(2011) 01 AHC CK 0230

In the Allahabad High Court

Case No : Writ C. No. 54883 of 2005

Shiv Narain Yadav APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:
Stamp Act, 1899 — Section 33

Citation : (2011) 01 AHC CK 0230

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sabhajeet Yadav, J.—By this petition, the Petitioner has challenged the judgment and order dated 27.8.2002 passed by Additional District Magistrate (Finance and Revenue) as well as judgment and order dated 28.6.2005 passed by Commissioner, Varanasi Division, Varanasi contained in Annexures 4 and 6 respectively to the writ petition, whereby the Additional Collector has sought to recover a sum of Rs. 105125/-along with 2% monthly interest as stamp duty chargeable on the instrument in question. It is not in dispute that the Petitioner has got sale certificate in his favour in auction made in pursuance of recovery of trade tax. The question for consideration before the authorities below was that as to whether the stamp duty was chargeable on sale certificate issued after auction of immovable property in pursuance of said recovery proceeding or not?

2. In support of his submission learned Counsel for the Petitioner has cited a decision of Hon''ble Apex Court rendered in Shanti Devi L. Singh Vs. Tax Recovery Officer and Others, . The aforesaid decision has been noticed by Additional Collector in the judgment and order dated 27.8.2002 passed by him in case No. 18/Ka 2001-02 u/s 33 Indian Stamp Act State v. Shiv Narain Yadav and held that the Apex Court did not express any opinion about the chargeability of stamp duty on sale certificate and left the matter to be decided by competent authority. Therefore, the aforesaid authority can be of no assistance to the case

of the Petitioner.

3. In my opinion, the auction purchaser would be liable to pay stamp duty on sale certificate pursuant to auction sale under the relevant provisions of Stamp Act and as such the view taken by the Additional Collector (Finance & Revenue) Varanasi in aforesaid case cannot be faulted with and for the same reason the revisional court has not committed any error while deciding the revision vide impugned order dated 28.6.2005 passed by Divisional Commissioner, Varanasi who has slightly modified the order passed by Additional Collector. Thus, in given facts and circumstances of the case I do not find any good ground to interfere in the matter. The decision of Hon''ble Apex Court cited by learned Counsel for the Petitioner, in my considered opinion, is distinguishable and cannot be taken to be authority on the question involved in the instant case. Accordingly, the writ petition stands dismissed.

4. However, in given facts and circumstances of the case the revisional court below was not justified in imposing penalty upon the Petitioner though the duty chargeable on the sale certificate amounting Rs. 105125/-cannot be faulted with. The Petitioner is liable to pay the aforesaid amount of duty along with interest thereon as indicated in order 1.5% per month.

