(2011) 06 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1149 of 2009

M/s. Steel Engineers — APPELLANT

Vs

State of Uttarakhand and two Others — RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:
Stamp Act, 1899 — Section 24

Citation : (2012) 116 RD 239 : (2012) 1 UC 429

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : Lalit Sharma, for the Appellant; Sudhir Kumar, Brief Holder, learned counsel for the Respondents-State, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble B.S. Verma, J.—Heard learned counsel for the parties. By means of this writ petition, the petitioner has sought a writ in the nature of certiorari quashing the order dated 7-1-2003, passed by the Assistant Commissioner (Stamps) Udham Singh Nagar, whereby deficient stamp duty worm Rs. 4,79,000/- along with fine of Rs. 47,900/-total amounting to Rs. 5,26,900/- was ordered to be recovered from the petitioner. The petitioner has further assailed the order dated 22.5.2009 (Annexure-I O to the petition), whereby the revision preferred against the order dated 7-1-2003 has been dismissed.

2. Briefly stated, the facts giving rise to the present writ petition are that the petitioner purchased land and building in public auction from the Uttar Pradesh Financial Corporation (U.P.F.C.) for a sale consideration of Rs. 10,50,000/- vide sale deed dated 9-7-1997.

3. It appears by a perusal of the order impugned dated 7-1-2003 passed by Assistant Commissioner (Stamps) that some audit objection was raised and the document was referred to adjudicate the actual duty to be paid at the time of execution of the sale deed by the U.P.F.C.

4. According to the petitioner, the learned Assistant Commissioner (Stamps) has committed a manifest error of law in applying the circle rate on a document of sale by the U.P.F.C. Since the land and building were purchased in public auction, it is well settled that the stamp duty has to be paid on the consideration of the auction price and not on the circle rate.

5. By a perusal of the order passed by the revisional authority/Chief Controller Revenue Authority, it is obvious that the revisional authority while upholding the finding of the Assistant Commissioner (Stamps) has given a finding that the stamp duty has to be paid on the remaining amount of loan i.e. Rs. 47,98,000/- taken by the debtor, in addition to the auction price of Rs. 10,50,000/- which comes to Rs. 58,48,000/-.

6. Learned counsel for the petitioner has contended that mere is no provision under the Indian Stamps Act indicating that the duty is payable on the interest and loan amount The loan was borrowed by the borrower, which has to be paid by the borrower and the petitioner, who purchased the property in public auction from the U.P.F.C, has no concerned with it.

7. Counter affidavit has been filed by the State and it has been stated in paragraph no. 21 thereof as under:-

21) That the then State of Uttar Pradesh had issued a circular on 12/10/2000 in which it was directed that the stamp duty on the sale deed executed by the Financial Institution, shall be chargeable on the value of the property as determined in accordance with the circle rates and the amount due on the mortgaged of such property. Accordingly the impugned orders have been passed following the said circular. A true copy of the said circular is being filed herewith and marked as ANNEXURE NO. CA-1 to this affidavit.

8. I have also perused the circular dated 12-10-2000. The same has been issued by the Special Secretary of the Uttar Pradesh Shasan. The impugned order dated 7-1-2003 has been passed by the Assistant Commissioner (Stamps) Udham Singh Nagar on the basis of the circle rate, while the revisional court has passed the order relying upon the provisions of Section 24 of the Indian Stamps Act 1899 and has held that the stamp duty is payable on unpaid balance of mortgaged price and the interest payable thereon.

9. Upon consideration of the submissions made by teamed counsel for both the parties, I am of the considered view that these findings are perverse since there is no such provision under the Indian Stamps Act, indicating the duty shall be payable on the basis of circle rate as well as on the loan amount plus interest. In my opinion, when a property is purchased by someone in public auction, as in the case at hand, the provisions of Schedule 1 of Article 18(c) of the Indian Stamps Act 1899 would be attracted. Schedule I of the Indian Stamps Act deals with Stamp Duty on Instruments. Relevant extract of clause 18 thereof reads as under:-

Description of Instrument

Proper Stamp-duty

(1)

(2)

18. CERTIFICATE OF SALE (in respect of each property put up as separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-Officer-

(a) xxxx

(b) xxxx

(c) in any other case

The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase money only.

10. It is thus evident that clause (c) of Article 18 provides that where the property sold by public auction other than by a Civil or Revenue Court or Collector or other Revenue Officer, the stamp duty shall be payable as on Conveyance No. 23, detailed above. Therefore, the stamp duty shall be payable in the case at hand at the rates set out in Conveyance No. 23 of Schedule I and not on the market value or otherwise.

11. Learned counsel for the State has contended that the directions contained in the Circular dated 12-10-2000 issued by the Special Secretary of the U.P. Government, were followed by the Assistant Commissioner (Stamps) as well as the revisional authority.

12. The provisions of the Stamps Act will prevail over the administrative order passed by the Special Secretary and it is evident that both the courts below have exceeded the jurisdiction (sic) in them by imposing deficient stamp duty on the basis of circle rate along with penalty as well as on the amount of loan and interest thereon. In view of the provisions of Article 18(c) aforesaid, the stamp duty has to be paid as conveyance.

13. In view of the discussion above, the impugned orders passed by the two authorities below suffer from manifest error of law and are perverse and are liable to be set aside. Accordingly, the writ petition deserves to be allowed. The writ petition is allowed. Costs easy. The impugned orders dated 7-1-2003 and 22-5-2009, passed by the Assistant Commissioner (Stamps) Udham Singh Nagar and the Additional Chief Revenue Commissioner/Chief Controller Revenue Authority, Uttarakhand respectively, are set aside. The recovery demand pursuant to the impugned order is also quashed.