(2012) 11 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition No. 1583 (M/S.) of 2008

Raj Kumar Dabra — APPELLANT

Vs

State of Uttarakhand — RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Limitation Act, 1963 — Section 5
Stamp Act, 1899 — Section 33, 40

Citation : AIR 2013 Utt 50

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : S.K. Jain, sisted by B.S. Thind, for the Appellant; H.M. Bhatia, for State, for the Respondent

Final Decision : Allowed

Judgement

Brahma Singh Verma, J.—By means of this petition the petitioner has sought a writ, order or direction in the nature of certiorari for quashing the impugned order dated 23-07-2008, passed by Additional Chief Revenue Commissioner, Uttarakhand Dehradun contained as No. 5 to the writ petition. The facts of the case giving rise to this writ petition according to petitioner in short are that the petitioner purchased a house situated at Sawam Nath Nagar, Haridwar for a consideration of Rs. 30,00,000/- from Dr. Sukhpal Singh Verma and another and who handed over the vacant physical possession to the petitioner. The construction of the house was 75 years old and it was in dilapidated condition. The petitioner sold out the said house to Smt. Sonal Jain. After purchase of the house Smt. Sonal Jain spent a huge amount and reconstructed it. After purchase of the said house by the petitioner in die-year 2000, the Addl. District Magistrate (Finance), Haridwar sent a notice to the petitioner and registered a Stamp Case No. 300-MV/99-2000 U/S. 47-A /33 /40 Kha of the Indian Stamp Act, 1899. The stamp case was contested by the respondent by filing objection. The A.D.M. (Finance) Haridwar after conducting the enquiry came to the conclusion that the market value of the house is Rs. 33,54,702/- and the deficit stamp duty of Rs.

33,000/-, which was calculated by the said authority, has been deposited by the petitioner on 17-11-2000, vide challan No. 43-A.

2. It is further pleaded in the writ petition in para-12 that after lapse of six years the respondent-State has preferred the revision No. 27 of 2006-07 before the Additional Chief Revenue Commissioner, Uttarakhand Dehradun. In the revision the petitioner has also raised objection to the fact that the revision is time barred and no delay condonation application has been filed, but learned Additional Chief Revenue Commissioner has illegally entertained the revision, and set aside the order passed by District Magistrate Haridwar and directed the petitioner to pay the deficit duty of Rs. 5,52,700/- and also ordered to pay a sum of Rs. two lacs as penalty.

3. Aggrieved by the order passed by Additional Chief Revenue Commissioner, the petitioner has preferred this writ petition.

4. The writ petition has been contested by the State by filing the counter affidavit. In the counter affidavit the stand taken is that the learned Addl. Chief Revenue Commissioner has rightly assessed the deficit duty on the market value of the property.

5. I have heard learned counsel for the parties and perused the record.

6. The learned Senior Advocate Sri S.K. Jain, appearing on behalf of the petitioner has raised legal ground in the writ petition that the learned revisional court has committed a manifest error of law in entertaining the revision without delay condonation application. In support of his contention he has placed reliance upon the judgment of Ragho Singh Vs. Mohan Singh and Others, , wherein the Apex Court has held that if the application u/s. 5 of Limitation Act was not filed for condoning the delay there was no justification to allow the appeal and the appeal was liable to be dismissed on the ground of limitation. In the said case the Board of Revenue before the question of limitation was agitated was of the view that though an application for condonation of delay was not filed, the delay shall be deemed to have been condoned. This is patently erroneous and the High Court was right in setting the judgment of the Additional Collector as also of the Board of Revenue.

7. The aforesaid judgment of Apex Court has been followed by this Court in the case of Smt. Khadoyot Chandra Sah Vs. The District Judge, Nainital and Others, . Relevant para-7 is quoted below:--

7. I am fortified in my aforesaid view by the ratio contained in a judgment of the Supreme Court in the case of Ragho Singh Vs. Mohan Singh and Others, , wherein dealing with the aforesaid question, their Lordship of the Supreme Court held as under:--

6. We have heard learned counsel for the parties. Since it is not disputed that the appeal filed before the Additional Collector was beyond time by 10 days and an application u/s 5 of the Limitation Act was not filed for condonation of delay,

there was no justification to the Additional Collector to allow that appeal. The appeal was liable to be dismissed on the ground of limitation. The Board of revenue before which the question of limitation was agitated was of the view that though an application for condonation of delay was not filed, the delay shall be deemed to have been condoned. This is patently erroneous. In this situation, the High Court was right in setting aside the judgment of the Additional Collector as also of the Board of Revenue. We find no infirmity in the impugned judgment. The appeal is dismissed. No costs.

8. In the instant case this court has also granted opportunity to the State-respondent to show whether any application has been filed by the State for condonation of revision before the revisional court, but no such document has been filed in support of the case by the respondent. There is also no such reference in the order of Additional Chief Revenue Commissioner that any such application for condonation of delay was filed. This fact is not disputed that the revision was filed in the year 2006 against the order of Additional collector (Finance) Haridwar dated 13-11-2000, after a lapse of six years and the revision was clearly time barred and no application u/s. 5 of the Limitation Act was filed to condone the delay in filing the revision, therefore, the writ petition is liable to be allowed on this ground alone and thus the learned Additional Chief Revenue Commissioner has committed a manifest error of law in allowing the revision.

9. Thus, in view of the facts, as discussed in foregoing paragraphs, learned revisional court has committed a manifest error of law in entertaining the revision and in view of law cited above, the judgment and order passed by the revisional court is not sustain-able in the eyes of law. The writ petition is allowed. The judgment and order dated 23-7-2008 passed by Additional Chief Revenue Commissioner Uttarakhand, Dehradun is set aside.