(2002) 01 AHC CK 0076

In the Allahabad High Court

Case No : C.M.W.P. No. 6136 of 1992

Rajendra Prasad Garg APPELLANT

Vs

Chief Controlling Revenue Authority and Others RESPONDENT

Date of Decision : 08-01-2002

Acts Referred:
Stamp Act, 1899 — Section 2(6), 3

Citation : AIR 2002 All 162 : (2002) 2 AWC 978 : (2002) 2 CivCC 369 : (2003) 3 RCR(Civil) 11 : (2002) 93 RD 198

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Prakash Chandra, for the Appellant;

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioner.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certtorari quashing the order dated 22.3.1986 passed by the Additional Collector (Finance), Agra and the order dated 22.11.1991 passed by the Chief Controlling Revenue Authority, Uttar Pradesh, Allahabad/the Board of Revenue, Uttar Pradesh at Allahabad in exercise of power u/s 56 of the Indian Stamps Act (for short ''the Act).

3. The facts of the case giving rise to the present petition are that the land in dispute measuring 330 sq. metres was purchased by the petitioner at the rate of Rs. 55 per sq. metre on higher purchase basis. The higher purchase agreement was executed in respect of the land in dispute in the year 1975, which provided that the entire sale consideration shall be paid by October, 1979. It is stated that the petitioner was given possession over the land in dispute on 12.3.1979, as the entire sale consideration was paid by him within the time prescribed under the agreement, i.e., before 30.3.1979. Thereafter, it has been stated that the

petitioner requested the respondent No. 3 to execute the sale deed, which was executed on 19.1.1985. In which the rate of land was mentioned as Rs. 55 per sq. metre, as was agreed upon between the parties initially. On the sale consideration paid by the petitioner, the stamp duty was also paid. Thereafter, the respondent No. 2 issued a notice to the petitioner demanding the stamp duty at the prevalent market rate in the year 1985.

4. The petitioner filed an objection contending that agreement was executed in the year 1975 so the market rate prevalent in the year 1976 should be made the criteria, which was Rs. 55 per sq. metre and not at the rate which was prevalent in the year 1985. The respondent No. 2 rejecting the contention of the petitioner, valued the plot at Rs. 82,500 and demanded Rs. 6,720 as deficiency in stamp duty and Rs. 6,720 as penalty and impounded the document u/s 33 read with Section 40B as amended by the State of Uttar Pradesh. by its order dated 22.3.1986. Aggrieved by the order passed by the respondent No. 2, the petitioner filed a revision before the respondent No. 1 u/s 56 of the Act. The respondent No. 1 although waived the penalty but upheld the order passed by the respondent No. 2 insofar it related to stamp duty, by its judgment and order dated 22.11.1991. Hence, the present petition.

5. Learned counsel for the petitioner submitted that the stamp duty should have been charged with reference to the date on which the agreement of higher purchase was executed in favour of the petitioner and not with reference to the date on which the sale deed was executed, the authorities below have acted illegally in charging the stamp duty with reference to the execution of the sale deed. On the other hand, learned standing counsel submitted that stamp duty is chargeable with reference to date of execution of instrument (sale deed). The submission made to the contrary by learned counsel for the petitioner was incorrect. According to him, the authorities below have rightly charged the stamp duty in the present case with reference to the execution of sale deed.

6. I have considered the submissions made by the learned counsel for the parties.

7. Section 3 of the Indian Stamp Act provides for instrument which are chargeable with duty. Section 3 of the Act came to be considered and interpreted in the case of In Re: Sri Kirti Ram Advocate, In the said case, after perusing the relevant provisions of the Act, it was ruled as under:

"Now, the certificate of enrolment being an instrument falling under Article 30 of Schedule I, it is compulsorlly chargeable with stamp duty u/s 3 of the Act. And since "chargeable" means, u/s 2(6) of the Act, chargeable when the instrument in question Is executed, it is clear that the crucial date which determines the law in force is the date of the execution of instrument."

8. Sub-section (6) of Section 2 which defines the term chargeable, no amendment has been made by the State of Uttar Pradesh, therefore, the decision in the case of Sri Kirti Ram, (supra) is fully applicable to the facts of the present case. Similar view was taken by a Full Bench of Madras High Court in the

case in ILR Mad 394 (FB), wherein it was observed that duty should be calculated with reference to the requirement of law at the time of execution of the document.

9. In view of the provisions of Sub-section (6) of Section 2 read with Section 3 of the Act and in view of the aforesaid decisions, the submission made by learned counsel for the petitioner cannot be accepted. Learned standing counsel is right in his submission that stamp duty is to be charged with reference to the date of execution of the instrument/sale deed. The authorities below, thus, committed no error of law in charging the stamp duty in the present case. The writ petition has got no force.

10. The writ petition falls and is hereby dismissed but without any order as to costs.

