
(2006) 01 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48409 of 2004

Smt. Nisha Keserwani

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Stamp Act, 1899 — Section 47A, 47A(3)

Citation : AIR 2006 All 152 : (2006) 2 AWC 1286 : (2006) 1 RD 406

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Siddharth Pandey, M.P. Yeday, Sanjay Kumar Singh and Pradeep Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Vineet Saran, J.—A sale deed was executed in favour of the petitioner on 4.5.1996 on which requisite stamp duty on the sale consideration had been paid. It has been submitted that after a gap of more than four years, a notice dated 4.7.2000 was issued by the District Magistrate, Allahabad to show cause why the said document be not impounded for being deficiently stamped and penalty be not imposed on the petitioner. According to the petitioner, the said notice was never served on him. However, by order dated 20.3.2003 the respondent no. 2, Deputy Commissioner (Stamps), Allahabad held that the valuation of the property in question was Rs. 20,00,000/- on which the stamp duty of Rs. 2,98,000/- ought to have been paid and thus after deducting the stamp duty already paid at the time of registration of the sale deed, it was held that the document was deficiently stamped by Rs. 2,64,624/-, on which a penalty of Rs. 376/- was also imposed and accordingly a sum of Rs. 2,65,000/- was found to be payable by the petitioner. The appeal filed by the petitioner against the said order was dismissed by the Commissioner, Allahabad Division, Allahabad, respondent no. 3 by order dated 28.9.2004 on the ground that the same was filed beyond the period of limitation. Aggrieved by the said orders, the petitioner

has filed this writ petition.

2. I have heard Sri Sanjay Kumar Singh, learned Counsel appearing for the petitioner as well as learned Standing Counsel appearing for the State-respondents. Counter and rejoinder affidavits have been exchanged and with the consent of learned Counsel for the parties, this writ petition is being disposed of at the admission stage itself.

3. The specific case of the petitioner is that it is only u/s 47A of the Indian Stamp Act, 1899 that the Collector could have called for and examined the instrument for the purpose of satisfying himself as to the correctness of the market value of the property and the duty payable thereon. u/s 47A(3) the same could have been done only within four years from the date of registration of such instrument on which the duty was to be charged on the market value of the property. The petitioner had raised such specific objections with regard to limitation before the authorities below. Admittedly the sale deed was executed on 4.5.1996 and the notice was issued for the first time on 4.7.2000, which was beyond the period of four years. The proviso may confer power to initiate action even after the period of four years and within a period of eight years, but only with the prior permission of the State Government. It is not the case of the respondents that such permission had been obtained from the State Government. In the counter affidavit the respondents have not denied this fact that the notice was for the first time issued only on 4.7.2000 and as such the action against the petitioner was taken for the first time after four years of the registration of the sale deed. Learned Standing Counsel has not placed before me any provisions of law under which the said notice could have been issued after the period of four years, when no prior permission of the State Government had been taken.

4. In such view of the matter, as the notice itself was issued to the petitioner after more than four years, which was in clear contravention of the provisions of Section 47A of the Indian Stamp Act, no proceedings could have been initiated against the petitioner in pursuance of the said notice. As such, the orders impugned in this writ petition, which had been passed in pursuance of the aforesaid notice, are both liable to be quashed.

5. Accordingly, this writ petition stands allowed. The impugned order dated 20.3.2003 passed by the respondent no. 2, the Deputy Commissioner (Stamps), Allahabad and the order dated 28.9.2004 passed by the respondent no. 3, the Commissioner, Allahabad Division, Allahabad are quashed. There shall be no order as to costs.

6. The amount deposited in terms of the interim order granted by this Court shall be refunded to the petitioner within two months from the date of filing of an application by the petitioner before the respondent no. 2, alongwith a certified copy of this order.