(2017) 03 AHC CK 0020

In the Allahabad High Court

Case No : Writ C No. 60382 of 2016

Smt. Janki Devi — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 30-03-2017

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

Citation : (2017) 4 ADJ 735

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Pramod K. Gupta, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Surya Prakash Kesarwani, J.—Heard Sri Pramod K. Gupta, learned counsel for the petitioner and Sri R.K.S. Chauhan, learned standing counsel for the State - respondents.

2. This writ petition has been filed challenging the order dated 25.1.2013, passed by the District Magistrate, Deoria and the order dated 24.11.2015 passed by the Deputy Commissioner (Stamp), Gorakhpur, Division Gorakhpur, in Revision No.C 20140500001157/ D2014 under Section 56(1) of the Indian Stamp Act, 1899, (hereinafter referred to as "the Act").

3. This case has a chequered history. By sale deed instrument no.595/05 plot nos.458 Ga and 459 Ga area 0.0005 hectare of village Rampur, Tappa Indupur, Pargana Silhat Tehsil and District Deoria were purchased by the petitioner for Rs.54,000/-.

4. A stamp case no.109/04 under Section 47-A(3) of the Act were registered against the petitioner by the A.D.M.(F/R) on a reference made by the Sub-Registrar, Deoria on 13.9.2006.

5. By ex parte order dated 30.9.2006 the Additional District Magistrate (F/R), Deoria, held the vended property to be located in a commercial area. He consequently determined deficiency of stamp duty of Rs.32,560/- and registration fee Rs.3920/-, imposed penalty of Rs.4000/- and interest Rs.9750/- and thus created total demand of Rs.50,230/-.

6. Against the aforesaid order a recall application was moved by the petitioner on 16.12.2006 which was allowed and the order was recalled. By order dated 26.6.2007 the A.D.M. (F/R) again restored and confirmed the earlier order dated 30.9.2006. Against the aforesaid two orders the petitioner filed stamp appeal no.7/43/D of 2007 which was dismissed by order dated 16.3.2011 and the order of the ADM (F/R) was upheld on the ground that as per spot inspection report the vended property is situated about 500 mtrs. away from Gauri Bazar Railway Station and about 250 mtrs. away from the Bus Station which fall within important residential area. He completely ignored the clear stand taken by the petitioner that the vended property was purchased as a vacant agricultural land and its valuation to compute stamp duty was made as per rate list issued by the District Magistrate.

7. Against the aforesaid order dated 16.3.2011 the petitioner filed Writ-C No.40485 of 2011 which was allowed by this Court by order dated 22.7.2011 as under :

"Learned counsel for the parties agree that the writ petition may be finally disposed of at this stage itself without calling for any counter affidavit, specifically in view of the order proposed to be passed today by the Court.

Proceedings initiated against the petitioner under Section 47-A of the Indian Stamp Act culminated in an order of the Additional District Magistrate (F&R), Deoria dated 30.09.2006 wherein it was recorded that there was deficiency of stamp duty to the tune of Rs. 32,500/-, registration fee of Rs. 3920/-, in addition thereto a penalty of Rs. 4,000/- was levied. Interest at the rate of 1.2% was also directed to be paid.

This order according to the petitioner was an ex parte order. He, therefore, filed a recall application, which was allowed. However, by means of order dated 30.08.2007 the earlier order was maintained. The petitioner, therefore, filed an appeal under Section 56-A of the Indian Stamp Act. The appeal has been dismissed under the impugned order.

From the records of the present writ petition it is apparently clear that the deficiency in the stamp duty and all other demands raised are based on a report of the Tehsildar where under it was pointed out that the land had potential for residential/commercial purposes.

According to the petitioner, he had specifically stated that the report was ex parte and further that it had been submitted after years from the date of purchase of the property in question. Therefore, it did not reflect the exact situation as was existing on the date of purchase. The constructions shown in the report were not the construction of the petitioner and they will not have the effect of treating the property purchased by the petitioner as one for residential/ commercial purposes on the date it was so purchased.

This Court finds that the aforesaid aspect of the matter has completely been ignored by the Commissioner while deciding the second appeal. I am of the considered opinion that an appeal under Section 56-A of the Stamp Act is maintainable both on issues of fact as well as on law. Therefore, issues of fact raised by the petitioner do require consideration by the Commissioner while hearing the appeal, which has not been done.

Accordingly, the order of the Commissioner dated 16.3.2011 is set aside. The appeal is restored to its original number.

Let appeal be heard and decided by the Commissioner afresh by means of a reasoned speaking order in light of the observations made herein above, preferably within three months from the date a certified copy of this order is filed before him, after affording opportunity of hearing to the petitioner.

Deposit made by the petitioner shall abide by the orders to be passed by the Commissioner on remand.

Writ petition is allowed subject to the observation made."

(emphasis supplied by me)

8. Pursuant to the aforesaid order of the Writ Court, the appeal of the petitioner was again heard and it was dismissed by the Commissioner, Gorakhpur Division, Gorakhpur by order dated 1.12.2011. In his order he observed that on the vended property there is only one room and the remaining land is being used for agricultural purposes. He further observed that since vended land is situated on the road side within 500 mtrs. of Railway station and 250 mtrs. of Bus station and, therefore, it shall be used in future for commercial purposes.

9. Aggrieved with the aforesaid order of the Divisional Commissioner dated 1.12.2011, the petitioner filed a Writ C No.20375 of 2012 in which an order dated 19.11.2012 was passed as under:

"By an order passed by the High Court dated 22.7.11 this matter had been remanded to the Commissioner-Appeals to pass fresh orders in accordance with law.? An order has been passed on 1.12.11 but it does not reflect any proper application of mind.

There is no dispute about the fact that the instrument which was registered by the petitioner was done on 9.2.05. The order passed on 1.12.11 does not refer to the position which was prevalent on that date at all. The authority, who has passed the order has calculated the stamp duty without any reference to the proximate time and has not relied on any exemplars of any kind of land in that area.

The matter is, therefore, sent back to the Collector-Stamps, Deoria to redetermine the matter and to pass? fresh orders in accordance with law. He will give to the petitioner an opportunity of raising his objections. The Collector-Deoria will fix a date in the matter with due information to the petitioner and, thereafter, will hear the matter and pass fresh orders. This exercise may be completed within next two months.

A copy of this order may be given to Shri Nimai Das, learned Standing Counsel for necessary communication to the Collector, Deoria.

List this matter after a period of three months, i.e., on 21st of January, 2013.

Interim order granted by this Court shall continue till 21st of January, 2013.

The order passed by the District Magistrate, Deoria shall be brought on record by the learned Standing Counsel as well as the learned counsel for the? petitioner on that date."

(emphasis supplied by me)

10. Thereafter, the District Magistrate Deoria numbered the stamp case as case no.106/2012 and passed an order dated 25.1.2013 confirming deficiency of Stamp duty and enhancing penalty to four times of the alleged deficiency of the stamp duty and thus created a demand of Rs.2,13,607/- against the petitioner. Thus the District Magistrate, Deoria has placed the petitioner in a worse situation by imposing penalty of Rs.130,240/- without recording any reason for enhancement of penalty as against the earlier imposed penalty of Rs.4000/-. The District Magistrate again held that as per report of the Naib Tehsildar dated 13.9.2006 and 04.06.2007 the vended land is situate about 500 mtrs. from Railway Station and 250 mtrs. from Bus Station and therefore as per rate list issued by the collector the vended land was to be valued @ Rs.3000/- per sq. mtr. and not @ Rs.1050/- per sq. mtr. as has been done by the petitioner.

11. Against this order the petitioner filed a Writ C No.24637 of 2013. Both the writ petitions, namely, writ petition no.24637 of 2013 and writ petition no.20375 of 2012 both were disposed of by order dated 6.5.2013 on the ground of alternative remedy with liberty to the petitioner to prefer an appeal or revision as may be advised.

12. Consequently, the petitioner preferred a revision no. C 20140500001157/ D-2014 under Section 56(1) of the Act before the Deputy Commissioner Stamp, Gorakhpur- Division, Gorakhpur which was dismissed by impugned ordeer dated 24.11.2015 observing as under:

"voj U;k;ky; }kjk ekuuh; mPp U;k;ky; ds mijksDr vkns''k dk iw.kZr% ikyu djrs gq, fuxjkuhdrkZ dks IquokbZ dk iw.kZ volj iznku djrs gq, i=koyh ij miyC/k rF;ksa ,oa lk{;ksa dks n`f"Vxr j[krs gq;s xq.k&nks"k ds vk/kkj ij fu.kZ; fnukad 25-01-2013 ikfjr fd;k x;k gS] ftlesa fdlh gLr{ksi dh vko'';drk ugh izrhr gksrh gSA"

13. The aforesaid impugned order dated 24.11.2015 passed by Sri Ram Akhilesh

Yadav, Deputy Commissioner (Stamp), Gorakhpur - Division, Gorakhpur is an unreasoned and non speaking order passed in a most arbitrary and illegal manner.

14. The aforesaid Deputy Commissioner Stamp has neither considered the grounds of revision nor the arguments of the petitioner nor the facts of the case and arbitrarily passed the impugned order without recording any reason for his abrupt conclusion. He failed to discharge the statutory duty cast upon him as Revising Authority under Section 56(1) of the Act.

15. In view of the afore noted facts this Court, by order dated 3.1.2017, observed/directed as under:

"The authorities are public servant. They are not above the law. The law has not given them licence to cause harassment to the public. The present case is clear example of a harassment being caused by the authorities in a routine manner. Such practise and approach of the authorities deserve to be discouraged.

In view of the aforesaid, let a personal affidavit be filed by the respondent no.2 explaining the reason for passing non speaking order. He shall also show cause as to why heavy cost may not be imposed on him. The other respondents may also file counter affidavit in which they shall also show cause that why heavy cost be not imposed for causing harassment to the petitioner. The counter affidavits shall be filed within two weeks from today. Petitioner shall have three days thereafter to file rejoinder affidavit."

16. Pursuant to the aforesaid order, a counter affidavit was filed on 6.2.2017 on behalf of respondent nos. 2 and 3 by which the State - respondents supported the impugned orders and again reiterated the finding recorded in the impugned orders with regard to the distance of the vended property from Gauri Bazar Bus Station and Gauri Bazar Railway Station.

17. By order dated 20.2.2017 this Court directed the respondent Nos 2 and 3 as under :

Heard learned counsel for the petitioner and the learned standing counsel for the State-respondents.

The basis for raising demand of enhanced stamp duty with respect to the sale deed instrument is the situation of the said land to be allegedly about 250 Mts. from Gauri Bazar Crossing.

In paragraph-25 of the writ petition, the petitioner has specifically stated that the Executive Engineer, PWD has given a distance certificate dated 13.6.2016 filed as Annexure-12 in which it has been certified that the vended property is situated 2 Kms. away from Gauri Bazar Crossing towards Hata Road. A vague reply has been submitted by the respondent nos.2 and 3 in paragraph no.8 of the counter affidavit dated 2.2.2017.

Under the circumstances, the respondent nos. 2 and 3 are required to show cause as to why specific reply to the contents of paragraph no.25 of the writ petition has not been submitted in the counter affidavit, particularly, in the circumstances, when the certificate issued by the Executive Engineer, Provincial Division, PWD, Deoria (letter No.1320/1C dated 13.6.2016) and filed with the writ petition has not been disputed. The cause shall be shown by respondent nos. 2 and 3 by filing a Supplementary Counter Affidavit. The petitioner may also file a Supplementary Affidavit on or before the next date fixed, bringing on record the rates of valuation applicable as on the date of sale-deed.

Put up on 8.3.2017.

Interim order granted earlier, is extended till the next date fixed.

18. On being compelled to submit reply to the contents of paragraph 25 of the writ petition as referred in the aforequoted order dated 20.2.2017, a supplementary counter affidavit was filed on 28.3.2017 on behalf of respondent nos. 2 and 3 stating in paragraph 3 as under :

"That in reply to paragraph no.25 of the writ petition, it is submitted that for the first time the petitioner has filed distance certificate dated 13.06.2016 (Annexure-12) before this Hon''ble Court. It is further submitted that after enquiry of the matter it was found that purchased land situate at the distance of 1500 meter from Gauri Bajar Crossing. It is further submitted that the land in question situate at the distance of 2450 meter from Gauri Bajar Railway Station and 2050 meter from Gauri Bajar Bus Station, this fact came within the knowledge of answering respondents after inspection of the spot during the pendency of above mentioned writ petition before this Hon''ble Court and after communication of order dated 03.01.2017 passed by this Hon''ble Court."

(emphasis supplied by me)

19. Considering paragraph 3 of the supplementary counter affidavit as aforequoted, as well as the facts and circumstances of the case, this Court passed an order on 28.3.2017 as under:

"Heard learned counsel for the petitioner and the learned Standing Counsel for the State-respondents.

Pursuant to the orders dated 20.2.2017 and 8.3.2017, a supplementary counter affidavit of Sri Balmik Tripathi Sub-Registrar - Rudrapur, District - Deoria has been filed today on behalf of respondent nos. 2 and 3.

In paragraph 3 of the supplementary counter affidavit, respondent nos. 2 and 3 have admitted the distance of the vended property from Gauri Bazar Railway Station to be 2450 meters and from Gauri Bazar Bus Station to be 2050 meters. They further stated that they came to know about the aforesaid distance after inspection of the spot during pendency of the writ petition and communication of the order dated 3.1.2017 passed by this Court.

This shows that the instrument in question was sufficiently stamped and there was no deficiency of stamp duty according to admitted case of the State - Respondents and yet the State - Respondents have harassed the petitioner by dragging him in litigation on false allegation, for about 7 years. This is fourth round of litigation that the petitioner has come up in writ petition before this Court. The conduct of the officers who passed the order in original as well as the remand order and the appellate/revisional authorities is the glaring example of abuse of power and arbitrary exercise of power with mala fide intention.

Under the circumstances, two days'' time is granted to all the respondents to show cause as to why their accountability be not fixed and why heavy cost be not imposed which may be recovered from the erring officers.

Put up on 30.3.2017.

Interim order is extended till the next date fixed."

20. In compliance to the aforesaid order dated 28.3.2017 an affidavit of Dr. Radha Krishna Mishra, Assistant Inspector General (Stamp) Deoria, on behalf of respondent Nos. 2 and 3 has been filed today which is taken on record. However, no affidavit of compliance has been filed by or on behalf of respondent no.1 nor any further time has been sought to file an affidavit for fixation of accountability.

21. In the aforesaid affidavit dated 30.3.2017 filed today the respondent nos. 2 and 3 have tendered unconditional apology and stated in paragraphs 4 and 5 that due to incorrect inspection report dated 13.9.2006 submitted by the then Tehsildar, Sadar Deoria on the basis of inspection report dated 11.9.2006 of the then Naib Tehsildar, Deoria, the order dated 25.1.2013 was passed in remand proceedings by the then District Magistrate, Deoria, namely, Sri Kumar Ravi Kant Singh. In paragraph 5 of the affidavit it is stated that respondent no.2 has joined duty at Gorakhpur on 27.6.2016 and the respondent no.3 has joined duty on 11.2.2017 and as such they were not aware with the correct facts of the present case. In paragraphs 7,8 and 9 of the aforesaid affidavit it has been stated that the present District Magistrate, Deoria made the spot inspection along with present revenue authorities and found that the spot inspection report on the basis of which the earlier order dated 25.1.2013 was passed was not correct and the officers posted between the year 2006 to 2015 who made the inspection and passed the orders have been transferred from District Deoria to Gorakhpur division and the mistake committed was not deliberate.

22. From the facts, briefly noted above, it is evident that proceedings against the petitioner was initiated on false allegations by the State-respondents and based on it an order dated 30.9.2006 was passed by the then A.D.M.(F/R), Deoria determining deficiency of stamp duty of Rs.32560/- penalty Rs.4000/-, interest Rs.9750/- and deficiency of registration fee Rs.3920/- and thus a total demand of Rs.50,230/- was created. The petitioner has been agitating from the very beginning that the vended property is much away from Gauri Bazar Crossing, Bus Stand and the Railway Station and, not within 500 meters of Railway Station or within 250 meters of the Bus Station and, therefore, the higher rate of

valuation applicable to properties situate within 500 meters of Railway Station or 250 meters of the Bus Stand is not applicable to the vended property. However, the respondents arbitrarily did not inquire into the matter. They even avoided to reply in their counter affidavit the specific averments of para 25 of the writ petition with regard to the distance of vended property from Gauri Bazar Crossing, Gauri Bazar Railway Station and Bus Stand which was supported by a distance certificate of P.W.D. On being compelled by order dated 20.2.2017 the respondents submitted reply to para 25 of the writ petition by filing a supplementary counter affidavit on 28.3.2017 in which they admitted the distance of the vended property to be 1500 mtrs from Gauri Bazar crossing, 2450 mtrs. from Gauri Bazar Railway station and 2050 mtrs. from Bus stand. In paras 4 and 5 of the affidavit filed on 30.3.2017 the respondents stated that due to incorrect reports regarding distance, the order creating demand against the petitioner was passed. Thus the petitioner has been dragged in litigation by the State respondents on totally false allegations and despite raising voice repeatedly none of the authorities cared to listen his voice till this Court compelled the respondent nos. 2 and 3 to file specific reply as aforesaid.

23. Thus, the conduct of the officers who acted illegally, arbitrary and negligently, renders them liable and accountable for the losses and harassment caused to the petitioner for about 11 years by dragging him in numerous litigations without there being any fault on his (petitioner) part. These officers, by abuse of power and arbitrary exercises of power; compelled the petitioner to contest thrice the adjudication proceedings two times in appeal and four times in writ petition so as to get rid of from the false and baseless demand created by them by instituting stamp case on totally false allegation. Under the circumstances, the accountability of guilty officers must be fixed by the State Government in accordance with law.

24. In view of the aforesaid, the impugned order dated 25.1.2013 passed by the respondent no.3 and the impugned revisonal order dated 24.11.2015 passed by the respondent no.2 are hereby quashed. Writ petition is allowed with cost of Rs. two lacs which shall be paid by the State-respondents to the petitioner within a month from today. Liberty is granted to the State Government to recover the cost from the officers/employees who may be found guilty in view of the law laid down by Hon''ble Supreme Court in the case of Punjab State Power Corporation Ltd. v. Atma Singh Grewal, (2014) 13 SCC 666 (para 14).

25. Any amount deposited by the petitioner, or recovered from him pursuant to the impugned orders/proceedings, shall be refunded by the State-respondents to the petitioner forthwith along with interest @ 8 per cent per annum in terms of the law laid down in the case of Ansal Housing & Construction Ltd. v. State of U.P. and 2 others in Writ C No.40859 of 2014 decided on 19.9.2014 which has been affirmed by Hon''ble Supreme Court.

26. Let a copy of this order be sent by the Registrar General, of this Court to the Chief Secretary, Government of U.P. Lucknow for compliance.

