
(2019) 09 CAL CK 0035

In the Calcutta High Court

Case No : General Application (GA) No. 2, 1506 Of 2019, Writ Petitions (WP) No. 610 Of 2017

Rekha Bajaj

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 340
Indian Stamp Act, 1899 — Section 2(10), 2(12), 2(14), 3, 9, 28(3)
Transfer Of Property Act, 1882 — Section 5, 55(1)(d)

Citation : (2019) 09 CAL CK 0035

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Saptangsu Basu, Sib Sankar Das, Abhrotosh Majumdar, Prithu Dudhuria, Ayan Banerjee

Final Decision : Disposed Off

Judgement

Debangsu Basak, J

1. Petitioners have assailed the vires of Government Order dated March 4, 2014 bearing No. 346-FT. Petitioners have also sought quashing of the letter dated March 7, 2017.

2. Learned Senior Advocate appearing for the petitioner has submitted that, the petitioner presented a deed of conveyance for registration. The conveyance relates to Premises No. 61A, Sharat Bose Road, Kolkata. The respondent Nos. 6 to 8 are the owners of such property. The respondent Nos. 6 to 8 executed an agreement for sale in favour of the respondent No. 5 on August 19, 2016. The entire consideration of Rs. 3,98,00,000/- was paid by the respondent No. 5 to the respondent Nos. 6 to 8. Such agreement for sale was duly registered and full stamp duty paid thereon. The agreement for sale provided that, the respondent No. 5 would be entitled to nominate a purchaser and that, if such nomination was made, the respondent Nos. 6 to 8 would be obliged to execute conveyance

in favour of the nominee.

3. Learned Senior Advocate appearing for the petitioners has submitted that, the respondent No. 5 nominated the petitioner in terms of such agreement for sale. In terms of such nomination, a draft deed of conveyance was prepared. The draft deed of conveyance was presented with the respondent authorities. The respondents did not accept the same and contended that, the deed of conveyance would require stamp duty. According to him, the agreement for sale having been registered with full stamp duty and such agreement for sale having a clause permitting nomination, no further stamp duty is payable for registration of the conveyance in view of the provisions of the Indian Stamp Act, 1899 as applicable in the State of West Bengal.

4. Learned Senior Advocate appearing for the petitioner has submitted that, the respondent No. 5 by letters dated September 5, 2016 and November 28, 2016 requested the respondent authorities to desist from charging the stamp duty. In response thereto, by the impugned letter dated March 7, 2017, the respondent authorities took the stand that in view of the Government Order dated March 4, 2014, no remission or deduction of stamp duty is permissible.

5. Learned Senior Advocate appearing for the petitioners has relied upon Section 2(10), 9, 28(3), Schedule I-A, Serial No. 5, Serial No. 23 of the Indian Stamp Act, 1899. He has relied upon Section 5 and 55(1)(d) of the Transfer of Property Act, 1882 in support of his contentions. He has relied upon All India Reporter 1954 Mysore page 145 (B. Himantharaju Setty v. Corporation of the City of Bangalore) and All India Reporter 1935 Bombay page 340 (Rahimtulla Lowji Damani v. The Official Assignee of Bombay) in support of his contentions. He has relied upon All India Reporter 1967 Supreme Court page 744 (Ram Baran Prasad v. Ram Mohit Hazra & Ors.) in support of the contention that an agreement for sale does not create any right. He has also relied upon All India Reporter 2010 Karnataka page 186 (M/s. Umrah Developers, Bangalore v. Deputy Commissioner, Bangalore Urban District, K.G. Road, Bangalore & Anr.) and 2006 Volume 4 Patna Law Journal page 124 (Uma Shankar Sah v. The State of Bihar & Ors.) in support of his contentions.

6. Learned Additional Advocate General appearing for the respondents has referred to the agreement for sale. He has submitted that, there is a difference between the memo of consideration in the agreement for sale and the deed of conveyance. Therefore, according to him, the two documents being different, each of them are chargeable under stamp duty. He has referred to Sections 2(10), (12), (14), 3, 9, Schedule 1-A Serial No. 5, Serial No. 23 in support of his contentions. He has relied upon 2010 Volume 3 Supreme Court Cases page 765 (Securities and Exchange Board of India v. Ajay Agarwal), 1975 Volume 1 Supreme Court Cases page 305 (Union of India & Anr. v. M/s. Parameswaran Match Works & Ors.), 1974 Volume 1 Supreme Court Cases page 534 (Shi Rama Sugar Industries Ltd. v. State of Andhra Pradesh & Ors.) and 1990 Volume 2 Supreme Court Cases page 502 (Kerala Hotel and Restaurant Association & Ors.)

in support of his contentions.

7. An agreement for sale dated August 19, 2016 in respect of Premises No. 61A, Sharat Bose Road, Kolkata was registered on August 19, 2016. Clause 10 of the agreement for sale requires the vendors to execute and have a deed of conveyance registered in respect of the property either in the name of the purchaser or in the name of another person nominated by the purchaser. The petitioner claims to be a nominee of the purchaser. The purchaser is the respondent No. 5. The petitioner presented a deed of conveyance for registration. The registering authority required the petitioner to pay the full stamp duty in respect of the deed of conveyance presented for registration. The petitioner contended that, the full stamp duty being paid on the agreement for sale, no further stamp duty is payable for registration of the deed of conveyance. By the impugned letter dated March 7, 2017 the respondent authorities have relied upon the Government Order No. 346-FT dated March 4, 2014 and expressed the view that, no remission or deduction of stamp duty is allowable if the transfer is made to any person other than the original purchaser.

8. The respondents have contended that, the petitioner cannot be considered to be a nominee of the respondent no. 5 in respect of the agreement for sale. The petitioner has relied upon the registered agreement for sale dated August 19, 2016 and a draft deed of conveyance which the petitioner claims to have been sent to the registering authorities under cover of a letter dated September 5, 2016 requesting the registering authority to allow registration of the deed of conveyance in favour of the petitioner as the nominee of the respondent no. 5 under the registered agreement for sale. The registered agreement for sale has a memorandum of consideration. The memorandum of consideration of the registered agreement for sale speaks of payment aggregating to a sum of Rs. 3.98 crores being made by the respondent no. 5 as the agreement for sale holder to the owners of the property. Such payments, as the memorandum of consideration of the registered agreement for sale demonstrates, were made by various banking instruments issued between the period of August 14, 2016 and August 19, 2016. The deed of conveyance which was closed with the letter dated September 5, 2016 contains a memorandum of consideration. In the proposed deed of conveyance, the memorandum of consideration is Rs. 4 crore 50 lakhs. It has been claimed in such memorandum of consideration that, consideration between the respondent No. 5 and the petitioner passed by way of banking transactions commencing from the period from June 17, 2008 onwards. The petitioner therefore, has relied upon payment of sale price to the respondent No. 5 in the year of 2008 for an agreement of sale entered into by the respondent No. 5 in the year 2016 to claim that the petitioner is the nominee of the respondent No. 5 in respect of such agreement for sale. By no stretch of imagination, the petitioner can be said to be a nominee of the respondent No. 5 in respect of the registered agreement for sale and in terms of the nomination clause contained in such registered agreement for sale, with such registered agreement for sale being registered on August 22, 2016. The subsequent

conveyance could not have happened prior to the registered agreement for sale being entered into. These facts have been pointed out by the Learned Additional Advocate General in the course of hearing of the writ petition. When the learned Additional Advocate General had pointed out such facts in the course of final hearing of the writ petition, the petitioner obtained an adjournment and filed an application seeking leave to withdraw the writ petition with liberty to institute a fresh writ petition on the self same cause of action and alternatively to allow the petitioner to file a supplementary affidavit to bring on record the draft conveyance with correct memo of consideration and transaction details between the parties. In such application, the petitioner has contended that, the deed of conveyance, enclosed with the letter dated September 5, 2016, did not have the correct memo of consideration. The proposed deed of conveyance as annexed to the writ petition does not exhibit the actual memo of consideration. Inadvertent mistakes have been committed. The same should be allowed to be rectified by the Court by either allowing withdrawal of the writ petition with liberty to file afresh and alternatively, permitting the petitioner to rely upon a supplementary affidavit placing the correct memorandum of consideration.

9. In such application, the petitioner has disclosed bank accounts of the respondent No. 5 and tax-deducted at source certificates of the respondent No.5 to substantiate that, the consideration passed from the petitioner to the respondent No. 5 in respect of the property concerned. The petitioner has prepared a chart of the money changing hands between the petitioner and the respondent No. 5 in respect of the transaction and has annexed such chart as annexure A to the application. The chart as disclosed by the petitioner in the application, claims that, money was transferred by the petitioner to the respondent No. 5 on July 27, 2017 and July 29, 2017 through Real Time Gross Settlement (RTGS) banking transactions. Such claims even if taken as true and correct, cannot allow such payments to be treated as consideration for the deed of conveyance since, the deed of conveyance was sent for registration under cover of a letter dated September 5, 2016 and the banking transactions as appearing in Annexure A to the application are of July 2017. Therefore, when the deed of conveyance was sent to the registering authority on September 5, 2016, no consideration between the petitioner and the respondent No. 5 had passed even on the basis of the documents as shown by the petitioner. Therefore, it cannot be said that, the petitioner is the nominee of the respondent No. 5 in terms of the registered agreement for sale dated August 19, 2016 for the registering authority to consider the petitioner as the nominee and allow the registration in respect thereof, assuming that, the impugned Government Order has no manner of application so far as the petitioner is concerned.

10. Law follows the contours that the fact scenario in a given case delineates. In the facts of the present case, the petitioner cannot be treated to be the nominee of the respondent No. 5 under the registered agreement for sale for the Court to consider the contentions of the petitioner as to the vires of the Government Order or the so-called arbitrariness of the contents of the letter of the

respondents. In order to invite the Court to consider the vires of the Government Order and the arbitrariness of the impugned letter of the respondents, the petitioner was required to substantiate that, the petitioner was the true and lawful nominee of the respondent No. 5 in terms of the nomination clause appearing in the registered agreement for sale dated August 19, 2019. The petitioner having failed to substantiate such fact, the Court need not enter into the arena of the niceties of the law as raised by the petitioner.

11. The petitioner has made false statements on oath, at least twice, knowing the same to be false. In the writ petition, the petitioner has disclosed a document containing a memorandum of consideration which according to the petitioner herself, is wrong. In the application, the petitioner has disclosed a memorandum of consideration which cannot form part of the memorandum of consideration of a deed of conveyance sought to be registered in 2016 with such alleged consideration to have been passed in 2017. Such false statements made on oath must visit the petitioner with consequences. The Registrar, Original Side, therefore, will proceed to lodge a complaint against the petitioner inter alia under section 340 of the Criminal Procedure Code. The petitioner will pay costs assessed at Rs. 10 lakhs to the West Bengal Legal Aid Services, Kolkata within a fortnight from date. The petitioner will submit documentary evidence of payment of such cost to the Registrar, Original Side. In the event, the Registrar, Original Side does not receive documentary evidence of payment of cost from the petitioner within the time period stipulated herein, the Registrar, Original Side will inform the appropriate authority for the purpose of initiation of proceedings to realize the cost imposed from the petitioner as arrears of land revenue. Such authority will realize the cost as awarded from the petitioner and deposit the same to the designated authority as expeditiously as possible. The authorities involved in realizing the costs from the petitioner are at liberty to realize the costs, expenses and charges for implementing this order against the petitioner, from the petitioner.

12. W.P. No. 610 of 2017, old G.A. No. 1506 of 2019 and G.A. No. 2 of 2019 are disposed of accordingly.