(2013) 07 MP CK 0203

In the Madhya Pradesh High Court

Case No : Writ Petition No. 316 of 2012

Ram Charan Lal APPELLANT

Vs

Surendra Sharma RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Stamp Act, 1899 — Section 38, 40, 40(1)(b)

Citation : (2013) 07 MP CK 0203

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : R.K. Goyal, for the Appellant; P.C. Chandil, Advocate for the Respondent No. 1 and Shri Raghvendra Dixit, Govt. Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S.K. Gangele, J.—Heard. The petitioner has filed this petition against the order dt. 2.1.2012 passed by the Board of Revenue (Annexure P/7).

2. The respondent No. 1 filed a suit for specific performance of contract. It was pleaded by the respondent No. 1 that the petitioner entered into a contract with the respondent No. 1 on 2.2.2006 in regard to sale of a house (House No. 176), area 4800 sq. ft., situate at Jiwaji Nagar, main road corner, Gwalior, in a consideration of Rs. 85,00,000/-. It is further pleaded that the petitioner received an amount of Rs. 3,00,000/- at the time of execution of contract. In support of his contention, respondent No. 1 filed a written agreement, which was on Indian Non-judicial Stamp of Rs. 20-20 each. The petitioner denied the execution of the contract.

3. Trial court vide order dt. 21.2.2011, sent the document (agreement) to the Collector of Stamps for impounding and charging the duty accordingly.

4. The Collector of Stamps vide order dt. 28.7.2011 held that the stamp duty of Rs. 8,07,400/- is required to be paid by the respondent No. 1 as stamp duty on the document and the respondent No. 1 is also liable to pay penalty of ten times

of Rs. 80,74,000/- on the document. Against the aforesaid order, the respondent No. 1 filed an appeal before the Board of Revenue. The Board of Revenue vide order dt. 2.1.2012 maintained the amount, which is payable by the respondent No. 1 as stamp duty of Rs. 8,07,400/-, however, imposed penalty of Rs. 1,00,000/- in place of Rs. 80,74,000/-.

5. Learned counsel for the petitioner has contended that the order passed by the Board of Revenue is illegal. It is further contended that the Board of Revenue has not assigned any reason in reducing the penalty.

6. Contrary to this, learned counsel for the respondent No. 1 has contended that the order passed by the Board of Revenue is in accordance with law. The Collector of Stamps did not assign any reason in imposing ten times penalty.

7. The question for consideration in this petition is that what penalty is to be imposed against respondent No. 2 in the event of impounding the document.

8. Section 40 of the Indian Stamps Act, 1989 (hereinafter referred as Act of 1989), prescribes Collector''s power to stamp instruments impounded. The relevant Section 40(1)(b) of the Act of 1989 prescribes provision for imposing penalty, which is as under:-

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of the five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

9. From the aforesaid provision, it is clear that the Collector of Stamps could impose ten times penalty of the amount of the proper duty if he thinks fit.

10. Division Bench of this court in Umesh Kumar Sharma Vs. Rajaram Jat and Another, has observed that u/s 40 of the Act, the Collector of Stamps can impose penalty not exceeding ten times the amount of proper duty, however, he can also impose lesser penalty of ten times because a discretion has been given to the authority. The relevant observation is as under:-

15. A sharp distinction is to be marked in the language of section 38 and section 40 of the Act. While section 38 requires the Court to recover the duty and ten times penalty and nothing less than that, section 40 authorizes the Collector (Stamps) to recover the duty so also recover penalty, which shall not exceed ten times the amount of proper duty. Discretion given to the Collector (Stamps) is to impose any amount of penalty, which should not necessarily be ten times, it can be less than that.

11. In the present case, it is observed by the Collector of Stamps that the respondent No. 1 did not pay the stamp duty on the document, however, no reasons were assigned by the authority in imposing ten times penalty. The Board

of Revenue in its order has observed that there was no evidence that the respondent No. 1 did not deliberately pay the stamp duty, hence, he was not guilty, in such circumstances, it would be appropriate to impose penalty of Rs. 1,00,000/-.

12. In my opinion, there is no evidence on record to show that the respondent No. 1 was innocent. It is submitted by the counsel for the petitioner that the respondent No. 1 had executed many sale deeds and he had knowledge that the stamp duty is payable on the instrument agreement to sale. By the aforesaid agreement, a valuable right of a person in regard to property was affected. The petitioner denied that he had agreed to sell the house. The stamp duty has been provided by the legislature in order to prevent the misuse of the provision and the bogus agreement could not take place. In such circumstances, it is obligatory on the part of the authority to impose proper penalty. Looking to the facts of the case, in my opinion, it would be just and proper to impose penalty of five times the amount of stamp duty of Rs. 8,07,400/-, i.e. Rs. 40,37,000/-, which is payable by respondent No. 1. Consequently, the petition is disposed of with the direction that the respondent No. 1 shall pay penalty of five times the amount of stamp duty of Rs. 8,07,400/-, i.e. Rs. 40,37,000/-. The impugned order dt. 2.1.2012 passed by the Board of Revenue (Annexure P/7) is modified accordingly. No order as to costs.