
(2005) 05 UK CK 0049

In the Uttarakhand High Court

Case No : Writ Petition No. 1136 of 2003 (M/S)

Smt. Sunita Devi

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Stamp Act, 1899 — Section 33, 40, 47A

Citation : (2005) 3 UC 1445

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

Bench : Single Bench

Advocate : Sri K.S. Verma, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble B.S. Verma, J.—By means o f this writ petition, the peti-(sic) challenged the judgment and order dated 13.8.2002 as well as judgment and order dated 13.10.2003 passed by the Upper Collector (Finance and Revenue) Haridwar and the Com-missioner Garhwal Division, Camp at Dehradun respectively.

2. By the order dated 13.8.2002, passed in Case No. 348-M.V./01-02 under the Stamps Act, the Respondent No. 2 imposed penalty of Rs. 92,801/- which included amount of Rs. 57,275/ towards deficiency of stamp duty against the Petitioner and ordered him to deposit the said amount within a week, failing which the recovery thereof shall be made as arrears of land revenue. Against this order, revision was preferred by the Petitioner before the Commissioner, Garhwal Division, who vide his judgment and order dated 13.10.2003 partly allowed the revision and waived the fine of Rs. 35,526/- but maintained the order regarding payment of deficiency of stamp duty.

3. Brief facts of the case are that ac-cording to the Petitioner, she purchased 1/4 share of Khata No. 84, Khasra No. 77/1 of village Laksari Paragana Manglaur, Tahsil Laksar, District Hardwar on 3.2.2000 from Sri Rajpal Gupta, S/o Lala Harnand Lal of village Simli vide registered sale deed dated 3.2.2000. The

disputed land was said to be agricultural land of village Laksari and is being used as such. The said land is excluded from Avas Vikas Kar. The Petitioner purchased the disputed land according to the circle rate and ad-equate and proper stamp duty.

4. On the basis of the audit report of the Accountant General, wherein the land measuring 0.0935 Hectare was held to be Abadi land, therefore, the sale deed No. 337/2000 was referred by the Sub-Registrar, Laksar to the Respondent No. 2 for determining the stamp duty and for recovery thereof. Notices were issued to the Petitioner, who filed objection alleging therein that the disputed land was agricultural land and is being used as such and accordingly, the stamp duty was paid according to Circle Rates of the Collector. It was also pleaded that the Tahsildar concerned has reported that the land in question is being used for agriculture, hence the notice be dropped.

5. The learned Upper Collector-respondent No. 2 after hearing both the parties and taking into consideration the material on record came to the conclusion that the disputed land of Khasara No. 77/1 measuring 0.0935 Hectare is being used for Abadi purposes. He also observed that since the land in dispute is less than 0.105 Hectare, therefore, the stamp duty was pay-able at the highest rate fixed for the village concerned. It was observed that the opposite party-petitioner could not show that land is being used for agriculture. The learned Upper Commissioner ignoring the report of the Tahsildar has held that the valuation of the land was Rs. 6,07,750/- and there was deficiency of stamp duty of Rs. 57,275/-. He accordingly passed the impugned order dated 13.8.2002 imposing penalty of Rs. 35,626/- and for recovery of deficient stamp duty of Rs. 57,275/-, as mentioned above.

6. Aggrieved by the said order, the Petitioner went up in revision before the Commissioner, where the case was registered as Stamp Revision No. 21/2001-02. The revisional authority after hearing both the parties did not find favour with the Petitioner and held that the Petitioner was liable to pay the deficit stamp duty of Rs. 52,275/-. However, it was held that there was no mala fide intention on the part of the Petitioner and that the disputed land was being used for agricultural purposes, hence, the imposition of penalty of Rs. 35,526/- was set aside vide judgment and order dated 13.10.2003.

7. It was contended on behalf of the Petitioner that the land in question is an agricultural land as reported by the Tahsildar Laksar to the Respondent No. 2 and there is finding of the Revisional Court that the land was being used for agricultural purposes, therefore, there was no deficiency in the payment of stamp duty with respect to the said land. It was submitted that the Petitioner had already paid the highest rate of stamp duty applicable to the agricultural land.

8. The learned Standing Counsel for the Respondents supported the impugned orders and submitted that since the land under sale-deed was less than 0.105

hectare, therefore, the authority below was justified in holding that the highest circle rate for the village concerned was applicable. It was further submitted that it is admitted fact that the land in dispute was measuring less than 0.105 hectare, therefore, the stamp duty was payable accordingly as per highest Circle Rate fixed for agricultural land in the village.

9. The only point of consideration in this case is whether the Petitioner has paid the stamp duty on sale deed in question as per market value/circle rate fixed by the Collector and whether the impugned orders passed by the authorities below suffer from gross illegality thereby causing grave injustice to the Petitioner.

10. On behalf of the Petitioner, it has been vehemently argued that the report of Tahsildar Laksar submitted to the Respondent No. 2 was wrongly disbelieved by him only on the ground that no Khasara was enclosed therewith by the Tahsildar. It has been submitted that the Tahsildar has mentioned in his report that the land in question is an agricultural land and it was never an Abadi land and the Revisional Court also found that the land in question was being used for agricultural purposes as per Khasara. Hence the finding of the revisional court directing the Petitioner to deposit the stamp duty is perverse and illegal.

11. I have perused the entire material on record including the impugned judgment and orders passed by the authorities below.

12. Initially, the proceedings of Case No. 348-M.V./01-02 under Sections 47-A/33/40 Kha of the Stamps Act were initiated against the Petitioner. From the impugned order dated 13.8.2002, passed by the Additional Collector (Finance) Haridwar, it reveals that on the basis of audit objection of the Audit report of the Accountant General, notice was issued to the Petitioner, who filed objection and con-tested the case. The O.P. Petitioner took the plea that the land under the sale-deed in question was an agricultural land and adequate stamp duty was paid as per the Circle Rates fixed by the Collector. The Additional Collector (Finance) Haridwar, in his order, observed that from the record it was established that the land under the sale-deed in question, i.e. Khasara No. 77/1 area 0.0935 Hectare is being used for Abadi purposes. It was also observed that since the area under the sale-deed is less than 0.105 Hectare, therefore, the stamp duty in respect of the same shall be payable to the highest Circle Rate fixed by the Collector Haridwar for the village concerned. The learned Additional Collector has disbelieved the re-port of the Tahsildar Laksar on the ground no Khasara was enclosed with the report. The entire order of the Additional Collector does not refer to any document, which could show that the land under the sale-deed was subject matter of stamp duty as applicable to Abadi land. It may be noted here that when the learned Additional Collector was of the opinion that the report of Tahsildar concerned is unbelievable, he ought to have obtained spot inspection report about the disputed land either himself or any other superior Officer to know the truth.

13. Learned Counsel for the Petitioner submitted that the order of the Additional

Commissioner is arbitrary as no reasons have been assigned by him while coming to the conclusion that there was deficiency of stamp duty of Rs. 57,275/-. It was further argued that the Revisional Court, i.e. Commissioner Garhwal Region, has also not applied his mind so as to find out as to on what basis, there was deficiency in the payment of Stamp Duty by the Petitioner and he too has not assigned any reasons. The Learned Counsel for the Petitioner submitted that the payment of stamp-duty at the highest rate of Rs. 3,25,000/- per hectare as fixed by the Collector Haridwar for the agricultural land was paid. It was vehemently argued that the Petitioner has paid the stamp duty as provided under Clause (8) of the Note given at the foot of the Circle Rates fixed by the Collector. This fact has not been denied by the learned Standing Counsel appearing for the Respondents.

14. A careful perusal of the judgment and order dated 13.10.2003 shows that the learned Commissioner gave a categorical finding that prima facie, there appears no mala fide on the part of the Petitioner-revisionist and in view of the copy of Khasara, the disputed land was being used as agricultural land, therefore, the imposition of penalty against the revisionist Petitioner was quashed. The Respondents have not challenged the finding recorded by the learned Commissioner. It has not been shown to me on behalf of the Respondents that the Petitioner was bound to pay the stamp duty at any rate fixed for Abadi land. The highest Circle Rate as fixed by the Collector Haridwar for the agricultural land is Rs. 3,25,000/- per Hectare as is deter from the C.A.-3 filed by the Respondents themselves. It has not been disputed from the side of the Respondents that the Petitioner had not paid the stamp duty @ Rs. 3,25,000/- per Hectare. The learned Commissioner himself found that the disputed land was being used as agricultural land and the Petitioner having already paid the stamp duty at the highest Circle Rate fixed by the Collector, Haridwar, in accordance with Foot Note (8), i.e. @ Rs. 3.25,000/- I am of the opinion that the court below committed manifest error in holding that the Petitioner was liable to make good deficiency of stamp duty of Rs, 57,275/-, which is apparent on the face of record. The finding of the learned Additional Collector assessing the stamp duty in respect of the disputed land assuming it as Abadi already stood set aside on the basis of the judgment and order passed by the learned Commissioner. The relevant portion (para 5) of the judgment and order is reproduced as under:

15. On behalf of the State, no evidence was adduced to show that the land which was sold was Abadi, at the time of execution of sale deed in question. The copy of Khasara for the year 1406 Fasli to 1409 Fasli has been filed by the Respondents alongwith Counter Affidavit and annexed as C.A.-1,

16. Under Article 227 of the Constitution, jurisdiction is supervisory and has to be exercised for keeping the sub-ordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction, which it does not have or has failed to exercise its jurisdiction, which it does have or the

jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned, then only the High Court may step into supervisory jurisdiction and in a writ certiorari or in exercise of supervisory jurisdiction, none is available to correct mere errors of facts or of law, unless the following requirements are satisfied as held by the Hon"ble Apex Court in Surya Dev Rai Vs. Ram Chander Rai and Others, and subsequently in " Ranjeet Singh Vs. Ravi Prakash, .

(i) error is manifest and apparent on face of record, and

(ii) grave injustice or gross failure of justice has been occasioned thereby.

17. It has been observed by the Apex Court in the case of Surya Dev Rai (supra) that "On the other hand, supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does not have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave in-justice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction." In the latter case, the Apex Court has observed inter alia in paragraph 4 of the judgment that "An error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinion on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Dev Rai that the jurisdiction was not available to be exercised for indulging in reappraisal or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal.

From a bare perusal of the judgment and order passed by the learned Commissioner, Garhwal Region dated 13.10.2003 reproduced earlier, it is clear that the learned Commissioner himself has held that the land under the sale deed in question is an Agricultural Land and the Commissioner has found that the Petitioner had paid the stamp duty according to the highest circle rate fixed by the Collector for the agricultural land. Accordingly the Commissioner by his impugned order quashed the imposition of penalty against the Petitioner, but even then the Commissioner did not set-aside the impugned order dated 13.8.2002 passed by the Additional Collector. In the circum-stances of the case, I am of the view that there was no justification for the Commissioner to not set aside the finding of the Court below i.e. Additional Collector and to direct the Petitioner to pay stamp duty at the highest circle rate fixed for semi-urban Abadi land.

18. In view of the discussion afore-said, I find that the portion of impugned judgment and order dated 13.10.2003 passed by learned Com-missioner

Garhwal Region directing the Petitioner to deposit deficit stamp duty of Rs. 57,275/- suffers from perversity and manifest error and the same is liable to be set aside. Accordingly, the order dated 13.8.2002 passed by the Additional Collector (Finance) Haridwar deserves to be set aside.

19. In the result, the Writ Petition succeeds. The impugned orders are hereby set-aside, as observed above. No order as to costs. If any amount is deposited in compliance of the interim order dated 11.11.2003 of this Court, the same shall be refunded to the Petitioner.