(2004) 09 PAT CK 0071

In the Patna High Court

Case No : C.W.J.C. No. 3575 of 2000

Nasco Steel Pvt. Ltd. — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:
Stamp Act, 1899 — Section 27, 40(1), 47A, 64

Citation : AIR 2005 Patna 20 : (2004) 4 PLJR 470 : (2005) 2 RCR(Civil) 618 : (2005) 2 RCR(Civil) 460 : (2005) 98 RD 101 : (2005) 1 RD 101

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : S.D. Sanjay and Suraj Samdarshi, for the Appellant; S.D. Yadav, G.A. for Respondent 1, for the Respondent

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. The petitioner being aggrieved by the order dated 2-3-2000, contained in Annexure 4 and notice dated 16-3-2000, is before this Court.

3. Short facts leading to this application are that the petitioner M/s. Nasco Steel Pvt. Ltd., a private limited company, purchased certain properties from M/s. Bihar State Financial Corporation (BSFC). The properties originally belonged to M/s. National Aluminium & Steel Corporation Pvt. Ltd., who after taking substantial loan from the BSFC could not re-pay the same in time. It appears, probably an action u/s 29 of the State Financial Corporation Act was taken and the partners of M/s. National Aluminium & Steel Corporation Pvt. Ltd. agreed to sell the property whose consideration was shown at Rs. 4.33 lacs being cost of land and building. Description of the property was mentioned giving fullest detail in Schedules A, B, and C. Schedules A and B related to land and building while schedule C related to plant and machinery. It was agreed between the parties that the total sale consideration shall be equivalent to the total balance outstanding of the BSFC against the concern M/s. National Aluminium & Steel Corporation Pvt. Ltd. It is not in dispute that the total amount of loan

outstanding against the defaulter debtor was Rs. 17,14,210.35.

4. After the settlement, the parties submitted sale deed for its registration to the Registrar of Conveyances who received the same but referred the matter to the Collector observing, inter alia that the property has not been properly valued nor the document has been properly stamped.

5. It appears that the matter was referred to the collector somewhere in the year 1991, on the basis of which Impounding Case No. 42 of 1991-92 was registered. The Collector, Patna sought for an advice from the Law Department and the Law Department, in its turn, sought for an advice from the Advocate General of the State. The opinion of the Advocate General is at page 36 of the docket. In his opinion dated 11-1-1996, the learned Advocate General observed that u/s 24 of the Indian Stamp Act, the stamps are payable only on the sale price and as in the present case there was a clause in the sale deed that a separate equitable mortgage will be created in future, by the purchaser in favour of BSFC, the stamp duty paid on 4.33 lacs was good and in accordance with law.

6. It appears that the State Government agreed with the opinion of the Law Department but the Collector probably disagreed with the opinion and issued notice contained in Memo No. 974, dated 25-11-1999 (Annexure-2 to the petition) to the petitioner informing him to show cause as to why the sale consideration be not fixed at Rs. 17,14,210.35 and the stamps duty be not fixed for Rs. 2,11,727.93 and the balance stamp worth Rs. 1,58,222.93 be not recovered from the petitioner and penalty be also not imposed.

7. The petitioner after receiving the notice, submitted his cause on 24-1 -2000 (Annexure-3). He submitted that if in accordance with law, he is required to pay the balance stamp duty, he would pay the same. He simultaneously made a submission that looking into the facts and the financial stringency faced by the petitioner, no penalty be imposed. Thereafter, by the impugned order contained in Annexure-4 order for recovery of Rs. 1,58,227.93 was made and penalty often times equivalent of Rs. 15,82,279/was directed to be recovered. The petitioner being aggrieved by the said order, has filed this writ application on 24-4-2000.

8. Learned counsel for the petitioner submitted that no proper opportunity was given to the petitioner to submit their show cause, therefore, the order contained in Annexures-4 and 5 are bad.

9. In the opinion of this Court, the notice to show cause contained in Annexure-2 cannot be held to be invalid. It gives, full details and also informs the petitioner that in accordance with law, the document was to be valued for a particular amount and as the same has not been value, the petitioner was required to pay the balance stamp duty and was also liable to pay the penalty.

10. It was next contended that the present would be a case falling u/s 27 of the Indian Stamp Act, 1899 (hereinafter referred to as the Act) and if that be so penal provision as provided u/s 64 of the Act will have to be followed.

11. This contention is vehemently opposed by the learned counsel for the State.

12. Section 27 of the Act says the consideration, if any, the market value of the property and all other facts and circumstances affecting the chargeability of an instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. If the complete details of the consideration etc. are not described in the instrument, then penal provision would be applicable as provided u/s 64 of the Act. Section 64 of the Act reads as under :--

"64. Penalty for omission to comply with provisions of Section 27.-Any person who, with intent to defraud the Government

(a) executes any instrument in which all the facts and circumstances required by Section 27 to be set forth in such instrument are not fully and truly set forth or

(b) being employed or concerned in or about the preparation of any instrument. neglects or omits fully and truly to set forth therein all such facts and circumstances; or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act; shall be punishable with fine which may extend to five "thousand rupees".

13. A perusal of Section 64 of the Act would show that it relates to criminal intention of a person who is producing document to the authority for its registration. Even if the provisions of Section 64 of the Act are made applicable, a person who undervalues a document, cannot escape the provisions of Section 40(1)(b) and Section 47A of the Act. If a person wants to defraud the State Government by not giving proper valuation of the property then he may not be allowed to say that he is liable to pay a fine of Rs. 5000/- only and should be made scot free. In fact, Section 64 is a provision where the prosecution/ complainant will have to prove before a competent Court of law that the valuation of the property as given in the instrument was not depicting true market value of the property and this was a deliberate fraudulent action on the part of the person producing the document and, therefore, he must also be convicted.

14. A perusal of Section 47A of the Act would show that where the Registering Officer appointed under the Act while registering any instrument of conveyance, etc. has reason to believe that the market value of the property which is the subject-matter of such instrument, has not been rightly set forth in the instrument he may, at the time of admitting such instrument refer the matter to the Collector for determination of the market value of such property and the proper duty payable thereon.

15. A fair understanding of Section 47A of the Act would make it clear that when a document is presented for registration, then the Registering Officer has to look into the claim and has to form a prima facie opinion that the market value shown in the document is real market value. If he finds or records an opinion that the

valuation given in the document does not depict real or correct market value, then he may refer the matter to the Collector for determination of the market value of the property and for an order from the Collector in relation to the proper duty payable thereon.

16. If while forming an opinion for referring the document or for any time thereafter he further records an opinion that there was deliberate inaction and omission on the part of the person producing the document with an intention to defraud the Government then he can require the authority or the Police or his own department to take an action u/s 64 of the Act. If Sections 64 and 47A of the Act are read with Section 27 of the Act, it would clearly appear that these are not mutually destructive but are supplemental to each other.

17. Learned counsel next contended that even assuming that the provisions of Section 47A read with Section 40 are applicable to the present matter, then too the order contained in Annexure-4 and the demand made in Annexure-5 will have to be quashed because u/s 40(1)(b) of the Act the minimum imposable penalty is Rs. 5/- and if the Collector records his opinion and thinks fit then only he can impose penalty not exceeding ten times amount of the proper duty. According to him, a perusal of order contained in Annexure-4 would make it clear that in a most technical and mechanical manner the Collector has directed that penalty to the extent of 10 times be recorded. He submits that unless the Collector records his satisfaction that the matter in hand was a matter where ten times penalty ought to have been imposed, such a mechanical order could not be issued.

18. Learned counsel for the State though supported the order by saying that if it was within the discretion of the Collector to impose minimum or maximum penalty then he is not required to give a reason of his own.

19. Section 40(1)(b) of the Act reads as under :-

Collector''s power to stamp instruments impounded.-

"(1) When the Collector impounds any instrument u/s 33, or receives any instrument sent to him u/s 38, sub-section (2) not being an instrument chargeable with a duty not exceeding ten have paise only or a bill of exchange or promissory note, he shall adopt the following procedure :-

(a) xxx xxx xxx (b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees."

20. For imposing penalty of Rs. 5/- only, the Collector is not required to record any reason because the law says that it is the minimum imposable penalty. For imposing any penalty beyond Rs. 5/-, the Collector is obliged to record his

satisfaction that for particular reason, penalty beyond Rs. 5/- is chargeable. In the present case, nowhere such reason is stated though the opinion of the Advocate General was also in favour of the petitioner. In a case where a discretion is given to an authority and the officer has to act between the two extremities then it is always not advisable to come to the extreme side. In any case before imposing ten times penalty, the Collector under the law was obliged to record his satisfaction and give reasons which persuade him to impose penalty of ten times.

21. The order contained in Annexure-4, not on the other count but on this count alone is quashed. The matter is remitted to the Collector, Patna, for giving proper opportunity of hearing to the petitioner, take into consideration the facts available in the matter and then to pass a reasoned order giving specific reasons for imposing penalty.

22. The petition to the extent indicated above is allowed.

