
(2019) 04 RAJ CK 0031
In the Rajasthan High Court
Case No : Civil Writ No. 10001 Of 2018

M/s. Maharaja Enclave

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 12-04-2019

Acts Referred:

Rajasthan Stamp Act, 1998 — Section 2(xi), 3, 21, 51(3), 65(1)
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security
Interest Act, 2002 — Section 17(2)
Indian Stamp Act, 1899 — Section 47A, 47A(1)
Rajasthan Stamp Rules, 2004 — Rule 65(1)
Rajasthan Stamp Act, 1998 — Article 5(bb), 21
Constitution Of India, 1950 — Article 14, 226, 227

Citation : (2019) 04 RAJ CK 0031

Hon'ble Judges : Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Sanjeet Purohit, Sandeep Shah

Final Decision : Disposed off

Judgement

1. The matter comes up on the second stay application. However, upon the joint prayer made by learned counsel for the parties, the matter has been heard finally.

2. This writ petition under Articles 226 & 227 of the Constitution of India has been preferred claiming the following reliefs:-

"I. The impugned order dated 26.03.2018 (Annex-7) passed by the respondent no.3 may kindly be declared illegal and the same may kindly be quashed and set aside.

II. The notice dated 08.10.2015 (Annex-2) may kindly be declared illegal and the same may kindly be quashed and set aside.

III. The respondents may kindly be restrained from taking any coercive action against the petitioner for recovering of the demand of deficient stamp duty.

IV. The respondents may be directed to consider the document registered on 22.07.2013 as an agreement to sale sufficiently stamped.

V. Any other writ or direction that may be deemed fit, just and proper in the facts and circumstances of the case may kindly be issued in favour of the petitioner.

VI. Costs of the proceedings may kindly be awarded in favour of the petitioner."

3. Brief facts of this case, as noticed by this Court, are that M/s. Maharaja Enclave is a partnership Firm, and whose behalf the present petition has been filed by its partners, namely Shri Daulatram s/o Shri Rawatram Bhadu, Shri Mahaveer Prasad s/o Shri Chimnaram Dahiya, Shri Govind Ram s/o Shri Dhannaram and Shri Aashish s/o Shri Vinay Malik.

4. The matter pertains to a land measuring 10523077 square yards situated between Ballabh Garden Shivwadi and Bypass of Bikaner belonging to Rajmata Bageli Ji, Sudarshana Kumari Ji Bikaner Trust (hereinafter referred to as 'the Trust').

5. The Trust resolved to sell some part of the aforementioned land i.e. 498750 square yards to the petitioner-Firm for a consideration of Rs.3,83,17,750/-. In pursuance of the said resolution of the Trust, an agreement to sale was executed on 18.07.2013 and the amount of consideration was paid by the petitioner-Firm. It was mentioned in the agreement to sale that possession of the property was not with the Trust. Although, the Trust has filed a suit for eviction/ejectment of Shri Om Prakash and Shri Prem Sukh, who were in possession of the property, but a condition was categorically mentioned in the agreement to sale that it was upon the purchasers to get the possession on their own and there shall be no obligation upon the Trust to give such possession. Further, the Trust was supposed to execute a sale deed in favour of the person nominated by the petitioner-Firm, after obtaining due permission from the Devasthan Department. All future expenses were to be borne by the present petitioner, as per the agreement to sale.

6. The agreement, as entered, was submitted for registration before the Office of Sub Registrar II, Bikaner and the document was thereafter registered under the instructions of agreement to sale without possession under Article 5(bb) of the Rajasthan Stamp Act, 1998 (henceforth to be referred to as 'the Act of 1998'). The stamp duty to the tune of Rs.11,49,552/- was accordingly paid by the petitioner.

7. The respondent No.2 however, issued a notice on 08.10.2015 against the petitioner-Firm on the count that the document registered on 22.07.2013 was registered with deficient stamp duty, and that, the value of the land was not properly assessed. The amount, as assessed by the Department, was Rs.3,77,16,278/- to be recovered as deficient stamp demand.

8. Mr. Sanjeet Purohit, learned counsel for the petitioner submitted that condition No.2 of the agreement was clear and the possession of the property was to be

recovered by the petitioner in future and the actual sale deed was to be executed by the Trust after obtaining due permission from the Devasthan Department, and therefore, since the possession was symbolic, the same cannot be treated as a physical possession so as to convert the document in question (agreement to sale) into conveyance.

9. Learned counsel for the petitioner also harped that the assessment of the market value by the audit team was contrary to law.

10. The argument regarding the possession being in the hands of Shri Om Prakash and Shri Premsukh was also advanced on behalf of the petitioner.

11. Learned counsel for the petitioner drew the attention of this Court towards the Site Commissioner's Report regarding the possession of the property, which was submitted before the learned trial court.

12. Learned counsel for the petitioner further submitted that the audit objection cannot become the basis for re-evaluating the assessment of the stamp duty as per the Act of 1998, and the document in question has wrongly been treated as conveyance, even when the possession was not transferred.

13. As per learned counsel for the petitioner, the respondents have wrongly treated the agreement as conveyance, and the respondent No.3 has wrongly accepted the reference while imposing a demand of Rs.7,99,58,510/- under the head of stamp duty, surcharge, interest and penalty upon the petitioner.

14. Learned counsel for the petitioner also submitted that the sale deed was to be executed in future after obtaining due permission from the Devasthan Department, and as such, the agreement in question dated 18.07.2013 was merely an agreement falling within the purview of Article 5 (bb) of the Act of 1998. Thus, as per learned counsel for the petitioner, the symbolic possession could not have been utilized so as to treat the agreement to sale as a document of conveyance.

15. Learned counsel for the petitioner further submitted that invocation of Section 21 of the Act of 1998 by the respondents was nothing but an illegality, as the said provision was only applicable to the allotment letter, patta, license etc., and since in this case, the actual possession was not transferred, therefore, the ingredients to constitute an instrument of conveyance were not in existence.

16. Learned counsel for the petitioner also argued that an enquiry was initiated against Shri Inderjeet Sharma, the then Sub-Registrar, Bikaner-II and the respondents themselves absolved the concerned of the charge of improper registration.

17. Learned counsel for the petitioner has drawn the attention of this Court towards para 2 of the agreement to sale dated 18.07.2013, which reads as under:-

"2. यह कि कब्जाधारियों से वास्तविक कब्जा प्राप्त करने का दायित्व द्वितीय पक्ष का होगा। इस बाबत् प्रथम पक्ष का कोई दायित्व नहीं होगा।"

18. Learned counsel for the petitioner has also drawn the attention of this Court towards the e-Stamp issued by the Government of Rajasthan in which the description of the document has been made by the respondents themselves as having reflecting it to be coming within the purview of Article 5(bb) Agreement to Sale Without Possession.

19. Learned counsel for the petitioner also submitted that the notice dated 08.10.2015 given under Section 51(3) of the Act of 1998 read with Rule 65(1) of the Rajasthan Stamp Rules, 2004 was not applicable, and therefore, the law does not permit any such notice. Thus, the notice so issued by the respondents is contrary to law.

20. Learned counsel for the petitioner further submitted that the evaluation done at the rate of Rs.1708/- per square metre, as per the DLC Rate on 26.03.2012, on the basis of the location being Bypass ahead of Shivbadi Village, was not correct.

21. On the other hand, Mr.Sandeep Shah, learned Additional Advocate General appearing on behalf of the respondents has shown that the description of the property in the document itself consisted of the location being Bypass ahead of Shivbadi Village. Learned Additional Advocate General has also shown to this Court the DLC Rate as applicable on 26.03.2012 and a copy of the same is also annexed alongwith the writ petition. The DLC Rate clearly reflects the rate of Rs.1708 per square metre, which has become the basis of the assessment made by the respondents.

22. Learned Additional Advocate General, at the threshold, has submitted that the petitioner is having an alternative remedy under Section 65(1) of the Act of 1998, and since the remedy is efficacious, the same cannot be bypassed for any ordinary reason. In support of this submission, learned Additional Advocate General relied upon the precedent law laid down by the Hon'ble Supreme Court in Har Devi Asnani Vs. State of Rajasthan & Ors., reported in (2011) 14 SCC 160. The relevant paras 11 and 12 of the said judgment read as under:-

"11. We also find that in the impugned order the High Court has relied on an earlier Division Bench judgment of the High Court in M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors. (supra) for rejecting the challenge to the proviso to Section 65(1) of the Act. We have perused the decision of the Division Bench of the High Court in M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors. (supra) and we find that the Division Bench has rightly taken the view that the decision of this Court in the case of Mardia Chemical Ltd. and Others vs. Union of India and Others(supra) is not applicable to the challenge to the proviso to Section 65(1) of the Act inasmuch as the provision of sub-section (2) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002, requiring deposit of 75% of the demand related to deposit at the stage of first adjudication of the demand and was therefore held to be onerous and oppressive, whereas the proviso to Section 65(1) of the Act in the present case requiring deposit of 50% of the demand is at the stage of revision against the order of first adjudication made by the Collector and cannot by the same reasoning held to be onerous and oppressive. In our considered opinion, therefore, the proviso to Section 65(1) of the Act is constitutionally valid and we are therefore not inclined to interfere with the order dated 16.11.2009 in D.B.CWP No.14220 of 2009. The Civil Appeal arising out of S.L.P. (C) No.20964 of 2010 is therefore dismissed.

12. We are, however, inclined to interfere with the order dated 21.10.2009 of the learned Single Judge of the High Court in SB Civil Writ Petition No.1244 of 2009 as well as the order dated 22.03.2010 of the Division Bench of the High Court in D.B. Civil Appeal (Writ) No.1261 of 2009. The learned Single Judge of the High Court and the Division Bench of the High Court have taken a view that as the appellant has a right of revision under Section 65(1) of the Act, the writ petition of the appellant challenging the determination of the value of the land at Rs.2,58,44,260/- and the demand of additional stamp duty and registration charges and penalty totaling to Rs.15,70,000/-could not be entertained under Article 226 of the Constitution. The learned Single Judge of the High Court and the Division Bench of the High Court have not considered whether the determination of market value and the demand of deficit stamp duty were exorbitant so as to make the remedy by way of revision requiring deposit of 50% of the demand before the revision is entertained ineffective. In *Government of Andhra Pradesh and Others vs. P. Laxmi Devi* (supra) this Court, while upholding the proviso to sub-section (1) of Section 47-A of the Indian Stamp Act introduced by Andhra Pradesh Amendment Act 8 of 1998, observed:

"29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Articles 14 of the Constitution vide *Maneka Gandhi vs. Union of India* [(1978) 1 SCC 248]. Hence, the party is not remediless in this situation."

23. Learned Additional Advocate General further submitted that the powers to determine the stamp duty is governed by Section 3 of the Act of 1998. Learned Additional Advocate General has also shown from the reply the definition of the term 'conveyance', as stipulated in Section 2 sub-section (xi). The said definition, as reproduced in the reply filed on behalf of the respondents, reads as under:-

"Conveyance include (i) a conveyance on sale."

24. While referring to the reply filed on behalf of the respondents, learned Additional Advocate General has also drawn the attention of this Court towards the stamp duty on conveyance as provided under Article 21 of Schedule. The same, as contained in the reply, reads as under:-

"21. Conveyance as defined by Section 2(xi)- -

(i) if relating to Eleven percent of the immovable property, market value of the property."

25. Learned Additional Advocate General submitted that invocation of Article 21 was proper, whereas invocation of Article 5 (bb) was erroneous.

26. Learned Additional Advocate General further submitted that though the possession was symbolic, which is admitted by the petitioner, but the same would attract stamp duty and the symbolic possession itself would make the agreement to come within the purview of the definition of 'conveyance'. The symbolic possession was given to the purchaser, and thus, the possession was transferred to the petitioner, and therefore, Article 21 of the Act of 1998 would apply.

27. Learned counsel for the respondents has referred to the explanation (i) attached to Article 21 of the Act of 1998 and has tried to establish that it was a deemed conveyance, and thus, the stamp duty was liable to be levied as per the market value of the property. Thus, as per the learned Additional Advocate General, the evasion of stamp duty was apparent.

28. In his rejoinder arguments, learned counsel for the petitioner has relied upon the judgment rendered by the Hon'ble Allahabad High Court in the case of Shri Sumati Nath Jain Vs. State of U.P. & Anr. (Special Appeal No.3 of 2016) decided on 14.01.2016, relevant paras 7 and 8 of which read as under:-

"7. On the issue of alternative remedy, the Division Bench in Smt Vijaya Jain noticed the law as enunciated by the Supreme Court in Government of Andhra Pradesh and others Vs. Smt. P. Laxmi Devi³ and Har Devi Asnani Vs. State of Rajasthan⁴, and held as under:-

"The existence of an alternative statutory remedy as has been consistently held by the Courts is not a rule of inflexible character nor is it an inviolable condition. The Courts vested with the power and jurisdiction under Article 226 of the Constitution of India have always viewed this rule as a self imposed restriction rather than a rule which is to be blindly adhered to and which brooks of no exception. Some of the well settled exceptions to the rule of a petitioner being relegated to an alternative remedy are where the principles of natural justice have been violated or where orders are made without jurisdiction."

"The law as authoritatively laid down by the Supreme Court in the aforementioned two judgments clearly establishes that a petitioner before the High Court is not liable to be relegated to the alternative remedy as a matter of

rule. If in the facts of a particular case it is established that the principles of natural justice have been violated or that the order has been rendered without jurisdiction or if it is disclosed to the Court that grave injustice has been caused to the petitioner and it is found that his relegation to the alternative remedy would perpetuate injustice and cause prejudice, it is always open to this Court to exercise its prerogative constitutional powers and to issue an appropriate writ striking at the offending action. This principle stands extended in light of the abovementioned precedents to a case where the petitioner is foisted with an exorbitant and arbitrary demand in which case his relegation to the alternative remedy would not be justified."

8. We are, with respect, of the firm opinion that the learned Single Judge has yet again fallen in error in dismissing the writ petition and relegating the appellant to the alternative remedy."

29. Learned counsel for the petitioner, in his rejoinder arguments, has further submitted that the issue of alternative remedy was not bar for invocation of the jurisdiction of this Court under Article 226 of the Constitution of India, and the existence of alternative statutory remedy is not a rule of inflexible character nor is it an inviolable condition. Learned counsel for the petitioner further submitted that the Courts are vested with the power and jurisdiction under Article 226 of the Constitution of India and there is no restriction on the powers to be invoked particularly when there is any violation of the principles of natural justice.

30. Learned counsel for the petitioner, in his rejoinder arguments, also submitted that the Hon'ble Apex Court has held that the payment of 50% of the stamp duty is a very harsh revisionary remedy under Section 65(1) of the Act of 1998, to which there was an effective rebuttal made by the learned Additional Advocate General that the same has been amended and now the requirement of invoking the remedy of Section 65(1) of the Act of 1998 was only 25% payment of stamp duty, which is very reasonable.

31. Learned Additional Advocate General, in sur-rejoinder arguments, however, opposed the applicability of the aforementioned judgment rendered in *Shri Sumati Nath Jain Vs. State of U.P. & Anr.* (supra), as cited by learned counsel for the petitioner, as it was delivered in a very different perspective, where the Hon'ble Allahabad High Court had gone into the invocation of Section 47-A of the Indian Stamp Act, 1899, and that, the controversy decided in the said precedent law does not have similarity with the present case, as there is no clear violation of the absolute law on the face of it or any absolute violation of the principles of natural justice.

32. After hearing learned counsel for the parties at length as well as perusing the record of the case, alongwith the precedent laws cited at the Bar, this Court finds that it would be prejudicial at this stage to the parties to make any comment on merits of the case, and this Court sees that the impugned order has a clear alternative remedy as provided under Section 65(1) of the Act of 1998. The

alternative and efficacious remedy is available with only 25% of the amount to be paid as per the new amendment in the law, which has done away with the mandatory requirement of payment of 50% of the amount. This Court also finds that there is no such outright violation of the principles of natural justice or any such irresistible reason, which would take this Court to bypass the statutory alternative remedy under Section 65(1) of the Act of 1998.

33. The aforementioned judgment rendered by the Hon'ble Allahabad High Court, as cited by learned counsel for the petitioner, is totally on a different footing and does not deal with the definition of conveyance or the applicability of Article 21 vis-a-vis Article 5 (bb).

34. Thus, in the best interest of justice, it would be appropriate to relegate the parties to the statutory remedy available with a clear liberty to come back to this Court again, in case either of them wishes to seek redressal, after the alternative remedy is exhausted.

35. With the aforesaid observations, the present petition stands disposed of. Stay Petition No.9894/2018 and Second Stay Petition No.15072/2018 also stand disposed of accordingly.