(2012) 08 AHC CK 0195

In the Allahabad High Court

Case No : Writ- No. 1303 of 2012

Shiv Kumar Rungta — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:
Stamp Act, 1899 — Section 47A, 56, 56(1A)

Citation : (2012) 08 AHC CK 0195

Hon'ble Judges : Pankaj Mithal, J

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—The writ petition was decided and allowed by me vide judgment and order dated 3.4.2012 after considering the pleadings exchanged between the parties.

2. Subsequent to the above decision, applicant Babu Gopal Binnani, who was not arrayed in the writ petition has filed application no. 133992 of 2012 for getting himself impleaded as respondent no. 5 in the above decided petition. He has filed another application no. 134000 of 2012 for recall of the judgment and order dated 3.4.2012.

3. The above two applications are for consideration before me.

4. I have heard Sri A.S. Rai, learned counsel for the applicant, Sri Devendra Vaish, learned counsel for the petitioner and the learned Standing counsel for the respondents in the petition.

5. Petitioner is a purchaser of a land situate in Azamgarh vide sale deed dated 28.1.1994 (wrongly mentioned as 10.1.1994 in the judgment and order dated 3.4.2012) which was subject matter of consideration under Section 47A of the Indian Stamp Act, 1899 (hereinafter referred to as "Act"). The deficiency in stamp duty determined by the Collector was upheld by the Commissioner but both the orders were quashed and the matter was remanded to the Collector for fresh redetermination vide judgment and order dated 15.12.2008 passed in writ

petition no. 42768 of 2005 (Shiv Kumar Rungta Vs. State of U.P. and Others). Pursuant to the above order of remand Collector passed a fresh order dated 28.1.2009 determining deficiency in stamp duty of Rs. 1,09,597.50 paise and imposing penalty of Rs. 102.50 paise. The aforesaid order of the Collector was accepted by the petitioner as no appeal or revision was preferred. Even the State authorities accepted it and did not assail it any further. However, on the revision preferred by the applicant, the order of the Collector was set aside and the matter was remanded by the Commissioner vide order dated 17.11.2011. The above order of the Commissioner was assailed by the petitioner in the writ petition inter alia on one of the grounds that the applicant had no locus standi to prefer any revision against the order of the Collector dated 28.1.2009.

6. In the writ petition as stated earlier, applicant was not arrayed as the respondent. In the writ petition counter affidavit was filed on behalf of the State authorities. On the basis of the stand taken by the State authorities the writ petition was allowed holding that the applicant was not a "person aggrieved" with the order determining deficiency in stamp duty in respect of the sale deed dated 28.1.1994 passed against the petitioner and therefore the revision at his behest was not maintainable as the matter of payment of stamp duty is between the State and the petitioner.

7. Learned counsel for the applicant had advanced two arguments; one, the order impugned in the writ petition was passed on the revision of the applicant and therefore applicant ought to have been arrayed as the respondent and without hearing him the writ petition could not have been allowed; the other is that the applicant is a "person aggrieved" as he has interest in the land transferred by the sale deed dated 28.1.1994 and the revision could have been preferred by him as the proceedings under the Act were initiated on his complaint.

8. The Act is a fiscal statute which vide Section 3 read with Section 17 provides for the various instruments on which stamp duty is payable as indicated in the schedule at or before the execution of the instrument. Section 29 of the Act provides the persons by whom stamp duty is payable. In respect of conveyance, stamp duty is payable by the person in whose favour the conveyance is made ie., the purchaser of the property. Therefore, the matter of payment of stamp duty on a sale deed is essentially a matter concerning the purchaser of the property and the State authorities and no one else.

9. The proceedings under Section 47A of the Act are initiated on a reference made by the SubRegistrar, court or the Commissioner or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any Officer authorized by the State Government in that behalf or by the Collector in exercise of its suomuto powers. Thus, there is no provision under the Act for initiation of proceedings on a complaint of a private person. Nonetheless, if any action on a private complaint is taken by any of the above authorities, it would be at best suomuto proceedings initiated by the Collector and would thereafter be

essentially a matter of dispute between the State and the person liable to pay stamp duty. The complainant would become functus officio once he had made the complaint and cognizance is taken thereof.

10. In other words, notwithstanding that the the applicant was a complainant he can not be recognized as a ''person interested'' in the matter. His job ceases on the making of the complaint which has been taken due cognizance by the authorities. Thereafter, it is a matter between the State Authorities and the petitioner who is liable for the payment of the stamp duty on the above instrument.

11. The applicant not being a party to the instrument of conveyance is not a person whose legal rights gets infringed by the proceedings under Section 47A of the Act and the order passed therein. The decision pronounced in proceedings under Section 47A of the Act by the Collector does not deprive him of anything and does not even affect his right or title, if any, in respect of any property. He is not even a person who suffers any wrong or injury by the said order of the Collector. He is not a person who has suffered any legal grievance by the order of the Collector. The said order even otherwise causes no prejudice to him. None of the tests laid down by the Supreme Court in AIR 1976 SC 576 Jasbhai Desai Vs. Roshan Kumar stand satisfied by him so as to give him right to challenge the said order. The tests were laid down by the Apex Court while considering the locus standi of a party in maintaining the writ petition where the powers of the Court are very wide and the strict rule of construction of locus standi is not necessarily applicable.

12. The revision against the order passed under Section 47A of the Act is maintained under Section 56 of the Act by virtue of the controlling power exercisable by the Chief Controlling Revenue Authority over the Collector in matters under Chapters 4 and 5 of the Act which includes 47A of the Act. This controlling power has been conferred to check loss of revenue and to secure its enhancement but not to satisfy any disappointment suffered by any individual who is actually not a "person interested or aggrieved". The controlling power of the Chief Revenue Authority under Section 56 of the Act is on the administrative side and not to revise the orders passed by the subordinate authorities, as against the orders of subordinate authorities a remedy of appeal has been separately provided under Section 56 (1A) of the Act. The legislature normally would not have envisaged for providing two remedies against the orders of the Subordinate authority. Therefore, primafacie there does not appear to be any remedy of revision available to any of the party against the orders of the subordinate authorities under the Act as is normally perceived to be under Section 56 (1) of the Act, but I am not entering into that aspect and leave it open for considering the same in appropriate case.

13. In view of the aforesaid facts and circumstances, I am of the opinion that the applicant was not having locus to assail the order of the Collector passed under Section 47A of the Act in connection with the determination of the deficient

stamp duty in respect of the aforesaid sale deed and therefore it was rightly quashed holding that he was not entitle to maintain a revision under Section 56 of the Act.

14. The order impugned in the writ petition was passed in the revision preferred by the applicant. Therefore, in the right earnest he ought to have been arrayed as the respondent to enable the Court to have heard him before deciding the petition.

15. Notwithstanding the above as the applicant has now been heard and given post decisional hearing instead of shutting him down and despite such hearing the result remains the same, I reject both the above applications but sounding a caution not only to the petitioner of this writ petition but in general to always come clean before the Court by arraying all the parties that were before the court or authority below.