(2007) 05 PAT CK 0039

In the Patna High Court

Case No : CWJC No. 7738 of 2000

Smt. Urmila Devi and Others — APPELLANT

Vs

State and Others — RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:
Stamp Act, 1899 — Section 2

Citation : (2007) 3 PLJR 734

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Ram Kishore Singh-2, for the Appellant; Dhurendra Kr., for the State, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard. Six petitioners, who are mother and five sons purchased land from one Gouri Shankar Nayak. Six separate sale deeds were executed on 22.7.1999. The sale deeds in respect of petitioner No. 1 was for a consideration of Rs. 32,000/- in respect of 4 and 1/2 dhurs of land. The rest sale deeds were in respect of 8 dhurs and 1 dhurki each for a consideration of Rs. 26,000/- each. When these six sale deeds were presented for registration on 9.8.1999 they were admitted and execution thereof and receipt of consideration was admitted by the vendor before the Sub-Registrar. The documents were then received for registration upon affixing of stamp duty and payment of registration fee. Registration receipts (Chirkuts) were issued. The petitioners thereafter kept visiting the office everyday but the documents were not registered for over a month. The petitioners alleged that it was entirely for mala fide purposes at the instance of respondent-Sub-Registrar, who was demanding illegal gratification to register the documents. Being fed up, they made a written complaint to the Additional Collector, Samastipur on 23.9.1999, who by his order dated 25.9.1999 directed the Sub-Registrar to send his report in the matter forwarding the petitioner''s complaint. It is said that the Sub-Registrar having come to know that the petitioner had made a complaint about his illegal act, only to cover himself up, sent a letter No. 270, dated 23.9.99 to the Collector (Annexure 4). It would be relevant to point out this is the day when written complaint was made by the petitioner to the Additional Collector. A reference to Annexure 4 would show that the Sub-Registrar, Rosera, District-Samastipur has sought to defend himself even without being asked to do so and apparently on having come to know that a complaint has been made, he sent his letter to the Collector. He states that the documents were presented for registration on 9.8.99. On 22.9.99 he received the complaint from one Kishore Kumar that the documents have been sought to be registered were under valued. In an effort made to clear himself he then writes that pursuant to the said complaint dated 22.9.99 he made spot enquiry and found that the documents presented for registration were proper and according to rate scheduled in this regard but he was sending his report to the Collector as the complaint was endorsed to the Collector as well.

2. At the cost of repetition I may state that this was a letter totally defending himself which exposes the Sub-Registrar. He was guilty concious. He was not asked to give any explanation or conduct any enquiry. He has admitted that the documents were presented for registration on 9.8.99 and the complaint, he received, was on 22.9.99 i.e. more than one and a half month after the documents had been presented for registration. He very conveniently omitted to explain as to why for a month and a half documents duly executed, the execution and consideration whereof was accepted by the vendor and chirkuts issued were lying in his office unregistered. This clearly establishes the mala fide on the part of Sub-Registrar. However, the matter did not end there. Apparently on basis of the complaint made and certain subsequent steps a Stamp Deficit Case No. 1/2000 was registered by the Additional Collector and the petitioners were noticed. They appeared and explained the situation that they had bona fide valued the land. The land adjacent to the road was valued much higher and the lands which were in the interior were valued lower. The valuation was according to the rates approved and notified. It appears in those proceedings there is reference to the matter by which explanation was called for from the Sub-Registrar. The Sub-Registrar refused to respond in spite of repeated requests and ultimately the matter was given to the Sub-Divisional Officer for enquiry. The Sub-Divisional Officer went and made enquiry and he did not find any suppression so far as value is concerned but what he reported was that if instead of six individual sale deeds a single deed could to be registered, then the stamp duty would have been much higher and therefore it appeared that while executing six different sale deeds the petitioner had sought to evade stamp duty. Accordingly, the Deputy Collector, Stamp by his order dated 13.6.2000 held petitioner guilty of evading stamp duty and levied not only the additional duty but penalty thereof for four times. This is the order impugned (Annexure 1) being dated 13.6.2000.

3. It seems that the petitioner had come to know of such cover up manner to save the Sub-Registrar they filed an application before the Collector on

16.6.2000, which was registered as Misc. Case No. 433/2000. On that application itself the Collector endorsed the matter to the Deputy Collector Stamp and directed it to be placed before him on the next working day. The petitioner then found that the impugned order dated 13.6.2000 passed by the Deputy Collector (Stamp) was then got approved by the Collector on 16.6,2000 itself and as such on the next day (11.7.2000) this Misc. Case No. 433 of 2000 was disposed of saying and creating an impression that order that was passed in Stamp Deficit Case No. 1/2000 was passed by the Collector on 16.6.2000 and left the petitioner to seek his remedy. The petitioner has come against the order dated 13.6.2000 of the Deputy Collector, Stamp as apparently approved by the Collector on 16.6.2000 as being an order wholly without jurisdiction.

4. State has filed a counter affidavit stating that the Deputy Collector, Stamp had been delegated authority by the Collector to look into such matter in the year 1999 itself and as such the order passed by the Deputy Collector, Stamp was valid. It is then stated that it was approved subsequently by the Collector and if the petitioners had any grievance they had appellate remedy. What has not been controverted is that though the documents were presented for registration on 9.8.99 why they were not registered upto 22.9.1999 where admittedly first complaint received in respect of the document was on 22.9.99, i.e. when the documents had been retained in the Sub-Registrar Office for over one and a half month without any cause or any explanation whatsoever by any authority. No one has chosen to comment on this unexplained delay rather made all conscious efforts to divert the attention to petitioner''s conduct.

5. These conducts clearly establish the nefarious activity in the registration office in Bihar and call for serious action against the persons concerned. Unfortunately, the Collector of the district has also fallen in the trap.

6. Under the Indian Stamp Act, 1899, Section 2, sub-section 9 defines "Collector" in places other than Patna it is the Collector of the district includes a Deputy Commissioner and any officer whom the State Government may by notification in the official gazette appoint in this behalf.

7. From the said definition it is clear that the authority of the Collector of the district can only be delegated by the State Government by a notification in the official gazette. In the present case in the counter affidavit it is clearly stated that the Collector of the district had, by his own authority, delegated the power to Deputy Collector, Stamp which in my view is completely invalid. This apparently the Collector and the Deputy Collector were aware still they proceeded with it, otherwise the Deputy Collector would not have rushed to take the signature of the Collector after he had passed the order. This itself is enough to invalidate the order and clearly establish the guilty conscious of the authorities.

8. The Collector also appears to have been aware of all these things and the illegality being committed but he became a party thereto by endorsing the order of Deputy Collector and in this counter affidavit by the State taking stand that it

is his order which he passed on 16.6.2000 whereas the certified copy of the order shows otherwise. The petitioners had appeared and argued before the Deputy Collector how could the Collector pass the order without the proceedings being before him. The order itself shows that it was dictated and signed by the Deputy Collector on 13.6.2000 and subsequently initiated by the Collector on 16.6.2000. Such proceedings are unknown to law. The entire proceedings are thus liable to be quashed and are quashed as such.

9. At this stage I may point out that only reason why penalty has been imposed is that by drawing up six sale deeds the petitioners have managed to reduce their tax burden. In my view, such an absurd and perverse stands have been taken because the authority had no other option to save the Sub-Registrar. They had thrown the burden and blame on a citizen. It is well settled that avoidance of tax is no offence. Evasion of tax is an offence. Every man is entitled to arrange his affairs in such a manner so as to reduce his tax liability to minimum. The question of morality does not arise. The question is of legality. If by six sale deeds the tax burden could be reduced and it not being illegal the petitioners were entitled to his legitimate tax planning. Even otherwise it was not six sale deeds as between the same party. The vendor was a single person but there were six separate and distinct individual persons as vendees. In all, there were six independent sale deeds and no taw prohibits that. Six separate sale deeds were therefore validly executed and any finding to the contrary smacks of mala fide in fact and in law in the facts of the case.

10. The writ petition is accordingly allowed. The documents, if they are not registered or impounded would be duly registered as on the day they were presented for registration and return expeditiously to the petitioners. The impugned order, as contained in Annexure 1 is quashed. The demand except of legitimate fee is unenforceable. In view of the seriousness of the facts, as noted above, let a copy of this order be forwarded to Inspector General of Registration, Bihar, Patna, for appropriate action against the officers concerned in accordance with law so that such inappropriate practices of officials are stopped and citizens saved from the vagaries of the officials.