

(2012) 03 GUJ CK 0082

In the Gujarat High Court

Case No : Letters Patent Appeal No. 487 of 2008 in Special Civil Application No. 16670 of 2004 and Civil Application No. 5072 of 2008 in Letters Patent Appeal No. 487 of 2008

State of Gujarat and 1

APPELLANT

Vs

Dr. Devendra Kaniyalal Shah

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Bombay Stamp Act, 1958 — Section 32A, 32B

Citation : (2012) 03 GUJ CK 0082

Hon'ble Judges : V.M. Sahai, J;A.J. Desai, J

Bench : Division Bench

Advocate : N.J. Shah, AGP 1 - 2, for the Appellant; Ravindra Shah for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

A.J. Desai

1. By way of present Appeal under Clause 15 of the Letters Patent, the State of Gujarat - original respondent has challenged the order dated 10.10.2005 passed in captioned petition by which the learned Single Judge has quashed and set aside the proceedings initiated by the present appellant under the provisions of the Bombay Stamp Act, 1958 (hereinafter referred to as "the Act"). The learned Single Judge by relying upon the decision in the case of Shailesh Jadavji Varia Vs. Sub-registrar and Others, decided by larger bench of this Court, allowed the petition on the ground that the authority have initiated proceedings u/s 32A of the Act at a belated stage. The brief facts arising from the case are as under:

1.1 That a sale deed was registered with the authorities on 29.3.1993 and the petitioner had paid Rs.38,720/- towards the purchase price of the land in question and also paid stamp duty at the tune of Rs.4,190/-. Some dispute arose between the parties and ultimately the sale deed which was registered on 29.3.1993 was cancelled. The original landlord again executed another sale deed

in favour of another party on 4.8.1994 for a sale consideration of Rs.3,81,760/- and a stamp duty of Rs.56,510/- was paid at the time of registration.

1.2 By order dated 31.12.2003 the appellant No.2 i.e. Deputy Collector and Stamp Duty Officer passed an order calling upon the petitioner to pay the deficit stamp, in all Rs.1,13,090/- within 90 days from the receipt of the order. The said order was challenged by the petitioner by way of appeal under the provisions of Section 32B of the Act and the same was rejected by the appellant on the ground that the appeal was not filed within a period of 90 days prescribed under the provisions of Section 32B of the Act.

1.3 The petitioner, being aggrieved and dissatisfied with both these proceedings, preferred captioned Special Civil Application and challenged the order passed by appellate authority as well as order dated 31.12.2003 which was passed by the Deputy Collector deciding the deficit stamp which was not paid on the conveyance according to the market price.

2. We have heard learned AGP Mr. N.J. Shah for the appellants and learned counsel Mr. Ravindra Shah for the respondent.

3. It was a specific case of the petitioner that though the order dated 31.12.2003 mentions about a notice issued by Deputy Collector on 15.12.2003, the same was never served upon the petitioner and, therefore, the order is contrary to principle of natural justice and requires to be quashed and set aside. It was the case of the petitioner that as per ratio laid down in case of Shailesh kumar (supra), the authority has failed in explaining the delay in issuing the notice and therefore also the same is required to be quashed and set aside.

4. It is an admitted position that the sale deed was registered on 29.3.1993 wherein, even if we believe that the notice, which was served, was issued on 15.12.2003 i.e. after more than 10 years. The ratio laid down in case of Shailesh kumar by which the question raised before the Full Bench was answered, is as under:

Question No.1

First part of Question No.1 is replied in the affirmative, namely, the Registering Officer under Sub-section (1) of Section 32A can exercise powers beyond two years on facts justifying delay.

5. In view of the decision of Full Bench, the authority was bound to justify the delay in issuing/passing the orders after 10 years. In the present case, there is no explanation whatsoever has been put forward for appreciation.

6. In view of above facts and circumstances, we do not find any infirmity with the impugned order passed by the learned Single Judge which would call for interference by this Court. This appeal is, therefore, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. In view of the aforesaid order passed in Appeal, Civil Application No.5072 of 2008 does

not survive and accordingly stands dismissed with no order as to costs.