(2003) 01 AHC CK 0075

In the Allahabad High Court

Case No : C.M.W.P. No. 54348 of 2002

Smt. Kamla Devi Khetan — APPELLANT

Vs

Commissioner and Another — RESPONDENT

Date of Decision : 06-01-2003

Acts Referred:
Stamp Act, 1899 — Section 33, 47A, 56

Citation : (2003) 1 AWC 528

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : B.K. Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Subject matter of impugnment in the instant petition are the order dated 19.8.2000 passed by the Additional District Magistrate (Finance and Revenue), Maharajganj in exercise of powers u/s 47A/33 of the Indian Stamp Act and the order dated 23.10.2002 passed by the Additional Commissioner, Gorakhpur Division, Gorakhpur, thereby levying stamp duty of Rs. 45,920 payable by the petitioner ostensibly to make good the deficiency.

2. Necessary facts shedding light on the controversy involved in this petition may be stated and they are that the petitioner purchased a house by registered sale deed on 12.9.1997 from one Dwarika Dass paying stamp fee against the value of Rs. 4,44,500. Subsequently, the petitioner was served with a notice, which escalated into proceeding before the Additional District Magistrate (Finance and Revenue) thereby adjudging deficiency of Rs. 43,920 and imposing a sum of Rs. 45,920 payable by the petitioner by means of the order dated 19.8.2002. Aggrieved, the petitioner preferred revision before the Additional Commissioner, Gorakhpur Division, who held the revision not maintainable and consequently, dismissed the same.

3. Learned counsel for the petitioner began his submission assailing the

revisional order stating that the revisional court erred in holding that the revision was not maintainable against an order passed by the Additional District Magistrate (Finance and Revenue), Maharajganj, on merits. He further submitted that the revisional authority eschewed from consideration the most vital and material facts and by this reckoning, the order rendered itself liable to be quashed. On the other hand, learned standing counsel, in vindication of the order, contended that the operative part of the order spelt out confirmation of the order passed by the Additional District Magistrate and it was rightly made in accordance with law.

4. I have heard the learned counsel for the parties and considered the facts and submissions in all their ramifications.

5. Before proceeding further, it would be useful to deal with the finding recorded by the revisional court. The finding as may be relevant may be excerpted below :

^^eSaus fo}ku mi&ftykf/kdkjh ?fo-@jk-? lnj] egjktxat }kjk ikfjr vkns''k fnuk?d 19-8-2000 dk xgurk iwoZd ijh{k.k fd;k ftlls ;g Li"V gqvk fd mDr vkns''k xq.k&voxq.k vk/kkj ij ikfjr vkns''k gaSa] ftlds fo:) fuxjkuh iks"k.kh; ,oa la/kk;Z u gksus ds dkj.k fujLr fd;s tkus ;ksX; vkSj fo}ku mi&ftykf/kdkjh ?fo-@jk-?] lnj] egjktxat }kjk ikfjr vkns''k fnuk?d 19-8-2000 ifjiq"V fd;s tkus ;ksX; gS A**

The quintessence of what has been held by the revisional court is that since the impugned order had been passed on merits by the Additional District Magistrate, the revision was held not to be maintainable. Section 56 of the Indian Stamp Act being relevant on the point at Issue in this petition, is referred to and Is quoted below :

"56. Control of and statement of case to Chief Controlling Revenue Authority.-- (1) The powers exercisable by a Collector under Chapter IV and Chapter V (and under Clause (a) of the first proviso to Section 26) shall in all cases be subject to the control of the Chief Controlling Revenue Authority.

(2) If any Collector, acting u/s 31, Section 40 or Section 41, feels doubt as to the amount of duty with which any instrument is chargeable he may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision."

A bare perusal of Section 56 of the Indian Stamp Act leaves no room for doubt that an order passed on merits is revisable by the Chief Controlling Revenue Authority in exercise of power u/s 56 of the Indian Stamp Act. The finding of the revisional court that revision is not maintainable in the event of an order passed on merits, being in obtrusive antagonism of the provisions of Section 56 of the Stamp Act does not commend to me to be sustained. The most pivotal aspect to be borne in mind is that the power to entertain and decide the revision as envisaged in Section 56, is not restricted to jurisdictional errors only but the power is very wide in amplitude. To be precise, if an order of subordinate authority is found to be erroneous in law, the Chief Controlling Revenue Authority is vested with the power to interfere and to set aside the same, of course after delving into the merit. It bears no repudiation that proceeding before the revenue authority have the complexion of quasi-judicial proceeding and it being so, the authority is called upon to decide the same by assigning reasons for his conclusions. Regard being had to the fact that since revisional court has not delved into the merits on most vital and material points involved in the case and as a consequence, proceeded to hold the revision not maintainable, I feel called to relegate the matter to the revisional authority studded with the direction that it will sift the facts on merit and decide the revision in accordance with law within a period of two months from the date of production of a certified copy of this order before him.

6. As a result of the foregoing discussion, the petition is allowed in terms of directions aforestated.