
(2014) 09 AHC CK 0319
In the Allahabad High Court
Case No : Writ-C No. 49436 of 2014

Neelam Sharma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-09-2014

Acts Referred:

Stamp Act, 1899 — Section 56(1)

Citation : (2015) 108 ALR 749 : (2014) 125 RD 774

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : Ajai Kumar Garg, Advocate for the Appellant

Judgement

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Surya Prakash Kesarwani, J.—Heard Sri Ajay Kumar Garg, learned Counsel for the petitioner and Sri B.P. Singh Kachhawah, learned Standing Counsel for the respondents. Briefly stated the facts of the present case are that one room Flat No. 215 with a toilet on the second floor situate at mohalla Super Bazar Complex, Station Road, Moradabad, area 13.82 Sq. Mts. was purchased by the petitioner vide instrument No. 4219 of 2013, disclosing valuation of Rs. 2,15,000/- and accordingly paid stamp duty of Rs. 13,010/-. The petitioner is a widow lady having minor children. She could not appear before the Additional Collector (Finance & Revenue), Moradabad, respondent No. 3 on the date fixed in Stamp Case No. 622/272/2013-14, under section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as the "Act") and as such the respondent No. 3 passed an order dated 24.4.2014 creating demand of the deficiency of stamp duty of Rs. 90,180/-, registration fee of Rs. 7,850/- and penalty of Rs. 90,180/- total Rs. 1,88,210/-. Against the this order, the petitioner filed a restoration application stating therein that the petitioner is the head of the family and, since she was ill and admitted in hospital as such she could not appear and, therefore, the order dated 24.4.2014 may be recalled and she be afforded an opportunity to file objection. However, the respondent No. 3 rejected the restoration application

of the petitioner vide order dated 13.6.2014 on the ground that he has no power to restore the case.

2. Against the order dated 24.4.2014 and the order dated 13.6.2014 passed by respondent No. 3, the petitioner preferred a Revision No. C-2014130000898 of 2014 before the Additional Commissioner (Administration), Moradabad, under section 56(1) of the Act, which was dismissed by the respondent No. 2 vide impugned order dated 14.8.2014. In this order also the respondent No. 2 has not rejected the stand of the petitioner with regard to her illness on the date fixed before the respondent No. 3 because of which she could not appear.

3. Aggrieved with the aforesaid three orders, the petitioner has filed the present writ petition.

4. Learned Counsel for the petitioner submits that the impugned orders have been passed in gross violation of principles of natural justice, inasmuch as the fact that the petitioner was ill on the date fixed was not disputed either by respondent No. 3 or by respondent No. 2, yet the restoration application was not allowed. The respondent No. 2 has not even touched this issue, although, he noted the fact that the revision has been filed against order dated 13.6.2014 rejecting the restoration application. He, therefore, submits that the petitioner may be afforded an opportunity to submit her objection and the case may be decided afresh by respondent No. 3 in accordance with law.

5. Learned Standing Counsel submits that the opportunity was afforded to the petitioner, as the notice was served on her yet she could not appear before the respondent No. 3 on the date fixed. She should have taken care to file objection.

6. I have carefully considered the submissions of the learned Counsel for the parties.

7. It is not in dispute that the petitioner is a widow lady and has minor children. It is also not disputed that she is the head of the family. It is also not in dispute that she was ill on the date fixed in the proceedings before the respondent No. 3. The vended property is a room with toilet being flat No. 215 situate at mohalla Super Bazar Complex, Station Road, Alma Roof, Arya Nagar, Moradabad. It is stated in the writ petition that presently, she is residing in the vended property. It is also stated that the property in question is a residential flat. As per copy of the instrument in question filed as Annexure-1, the vended property is a single room flat on the second floor.

8. In the circumstances, merely because there are some shops on the ground floor, a residential flat at the second floor cannot be said to be a commercial property, unless the entire facts and evidences are disclosed by the petitioner and she is afforded an opportunity to submit objection. In the impugned orders, the authorities have not raised any dispute with regard to the stand taken by the petitioner that she was ill on the date fixed before the respondent No. 3.

9. In the circumstances, I find that the impugned orders cannot be sustained. An

opportunity of hearing needs to be afforded to the petitioner by the respondents to comply with the rule of natural justice.

10. In view of the above, the impugned order dated 24.4.2014 passed in Stamp Case No. 622/272/2013-14, order dated 13.6.2014 passed by the Additional District Magistrate (Finance & Revenue), Moradabad on the Restoration Application of the petitioner and the impugned order dated 14.8.2014 passed by the Additional Commissioner (Administration), Moradabad Division, Moradabad in Revision No. C2014130000898 of 2014 are hereby set aside. The Stamp Case No. 622/272/2013-14, under section 47-A of the Act is restored to its original number.

11. The matter is remanded to the respondent No. 3 to decide the aforesaid stamp case afresh, in accordance with law, by a speaking and reasoned order, without being influenced by any of the observations made above, as expeditiously as possible, preferably within a period of three months from the date a certified copy of this order is filed before him.

12. It is made clear that the respondent No. 3 shall afford an opportunity of hearing and allow her to submit objection. It is further made clear that this Court has not expressed any opinion on the merits of the case. With the aforesaid observations, the writ petition is allowed and the matter is remanded to the respondent No. 3 for decision afresh.