(2007) 04 UK CK 0031

In the Uttarakhand High Court

Case No : Writ Petition No. 1312 of 2001 (M/S)

Smt. Krishna Kochhar APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 09-04-2007

Acts Referred:
Stamp Act, 1899 — Section 2(6), 47A

Citation : (2007) 04 UK CK 0031

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : Alok Singh, a/b., Dharmendra Barthwal, for the Appellant; Gopal Narain, Brief Holder, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Verma, J.—This writ petition has been preferred for issue a writ order or direction in the nature of certiorari quashing the orders dated 10-11 -1999 (Annexure No. 4) passed by the Commissioner/Chief Controller of Stamps and the order dated 28-6-1999 passed by the Respondent No. 3-Assistant Commissioner of Stamps, Dehradun (Annexure No. 2).

2. Relevant facts giving rise to the present writ petition are that the Sub Registrar made a reference to the Assistant Commissioner of Stamps, Dehradun for determination of stamp duty in respect of Sale Deed No. 3118 of 1998 relating to property No. 6, Anchal Niwas, Green Park, Saharanpur Road, Dehradun, measuring 3,1/2 Bigha, which had been sold to Smt. Krishna Kochhar showing the valuation at Rs. 1,20,000/-. The notice was issued to the opposite party, who submitted her reply that an agreement for sale of disputed property was executed on 30-6-1974 and the property was valued at Rs. 1,20,000/- as its market value on the date of agreement. It was contended that the valuation of property should be determined as on the date of agreement, therefore, there is no deficiency in the stamp duty. It was also stated that the disputed property is under the tenancy and occupation of the Defence Department. It was pleaded

that the notice be dropped. The authority concerned considered the material on record and found that the sale deed was executed en 12-8-1998 and as per provision of Section 2(6) of the Indian Stamps Act, the stamp duty is payable on the market value of the property on the date of execution of sale deed and, therefore, as per procedure laid down for determination of market value, the market value of the said property was valued at Rs. 29,21,572/- on which stamp duty of Rs. 2,93,000/- was payable The vendee had pale stamp duty of Rs. 12,000/-, therefore, there was deficiency of stamp duty to the tune of Rs. 2,81,000/-. The Respondent No. 3 vide his order dated 28-6-1999 directed the Petitioner-vendee to make good the deficiency of stamp duty within a period of 15 days. Aggrieved by that order, the Petitioner went up in Stamp Revision No. 51/98-99 before the Commissioner, Garhwal Division. The revisional authority after hearing both the parties did not find favour with the contention of the revisionist-Petitioner and held that the stamp duty is payable at the marke: value of the property on the date of execution of sale deed and the date of execution of agreement for sale had no relevance for determination of the market value for the purposes of stamp duty and accordingly, the revision was dismissed vide judgment and order dated 10-11 -1999, which gave rise to the present writ petition.

3. The impugned orders have been mainly hammered by the learned Counsel for the Petitioner on the ground that the sale-deed in question was executed in consequence of the orders passed by the Civil Judge Dehradun in Case No. 464 of 1996, but the Petitioner has not filed any document before this Court to substantiate her contention that the stamp duty had been paid under the orders passed by the Civil Judge, Dehradun. The Petitioner could not dare file copy of the order passed by the court for the reasons best known to her.

4. Admittedly, in the instant case an agreement for sale was executed on 30-6-1974. It is not disputed that the sale deed was in fact executed on 12-8-1998. It is not the case of the Petitioner that the stamp duty had already been determined by any competent authority, which could not have been inquired into by the Collector under the provisions of the Stamps Act by the impugned orders.

5. I have carefully examined the orders passed by the two authorities below, and have perused the relevant provisions of the Indian Stamps Act including the provision of Section 47-A. It is pertinent to note that the Apex Court in the case of " Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others, while dealing with the provisions of Section 47-A of the Stamp Act, 1899, in paragraph No. 5 has held that "the object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is a matter of common knowledge that in order to escape such duty by unfair practice, many a time undervaluation of a property or lower consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds is on the actual market value of such

property and not the value described in the instrument. Thus, an obligation is cast on the authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, the Act empowers an authority to charge stamp duty on the instrument presented before it for registration The market value of a property may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is the likely value of such property in that area. In its absence it would be very difficult for SUCH registering authority to assess the valuation of such instrument."

6. As has been mentioned above that the agreement for sale was executed on 13-06-1974 and the sate deed was executed on 12-8-1998. It is settled law that the agreement for sale is not a transfer deed. This is only a contract between the parties for execution of sale deed. The stamp duty has to be paid by the vendee/ purchaser on the date of execution of the sale deed. The consideration set forth in the agreement for sale cannot be the criteria to nay the stamp duty. Hon''ble Apex Court has held in the case of Ramesh Chand Bansal (supra; that the imposition of stamp duty on sale deeds is on the actual market value of such property and not the value described in the instrument.

7. For the reasons aforesaid and in the light of the law laid down by the Apex Cousin the case of Ramesh Chand Bansal (supra), I find that there is no perversity in the impugned orders passed by the Respondent No. 3 thereby the stamp duty had been fixed on the market value of the property as on the date of execution of sale-deed and the revisional authority was fully justified in dismissing the revision preferred by the Petitioner challenging the order dated 28-6-1999 passed by the Assistant Commissioner, Stamps. There is no scope of interference by this Court in the writ petition. Accordingly, there is no force in the writ petition, which is liable to be dismissed at the admission stage.

8. The writ petition is dismissed in limine on merit.

9. Interim order dated 8-12-1999 passed by this Court is hereby vacated.

10. All applications stand disposed of accordingly.