(2014) 07 GUJ CK 0136

In the Gujarat High Court

Case No : Special Civil Application Nos. 3045 and 3046 to 3051 of 2014

Pratishtha Developers Pvt. Ltd. APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Advocates Act, 1961 — Section 48AA
Constitution of India, 1950 — Article 226, 227
Gujarat Stamp Act, 1958 — Section 53(1)

Citation : (2014) 3 GLR 2609

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : Bhargav D. Karia for Bhargav Karia and Associates, Advocate for the Appellant; Alpesh Bhatt, A.G.P, Advocate for the Respondent

Judgement

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C.L. Soni, J.—In this group of petitions filed under Art. 226/ 227 of the Constitution of India, the orders dated 29-11-2013/28-11-2013 though passed separately, but of the same nature, by respondent No. 2 - the Chief Controlling Revenue Commissioner, in appeals preferred by the petitioners under Sec. 53(1) of the Gujarat Stamp Act, 1958 ("the Act" for short) are under challenge. Learned Advocate Mr. Bhargav D. Karia appearing for M/s. Bhargav Karia & Associates for the petitioners submitted that though the appeals preferred by the petitioners under Sec. 53(1) of the Act were within the time-limit, still, the appellate authority has rejected such appeals by holding that the appeals were not filed within time-limit of ninety days. Mr. Karia submitted that the orders under challenge before respondent No. 2 are though dated 4-4-2013, the same were received by the petitioners on 10-4-2013. Mr. Karia submitted that even in the impugned order, it is stated that the order dated 4-4-2013 passed by the Deputy Collector were sent to the petitioners on 9-4-2013, and therefore, the petitioners were entitled to file appeals within ninety days only from the date of receipt of the said orders. Mr. Karia, thus, urged to allow the petitions and remit the matter to the appellate authority to treat the appeals of the petitioners within time-limit and to decide such appeals in accordance with law.

2. Learned A.G.P. Mr. Bhatt appearing for the respondents in all the matters submitted that the appeals are dismissed by the appellate authority as the appeals were not preferred within ninety days from the date of the order passed by the Deputy Collector, and therefore, it cannot be said that the appellate authority has committed any error in dismissing the appeals on such ground. Mr. Bhatt, thus, urged to dismiss the petitions.

3. Having heard the learned Advocates for the parties, it appears that there is no dispute about the fact that the petitioners preferred the appeals under Sec. 53(1) of the Act against the order dated 4-4-2013 passed by the Deputy Collector, Stamp Duty Valuation Department on 8-7-2013. The limitation period for filing such appeals is of 90 days. If the period of ninety days is calculated from 4-4-2013, obviously the appeals could be treated to have been filed beyond the prescribed period of limitation of ninety days. However, as found recorded in the impugned orders passed by the appellate authority, the order dated 4-4-2013 passed by the Deputy Collector was sent to the petitioners by the office of the Deputy Collector only on 9-4-2013. Therefore, 90 days were available to the petitioners to file appeals against the order dated 4-4-2013 before the appellate authority from the date of communication of the order passed by the Deputy Collector. The petitioners have stated that the petitioners received copy of order dated 4-4-2013 on 10-4-2013. Such is not disputed when it is stated in the impugned orders that the order dated 4-4-2013 were dispatched to the petitioners only on 9-4-2013.

4. In such view of the matter, it appears to the Court that the appeals preferred by the petitioners were within the time-limit of ninety days, and therefore, the appellate authority was not justified in rejecting the appeals of the petitioners on the ground that the appeals of the petitioners were time-barred.

5. In the case of D. Saibaba Vs. Bar Council of India and Another, , the question was as to whether the commencement of the period of limitation for filing the review petition under Sec. 48AA of the Advocates Act would be from the date of the order or from the date of communication of the order. Section 48AA provides for filing of review of any order within 60 days from the date of that order passed by the Bar Council of India or any of its Committees under the said Act. Hon''ble the Supreme Court has held and observed in Paragraph 9 as under:

"9. So far as the commencement of period of limitation for filing the review petition is concerned, we are clearly of the opinion that the expression ''the date of that order'' as occurring in Sec. 48AA has to be construed as meaning the date of communication or knowledge of the order to the review-petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. True, the process of interpretation cannot be utilised for implanting a heart into a dead provision; however, the power to construe a provision of law can always be so exercised as to give throb to a sinking heart."

In light of above principles of law settled by Hon''ble Supreme Court and for the reasons stated above, the petitions are allowed. The impugned orders dated 29-11-2013/28-11-2013 passed by respondent No. 2-the Chief Controlling Revenue Commissioner are quashed and set aside. The appeals preferred by the petitioners under Sec. 53(1) of the Act shall be treated to have been filed within the prescribed time of ninety days and shall be decided in accordance with law. Rule is made absolute to the extent stated above in each petition.