(2008) 09 AHC CK 0300

In the Allahabad High Court

Case No : Writ Petition No. 211 (M/B) of 1992

Smt. Neelu Chopra and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 01-09-2008

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

Citation : (2009) 4 CivCC 403

Hon'ble Judges : U.K. Dhaon, J;Satish Chandra, J

Bench : Division Bench

Advocate : Asit Srivastava, for the Appellant; H.P. Srivastava, Addl. CSC, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri Asit Srivastava, learned counsel for the petitioners and Sri H.P.Srivastava, learned Additional Chief Standing Counsel for the opposite parties.

2. The petitioners being aggrieved by the order dated 02.08.1991 passed by the Additional District Magistrate (Finance & Revenue), Lucknow has filed the instant writ petition.

3. The brief facts of the case are that the petitioners through registered sale deed dated 31.12.1984 purchased half share in the property known as 7, Dali Bagh, Old Butler Road, Lucknow from Dr.Mulk Raj, son of late Rai Bahadur Laxman Das and SmtAsha Agarwal, daughter of Dr.Mulk Raj for a consideration of Rs.2,52,200/-. The Additional District Magistrate (Finance & Revenue) on the basis of an audit report made during audit inspection in the office of the Sub-Registrar, Lucknow, initiated proceedings against the petitioners u/s 33 and 47A of the Indian Stamp Act 1899 (hereinafter referred to as ''Act'') by issuing a notice dated 26.03.1991. The impugned order dated 02.08.1991 reveals that a notice dated 26.03.1991 was issued to the petitioners and as no one appeared on behalf of the petitioners, the value of the property was assessed as

Rs.7,84,000/ and additional stamp duty of Rs.55,860/- and a penalty of Rs.55,860/- was levied.

4. The learned counsel for the petitioners submits that for the first time through notice dated 20.12.1991, the petitioners acquired the knowledge about the order dated 02.08.1991. He further submits that the proceedings initiated by the Additional District Magistrate (Finance & Revenue) on 26.03.1991 was time barred in view of the specific provisions contained in Section 47A (4) of the Indian Stamp Act, 1899. He further submits that sufficient stamp duty was paid by the petitioners when the instrument was duly registered on 31.12.1984 by the registering authority and the impugned order dated 02.08.1991 deserves to be quashed.

5. Sri H.P.Srivastava, learned Additional Chief Standing Counsel appearing on behalf of the opposite parties submits that there is no illegality in the impugned order dated 02.08.1991 passed by the Additional District Magistrate (Finance & Revenue), which was passed after issuance of the show cause notice dated 26.03.1991. He further submits that as no reply to the notice dated 26.03.1991 was filed by the petitioners, the authorities passed the impugned order on 02.08.1991. He further submits that as soon as the illegality in the deed dated 31.12.1984 was discovered the notice u/s 33 and 47 A of the Indian Stamp Act, 1899 was issued to the petitioners. He further submits that while paying the stamp duty, the petitioners did not follow the procedure as prescribed under Rules 341(3) and 341(4) of the Indian Stamp Rules as constructed area was not disclosed in the instrument. He further submits that actual valuation of the property as per prevailing rate was Rs.7,84,000/- and the valuation which was shown by the petitioners was insufficient.

6. We have considered the submissions made by the learned counsel for the parties and gone through the record.

7. It is admitted case of the parties that the petitioners through registered sale deed dated 31.12.1984 purchased half share in the property known as 7, Dali Bagh, Old Butler Road, Lucknow from Dr.Mulk Raj, son of late Rai Bahadur Laxman Das and Smt. Asha Agarwal, daughter of Dr.Mulk Raj for a consideration of Rs.2,52,200/-.

8. Section 47A(4) of the Indian Stamp Act, 1899 is as under:

The Collector may, suo motu, (or on a reference from any court or from the (Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the Board of Revenue in that behalf) Inspector of Stamps, Uttar Pradesh, within (four years) from the date of registration of any instrument (on which duty is chargeable on the market value of the property) not already referred to him under sub section (1) or sub-section (2), call for and examine the instniment for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject (of such instrument) and duty payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty payable thereon in accordance with the procedure provided for in sub-section (3). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

9. u/s 47-A(4) of the Act the proceedings for impounding of any instrument can be initiated within a period of four years from the date of its registration. In the instant case, as per the impugned order dated 02.08.1991 the show cause notice to the petitioners was issued on 26.03.1991 although the sale deed was registered on 31.12.1984. Admittedly, the proceedings were initiated against the petitioners after more than six years.

10. Rule 352 of the Indian Stamp Rules, 1925 is as under:

The Collector may also, suo motu or on a reference from any Court or from the Chief Inspector of Stamps, Uttar Pradesh or any officer of the Stamp Department of the Board of Revenue within four years from the date of registration of any instrument mentioned in Rule 340, call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property forming the subject-matter thereof and shall follow the same procedure as laid down in Rules 347, 349, 350. and 351 and, after taking such action as may be necessary, return the instrument to the authority from which it was received.

11. The explanations given by the opposite parties in the counter affidavit for initiation of the proceedings beyond four years are not sufficient. The maximum period of limitation for initiating the proceedings u/s 33 read with Section 47-A of the Indian Stamp Act, 1899 is four years as provided u/s 47-A(4) of the Act and Rule 352 of the Indian Stamp Rules, 1925 from the dale, the instrument is registered with the Registering Authority.

12. In the result, the writ petition succeeds and is hereby allowed. The impugned order dated 02.08.1991 passed by the opposite party No.3, a copy of which has been annexed as Annexure-1 to the writ petition is hereby quashed.

In the circumstances, there shall be no order as to costs.