(2013) 07 AHC CK 0076

In the Allahabad High Court

Case No : C.M.W.P. No. 24003 of 2000 and Civil Miscellaneous Correction Application No. 196226 of 2013

Ramesh Chandra Gupta and Others APPELLANT

Vs

Board of Revenue U.P./Chief Controlling Revenue Authority, U.P. Allahabad and Others RESPONDENT

Date of Decision : 07-07-2013

Acts Referred:

Citation : (2013) 121 RD 3

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary, K.N. Tripathi, N.B. Nigam and Rajnish Kumar Rai, for the Appellant;

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Shorn of all technicalities and unnecessary facts on the submission made on behalf of the parties, the only question which re-quires to be dealt within this writ petition is whether the instrument dated 7.9.1999 (Annexure-3 to the petition) is chargeable to stamp duty as a conveyance under Article 23 of Schedule 1-B of the Indian Stamps Act, 1899 (hereinafter referred to as an ''Act'') or as a transfer of lease by way of assignment under Article 63 of Schedule 1-B of the Act. The orders impugned in this writ petition are the orders passed by the Additional District Magistrate (Finance and Revenue) dated 23.2.2000 in Stamp Case No. 151 of 1999-2000 and the revisional order thereto dated 27.9.1999 passed by the Board of Revenue/Chief Controlling Revenue Authority, U.P. Allahabad.

2. The petitioners on the above instrument on the sale consideration of Rs. 71 lacks mentioned therein have paid stamp duty of Rs. 10,30,570/- in accordance with Article 63 of Schedule 1-B of the Act but the authorities by the impugned orders have treated the instrument to be a conveyance and have demanded stamp duty on it on the market value under Article 23 of Schedule 1-B of the Act.

3. Sri K.N. Tripathi, Senior Advocate assisted by Sri N.B. Nigam and Rajnish Kumar Rai, learned Counsel for the petitioners had argued that the property was on perpetual lease and the lease hold rights alone have been transferred and this is implicit from the plain reading of the instrument and therefore the authorities are not justified in treating it a deed of conveyance u/s 2(10) of the Act.

4. Sri Nimai Das, had defended the impugned order on the ground that the transfer is not only of lease hold rights but right to construct which amounts to absolute sale of the property.

5. The instrument in question dated 7.9.1999 which has been filed as Annexure-3 to the writ petition describes the property in question in Schedule A and Schedule B to be revenue plot No. 158 (corresponding to new numbers 296, 198) and revenue plot No. 234 (corresponding to new number 293) situate in Civil Lines, Jhansi.

6. The above properties were the properties of then Zamindar Smt. Radha Bai which devolved upon Smt. Sarju Bai in respect whereof a permanent lease deed dated 1.9.1999 was executed and the lessee was granted transferable rights.

7. The heirs and successors of the above lease holder have executed the present deed in favour of the petitioners. The instrument clearly states that the transferors are the permanent lessees of the land vide lease dated 1.9.1999 and they intend to transfer their permanent lease hold rights in the said land in favour of petitioners for consideration of Rs. 71 lacs. It also states that they have delivered possession of the land to the petitioners and that they have no concern left with the above land in any manner. The instrument further states that the lease rent payable by the transferors will now be paid by the petitioners to the lawful heirs/successors of the Zamindar who had leased out the land permanently to their predecessors.

8. In view of the recitals contained in the above instrument it is implicit that the property was on permanent lease and the heirs/successors of lessee have transferred whatever rights they have acquired in the said land in favour of the petitioners. It is well known that a person cannot transfer more man what he himself possesses in the property. Therefore, the heirs/successors of the lessee can only transfer their permanent lease hold rights in the land and nothing more.

9. Accordingly, the above instrument only purports to transfer the lease hold rights acquired by the lessee and not the absolute ownership rights in the said land.

10. The Apex Court in dealing with a similar controversy in the Residents Welfare Association, Noida Vs. State of U.P. and Others, , where lease was granted by NOIDA and the lessee thereof transferred its rights in favour of third party, held the instrument to be a transfer of lessee by way of assignment chargeable to stamp duty under Article 63 of Schedule 1-B of the Act and that it was not open for the authorities to embark upon enquiry into the market value of the land or

even the building.

11. In Om Shree Ganesh Sahkari Avas Samiti Limited Vs. State Of U.P. and Others, , relying upon the decision of the Supreme Court in the case Resident Welfare Association (supra) I myself has held that in transfer of lease by way of assignment the lease holder assigns whatever rights he possesses under a lease in favour of third party without keeping any right reserved for himself thus bringing the assignee in direct contact with the original lessor. In such transfer the assignee/transferee does not acquire absolute ownership of the property but only lease hold rights which were possessed by the lessee clothing himself with the rights of his principal and the instrument would be covered by Article 63 Schedule 1-B of the Act.

12. A similar view was expressed by me in the case of Narendra Dhar Vs. State of U.P. and Another, . In the said case the development authority leased out the property and the lessee thereof transferred his rights in favour of the petitioner, the Stamp authorities treated the instrument to be a conveyance but in the writ petition it was held that the lessor had only transferred his lease hold rights in the property for the remainder period and as such the transfer would be a transfer of lease by way of assignment chargeable to stamp duty under Article 63 of Schedule 1-B of the Act.

13. A lease is defined in sub-section (16) of section 2 of the Act to mean a patta and certain other instruments. The definition of lease is more appropriately contained in section 105 of the Transfer of Property Act (hereinafter referred to as "T.P. Act"). It provides that a lease of immovable property is a transfer of rights to enjoy the property for a certain time or in perpetuity for consideration of a price paid or promised. The rights and liabilities of the parties to the lease i.e. lessor and lessee are contained in section 108 of the T.P. Act and it provides that the lessee has a right to transfer absolutely or by way of mortgage or sub-lease the whole or any part of interest in the property and any transferee of such interest or part may against transfer it. It means that the lease hold rights are transferable by the lessee.

14. It appears that the heirs and successors of the original lessee in pursuance to the above by the instrument in question transferred all their rights in the property in favour of the petitioners with the liability of payment of rent henceforth on their behalf to the owner i.e. the heirs and successors of the Zamindar who executed the permanent lease.

15. The recitals in the instrument and the surrounding facts clearly points out that the instrument in question is a simple deed of transfer of lease hold rights and is not a conveyance irrespective of the right given to raise construction which is not shown to be forbidden by the original lease.

16. Sub-section (10) of section 2 of the Act defines ''conveyance'' to include a sale and every instrument by which the property is transferred inter vivos provided it is not otherwise contained in Schedule 1, Schedule 1-A or Schedule 1-

B of the Act.

17. For the sake of convenience section 2(10) of the Act is reproduced below:--

Section 2 Definitions:

(10) Conveyance--Conveyance includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I, Schedule I-A or Schedule I-B as the case may be.

18. A plain reading of the above definition connotes that the instruments which are otherwise specified in Schedule 1, Schedule 1-A or Schedule 1-B of the Act stand excluded from the definition of "conveyance".

19. Therefore, a deed of transfer of lease hold rights as specifically provided in Article 63 of section 1-B of the Act stand excluded from the definition of conveyance as contained in section 2(10) of the Act.

20. Accordingly, the instrument in question is held to be an instrument which transfers lease by way of assignment in favour of the petitioners as such would be covered by Article 63 of Schedule 1-B of the Act for the purposes of payment of stamp duty and would stand excluded from the definition of "conveyance" contained in section 2(10) of the Act.

21. This apart, report of the Sub-Registrar dated 2.12.1999 admits that the instrument is transfer of lease covered by Article 63 of Schedule 1-B of the Act and the stamp duty payable is Rs. 10,29,500/- whereas the petitioners have paid a sum of Rs. 10,30,570/- which is more than sufficient.

22. The report of the Tehsildar dated 10.1.2000 which is highly disputed and is said to have been submitted after the so called survey on a Sunday states that the minimum market value of the property is to be calculated by applying the rate of Rs. 4,500/- per sq. meter as notified by the Collector whereas on the date of the execution of the above instrument the rate in force was only Rs. 3,700/- per sq. meter. The rate of Rs. 4,500/- per. sq. meter has come into effect from 1.11.1999. The assessment of the market value on the basis of rate of Rs. 4,500/- per sq. meter by applying the said rate retrospectively w.e.f. 1.9.1999 (sic) so as to bring the instrument dated 29.9.1999 within its ambit is ex-facie illegal and appears to be nothing but to abuse of the process to harass the parties.

23. In the aforesaid facts and circumstances the impugned orders dated 23.2.2000, 27.9.1999 and the consequential recovery with the sale proclamation are quashed. The writ petition is allowed. No orders as to costs.