(2011) 04 AHC CK 0438

In the Allahabad High Court

Case No : C.M.W.P. No. 20357 of 2011

Smt. Sonia Jindal — APPELLANT

Vs

State of U.P. and others — RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Stamp Act, 1899 — Section 47A(4), 47A(4A)

Citation : (2011) 5 ADJ 316 : (2011) 4 AWC 3865 : (2011) 8 RCR(Civil) 3163

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—On the basis of the spot inspection report dated 26.8.2010 proceedings were drawn under the Indian Stamp Act in respect of the document No. 3717 dated 20.7.2010 which is a sale deed. The authorities under the Stamp Act vide order dated 14.12.2010 determined the market value and the deficiency in stamp duty. At the same time an amount equal to deficiency of stamp duty has also been imposed as penalty. This order was affirmed in appeal vide order dated 9.3.2011.

2. Sri Varun Dev Sharma, learned counsel for the petitioner has argued that imposition of the penalty under the facts and circumstances of the case is wholly unjustified.

3. In response to the above argument learned standing counsel has submitted that as the document was found insufficiently stamped, the authorities have rightly imposed penalty of an equal amount of deficiency though they had the power to Impose penalty four times of the deficiency in stamp duty.

4. There is no dispute with regard to power of the authorities under the Stamp Act to impose penalty to the extent of four times the deficiency in stamp duty. However, the question is as to what is the criteria for imposing penalty.

5. The purpose for imposing penalty in exercise of power u/s 47A (4) of the Act is to dissuade persons from deliberately under-valuing the Instrument and from payment of insufficient stamp duty. The purpose is not to make good the loss caused due to nonpayment/delay in payment of proper court fees, as the loss so caused to the exchequer has been taken ample care u/s 47A (4A) by requiring the person concern to pay simple interest @ 1.5% per month on the deficient stamp duty.

6. In the instant case, the petitioner is one time petty purchaser of Immovable property and is not in business of real estate. She is not a property dealer and is not regularly purchasing or selling immovable properties. Thus, imposition of penalty upon her may not act as a deterrent to her as she is not likely to enter into any such transaction in future.

7. The authorities below have not recorded any finding that the petitioner has deliberately not set-forth the market value of the property in the instrument and knowingly under-valued the instrument to avoid payment of proper stamp duty. Merely for the reason that the stamp duty paid by her is found to be deficient cannot by itself be a ground for imposing penalty, particularly, in the absence of any finding that there was intention to evade proper stamp duty.

8. Moreover, the power to impose penalty of an amount not exceeding four time the amount of the proper duty or the deficiency portion thereof is dependent upon the judicial discretion and cannot be exercised in an arbitrary fashion. The authorities below have not assigned any reason for imposing penalty equivalent to the deficiency portion of the stamp duty. Therefore it cannot be said to have been acted Judicially.

9. In view of the above, the imposition of penalty cannot be sustained.

No other argument has been advanced on behalf of the petitioner.

10. Accordingly, writ petition is partly allowed.

The impugned order dated 4.12.2010 and the appellate order dated 9.3.2011 are quashed only to the extent they impose penalty upon the petitioner. In all other respects the above orders shall remain intact. The said orders as such shall stand modified to the above extent only.

Petition partly allowed.

