
(2013) 04 MP CK 0116
In the Madhya Pradesh High Court
Case No : Writ Petition No. 547 of 2006

State of M.P.

APPELLANT

Vs

Narmada Drillers and Others

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Regional Rural Banks Act, 1976 — Section 3
Stamp Act, 1899 — Section 33, 9

Citation : (2013) 3 MPHT 507 : (2013) 4 MPLJ 30

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : Bhuvan Deshmukh, Govt, for the Appellant; V. Kasrekar, Advocate for the Respondent Nos. 1 to 6, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Sharma, J.—The petitioner before this Court has filed this present petition being aggrieved by the order dated 27-12-2004 passed by the Board of Revenue, by which the orders passed by the Collector Stamps, Mandsaur dated 22-11-96 has been set aside. The petitioner-State is aggrieved by the order of the Board of Revenue, by which the respondents have been held to be eligible for exemption from payment of stamp duty. It has been argued by the learned Counsel appearing for the petitioner-State that the respondent Nos. 1 to 6 obtained a loan from the respondent No. 7-State Bank of India and a mortgaged deed was executed on 29-1-87. Learned Counsel has also argued before this Court that as per the loan agreement executed between the parties and the mortgaged deed executed by the respondent Nos. 1 to 6, a loan was granted for agricultural purposes, however, in the mortgaged deed it was categorically stated that cash credit limit is being granted to the tune of Rs. 8,75,000/- and the loan for purchasing drilling machine truck, jeep amounting to Rs. 21,00,000/- is being granted. Learned Counsel for the petitioner has argued before this Court that as the loan was granted for purchasing the drilling machine, truck and jeep, the same was certainly not for the agricultural purposes and therefore, the Sub-

Registrar, Javad, District Mandsaur issued a letter on 4-2-87 u/s 33 of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act of 1899"). It has further been stated that thereafter, the matter was referred to the Collector Stamps and the Collector Stamps vide order dated 27-7-94 has held that the respondent Nos. 1 to 6 are not entitled for exemption in the matter of payment of stamp duty. The order dated 27-7-94 was challenged before the Chief Controlling Authority and the Chief Controlling Authority has remanded the matter back vide order dated 31-7-95 directing the Collector Stamps to decide the matter afresh after hearing the respondent Nos. 1 to 6. Learned Counsel has further stated that the Collector Stamps after the remand, has passed an order dated 22-11-96 holding that the respondent Nos. 1 to 6 are not entitled for exemption from the payment of stamp duty as the loan was not granted for the agricultural purposes. It has been further stated that the Chief Controlling Authority on the basis of a revision petition preferred by the respondent Nos. 1 to 6 has again set aside the order passed by the Collector Stamps and by the order dated 27-7-94, it has been held that the respondent Nos. 1 and 6 are not required to pay the stamp duty, they are entitled for grant of exemption by virtue of notification dated 15th September, 1978 issued by the State Government u/s 9 of the Act of 1899. Learned Counsel for the petitioner-State has vehemently argued before this Court that the order passed by the Board of Revenue is bad in law as the notification dated 15th September, 1978 was later on amended on 5-12-97, which provided an explanation in respect of "agricultural purposes" and it was explained in the aforesaid notification that the loan in respect of truck, mini truck, matador and drilling machine shall not be exempted from payment of stamp duty by treating it as a loan granted for the agricultural purposes. His contention is that by no stretch of imagination, the purchase of a truck and jeep can be termed as purchase for agricultural purposes and therefore, the impugned order passed by the Board of Revenue deserves to be set aside.

2. Heard learned Counsel for the petitioner as well as learned Counsel appearing for the respondent Nos. 1 to 6 and perused the record.

3. In the present case, it is not in dispute that the respondent Nos. 1 to 6 have availed a financial assistance from the State Bank of India and the mortgaged deed was executed on 29-1-87. The Sub-Registrar, Javad referred the matter u/s 33 to the Collector Stamps on 4-2-87 and the Collector Stamps has passed an order directing the respondent Nos. 1 to 6 to pay the stamp duty. In the present case, the basic question is involved whether the stamp duty has to be paid in respect of the mortgaged deed executed on 29-1-87 or not? The State Government has issued the notification dated 15th September, 1978 in exercise of powers conferred u/s 9 of the Act of 1899 and the notification reads as under:--

Notification No. 657-VI-R-78, dated the 15th September, 1978.--In exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (No. II of 1899) and in supersession of this department

notifications No. 240-6904-VI-R, dated the 24th April, 1976, No. 881-718-VI-R, dated 7th December, 1976 and No. 297-1122-VI-R, dated 16th November, 1977 the State Government hereby, with effect from the date of publication of this notification in the "Madhya Pradesh Gazette", remits stamps duty chargeable on (a) mortgage deeds, and (b) hypothecation deeds forming part of such mortgage deeds when executed by:--

(1) a bhumiswami belonging to the Scheduled Castes or Scheduled Tribes; or

(2) a bhumiswami not covered by (1) above, but having a holding not exceeding ten hectares;

in favour banks for securing loans for agricultural purposes.

Explanation:--In this notification (a) "bank" means--

(i) a banking company as defined in the Banking Regulation Act, 1949 (No. 10 of 1949);

(ii) the State Bank of India constituted under the State Bank of India Act, 1955 (No. 23 of 1955);

(iii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (No. 38 of 1959);

(iv) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (No. 5 of 1970);

(v) the Agricultural Refinance Corporation constituted under the Agricultural Refinance Corporation Act, 1963 (No. 10 of 1963);

(vi) the Madhya Pradesh State Agro Industries Development Corporation Ltd., Bhopal;

(vii) Agricultural Finance Corporation Ltd., a company in corporate under the Companies Act, 1956 (No. 1 of 1956);

(viii) a Regional Rural Bank established under sub-section (1) of Section 3 of Regional Rural Bank Act, 1976 (No. 21 of 1976);

(b) "Agricultural purposes" means making land fit for cultivation, cultivation of land, improvement of land including development of sources of irrigation, raising and harvesting of crops, horticulture, forestry, planting and farming, cattle breeding, animal husbandry, dairy farming, seed-farming, pisciculture, apiculture, sericulture, piggery and poultry farm farming and the acquisition of implements and machinery in connection with any such activity.

[Published in M.P. Rajpatra (Asadharan), dated 15-9-78 Page 1730].

4. The aforesaid notification provides exemption in respect of payment of stamp duty, in case the holding mortgaged with the bank is not exceeding ten hectares and the loan is granted for the agricultural purposes. The words "agricultural

purposes" has already been defined under clause (b) and the same includes development of sources of irrigation. The drilling machine, which has been purchased by the respondent Nos. 1 to 6 was certainly for digging bore wells/tube wells and it does fall within the meaning of development of sources of irrigation. Not only this, as large number of agriculturists were obtaining loan for purchase of drilling machine, truck and jeep, a necessity arose for clarifying the meaning of the words "agricultural purposes" and the State Government vide notification dated 15-12-97 has inserted a proviso in the exemption notification dated 15th September, 1978 and the same reads as under:--

Provided that no exemption shall be permissible on instruments executed for obtaining loans for Truck, Mini Truck, Matador and Drilling Machine.

5. The aforesaid proviso makes it very clear that no exemption is permissible on instruments executed for obtaining loans for Truck, Mini Truck, Matador and Drilling Machine. The aforesaid proviso came into existence on 5-12-97 and in the present case, the mortgaged deed was executed on 29-1-87 and, therefore, the proviso which came into force in 1997 cannot be applicable with retrospective effect until and unless it was so mentioned in the notification dated 5-12-97.

6. Hon"ble Justice G.P. Singh in his land mark book "Principles of Statutory Interpretation" while dealing with operation of statutes under the heading of retrospective operation (e) Fiscal Statutes at Page 382 has observed as under:--

(e) Fiscal Statutes:

Fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective [Halsbury's Laws of England (3rd Edition), Vol. 36, p. 425; See also The Union of India Vs. Madan Gopal Kabra, (income tax Legislation imposing tax on the basis of income of previous year is not really retrospective). It is submitted that in D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another, it has not been correctly stated that a tax on building which operates from an anterior date is not retrospective. For excise duty; see: Collector of Central Excise, Ahmedabad Vs. Ashoka Mills Ltd., . (Rate of Excise duty is that which prevails on clearance of the goods and a subsequent change in rate of duty is not construed as retrospective to apply to goods already cleared.)) and it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication [Reliance Jute and Industries Ltd. Vs. Commissioner of Income Tax, West Bengal, The above rule applies to the charging section and other substantive provisions and does not apply to machinery or procedural provisions of a taxing Act which are generally retrospective and apply even to pending proceedings [Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, (Rule LBB of the Wealth Tax Rules inserted from 1-4-79 laying down method of valuation of a house used for residential purpose was applied to pending assessments of the years 1977-78 and 1978-79).] But a procedural provision, as far as possible, will not be so construed as to affect finality of tax

assessment or to open up liability which had become barred [Income Tax Officer, V Circle, Madras, and Another Vs. S.K. Habibullah, ; AIR 1927 242 (Privy Council) See: State of Tamil Nadu Vs. Star Tobacco Co., (Power to open an assessment is not a manner of procedure)]. Assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective [Controller of Estate Duty, Gujarat I, Ahmedabad Vs. M.A. Merchant, Accountable Person of Late Shri A.G. Merchant, Majirajwadi Road, Bhavnagar and Others, . A provision which in terms is retrospective and has the effect of opening up liability which had become barred by lapse of time, will be subject to the rule of strict construction [Banarasi Devi Vs. Income Tax Officer, Calcutta, ; Commissioner of Income Tax, Bombay Vs. Onkarmal Meghraj (H.U.F.), . In the absence of a clear implication such a legislation will not be given a greater retrospectively than is expressly mentioned; nor will it be construed to authorise the income tax Authorities to commence proceedings which, before the new Act came into force, had by the expiry of the period then provided become barred [S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company,). But see: Mysore Rolling Mills (P) Ltd. Vs. Collector of Central Excise, Belgaum, But unambiguous language must be given effect to, even if it results in reopening of assessments which had become final after expiry of the period earlier provided for reopening them [Commercial Tax Officer and others Vs. M/s. Biswanath Jhunjhunwala and another, Addl. Commissioner (Legal) and Another Vs. Jyoti Traders and Another,

7. Keeping in view the aforesaid, this Court is of the considered opinion that the subsequent amendment by which a liability to pay stamp duty has been fastened upon those persons, who have obtained loans for truck, mini truck, matador and drilling machine cannot be made applicable with retrospective effect in case of the petitioner.

8. Resultantly, this Court is of the considered opinion that amendment and insertion of a proviso in the notification in the year 1997 cannot be enforced in respect of a mortgaged deed which was executed on 21-1-87, and therefore, this Court is of the considered opinion that the Board of Revenue was justified in passing the impugned order based upon the earlier notification dated 15th September, 1978 read with the subsequent amendment dated 5-12-97. Hence, no case for interference in the matter is made out and the writ petition is dismissed. No order as to costs.