(2011) 05 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6540 of 2006

Peeyush Kumar APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Stamp Act, 1899 — Section 27, 47, 47A, 75
Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 — Rule 9

Citation : (2011) 8 ADJ 750 : (2011) 5 AWC 5300 : (2011) 113 RD 830

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Pankaj Mithal, J.—Petitioner is aggrieved by the order dated 8.9.2003 passed by the Additional Collector, Finance & Revenue, Ghaziabad and the appellate order thereto dated 25.10.2005 passed by the Commissioner, Meerut Division, Meerut in proceeding u/s 47A of the Indian Stamp Act, 1899.

2. By the aforesaid orders the authorities have determined the deficiency in stamp duty in connection with the sale dated 19.11.1999 by treating property to be of commercial nature though according to the petitioner it is purely residential property.

3. In assailing the aforesaid orders the primary contention of Sri Manish Goyal, learned counsel for the petitioner is that no notice was served upon the petitioner as contemplated by Rule-9 of the U.P. Stamp (Valuation of Property) Rules, 1997 and as such the order of the Additional Collector is ex parte. The appellate authority in dealing with above aspect as to whether the order passed by the Additional Collector was in violation of the principle of natural justice has side tracked the issue and has concluded by merely saying that the notice sent to the petitioner is deemed to be served by refusal.

4. In exercise of powers under Sections 27, 47A and 75 of the Indian Stamp Act,

1899, a set of Rules known as Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 have been framed. The said Rules vide Rule 9 provides for the method of service of notices in connection with the proceedings under the Act.

5. Rule 9 provides that all notices, orders and other documents-required to be served upon any person shall be deemed to be duly served if the procedure prescribed therein for service is followed. The relevant part of the Rule 9 of the aforesaid Rule reads as under:

9. Services of notices, etc.-AII notices, orders and other documents required to be served upon any person shall be deemed to be duly served:

(a). ....

(c). ....

(d) in any other case, if it is addressed to the person, to be served, and (i) is given or tendered to him or his authorized agent, or (ii) is sent by registered post to that person, or (iii) if such person cannot be found and notice or order or the document sent to him through registered post is received back undelivered, is affixed on some conspicuous part of his last known place of residence or business, or is given or tendered to some adult member of his family.

The aforesaid Rule 9(d) provides that the notice shall be deemed to be served if it is addressed to the person to be served :

(i) by tendering it upon him or his authorised agent; or

(ii) by sending it to him by registered post; or

(iii) where such person cannot be found and the notice sent to him through registered post is received back undelivered it may be affixed on some conspicuous part of his last known place of residence or address or by giving or tendering it to some adult members of his family.

6. To put it simply, first an effort is to be made by tendering notice personally to the person concerned or upon his authorised agent. The notice may also be sent to him by registered post and if the person is not found or the notice sent by registered post is received back undelivered, it may be affixed at his last known place of residence or business or by giving or tendering it to some adult member of his family.

7. A perusal of the documents brought on record indicates that a notice was sent to the petitioner through the process server of the department. There is no material on record to show that the notice was sent to him by registered post. The notice so sent does not contain the last known residential address of the petitioner appearing in the sale-deed. It was addressed to him at the address of the property involved in the sale-deed which cannot be recognized as the last known place of residence or business of the petitioner. The report of the process server dated 3.12.2002 (wrongly mentioned as 3.12.2003) states that the

petitioner was not found and the person available on the spot refused to accept the notice, therefore, its copy was affixed on the main gate. This affixation is obviously not at the last known place of residence/business of the petitioner but at the address of the property involved in the sale-deed.

8. Thus from the above, it can be seen that the notice was sent by process server only. It was neither tendered to the petitioner or to his authorised agent as such its service could not have been affected by affixation. The service by affixation is only possible when the notice sent by registered post is received back undelivered on account of the fact that the person concerned could not be found. This was not the situation and therefore, the service by affixation was not legally permissible. Secondly as stated earlier the notice contained the address of the property involved in the sale-deed and not the last known residential or business address of the petitioner which clearly appeared in the sale-deed itself. The affixation of notice at the property transferred cannot be recognized as deemed service of the notice. A part from above the process server of its own was not competent to take recourse to affixation of notice.

9. In view of aforesaid facts and circumstances, I am of the opinion that there was no service of the notice of the proceedings upon the petitioner and the authorities below manifestly erred in law in treating it to be sufficient. Thus both the orders of the authorities below are liable to be set aside.

A writ of certiorari is accordingly issued quashing the impugned orders dated 8.9.2003 passed by the Additional Collector, Finance and Revenue, Ghaziabad and the appellate order thereto dated 25.10.2005 passed by the Commissioner, Meerut Division, Meerut in proceeding u/s 47 of the Indian Stamp Act and a further writ is issued directing the Collector/Additional Collector to pass a fresh order in accordance with law as expeditiously as possible preferably within a period of 6 months from the date of production of a certified copy of this order after, affording opportunity of hearing to the petitioner.

The petitioner would appear in person or through counsel before the Collector/ Additional Collector on 6th June, 2011.

In view of the date being fixed by the Court for appearance, no fresh notice need to be issued to the petitioner regarding the proceeding.

Any amount deposited by the petitioner pursuant to the impugned order will abide by the fresh decision to be taken by the Collector/Additional Collector.

Petition allowed as above.

