the Court, the authorities have rightly treated the mutation application as an instrument and have therefore, has rightly demanded the stamp duty.

19. This Court may also record that since there was a deliberate attempt on the part of the petitioner to avoid payment of Stamp Duty the penalty levied alone does not warrant any interference.

20. In view of the said conclusion the writ petition is dismissed.