
(2009) 01 AHC CK 0131

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65744 of 2008

Sudhish Kumar Singh

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Stamp Act, 1899 — Section 47A, 56

Citation : (2009) 01 AHC CK 0131

Hon'ble Judges : Prakash Krishna, J

Final Decision : Allowed

Judgement

Prakash Krishna, J.—By means of the present petition, the petitioner has sought a writ, order or direction for quashing the order dated 3.11.2008 passed by the District Magistrate, Aligarh as contained in Annexure 1 to the writ petition.

2. The proceedings giving rise to the present writ petition were initiated against the petitioner under Section 47A of the Stamp Act as amended in the State of U.P. It has been stated in the writ petition that Indian Implements Manufacturing Company is the lessee of land contained in plots Nos. 7, 8, 9 and 10 Kasba Koil, Aligarh the said company authorised another company namely Ansal Properties and Industries Ltd., referred to as "company" in the writ petition, to carry out development of the aforesaid piece of land and also to sell the same in best possible manner on behalf of Indian Implements Manufacturing Company. The lessee and the company agreed to transfer lease hold right in respect of the land in question by an assignment in favour of the petitioner and some other persons. An agreement in this regard was duly registered with SubRegistrar Sadar Aligarh on 27.6.2003. The payment of proper stamp duty on the said agreement is in dispute.

3. According to the respondents, proper stamp duty has not been paid on the said instrument. In this regard case No. 52 of 2003 Under Section 47A of the Stamp Act has been registered. It is also not in dispute that a showcause notice has been issued to the petitioner and the petitioner has filed his reply. The

Additional District Magistrate (Finance & Revenue) Aligarh by order dated 23.10.2004 directed the Tehsildar Koil (Aligarh) to submit a report in respect of the land in question. The Tehsildar concerned submitted the report dated 29.11.2005. The matter was pending before the District Magistrate, Aligarh. An application to transfer the said case was filed before the Chief Controlling Revenue Authority, UP. Allahabad being transfer application No. 30 of 200809. On the said application, the Chief Controlling Revenue Authority passed stay order on 10.4.2008 staying further proceedings. Grievance of the present petitioner is that in spite of the stay order granted by the Chief Controlling Revenue Authority, the impugned order has been passed by the Collector, Aligarh.

4. When the matter was taken up earlier, an order dated 6.1.2009 was passed which is reproduced below:

"A serious allegation has been made against the Collector. The contention is that the case stood transferred by the transfer order passed by the Board of Revenue from the Court of Collector to the Additional District Magistrate. In spite of knowledge of the transfer order, the Collector, Aligarh has passed the impugned order.

Shri Sahai, learned Standing Counsel is hereby directed to produce the original record before the Court on 13.1.2009. He will also file counter affidavit on or before that date.

List on 13.1.2009."

5. In pursuance of the aforesaid order, the learned Standing Counsel has produced the record. The stand taken by the learned Standing Counsel in the light of the writ petition is that the matter is pending since the year 2003 and the petitioner's representative has been appearing all through. The said District Magistrate against whom allegations in the transfer application were made having been transferred and new incumbent having joined at his place, the interim order passed on the transfer application had become in fructuous and as such, new incumbent rightly passed the impugned order. It was further stated that opportunity of hearing was afforded to the petitioner before passing of the impugned order as is apparent from the order sheet. The matter was heard on 20.10.2008 and on the request of the present petitioner he was permitted to file written argument before 20.10.2008. The petitioner having failed to file the written argument the impugned order has been passed by the District Magistrate, Aligarh after taking into consideration the entire facts and circumstances of the case.

6. Sri Shashi Nandan, learned Senior Counsel appearing on behalf of the petitioner submits that even if the officer concerned was transferred, the District Magistrate, who has taken charge after transfer of earlier District Magistrate, ought not to have heard and decided the matter in view of the fact that the stay order was operative, staying proceedings before the District Magistrate. The learned Standing Counsel, on the other hand, submits that on the facts of the

present case, no prejudice has been caused to the petitioner there being no allegation against the present District Magistrate who has passed the impugned order. The present District Magistrate has decided the matter on merits.

7. Considered the respective submissions of the learned counsel for the parties and perused the writ petition as well as original record produced by the learned Standing counsel.

8. Before coming to the merits of the case, it may be noted that the impugned order is appealable under Section 56 of the Stamp Act. However, no appeal was filed, instead the present writ petition has been filed. In view of the order proposed to be passed in the writ petition, it is not necessary for this Court to relegate the petitioner to the statutory remedy.

9. From a bare perusal of the original record of the case, it is apparent that the proceeding are pending since the year 2003. Only hearing was required to take place. Hearing of the case has been adjourned from time to time either due to lawyers' strike or on the adjournment applications filed by the petitioner and allowed on payment of costs.

10. Main grievance of the petitioner is that the impugned order has been passed during the continuance of the stay order granted by the Chief Controlling Revenue Authority. This is one aspect of the matter. Equally, it is important that there was no allegation against the present District Magistrate who passed the impugned order. It would have been better for the present District Magistrate to have waited for vacation of the stay order passed on the transfer application. He proceeded to decide the matter presumable as the matter is old one and huge amount of duty is involved. There is no allegation in the present writ petition against the present District Magistrate. It may be that the petitioner was misled and could not argue the matter before the District Magistrate in the hope that the District Magistrate will not hear the matter due to stay order passed on the transfer application.

11. It is desirable that another opportunity of hearing may be afforded to the petitioner to which the learned counsel for the both the parties readily agreed.

12. Sri Shashi Nandan, learned Senior Counsel appearing for the petitioner also stated in the clear terms that the petitioner will not seek any adjournment and he is prepared to get the matter finally argued out in a shortest possible time. The stand taken by the petitioner is fair enough to which the learned Standing Counsel has also no objection of the matter is reheard.

13. Taking into consideration the entire facts and circumstances of the case and looking to the fact that by the impugned order a very heavy demand has been created against the petitioner, it is desirable that further an opportunity by way of last resort be afforded to the petitioner by setting aside the impugned order with the direction to the authority concerned to dispose of the matter expeditiously.

14. It was also argued by the learned Senior Counsel that the matter may be heard by Additional District Magistrate (Finance & Revenue) Aligarh, respondent No. 3 herein. At this stage, the learned Standing Counsel submits that the matter is to be heard by the District Magistrate, Aligarh in pursuance of the some Government Order which provides that the matter of higher valuation should be heard by the District Magistrate himself. In my considered view, let the matter be heard by the District Magistrate.

15. In view of the above discussions, the impugned order dated 3.11.2008 is hereby quashed. Let the matter be heard by the Collector, Aligarh afresh. The petitioner shall appear before the Collector, Aligarh on 2.2.2009. The Collector will hear the matter on that date. If for any reason, it is not convenient or possible to hear the matter on 2.2.2009, he may postpone the hearing to a date convenient to him. No notice is required to be given to the petitioner for appearance and the petitioner shall file a certified copy of this order before the Collector, Aligarh within 15 days from today. The petitioner shall cooperate in the hearing and shall not seek any unnecessary adjournments. It will be open to the District Magistrate to hear and decide the matter even if the petitioner fails to appear or cooperate in the hearing, ex parte, in accordance with law. The Collector shall hear and decide the matter on merits being uninfluenced by any observation made in the body of the judgment, in accordance with law.

16. Subject to the above directions, the writ petition stands allowed.

17. No order as to costs.