(2013) 09 AHC CK 0252

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22017 of 2013

M/s. Magnum Ventures Limited — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2013) 10 ADJ 364 : (2014) 102 ALR 170 : (2013) 121 RD 777

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Sumit Daga, for the Appellant;

Judgement

Arun Tandon, J.—Heard Sri Sumit Daga, learned counsel for the petitioner, Sri V.K. Birla, learned counsel for U.P. State Industrial Development Corporation and learned Standing Counsel for the State-respondents. Petitioner, before this Court, seeks quashing of the order dated 10th July, 2012 passed by the Assistant Commissioner (Stamp), Ghaziabad as well as the order passed by the Commissioner, Meerut Division, Meerut dated 28th February, 2013 (Annexure Nos. 7 and 9 to the present writ petition respectively).

2. Facts in short leading to the present writ petition are as follows:

Plot No. 64/5/7 Industrial Area, Site IV, Sahibabad, District Ghaziabad was leased out in favour of Sri Surinder Kumar Dhawan under the lease deed dated 28th February, 2008 by U.P. State Industrial Development Corporation, Ghaziabad (hereinafter referred to as the "UPSIDC"). A lease deed was registered with the Sub- : Registrar, Ghaziabad on 7th March, 2008 in that regard.

3. It appears that Surinder Kumar Dhawan surrendered the lease and thereafter an application was made by the petitioner for the same plot being leased in his favour, which was granted. A lease deed in that respect was executed on 21st November, 2008, a copy of the lease deed executed in favour of the petitioner is enclosed as Annexure-2 to the present writ petition. In Clause-6 (a) of the said

deed at page -42 of the paper book, there is a specific mention of the lease of the same plot having been granted in favour of Surinder Kumar Dhawan earlier. The deed is signed by the petitioner and the office of the UPSIDC. It is, therefore, admitted on record that the lease which was granted in favour of the petitioner was not the first lease of the plot in question by UPSIDC.

4. The petitioner was, therefore, not entitled to the benefit of exemption from payment of stamp duty in terms of the Government Order dated 9th July, 2008, which provided for exemption from payment of stamp duty only in respect of first transfer deed executed by State Corporation including the UPSIDC in favour of a particular plot.

5. Before this Court also, petitioner has not set up any claim for grant of exemption under Notification dated 9th July, 2008.

6. Petitioner wrongly claimed and was wrongly granted benefit of said Government Order dated 9th July, 2008 at the time of registration of the said deed on 21st November, 2008. However, on correct facts being brought to the notice of the Assistant Commissioner (Stamp), proceedings u/s 33 /47-A of the (Indian) Stamp Act were initiated against the petitioner vide notice dated 5th November, 2009.

7. Petitioner submitted reply to the notice so issued and it was claimed that there has been a subsequent notification to be precise on 30th September, 2010, wherein benefit of exemption from payment of stamp duty under Government Order dated 9th July, 2008 was extended in favour of second and third transfers also. Petitioner, therefore, submitted that even if it was second transfer of plot in his favour by UPSIDC, he became entitled for exemption from payment stamp duty in terms of the subsequent Government Order dated 30th September, 2010.

8. These proceedings against the petitioner culminated in an order dated 10th July, 2012 and it was held that on the date the deed was got registered, petitioner was not entitled to any exemption in terms of the provisions as were applicable. As admitted by the petitioner herself, her case was not covered by the Government Order dated 9th July, 2008. The Assistant Commissioner (Stamp) went out to hold that the petitioner was liable to make good the balance amount of stamp duty, which was short paid by claiming benefit of exemption under Government Order dated 9th July, 2008. This amount was quantified at Rs. 3,50,890/-. Petitioner was also required to pay of interest at the rate of 1.5% and penalty to the tune of Rs. 35,300/-.

9. Against the said order, petitioner filed an appeal u/s 56 of the (Indian) Stamp Act only on 30th January, 2013 i.e. after delay of nearly 8 months. He made an application u/s 5 of the Limitation Act for condoning the delay in filing of the appeal.

10. This application of the petitioner has been rejected on the ground that the petitioner had knowledge of the order passed in proceedings taken by the

Assistant Commissioner (Stamp) u/s 33 /47-A of the (Indian) Stamp Act, he had participated in the proceedings and therefore, his case that he had no knowledge of the final order cannot be accepted. Plea of the petitioner that he could come to the order dated 10th July, 2012 only when the recovery proceedings were initiated, has not been accepted by the authorities. Accordingly the appeal filed by the petitioner has been dismissed as barred by limitation.

11. It is against these two orders that the present writ petition has been filed.

12. I have considered the submissions made by the learned counsel for the parties and have gone through the records of the present writ petition.

13. So far as the issue of limitation is concerned, I have carefully gone through the application made u/s 5 of the Limitation Act. It has been stated that the petitioner could obtain knowledge of the order dated 10th July, 2012 only on 11th December, 2012 i.e. after nearly 5 months when the recovery Amin approached the petitioner for adopting coercive action for recovery of the amount determined under the order dated 10th July, 2012.

14. The Commissioner appears to be justified in holding that the explanation furnished by the petitioner that he could obtain knowledge of the order only on 11th December, 2012 cannot be accepted as the petitioner had knowledge of the proceedings and there is no reason for the petitioner having not obtained information of the order passed therein. This Court is also satisfied that the reasons so recorded by the Commissioner in the order while rejecting the Section 5 application are fair and just.

15. However, in order to do the complete of justice with the petitioner, this Court permitted petitioner to address the Court on merits of his claim with regard to the exemption from payment of stamp duty under Government Order dated 30th September, 2010.

16. Sri Sumit Daga contended before this Court that although the petitioner was not entitled to the exemption from payment of stamp duty under Government Order dated 9th July, 2008, which Government Order was applicable on the date the deed was registered, yet his claim for such exemption stood matured on the issuance of the subsequent Government Order dated 30th September, 2010, when the benefit of exemption was extended, even in respect of second and third deed etc. of the same plots by Government Corporation like UPSIDC, on same terms as applicable in respect of the first deed under Government Order dated 9th July, 2008.

17. In order to appreciate the said contention raised on behalf to the petitioner it is worthwhile to reproduce the relevant part of the Government Order dated 30th September, 2010, which reads as follows:

.... Notification Order

No. 4590/XI-5-2010-500(35)-200

Lucknow : Dated 30 September, 2010

In exercise of the powers under Clause (a) of sub-section (1) of Section 9 of the (Indian) Stamp Act, 1899 (Act No. 2 of 1899) as amended from time to time in its application to Uttar Pradesh, read with Section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897) and in partial modification of Government notification issued in this behalf, the Governor is pleased to extend the benefits of the Government Notification No. K.N.-5-2757/XI-2008-500 (35)/2000 dated July 9, 2008 also to those deeds of transfers which are not first time transfer and there is no existing construction on the property transferred by such deed or if any construction exists thereon the deed of transfer of the existing construction has been executed. This benefit of remittance in stamp duty shall be given to such deeds as are executed between April 1, 2008 and March 31, 2009, provided that the stamp duty already paid shall not be refunded. For the purposes of this notification the officer authorised for executing the transfer deed on behalf of the concerned Institution shall issue a certificate that there is no construction on the property and if any construction exists, the transfer deed of such construction has been executed.

18. From a simple reading of the said Government Order dated 30th September, 2010, it is apparently clear that the benefits of exemption from payment of stamp duty had been extended in respect of 2nd and subsequent deeds also, i.e. which deeds were not the first deed of transfer in respect of plot in question on conditions, namely:

(a) the authority concerned had issued a certificate about there being a construction or no constructions over the plot subject-matter of subsequent transfer,

(b) if there were standing constructions, a separate transfer deed had been executed in respect of the constructions.

It was further provided that any stamp duty already deposited shall not be refunded because of the said Government Order.

19. From the document brought on record by the petitioner himself dated 27th April, 2013 as Annexure-R.A. 1 to the rejoinder-affidavit, it is admitted that a boundary wall was standing over the plot in question on the date of second transfer by way of lease in favour of the petitioner by UPSIDC. It is further not disputed that no transfer deed in respect of standing constructions of the boundary wall was ever executed in favour of the petitioner, at least there is no pleading in that regard on record.

20. Sri Sumit Daga, learned counsel for the petitioner however, submitted that constructions of the boundary wall cannot be termed to be constructions within the meaning of the Government Order dated 30th September, 2010 and therefore, petitioner is entitled to the benefits of the said Government Order.

21. The contention of the petitioner has only been raised to be rejected,

inasmuch as provision of exemption from stamp duty has to be construed strictly unless the petitioner satisfies the requirements thereof, he is not entitled to the benefit in that respect. The Government Order dated 30th September, 2010 talks of constructions, which may have been raised over the plot and as may be existing on the date of subsequent lease/transfer. Constructions would necessarily include the construction of the bound any wall also. Therefore, this Court has no hesitation to hold that the petitioner also does not satisfy the requirements of the Government Order dated 30th September, 2010. Even otherwise, it may be recorded that the petitioner at no point of time brought on record any certificate issued by the Competent Authority before the revenue authorities.

22. In the totality of the circumstances on record, this Court finds no good ground to interfere with the orders impugned, insofar as it holds that the petitioner is liable for payment of deficient amount of stamp duty, benefit whereof was claimed by the petitioner under Government Order dated 9th July, 2008 when admittedly it was not applicable in the case of the petitioner. The present writ petition is accordingly dismissed. Interim order, if any, stands discharged.

