(2012) 08 RAJ CK 0149

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7587 of 2012

Smt. Anubha Prabhune APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Citation : (2012) 08 RAJ CK 0149

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : J.P. Gargey, for the Appellant; S.D. Khaspuria, GC for the State, for the Respondent

Judgement

Alok Sharma

1. The petitioner has challenged the orders dated 3-2-2012 and amended order dated 14-3-2012 passed by the Additional Collector (Stamps) Jaipur on the ground that the orders have been passed without giving an opportunity of hearing to her. The facts of the case are that the petitioner as a vendee entered into an oral agreement to purchase on or about 25-1-2003 with Manak Raj Jain, the Chief Trustee of Raj Welfare Trust 6/4 Taron ki Koot, Durgapura Jaipur, the vendor who agreed to sell the property i.e. 0.91 hectare land in village Durgapura Tehsil Sanganer, District Jaipur for a sum of Rs. 1.5 crore. Later in the year 2009 due to general rise in the price of land, under a memorandum dated 21-8- 2009 price of the land was settled as Rs. 4.5 crore, out of which the petitioner paid Rs. 22,000/- as advance, and the balance amount was to be paid by her to the vendor at the time of registration of saledeed. A dispute thereafter arose between the vendor and vendee owing to the vendor''s disinclination to honour the agreement to sell and execute a sale deed in favour of the petitioner. Consequently the petitioner filed a suit No. 105/2009, Smt. Anubha Prabhune Vs. Rajasthan Welfare Trust in the court of Additional District Judge No. 9, Jaipur Metropolitan City, Jaipur for specific performance of the agreement to sell dated 21-8-2009.

2. During pendency of the suit, the defendant Rajasthan Welfare Trust-the vendor filed an application under the Rajasthan Stamp Act before the trial court stating therein that the agreement to sell dated 21-8-2009 on which the suit was founded was not properly stamped and the agreement to sell was undervalued, and therefore not admissible in evidence. The petitioner as plaintiff in the suit agreed that the agreement to sell dated 21-8-2009 be sent to the Additional Collector (Stamps) Jaipur for assessment of stamp duty as the plaintiff would be ready to pay the duty lawfully determined. Consequently, considering the objection raised by the defendant and the plaintiff''s admission, the trial court i.e. the Additional District Judge No. 9, Jaipur Metropolitan City vide order dated 9-11-2010 referred the matter to the Additional Collector (Stamps) Jaipur for determination of the stamp duty payable in the facts under the provisions of Rajasthan Stamp Act, 1998 on the agreement to sale dated 21-8-2009 entered into between the plaintiff Smt. Anubha Prabhune Vs. Rajasthan Welfare Trust. Following the order dated 9- 11-2010, the trial court vide letter dated 14-12-2011 required the Additional Collector (Stamps) Jaipur to assess the stamp duty payable on the agreement to sell dated 21-8-2009.

3. It appears that on the reference by the trial court to the Additional Collector (Stamps) Jaipur, the matter was registered on 3- 2-2012 by the Additional Collector (Stamps) Jaipur as case No. 812/2011 and he without hearing the petitioner proceeded to assess the stamp duty on the agreement to sell dated 21-8-2009, at Rs. 13,49,900/-, and taking into consideration the fact that stamp duty was not paid at the time of the execution indicative of an intent to evade payment of stamp duty due, the Additional Collector (Stamps) Jaipur levied a penalty ten times of the stamp duty as Rs. 1,34,99,000/- vide impugned order dated 3-2-2012. Subsequently, the learned Additional Collector (Stamps) Jaipur without notice to the petitioner issued an amended order dated 14- 3-2012 and included the amount of surcharge also as Rs. 1,34,900/-, thus total amount was assessed as Rs. 1,49,83,890/-.

4. Counsel for the petitioner has not addressed the question of levy of penalty on the stamp duty short paid on agreement to sell dated 21-8-2009, but his limited contention is that the impugned orders dated 3-2-2012 and 14-3-2012 have been passed in contravention of the principle of natural justice as no notice or opportunity of hearing was given to the petitioner herein before the passing of the order of assessment of stamp duty payable by the petitioner on the agreement to sell dated 21-8-2009.

5. Mr. Khaspuria, Learned Counsel for the State would submit that this Court should not interfere with the orders dated 3-2-2012 and 14-3-2012 as the remedy of revision under the Rajasthan Stamp Act, 1998 is available to the petitioner.

6. Heard Learned Counsel for the parties, and perused the material available on record as also the impugned orders dated 3-2- 2012 and 14-3-2012 passed by the Additional Collector (Stamps) Jaipur.

7. A perusal of the impugned orders dated 3-2-2012 and 14-3- 2012 indicates that the same have been passed without hearing the petitioner by the Additional Collector (Stamps) Jaipur. On reference of the matter by the trial court to the Additional Collector (Stamps) Jaipur the matter was registered as case No. 812/2011 on 14-12- 2011, but without giving any opportunity of hearing to the petitioner the impugned orders have been passed. In these facts of the case, Mr. Khaspuria''s argument of the petitioner having the alternative remedy of filing a revision under the Act of 1998 is of no consequence as it is settled law that contravention of the principles of natural justice justifies a writ court overlooking availability of an alternative remedy and directly entertain a writ petition.

8. Consequently, I would set aside the orders dated 3-2-2012 and 14-3-2012 and remand the matter to the Additional Collector (Stamps) Jaipur for determination of the stamp duty on the agreement to sell dated 21-8-2009 between the plaintiff Smt. Anubha Prabhune and the defendant Rajasthan Welfare Trust, under the provisions of Rajasthan Stamp Act, 1998. The petitioner be given an opportunity to file her version on the stamp duty leviable and be heard before passing an order of assessment.

9. The petitioner is directed to appear before the Additional Collector (Stamps) Jaipur on 4-9-2012, thereupon the Additional Collector (Stamps) will decide the matter afresh in accordance with law within thirty days thereafter. The petitioner will not be allowed any unwarranted adjournments.

10. The writ petition is disposed of accordingly. Stay application stands dismissed.

