(2016) 01 SC CK 0012

In the Supreme Court Of India

Case No : Civil Appeal No. 6955 of 2011

State of U.P. and Anr. — APPELLANT

Vs

M/s. Arezzo Developers Pvt. Ltd. & Ors. — RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Stamp Act, 1899 — Section 29(E), 31, 33(4), 47
Transfer of Property Act, 1882 — Section 118
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 161

Citation : (2017) 2 AllLJ 90 : (2016) 2 BBCJ 36 : (2016) 3 Scale 169 : (2016) 12 SCC 530

Hon'ble Judges : Pinaki Chandra Ghose;Amitava Roy, JJ.

Bench : Division Bench

Advocate : Aruneshwar Gupta, AOR, Monisha Handa, Mohit D. Ram, AOR, Kavin Gulati, Sr. Adv, Siddhartha Dave, Umesh Kumar Khaitan, AOR, Avi Tandon, Jemtiben AO, Salil Seth, Deepak Chawla and Surabhi Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the judgment and order dated 11.12.2009 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.45972 of 2007, whereby the High Court allowed the writ petition filed by the respondents herein and quashed the show cause notices dated 20.08.2007, issued by the Additional Collector (Finance and Revenue), Ghaziabad, under Section 33 of the Indian Stamp Act, 1899.

2. The respondents herein are the companies engaged in procurement of land and development of residential apartments. They purchased large tracts of land from its owners in Village Dundahera, Ghaziabad, U.P. Since exchange of lands between the parties is compulsory for implementation of the policy of planned development framed by the Government of Uttar Pradesh, the respondents moved applications seeking permission for exchange of land under Section 161 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, (hereinafter referred to

as "the Act") before the Sub-Divisional Magistrate/Assistant Collector, Ghaziabad. The land sought to be exchanged in all the cases is between the Real Estate Builders/ Companies and is located at Village Dundahera, Pargana Loni, District Ghaziabad. None of the parties had any objection to the proposed exchange of lands. The Assistant Collector, Ghaziabad vide his orders dated 29.07.2006 allowed the applications filed by the respondent companies, permitting the exchange of lands. However, the Additional Collector (Finance and Revenue), Ghaziabad issued Show Cause Notices to the respondents under Section 33 of the Indian Stamp Act, for determination of stamp duty in accordance with Section 29(e) read with Article 31 of Schedule 1-B and Section 33(4) of the Indian Stamp Act. Being aggrieved the respondents preferred a writ petition before the High Court of Judicature at Allahabad. The High Court after hearing the parties and after going through the evidence on record, quashed the show cause notices dated 20.08.2007, issued by the Additional Collector (Finance and Revenue), Ghaziabad. The State is, thus, before us in this appeal.

3. Normally, this Court does not interfere with the Show Cause Notice, but when any Show Cause Notice is issued without jurisdiction, the Court has to see whether it is patently illegal, without jurisdiction, arbitrary or mala fide in nature. In the present case, when the landed properties were exchanged amongst the Bhumidhars without any consideration, can it be treated to be an instrument of transfer so as to attract stamp duty. "Exchange" is defined in Section 161 of the Act which reads:

"161. Exchange.- (1) a bhumidhar may exchange with - (a) any other bhumidhar land held by him; or (b) any Gaon Sabha or local authority lands for the time being vested in it under Section 117; Provided that no exchange shall be made except with the permission of an Assistant Collector who shall refuse permission if the difference between the rental value of land given in exchange and of land received in exchange calculated at hereditary rates is more than 10 per cent of the lower rental value.

(1-A) Where the Assistant Collector permits exchange he shall also order the relevant annual registers to be corrected accordingly.

(2) On exchange made in accordance with sub-section (1) they shall have the same rights in the land so received in exchange as they had in the land given exchange."

4. The purpose of the above provision is amply clear, that is, to provide the State an opportunity to see, whether the said transfer between the Bhumidar lands is not out of any fraudulent action or, whether there is any unlawful deprivation of the parties or not. The permission by the State to transfer such lands in the affirmative will make the exchange valid and lawful.

5. This Appeal raises a specific question as to the application of the Transfer of Property Act, 1882 to the exchange of land in the present case under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The

''exchange'' under the Transfer of Property Act requires compliance of the manner provided for transfer of such property by sale, i.e. an instrument with consideration, but when there is no instrument and no consideration, the Transfer of Property Act or the Stamp Act cannot be held to be applicable. The reason is that if both the Bhumidars agree to exchange their land on account of compactness and there is no financial involvement, then by way of the policy, the State can allow the same. The exchange contemplated under Section 161 of the U.P. Zamindari Abolition and Land Reforms Act is one such transaction where the Bhumidars can exchange without any instrument or consideration with the permission of the State.

6. Further examination of provisions of Section 31 and 47 of the Stamp Act reveals that it provides the power to the Collector to order stamp duty chargeable upon an instrument. The suo moto power is provided only under Section 47 of the Act. However such authority is limited to certain circumstances. The show cause notice in question in the present case could not have been issued against the exchange under Section 161 of the U.P. Zamindari Abolition and Land Reforms Act.

7. Thus, we do not find any cogent reason to interfere with the reasoning adduced by the High Court. Also the High Court has not restrained the State Government in any manner to make any new law, to make such transfer more genuine or even to prevent any loss of public exchequer. This finding of the High Court, therefore, does not require any interference by us.

8. The Civil Appeal is accordingly dismissed with no order as to cost.

