(2011) 07 AHC CK 0286

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39337 of 2011

Smt. Satyawati and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 33, 47A, 56A

Citation : (2011) 7 ADJ 518 : (2011) 5 AWC 5418 : (2011) 113 RD 825

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon''ble Arun Tandon, J.—Proceedings u/s 33/47-A of the (Indian) Stamp Act were initiated against the petitioners in terms of the a notice issued by the Deputy Registrar-I on 12.3.2010 whereunder the deficiency of the stamp duty on the document in question was shown as Rs. 24,480/-.

2. Before the proceeding in that regard could be concluded, a supplementary report was submitted after spot inspection by the Collector himself stating therein that the deficiency in the stamp duty in the matter was Rs. 59,200/-. A further direction was issued that the case be decided having due regard to the supplementary report so submitted.

3. The Assistant Commissioner Stamp without noticing the subsequent spot inspection report of Collector passed an order dated 31st March, 2010 upholding the earlier notice only because in response thereto the petitioners unconditionally agreed to pay the money mentioned in the notice.

4. On coming to know the aforesaid order dated 31.3.2010, which was passed without considering the subsequent spot inspection done by the Collector, the District Government Advocate made a recall application. This application was allowed on 04th June, 2010 after noticing that the report of the Collector, in

respect whereof notice has already been issued to the petitioners pointing out the deficiency of stamp duty was to the tune of Rs. 59,200/-, could not have been ignored while passing the order dated 31st March, 2010. Thus there was an error apparent in the order. A mistake had been committed in ignoring the subsequent report of the Collector.

5. After noticing the aforesaid facts, the Assistant Commissioner Stamp, Saharanpur has recalled the earlier order and has directed that the proceedings u/s 47A/33 of the (Indian) Stamp Act be determined afresh after affording opportunity to the parties concerned.

Not being satisfied with the order so passed, the petitioners filed an appeal u/s 56-A of the (Indian) Stamp Act. The appeal has been dismissed under the impugned order dated 17th June, 2011. Hence this petition.

6. On behalf of the petitioners it is contended that the Additional Commissioner Stamp had no authority of law to recall the order passed on 31st March, 2010 and therefore the order dated 4.6.2010 and the subsequent order of the Appellate Authority dated 17th June, 2011 are wholly illegal. He submits that the proceedings u/s 47-A stood concluded under the order dated 31st March, 2010. Under the (Indian) Stamp Act there is no power of review.

7. I have heard learned counsel for the parties and have examined the records.

It is no doubt true that under the (Indian) Stamp Act no power has been conferred upon the Commissioner Stamp to review his earlier order but at the same time this Court cannot loose sight of the fact that every authority has inherent right to correct its own mistake. From the records it is established beyond doubt that before the order dated 31st March, 2010 could be passed in the proceedings initiated, an spot inspection report of the District Magistrate himself had intervened qua which a categorical direction was issued by the Collector himself that the pending matter be decided only after taking into consideration the subsequent report. In order to avoid the action in terms of the report of the District Magistrate, the petitioners in the matter agreed to pay the deficiency of stamp duty as per the first notice issued. The Additional Commissioner Stamp, without taking note of the subsequent notice and subsequent report of the Collector, closed the proceedings on the undertaking given by the petitioners to deposit the entire deficiency. I am of the opinion that the subsequent report of the Collector could not have been ignored while passing the order dated 31st March, 2010.

This Court, therefore, finds that the order of the Appellate Authority, refusing to interfere with the order of the Additional Commissioner, recalling the order dated 31st March, 2010, is in the interest of substantial justice. There may be some technical flaw in the order, however, this Court is not inclined to exercise is jurisdiction under Article 226 of the Constitution of India to set aside an order which has been passed in the interest of substantial justice.

Writ petition is dismissed.

However, all issues are left open to be agitated by the petitioners specifically in respect of the total valuation of the property as well as in respect of the correctness or otherwise of the report of the Collector in the proceedings, which stood restored under the orders impugned.

