(2017) 04 AHC CK 0161

In the Allahabad High Court

Case No : 6879 of 2017

Meenu Pathak APPELLANT

Vs

Revisional Authoirty u/s 56 of 1899 and others RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Land Acquisition Act, 1894, Section 13-A -

Uttar Pradesh Panchayat Raj Act, 1947, Section 33, Section 29, Section 56, Section 47A, Section 95(g)

Citation : (2017) 04 AHC CK 0161

Hon'ble Judges : Surya Prakash Kesarwani

Bench : Single Bench

Advocate : Ramendra Asthana, Anand Kumar Pandey, Bhrigu Jee Singh

Judgement

1. Heard Sri Ramendra Asthana, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Sri Anand Kumar Pandey and Sri B.J. Singh, learned counsels for respondent no. 5. Facts: 2. Briefly stated facts of the present case are that Sri Anand Pathak and Smt. Anuradha Pathak (respondent nos. 3 and 4) have executed a sale deed on 05.03.2012 in favour of Smt. Asha Pathak (respondent no. 5). According to respondent nos. 3, 4 & 5, in the said sale deed, inadvertently Khasra Plot No. 1916 measuring 0.016 hectare was mentioned instead of Khasra Plot No. 477 measuring 0.012 hectare and Khasra Plot No. 480 measuring 0.004 hectare out of an area of 0.016 hectare of village Nagwa, Pargana, Tehsil and District Ballia. Thus, under the aforesaid sale deed dated 05.03.2012 a total land of 0.016 hectare was sold. The boundaries were correctly shown in the sale deed but Khasra Plot No. 1916 was inadvertently mentioned instead of Khasra Plot Nos. 477 and 480. Subsequently, the respondent nos. 3 and 4 executed another sale deed dated 03.06.2013 in

favour of the petitioner on 01/02.06.2013 with respect to several plots including Khasra Plot Nos. 477 and 480. Since, according to the respondent nos. 3, 4 & 5 there was a mistake in the sale deed dated 05.03.2012 in mentioning the Khasra Plots and as such a correction deed dated 08.08.2013 was executed by the respondent nos. 3 and 4 to correct the earlier executed sale deed dated 05.03.2012 whereby Khasra Plot Nos. 477 and 480, for areas mentioned above, were substituted in place of Khasra Plot No. 1916. The respondent no. 5 also filed Original Suit No. 460 of 2013 on 23.08.2013 for permanent injunction against the petitioner and the respondent nos. 3 and 4 with respect to land of Khasra Plot Nos. 477 and 480 measuring 0.016 hectare of the village in question. In the meantime, the Sub-Registrar, Ballia made a reference dated 26.08.2013 to the Addl. District Magistrate (F/R), Ballia alleging deficiency of court fees of Rs. 16,220/- and registration fees Rs. 8,060/- on the ground that the deed dated 08.08.2013 should be charged to duty, as a sale deed and not as a correction deed. Consequently, a Stamp Case No. 82 of 2013 (State v. Asha Pathak) registered and notices under Section 33/47A of the Indian Stamp Act, 1899 (hereinafter to be referred as the ''Act'') with respect to the instrument dated 08.08.2013 were issued to the respondent no. 5 by the Addl. District Magistrate (F/R), Ballia. The respondent no. 5 submitted a reply dated 30.09.2013 which was accepted by the Addl. District Magistrate (F/R), Ballia and an order dated 30.07.2014 was passed in Stamp Case No. 82 of 2013 holding as under: "VERNACULAR MATTER OMITTED" 3. Against the aforesaid order dated 30.07.2014 the petitioner filed a Revision No. 21/B/C/2014150000717 of 2014 in the court of the Commissioner, Azamgarh Division, Azamgarh. The aforesaid revision of the petitioner under Section 56 of the Act was dismissed by the Deputy Commissioner (Stamp), Azamgarh Division, Azamgarh by the impugned order dated 04.11.2016. Aggrieved with the order dated 30.07.2014 passed by the Addl. District Magistrate (F/R), Ballia holding the correction deed dated 08.08.2013 to be sufficiently stamped and the order dated 04.11.2016 passed by the Deputy Commissioner (Stamp), Azamgarh Division, Azamgarh in the aforesaid revision, the petitioner has filed the present writ petition. Submissions: 4. Sri Ramendra Asthana, learned counsel for the petitioner submits that if correction deed of the respondent no. 5 is registered then the petitioner shall cease to be the owner of Khasra Plot Nos. 477 and 480 which shall stand incorporated in the sale deed of the respondent no. 5 dated 05.03.2012 while these plots were in fact sold by the respondent no. 3 and 4 to the petitioner by separate sale deed dated 03.06.2013. A Civil Suit No. 184 of 2015 has been filed by the petitioner against the respondent nos. 3, 4 & 5 praying for declaration that the correction deed in question be declared illegal and ineffective instrument. He submits that on the basis of said correction deed, the respondent no. 5 cannot have any right over the disputed Khasra Plot Nos. 477 and 480 for an area of 0.016 hectare. The respondent no. 5 has also filed a Suit No. 460 of 2013 in the court of Civil Judge (Junior Division), Ballia for permanent injunction against the petitioner and the respondent nos. 3 and 4 with respect to aforesaid two Khasra plots which is also pending. He submits that registration of the aforesaid correction deed shall adversely affect the title of the petitioner over the disputed property and therefore, the petitioner has a right to oppose the aforesaid correction deed. He submits that the correction made in the original sale deed by the correction deed in question is wholly illegal. Reliance has been placed upon a Division Bench judgment in the case of Basdeo Singh v. State of U.P. And others 2004 (96) RD 612. 5. Learned Standing Counsel as well as learned counsel for respondent nos. 3, 4 & 5 support the impugned orders and submit that the determination of stamp duty with respect to the correction deed in question is a matter between State authorities and respondent no. 5 and as such the petitioner is neither aggrieved person nor has locus standi to challenge the impugned orders. It is further submitted that the proceedings under Section 33/47A of the Act was initiated by the Addl. District Magistrate (F/R), Ballia against the respondent no. 5 to demand stamp duty which is a tax and proceedings were concluded in favour of respondent no. 5 holding that the correction deed is sufficiently stamped. There was neither any demand against the petitioner nor the petitioner is a party to the original proceedings in Stamp Case No. 82 of 2013 and as such the petitioner is not an aggrieved person. The petitioner is not affected at all by the impugned orders and as such the writ petition is not maintainable. It is further submitted that the title suit is pending in civil court in which the title over the disputed property may be decided. Discussion and Findings: 6. I have carefully considered the submissions of learned counsels for the parties and with their consent this writ petition being finally heard. 7. Considering the facts of the case and submissions of learned counsels for the parties, following questions are framed for consideration: (i) Whether the findings of the authorities holding the correction deed to be sufficiently stamped is correct? (ii) Whether the petitioner is a person aggrieved from the order dated 30.07.2014 passed by Addl. District Magistrate (F/R), Ballia in Stamp Case No. 82 of 2013, under Section 33/47A of the Act as well as the order dated 04.11.2016 passed in Revision under Section 56 of the Act? (iii) Whether the petitioner has locus-standi to challenge the aforesaid two impugned orders holding the correction deed to be sufficiently stamped? Question No. (i) Whether the findings of the authorities holding the correction deed to be sufficiently stamped is correct? 8. Undisputedly, the respondent nos. 3 and 4 were the owners of disputed Khasra Plot Nos. 477 and 480 and Khasra Plot No. 1916. They have sold an area of 0.016 hectare of land to the respondent no. 5 by sale deed instrument dated 05.03.2012. The boundaries of the vended land shown in the aforesaid sale deed is also undisputed. The dispute has been raised by the petitioner with regard to the sufficiency of stamp duty payable on the correction deed dated 08.08.2013 executed by the respondent nos. 3 and 4 in favour of the respondent no. 5 to correct the description of vended plot of sale deed instrument dated 05.03.2012. The adjudicating authority as well as the revising authority have recorded a concurrent finding of fact that there is no change by the correction deed in the boundaries of the vended property sold by the respondent nos. 3 and 4 to the respondent no. 5 by sale deed instrument dated 05.03.2012 and thus there is no basic change sought to be effected by the correction deed dated 08.08.2013 in the original sale deed dated 05.03.2012. The correction deed has been executed to correct in the original sale deed the khasra plot number. On these facts, the fact finding authority came to the conclusion that in the absence of any basic change sought to be effected by the correction deed in question, there is no deficiency of stamp duty. This is a finding of fact which does not suffer from perversity. Under the circumstances, this Court has no difficulty to hold that the correction deed dated 08.08.2013 has been sufficiently stamped. 9. Similar controversy with respect to correction of a clerical or arithmetical error came for consideration before a Division Bench of this Court in the context of Section 13-A of the Land Acquisition Act in the case of Basdeo Singh v. State of U.P. And others 2004 (96) RD 612 (para 17) and the Division Bench has held as under: "We are further of the view that an arithmetical mistake has to be taken to be a mistake of calculation and a clerical mistake has to be taken to be a mistake in writing or typing. A mistake requiring elaborate arguments on question of fact or law cannot be categorized as clerical or arithmetical mistake. The petitioner has sought to claim a right asserting that there was an error of decision. Such grievance could be raised only in a proceeding challenging the award after getting reference made as contemplated under section 18 of the Act and not in the proceedings under Section 13-A of the Act. The question of enhancement of the compensation as sought for in the present case has to be determined in the appropriate proceeding after the reference is made as contemplated under section 18 of the Land Acquisition Act." (Emphasis supplied by me) 10. In the case of Vineeta Agarwal v. Additional Commissioner (Admn.) and others 2013 (199) RD 745, this Court considered the provisions of the Indian Stamp Act, with respect to sufficiency of stamp duty of a correction deed for correcting the plot number mentioned in the original deed and held as under: "7. The mistake in mentioning the plot number in the lease deed is purely a clerical error which has arisen due to inadvertence of the parties, specially the office of the Allahabad Development Authority. The said correction deed does not create any new rights in favour of the petitioner. The petitioner by the said two documents read together only gets right in plot no.D-393 and, therefore, is liable for payment of stamp duty only once. 8. In Writ Petition No. 20061 of 2011 C.L. Memorial Girls Post Graduate College v. Deputy Commissioner (Administration) and another dated on 16.5.2012, I have already held that a deed of correction to rectify certain clerical mistake arising in the sale deed already registered would not be liable to payment of stamp duty as a fresh sale deed and would be stamped only as a correction deed. 9. In view of the above, the aforesaid deed dated 7.2.2006 is a deed of correction and since it was necessitated on account of clerical mistake it would be chargeable to stamp duty under Article 34-A of Schedule 1-B of the Indian Stamp Act, 1899 and stamp duty of Rs.10/- alone shall be payable on it. The petitioner has already paid a stamp duty of Rs.100/- on the said deed." (Emphasis supplied by me) 11. In Writ-C No. 5797 of 2006 (Ilam Chand v. State of U.P. And others) similar controversy arose before another Bench of this Court and it was held as under: "If the map, Annexure 9, is correct then there is no question of exchange of property. No road is shown towards south of the property in the map. Eastern and western boundaries remaining constant, both the deeds could relate to two different properties only if towards south also there was road. In the original sale deed road was shown towards south while according to the map Annexure 9 of the writ petition road is in the north. However, in the south of the entire property of the transferor there is no road hence there is no question of exchange of property. Without rectification the deed dated 1.2.2002 does not relate to any property. Accordingly, it was merely a typing error in the description of boundaries that northern and southern boundaries had been interchanged. Accordingly, writ petition is allowed. Impugned orders are set aside. The correction deed if not registered shall at once be registered. The amount deposited by the petitioner under interim order passed in this writ petition shall be returned to him within four months from the date of production of certified copy of this order." 12. In view of the above discussion, I find no substance in this writ petition, inasmuch as, the correction deed dated 08.08.2013 does not create any new right in favour of respondent no. 5. Since the deed dated 08.08.2013 is a correction deed which was executed to correct the clerical mistake in the original deed dated 05.03.2012 and as such it would be chargeable to stamp duty under Article 34-A of the Schedule 1-B of the Indian Stamp Act, 1899 and stamp duty of Rs. 10/- alone shall be payable on it. The respondent no. 5 had paid stamp duty of Rs. 100/- on the correction deed dated 08.08.2013 and as such the correction deed is sufficiently stamped. 13. Question no. 1 is answered accordingly. Question No. (ii) - Whether the petitioner is a person aggrieved from the order dated 30.07.2014 passed by Addl. District Magistrate (F/R), Ballia in Stamp Case No. 82 of 2013, under Section 33/47A of the Act as well as the order dated 04.11.2016 passed in Revision under Section 56 of the Act? Question No. - (iii) Whether the petitioner has locus standi to challenge the aforesaid two impugned orders holding the correction deed to be sufficiently stamped? 14. Before I proceed to examine the afore noted two questions, it would be appropriate to examine first the nature of levy of stamp duty under the Act. 15. In Blacks'' Law Dictionary 6th Edition 1990 the description of stamp duty has been given as follows: "In old English law, dues imposed upon and raised from stamps upon parchment and paper, and forming a branch of perpetual revenue of the Kingdom." 16. In Halsberry Law of England Vol. 44 (1) England para 1010, the nature and charge of stamp duty has been described as under: "Stamp duty is chargeable on instruments and not on transactions. The liability of an instrument to stamp duty arises at the moment at which it is executed and depends on the law enforce and the circumstances which exist at that time." 17. Section 3 of the Act is the charging section which contains the heading "instrument chargeable with duty". It provides that instruments of the description given in three schedules namely Schedule 1, 1-A and 1-B of the Act shall be chargeable with duty in the circumstances set out in the section. Thus, from the bare reading of charging section it is clear that only an instrument is chargeable with duty. In other words stamp duty is a duty on an instrument and not a duty on transaction. Thus, from the aforesaid statutory provisions, it is clear that the Indian Stamp Act is a fiscal measure enacted to raise revenue for the State on certain classes of instruments. It is a taxing statute providing for levy of stamp duty on execution of instruments as provided in Section 3 of the Act. The payments of stamp duty has to be made as per provisions of Section 10 of the Act and as such payment shall be indicated on such instruments by means of stamp as prescribed. 18. In the case of Board of Revenue, Uttar Pradesh v. Rai Saheb Sidhnath Mehrotra AIR 1965 SC 1092, a Constitution Bench of Hon''ble Supreme Court held that the Stamp Act is a taxing statute and it must be construed strictly, and if two meanings are equally possible, the meaning in favour of subject must be given effect to. In the case of Hindustan Steel Co. v. M/s. Dileep Construction Company 1969 1 SCC 597 Hon''ble Supreme Court held that Stamp Act is fiscal measure enacted to secure revenue for the State on certain classes of instrument. The stringent provisions of the Act are conceived in the interest of revenue. 19. Section 29 of the Act describes the person by whom stamp duty shall be payable. Section 48 provides that all dues, penalties and other sums, required to be paid under this Chapter, may be recovered by the Collector by distress and sell of move-able property of the person from whom the same are due, or by any other process for the time being enforced for recovery of arrears of land revenue. 20. From perusal of the scheme of the Act, particularly the provisions aforementioned, it is clear that stamp duty is a tax which is chargeable on instrument and is payable by the person specified under the Act. Section 33/47A of the Act provides for examination and impounding of instruments and demand/ recovery of deficiency of stamp duty and penalty. The liability under these provisions may be created only upon the person who is party to the execution of the instrument. The proceedings against respondent no. 5 was initiated under Section 33/47A of the Act with respect to the correction deed in question. The petitioner was neither party to the said proceeding nor demand of any stamp duty was sought to be made from her. Under the circumstances, when the statutory authorities under the Act have found the correction deed instrument in question to be sufficiently stamped, that has not adversely affected the petitioner with regard to sufficiency of stamp duty. Under the circumstances, the petitioner is neither an aggrieved person nor she has locus standi to challenge the impugned orders. 21. The word "aggrieved person" has not been defined under the Act. In the case of Dharam Raj v. State of U.P. & Ors (2009) 108 RD 689 a Division Bench of this Court considered the question as to who may be an aggrieved person and held as under: "12. According to our opinion a "person aggrieved", means a person who is wrongly deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal in convenience. "Person aggrieved" means a person who is injured or he is adversely affected in a legal sense. 13. It is settled law that a person who suffers from legal injury only can challenge the act/ action/ order etc. by filing a writ petition. Writ petition under Article 226 of the Constitution is maintainable for enforcing a statutory or legal right or when there is a complaint by the petitioner that there is a breach of the statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfied the Court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction (Utkal University etc. v. Dr. Nursingha Charan Sarangi and others AIR 1999 SC 943, and Laxaminarayan R. Bhattad and others v. State of Maharashtra and another (2003) 5 SCC 413) 14. legal right is an averment of entitlement arising out of law. It is, in fact, an advantage or benefit conferred upon a person by a rule of law, Shanti Kumar R. Canji v. Home Insurance Co. of New Yord AIR 1974 SC 1719, and State of Rajasthan v. Union of India and others AIR 1977 SC 1361. 15. In Jasbhai Motibhai Desai v. Roshan Kumar Hazi Bashir Ahmad and others AIR 1976 SC 578, the Apex Court has held that only a person who is aggrieved by an order, can maintain a writ petition. The expression "aggrieved person" has been explained by the Apex Court observing that such a person must show that he has a more particular or peculiar interest of his own beyond that of the general public in seeing that the law is properly administered. In the said case, a cinema hall owner had challenged the sanction of setting up of rival cinema hall in the town contending that it would adversely affect monopolistic commercial interest, causing pecuniary harm and loss of business from competition. The Hon''ble Apex Court observed as under: "Such harm or Loss is not wrongful in the eye of law because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity. Judicially, harm of this description is called demnium sine injuria. The term injuria being here used in its true sense reason why law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to legal wrong. He has suffered no grievance. He has no legal peg for justiciable claim to hang on. Therefore, he is not a "person aggrieved" to challenge the ground of No-objection Certificate." 16. In Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd. and others (1997) 4 SCC 452, the Hon''ble Supreme Court again considered the meaning of "person aggrieved" and "locus of a rival Government undertaking" and held that a rival businessman cannot maintain a writ petition on the ground that its business prospects would be adversely affected. 17. The view taken by us that the petitioner is not a person aggrieved, thus he has no locus standi to file the present writ petition thereby challenging the order dated 16.03.2009 passed by Sub-Divisional Magistrate, Jai Singh Pur, District Sultanpur is also supported by the decision of this Court in the case of Suresh Singh v. Commissioner, Moradabad Division, where it was held that in any inquiry under section 95(g) of the U.P. Panchayat Raj Act, 1947, the complainant who was Up-Pradhan could be a witness in an inquiry but had no locus standi to approach this Court against the order of the State authorities, for the reasons that none of his personal statutory right are affected. 18. As such the petitioner has no locus standi to file the present writ petition under Article 226 of the Constitution of India. Even otherwise having regard to the facts and circumstances of the case, we are not inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution of India." (Emphasis supplied by me) 22. The petitioner has not suffered any injury on account of acceptance of the case of the respondent no. 5 that the correction deed dated 08.08.2013 executed by respondent nos. 3 and 4 in favour of respondent no. 5 is sufficiently stamped. The proceeding under Section 33/47A of the Act was initiated against respondent no. 5 with respect to the aforesaid correction deed. Under the circumstance, the petitioner was not to suffer either on confirmation of demand of stamp duty against the respondent no. 5 or on acceptance of the case of the respondent no. 5 that the correction deed is sufficiently stamped. 23. It is settled law that a person who suffers from legal injury only can challenge the act, action, order etc. Writ petition under Article 226 of the Constitution of India is maintainable for enforcing a statutory or legal right or there is a complaint by the petitioner that there is a breach of statutory duty on the part of the authorities. Such a person must show that he has a more particular and peculiar interest of own beyond that of the general public in seeing that the law is properly administered. There must be a judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The court can enforce the performance of statutory duty by public bodies through its writ jurisdiction at the behest of a person provided such person satisfies the court that he has a legal right to insist on such performance. The existence of such right is the condition precedent to invoke the writ jurisdiction. A legal right is an averment of entitlement arising out of law. It is, in fact, a advantage or benefit conferred upon a person by rule of law. A writ petition can be maintained only by a person aggrieved. Normally a "person aggrieved" must be a man who has suffered legal grievance, a man against whom a decision has been pronounced which has wrongly deprived him of something or wrongfully refused something or wrongfully affected his title to someone. For these settled principles of law, regard may be had to the judgments of Hon''ble Supreme Court in the cases of The Calcutta Gas Company Proprietary Ltd. v. The State of West Bengal AIR 1962 SC 1044, State of Kerala v. A. Lakshmykutty AIR 1987 SC 331, Rani Laxmibai Kshetriya Gramin Bank v. Chand Behari Kapoor (1998) 7 SCC 469, State of Kerala v. K.G.M. Pillai JT 1988 (4) SC 613, Rajendra Singh v. State of M.P. (1996) 5 SCC 460, Utkal University v. Nrusingha Charan Sarangi AIR 1999 SC 943, Laxminarayan R. Bhattad v. State of Maharashtra (2003) 5 SCC 413, Tamilnadu Mercantile Bank Shareholders Welfare Association v. S.C. Sekar (2009) 2 SCC 784, Shanti Kumar R. Chanji v. Home Insurance Co. of Yew York AIR 1974 SC 1719, State of Rajasthan v. Union of India AIR 1977 SC 1361, Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed AIR 1976 SC 578, Thammanna v. K. Veera Reddy AIR 1981 SC 116, M.S. Jayaraj v. Commissioner of Excise, Kerala (2000) 7 SCC 552, Chairman, Railway

Board v. Chandrima Das (2000) 2 SCC 465 and Kabushiki Kaisha Toshiba v. Toshiba Appliances Co. 2008(10) SCC 766 In the case of Sanjay Kumar Gupta & Ors v. Chief Secretary, Govt. of NCT, Delhi and Ors 2002 AWC 413 a Division Bench of this Court has held that unless a person suffers from actual legal injury, he cannot be heard in writ court. He cannot maintain a writ petition merely because he may be beneficiary of the circumstances. 24. In view of the above discussion and the law laid down by Hon''ble Supreme Court and Division Benches of this Court, I have no difficulty to hold that the petitioner is neither a person aggrieved from the order dated 30.07.2014 passed by Addl. District Magistrate (F/R), Ballia in Stamp Case No. 82 of 2013, under Section 33/47A of the Act as well as the order dated 04.11.2016 passed by the Deputy Commissioner (Stamp), Azamgarh Division, Azamgarh in Revision under Section 56 of the Act nor the petitioner has locus standi to challenge the aforesaid two orders by which the correction deed in question has been held to be sufficiently stamped. The question nos. 2 and 3 are answered accordingly. 25. In view of the above discussion, the writ petition is dismissed. Petition Dismissed.