(2005) 07 CAL CK 0038

In the Calcutta High Court

Case No : Writ Petition No. 21042 (W) of 2004

Ram Singh Saraf APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 05-07-2005

Acts Referred:
Stamp Act, 1899 — Section 49, 50

Citation : (2005) 4 CHN 541

Hon'ble Judges : Sadhan Kumar Gupta, J

Bench : Single Bench

Advocate : Sandip Kumar and K.P. Banerjee, for the Appellant; Tarapada Haldar, for the Respondent

Final Decision : Allowed

Judgement

Sadhan Kumar Gupta, J.—The case of the writ petitioner is that he submitted a Deed of Gift for registration, he being the donor, in the office of the Additional Registrar of Assurances--II, New Secretariat Building, Calcutta. Stamp-duty of Rs. 22,520/-was paid in respect of the said Deed of Gift. In addition to that, the Additional Registrar of Assurances--II before registering the said instrument of transfer, directed that a further stamp-duty to the extent of Rs. 4,57,200/- was to be paid in respect of the said instrument, before final registration. As the petitioner could not pay such a huge amount of stamp-duty, he abandoned the idea of registering the said Deed of Gift and decided not to make any transfer of his property by the said Deed of Gift. Consequently, the petitioner asked for the return of the said unregistered document from the respondent No. 2. But he refused to return the said unregistered instrument and advised the petitioner to file a deed of cancellation in respect of the said unregistered Deed of Gift. Being dissatisfied with the decision of the Registrar, the petitioner submitted series of representations to the respondents requesting them to return back his unregistered Deed of Gift. But the respondent authorities did not take any action. As the respondents did not take any step on the basis of his representation in that respect, so finding no other alternative, the petitioner has filed this writ application praying for directing the respondent authorities to immediately return back the said unregistered Deed of Gift in his favour.

2. I have heard the submissions of the learned Advocate for the petitioner and the learned Advocate for the State. Both of them conceded that there is no specific provision either in the Registration Act or in the Indian Stamp Act regarding the return of the document in question under the circumstances of the present case. But the fact remains that the petitioner submitted a Deed of Gift before the registering authority for the purposes of registration and at that time he paid stamp-duty to the extent of Rs. 22,520/-. But the said Deed of Gift was not registered on the ground that further stamp-duty to the extent of Rs. 4,57,200/- was required to be paid by the petitioner. The petitioner, as it appears from the writ petition, thereafter decided not to register the said Deed of Gift as he was unable to pay such a huge amount of stamp-duty, which was required to be paid in accordance with law. For that reason, he prayed for return of the document. But the Registrar concern did not return the same presumably on the ground that once it has been presented for registration, it cannot be returned to the presenter as there is no such provision in the Registration Act. But simply because there is no such provision in the Act itself, it cannot be said that for that reason only the petitioner will be deprived of getting back his deed in question. There are provisions in the Registration Act regarding the steps that are to be taken in respect of an unclaimed document or when for reasons to be recorded the Registrar decided not to register a particular document. Fact remains that for the said deed, a stamp-duty valued at Rs. 22,250/- has been paid and as the petitioner is not in a position to pay the balance stamp-duty, so the stamp-duty already paid, has been spoilt. Unless and until the document is registered with the registering authority, it cannot be said that it is the property of the said authority. A document is presented before the registering authority for the purpose of registration and if the formalities are complete and necessary stamp duty is paid, then and then only the Registrar can direct for registration of the said document and consequently the said document becomes the property of the said department and it will be preserved accordingly, as provided in the Registration Act. But so far as the present case is concerned, it appears that admittedly said document was not registered for non-payment of the required stamp-duty. So, said document cannot be the property of the registering authority. I fail to understand as to what is the difficulty in returning the said document along with the stamp which has already been affixed with the said document to the petitioner; when the said document was not registered in accordance with law. It may be pointed out here that Section 49 of the Indian Stamp Act, 1899 has provided for making allowances for spoiled stamps. It has been provided in the said section that the Collector may, on application made with the period prescribed in Section 50, and if he is satisfied as to the facts, he can make allowance for impressed stamps spoiled in the cases mentioned in the said section. Whether the petitioner can take advantage of the said section for

getting allowances in respect of the spoiled stamps, is a different question. But, it cannot be denied that if the said deed, along with the spoiled stamps, is returned to the petitioner, then he will be at liberty to pray before the Collector for making allowance for the said spoiled stamps. The registering authority, by not returning the said document along with the stamp already affixed with it, has practically denied this opportunity to the petitioner which has been provided in Section 49 of the Indian Stamp Act. This action on the part of the registering authority appears to me to be highly improper and against the principle of natural justice and I think that this Court by exercise of its writ jurisdiction should interfere into the matter and necessary direction should be given to the respondents in this respect. To my mind, ends of justice will be served if the provisional registration, as presumed to have been done in respect of the deed produced by the petitioner to the registering authority, should be treated to be cancelled and the deed in question should be returned to the executor or to the person who presented the same for registration. If such an order is passed, there is no question of the respondents suffering any loss or injury due to that.

3. Considering all these things, the writ petition is allowed on contest. The respondents are directed to return the deed in question along with the stamp already affixed with it treating the provisional registration of the said deed, as cancelled and after making necessary notes in the register, as kept in the office of the Registrar. With this observation the writ petition is thus disposed of.

