(2010) 04 GUJ CK 0023

In the Gujarat High Court

Case No : Special Civil Application No. 4010 of 2010

Nileshkumar Babubhai Patel APPELLANT

Vs

Deputy Collector and Others RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 04 GUJ CK 0023

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : AR Thacker, for the Appellant; Manisha Narsinghani, AGP, for the Respondent

Judgement

K.A. Puj, J.—Leave to amend as per the draft amendment. The petitioner is directed to carry out the amendment forthwith.

2. RULE. Ms. Manisha Narsinghani, learned Assistant Government Pleader waives service of rule on behalf of respondents. Looking to the issue involved in the petition, the same is taken up for final hearing today.

3. The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the order dated 23.04.2001 passed by the respondent No. 1. Alternatively, the petitioner has prayed for the direction to the respondent No. 3 to hear the appeal filed by the petitioner on 18/19.07.2001 and during the pendency of the appeal, notice issued by the respondent No. 2 dated 01.09.2009 may be stayed. The petitioner has also moved draft amendment and as per the draft amendment, the petitioner has challenged the order passed by the respondent No. 3 on 27.03.2010 whereby the appeal filed by the petitioner on 07.10.2009 was dismissed on the ground that requisite deposit of 25% of the duty amount was not paid by the petitioner.

4. Heard Mr. A. R. Thacker, learned advocate appearing for the petitioner and Ms. Manisha Narsinghani, learned Assistant Government Pleader appearing for the

respondents.

5. It is the case of the petitioner that a document was executed on 19.04.2000. The Deputy Collector passed an order on 23.04.2001 determining the market value of the property at Rs. 5,65,000/- and stamp duty of Rs. 55,060/- was demanded from the petitioner. Being aggrieved by the said order, the petitioner filed appeal before the respondent No. 3 on 18.07.2001. However, along with the said appeal, the petitioner has not deposited 25% of the duty amount. The said appeal remained pending with the respondent authority for more than 8 years. However, on 01.09.2009, the Deputy Collector issued notice for recovery of the amount. The petitioner, therefore, wrote a letter on 07.10.2009 which was treated as appeal by the respondent No. 3 and the same was disposed of on 27.03.2010 on the ground that requisite deposit of 25% of the duty amount was not paid by the petitioner. The respondent No. 3, however, totally ignored the appeal filed by the petitioner on 18.07.2001. The only default on the part of the petitioner is that the petitioner has not deposited 25% of the duty amount along with the appeal filed on 18.07.2001.

6. Mr. A. R. Thacker, learned advocate appearing for the petitioner has strongly urged that the petitioner was not informed about the deposit of the amount nor even the appeal filed by the petitioner on 18.07.2001 was taken note of by the respondent authorities. The impugned order in the appeal was also a stereo-typed order. No reasons were assigned as to how the whole amount was taken into consideration despite the fact that only 30% share was transferred. Therefore, he has submitted that instead of taking technical view in the matter, the respondent authorities should have decided the appeal on merits.

7. Ms. Manisha Narsinghani, learned Assistant Government Pleader, on the other hand, has submitted that there is a statutory provision to deposit 25% of the duty amount along with the appeal and that has not been complied with by the petitioner and hence, the respondent authority has rightly dismissed the appeal filed by the petitioner.

8. Having heard learned advocates appearing for the parties and having considered the documents, the Court is of the view that the appeal of the petitioner was dismissed only on technical ground. If the appeal was filed by the petitioner in 2001 without deposit of 25% of the duty amount, the petitioner should have been informed immediately. However, for 8 years, nothing was done at the end of the respondent authorities and only in 2010, the appeal of the petitioner was dismissed, that too, after considering the letter dated 07.10.2009 of the petitioner as appeal. The impugned order dated 27.03.2010 passed by the respondent No. 3 is, therefore, quashed and set aside. The matter is remanded back to the respondent No. 3 with a direction to the respondent No. 3 to decide the appeal filed by the petitioner in 2001 on merits after giving an adequate opportunity of being heard to the petitioner. Before entertaining the appeal of the petitioner, the petitioner is hereby directed to deposit 50% of the duty amount demanded, with the respondent No. 3 within a period of one month from the

date of receipt of writ or certified copy of this order, whichever is earlier. Only on deposit of the above amount, the appeal will be heard on merits.

9. On deposit of the above amount by the petitioner, the recovery notice dated 01.09.2009 shall not be implemented till the appeal is finally heard and decided.

10. With this direction, this petition is accordingly disposed of. Rule is made absolute to the above extent.