(1987) 02 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 633 of 1979

Mohammad Ali APPELLANT

Vs

Board of Revenue, U.P., Allahabad and Others RESPONDENT

Date of Decision : 17-02-1987

Acts Referred:
Stamp Act, 1899 — Article 35, 5, 2(16), 35

Citation : AIR 1987 All 348 : (1987) 1 AWC 689

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : Rajesh Tandon, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Singh, J.—By means of this writ petition the petitioner has prayed for quashing the order of the Chief Controlling Revenue" Authority dated 8-12-1978 contained in Annexure ''6'' attached with the writ petition and also the order dated 18-1-1975 passed by the Collector, Nainital contained in Annexure ''5'' attached with the writ petition.

2. The petitioner was the highest bidder and had offered Rs. 42,000/- as the Tahbazari in auction of Town Market at Kichha, Nainital for the period from 1st April, 1972 to 31st March, 1973. A deed of agreement was executed as is evident from the term of the deed contained in Annexure T attached with the writ petition.

3. It appears that on the report of the Stamp Inspector it was detected that the deed of agreement contained in Annexure T attached with the writ petition was deficiently stamped. Therefore the deficient stamp to the tune of Rs. 2727.25P. as well as the fine of Rs. 272-40P. was reported to be realised from the petitioner and information was sent by the Town Area Committee to the petitioner as is evident from Annexure ''3'' attached with the writ petition. The petitioner

through his counsel Sri I.N. Tandon sent a reply to the Administrator, Town Area Committee asserting that the requisite stamp duty had been affixed upon the agreement and the agreement could not be termed as bond nor the deficient amount of stamp as indicated nor penalty could be realised from the petitioner. If any amount is taken ''the petitioner shall defend himself and would be legally entitled to recover costs from the Town Area (See Annexure ''4''). Annexure ''5'' is the order passed by the Collector, Nainital. Against the order of the Collector, Nainital the petitioner had preferred a revision petition which has been dismissed by the Chief Controlling Revenue Authority through Annexure ''6''. Aggrieved by the orders contained in Annexures ''5'' and ''6'' aforesaid the petitioner has approached this Court under Art. 226 of the Constitution.

4. Before me the learned counsel for the petitioner has contended that the term of the agreement contained in Annexure ''1'' is in the nature of bid-sheet and no stamp was required under the provisions of the law. According to the learned counsel for the petitioner if any stamp was needed it was duly affixed and it could not be more than the stamp of Rs. 2-50.

5. During the course of arguments the learned counsel for the petitioner has placed reliance upon the ruling reported in Mohd. Yaqoob Khan and Another Vs. The Chief Controlling Revenue Authority, and he has also referred to the rulings reported in Mahabir Prasad Vs. Peer Bux, and B.C. Mohindra Vs. The Municipal Board Saharanpur,

6. Learned counsel for the petitioner also invited my attention to the provisions of Section 5(c) of Schedule I-B of the Stamp Act and it has been contended that the determination by the Stamp authorities regarding deficiency of the stamp on the deed contained in Annexure ''1'' attached with the writ petition is patently erroneous and deserves to be quashed.

7. I have considered the contentions raised on behalf of the petitioner and I have gone through the rulings relied upon by the learned counsel for the petitioner. I have also examined the provisions of Section 5(c) of Schedule I-B of the Stamp Act.

8. The contention of the learned counsel for the petitioner that the order passed by the Chief Controlling Revenue Authority contained in Annexure ''6'' is bad in law and deserves to be quashed, is not acceptable to me in view of the observations made in the ruling relied upon by the learned counsel for the petitioner and reported in Mohd. Yaqoob Khan and Another Vs. The Chief Controlling Revenue Authority, . In paragraph 19 of the aforesaid ruling the following observations have been made : --

"...... In the instant case we are concerned with the lease of tolls, as defined in Section 2(16)(c) of the Stamp Act. As stated earlier, lease included an instrument by which tolls of any description are let. The instrument includes every document by which any right or liability is or purports to be created. Bid-sheet, in our opinion, neither created nor purports to create any right or liability."

9. In the present case giving rise to the writ petition the bare perusal of the agreement contained in Annexure ''1'' attached with the writ petition would indicate that it is not a bid sheet, therefore, the petitioner cannot derive any benefit out of this ruling. Moreover, the deed contained in Annexure T indicates that both the parties had signed the deed and they have agreed to the terms how the Tahbazari was to be realised. I think that the Chief Controlling Revenue Authority has not patently erred in taking the view indicated in Annexure ''6'' attached with the writ petition.

10. Section 2(16)(c) of the Indian Stamp Act defines the term "lease". "Lease" means a lease of immovable property and includes also -

(a), (b) ....

(c) any instrument by which tolls of any description are let.

11. Section 35 of Schedule I-B of the Indian Stamp Act reads as below : --

"35. Lease, including an under lease or sublease and any agreement to let or sub-let -

(a).....

(b) Where the lease is granted for a fine or premium or for money advanced and where no rent is reserved."

12. Reading the Deed of Agreement contained in Annexure ''1'' attached with the writ petition together with the provisions of Section 2(16)(c) and the provisions of Article 35(b) of Schedule I-B of the Stamp Act I think that the Chief Controlling Revenue Authority has arrived at correct conclusion in the facts and circumstances of the present case. The impugned order does not suffer from any error of law much less an error apparent on the face of the record.

13. In view of my above conclusions it is not necessary to deal with other contentions raised on behalf of the petitioner.

14. However, Item 5(c) of Schedule I-B of the Stamp Act, 1899 reads as below : --

"5. Agreement or Memorandum of an Agreement -

(a), (b) .....

(c) if not otherwise provided for.

Proper Stamp duty indicated in the Act is Rs. 6/-.

15. The contention of the learned counsel for the petitioner that in no case more than Rs. 6/- could be levied upon the terms of the agreement contained in Annexure ''1'' attached with i.e. writ petition, therefore, the impugned order contained in Annexure ''6'' attached with the writ petition should be quashed I think that the arguments in this regard are misconceived. That aforesaid

provisions would not apply to the facts of the present case. I have already indicated above that the reading of the Agreement contained in Annexure ''1'' attached with the writ petition read with the provisions of Section 2(16)(c) read with Item 35{b) of Schedule I-B of the Stamp Act would cover the agreement under consideration. Therefore, I am not prepared to hold that the impugned order of the Chief Controlling Revenue Authority suffers from any patent error of law.

16. In the result the writ fails and is accordingly dismissed. Parties are directed to bear their own costs.

