(2011) 05 AHC CK 0143

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21535 of 2011

Rajhans Infratech Pvt. Ltd. and Another — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Stamp Act, 1899 — Section 10(A)

Citation : (2011) 5 ADJ 518 : AIR 2011 All 146 : (2011) 5 AWC 4745 : (2011) 113 RD 806

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Petitioners are two registered private limited companies duly incorporated under the provisions of the Indian Companies Act. They are sister companies.

2. The Petitioner-companies were allotted plot No. 6-B and 6-A respectively in Sector-I, district Gautambudh Nagar by the Greater Noida Industrial Development Authority having value of Rs. 18,11,84,248/- and Rs. 22,19,63,683/-, respectively. The Greater Noida Industrial Development Authority vide letter dated 24.3.2011 required both the companies to furnish stamp papers equivalent to 5% of the value of the plots allotted to them for the purposes of execution of the lease deeds.

3. Petitioner No. 1 was required to pay stamp duty of Rs. 1,24,10,000/- and Petitioner No. 2 Rs. 1,52,02,992/- as per the calculation made by their counsel. Since the amount of stamp duty payable was very heavy, it was advised that the same may be paid in cash and a certificate of payment may be obtained in the form of an endorsement by the officer in charge of the treasury as provided u/s 10-A of the Indian Stamp Act.

4. The Petitioners accordingly, for the purpose of payment of requisite stamp duty, as indicated above, applied to the respective banks i.e. Allahabad Bank, Nehru Place, New Delhi and Allahabad Bank, Vasundhara, Ghaziabad for preparation of the necessary drafts/bankers cheques in favour of Chief Treasury Officer, Gautambudh Nagar, U.P. Petitioner No. 1 was issued draft No. 019641 for a sum of Rs. 1,24,10,000/- and Petitioner No. 2 was issued draft No. 018564 for an amount of Rs. 1,52,02,992/-.

5. The above drafts/bankers cheques were submitted for payment of stamp duty before the Officer In charge, Treasury, Gautambudh Nagar on 26.3.2011 whereupon the Petitioners were required to make an application in writing. The assistant of the counsel for the Petitioners accordingly drafted two separate applications for payment of stamp duty in cash/draft/bankers cheques and for issuance of necessary certificate by endorsement However, in submitting such applications due to some inadvertence/human error the amount of stamp duty payable by the two Petitioner-companies were interchanged alongwith the drafts with the result that the Officer In charge, Treasury on 30.3.2011 issued certificate by endorsement to the effect that Petitioner No. 1 had paid stamp duty of Rs. 1,52,02,992/- in place of Rs. 1,24,10,000/- and that Petitioner No. 2 had paid stamp duty of Rs. 1,24,10,000/- in place of Rs. 1,52,02,992/-.

6. The Petitioners on knowing about the said mistake, immediately on 1st April, 2011 moved application for correction of the above certificates but as no order was passed on the same and the Petitioners were orally informed that there is no provision for any such correction, they invoked writ jurisdiction of this Court making the following prayer:

(i) Issue a writ order or direction in the nature of mandamus, commanding the Respondent Nos. 3 and 4 to make the necessary correction in the certificates issued u/s 10-A of the Indian Stamp Act to the effect that the name shown in the certificate annexed as Annexure No. 6 may be changed to "M/S Express Projects Pvt. Ltd." and that in Annexure No. 7 may be changed to "M/S Rajhans Infratech Pvt. Ltd.

(ii) Issue a writ order or direction in the nature of mandamus commanding the Respondent No. 4 to decide the application of the Petitioners dated 1.4.2011 and to make the necessary corrections in the certificate u/s 10-A of the Indian Stamp Act, as solicited therein.

(iii) Issue a writ, order or direction which this Hon''ble Court may deem fit and proper in the nature and circumstances of the case; AND

(iv) To award cost of the petition to the Petitioner.

7. On the writ petition being presented, the Court on 15.4.2011 permitted the learned Standing Counsel, who had accepted notice on behalf of the Respondents to seek instructions in the matter or to file counter-affidavit.

8. Learned Standing Counsel on instructions, informed that the prayer for

correction made by the Petitioners has been rejected by the order dated 4.4.2011 passed by the Senior Treasury Officer, Gautambudh Nagar.

9. Accordingly, Petitioners moved application No. 136709 of 2011 for amending the writ petition so as to challenge the above order dated 4.4.2011. The said application was allowed vide order dated 4.5.2011 and the Petitioners were permitted to challenge the order dated 4.4.2011 also.

10. I have heard Sri Ashish Mishra, learned Counsel for the Petitioners and Sri K.M. Sahai, learned Standing Counsel who appears and has filed a counter-affidavit on behalf of the Respondents.

11. The sole ground on which the correction in the certificates of payment of stamp duty has been rejected is that once a certificate has been issued there is no provision for amending the same.

12. Learned Counsel for the Petitioner has argued that the Petitioners have not prayed for amendment of the certificates but only for the correction which power is always vested in the authority concerned of there is some bona fide error or mistake in the certificates.

13. On the other hand, submission of learned Standing Counsel is that in the absence of any specific provision permitting such an amendment/correction, any change in the certificate would amount to review which is not permissible under the Act Moreover, if such corrections are permitted to be made it will create chaos in the working of the treasury. He has further submitted that in case Petitioners have been issued stamps in excess they can surrender the same and get refund in accordance with the Rules and, if there is any shortage they can apply and purchase further stamp papers to make the deficiency good, but the certificates issued cannot be corrected.

14. I have considered respective submissions of the parties and have examined the pleadings.

15. Petitioner No. 1 was allotted plot No. 6 B, Sector-I in Gautambudh Nagar by the Greater Noida Industrial Development Authority having value of Rs. 18,11,84,248/-. On lease of such value of land stamp duty at the rate of 5% of the value amounting to Rs. 1,24,10,000/- was payable. In order to pay the said stamp duty Petitioner No. 1 got a bankers'' cheque No. 019641 of the aforesaid amount prepared from the Allahabad Bank, Nehru Place, New Delhi. The Chief Manager of the said branch of the bank vide certificate dated 1st April, 2011 has certified that the aforesaid bankers cheque No. 019641 dated 25.3.2011 for a sum of Rs. 1,24,10,000/- has been issued by its branch in favour of Chief Treasury Officer, Gautambudh Nagar, U.P. from the account of Petitioner No. 1. It means that the Petitioner No. 1 intended to pay the aforesaid amount towards the stamp duty in respect of the lease for the aforesaid plot. Similarly, Petitioner No. 2 was allotted plot No. 6 A in Sector-I of Gautam Budh Nagar by the Greater Noida Industrial Development Authority for a value of Rs. 22,19,63,683/- and on

the lease of such value of plot stamp duty payable was Rs. 1,52,02,992/-. In order to pay the said stamp duty Petitioner No. 2 got a bankers cheque No. 018564 of the aforesaid amount prepared from the Allahabad Bank, Vasundhara Ghaziabad. The Chief Manager of the said branch of the bank vide certificate dated 1st April, 2011 has certified that the aforesaid bankers cheque No. 018564 dated 25.3.2011 for a sum of Rs. 1,52,02,992/- has been issued by its branch in favour of Chief Treasury Officer, Gautambudh Nagar, U.P. from the account of Petitioner No. 2. It means that the Petitioner No. 2 intended to pay the aforesaid amount towards the stamp duty in respect of the lease for the aforesaid plot.

16. These factual averments and the issuance of the certificates by the respective Chief Managers of the two branches of the Allahabad Bank have not been denied or disputed by the Respondents in the counter-affidavit or even orally.

17. In view of aforesaid facts and circumstances, the issuance of the certificate dated 30.3.2011 by the Officer In charge, Treasury, Ghaziabad with regard to payment of stamp duty by the Petitioners are ex facie incorrect The amount of stamp duty paid by Petitioner No. 1 has been endorsed in the certificate issued to Petitioner No. 2 and vice versa. The said error/mistake is a bona fide mistake which is apparent on the face of the record.

18. The Act contains no specific provision conferring power of review or for the amendment/correction of such a certificate issued u/s 10-A of the Act with regard to the payment of stamp duty in cash. However, it is well settled that where an authority is empowered to issue a certificate or pass order it always has an inherent power to correct or rectify the mistake which may accidentally occur in issuing such a certificate or passing an order. The inherent power is one which is not expressly provided but nevertheless is deemed to exist in the authority or the Court concerned. It is altogether distinct from the power of review which is normally a creation of statute.

19. Undoubtedly, the statute may not have conferred any power of review in this regard upon the authority concerned but such an statutory power of review, which is substantive in nature is to be distinguished from a procedural review which is inherent in every Court, tribunal or authority.

20. The Supreme Court in the case of Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, observed as under

6 We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental

or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

21. The procedural review or the inherent power to correct or rectify an order or certificate is based on the maxim "actus curiae neminem gravabit" which means an act of Court shall prejudice no man as has been laid down in Jang Singh Vs. Brijlal and Others,

22. It may also be noted that there is no express or implied bar under the Act which prohibits the authority from correcting or rectifying the certificate issued or order passed. In Jaipur Mineral Development Syndicate, Jaipur Vs. The Commissioner of Income Tax, New Delhi, it has been held that the Court have power, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent abuse of the process. To hold otherwise would result in cross miscarriage of justice.

23. In another case The Newabganj Sugar Mills Co. Ltd. and Others Vs. The Union of India (UOI) and Others, of Supreme Court observed as under

The inherent power has its root in necessity and its breath is coextensive with necessity.

24. Based upon the aforesaid maxim "actus curiae neminem gravabit" is the provision of Section 152 of the Code of Civil Procedure. It provides that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

25. The aforesaid provision can be invoked only for the limited purpose of correcting clerical or arithmetical errors which may arise by accidental slip or omission.

26. The Apex Court in the case of Jayalakshmi Coelho Vs. Oswald Joseph Coelho, has considered the provisions of Section 152 of the CPC and held that the intention behind the aforesaid provision is clearly reflected in the maxim "actus curiae neminem gravabit" and the powers as contained in Section 152 of the CPC are inherent powers which are available to all Courts and authorities regardless of whether or not Section 152 of the CPC is applicable to any particular proceeding. The power to correct or rectify any mistake or error which may have crept into any order passed by any authority is inherent in every Court and authority irrespective of applicability of Section 152 of the Code of Civil Procedure.

27. In another case in Tilak Raj Vs. Baikunthi Devi (D) by LRs., the Apex Court in paragraph 25 observed as under:

25. Since the Court exists to dispense justice, any mistake which is found to be clerical in nature should be allowed to be rectified by exercising inherent power

vested in the Court for sub-serving the cause of justice. The principle behind the provision is that no party should suffer due to bona fide mistake. Whatever is intended by the Court while passing the order or decree must be properly reflected therein otherwise it would only be destructive of the principle of advancing the cause of justice. In such matters, the Court should not bind itself by shackles of technicalities.

28. In the light of aforesaid discussion, it can safely be concluded that no authority is powerless to correct a mistake in its own order if the mistake is a bona fide mistake and is of arithmetical or clerical nature which may have arisen due to incidental slip or omission. Such correction or rectification can be done in exercise of inherent power notwithstanding that the same has not been conferred upon it under the Statute.

29. In the instant case, as pointed out earlier, the mistake in the issuance of the certificate dated 30.3.2011 is a bona fide mistake which is of clerical nature and, as such, can be corrected/rectified by the authority. The authority concerned has simply rejected the prayer for correction without reference to its inherent power-only for the reason that a certificate once issued is not liable to be corrected.

30. It may be pertinent to mentioned that in issuing certificate u/s 10-A of the Act no stamp paper worth the amount of stamp duty payable or paid is issued and it is only on the instrument concerned that an endorsement is made certifying payment of requisite stamp duty which is deposited by the person concerned in cash/bank draft/bankers cheque and, as such, there is no question of return of stamp papers found to have been issued in excess. Accordingly, the provisions of the Rules framed under the Act, as contained in the Stamp Manual would not be applicable in so far as the correction of certificates issued u/s 10-A of the Act are concerned.

31. In view of aforesaid facts and circumstances, the order impugned dated 4.4.2011 passed by the Senior Treasury Officer, Gautambudh Nagar cannot be sustained in law. Accordingly, a writ of certiorari is issued quashing the said order and a further writ of mandamus is issued to the Respondent No. 4 to make the necessary correction in the certificates issued on 30.3.2011 with regard to the payment of stamp duty by the Petitioner Nos. 1 and 2.

32. However, it may be necessary to add that under the Act as the authority to allow to payment of stamp duty in cash is vested in the Collector, in order to avoid any misuse of the aforesaid power in proposed correction or rectification in certificates issued u/s 10-A of the Act would be subject to approval of the Collector concerned.

33. The writ petition is allowed with the above observation.

34. No order as to costs.

