(2019) 07 UK CK 0084

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3045 Of 2015

Suman Devi	APPELLANT
Vs	
State Of Uttarakand	RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Indian Stamp Act, 1899 — Section 33(5), 38(1)(b), 40(1)(b), 47(1), 47(2), 47(3), 47A, 47A2, 47A(3), 47A(4), 56, 75
Constitution Of India, 1950 — Article 13

Citation : (2019) 07 UK CK 0084

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Tapan Singh, Narain Dutt

Final Decision : Partly Allowed

Judgement

Sharad Kumar Sharma, J

1. The present writ petition has been preferred by the petitioner challenging the order dated 30.11.2012 as passed by the Assistant Collector (1st Class)/SDM, Laksar, in Case No. 103 of 2009 under Section 47A of the Stamp Act, as well as the judgment dated 18.08.2015 as passed by the Chief Controller Revenue Authority/Commissioner Garhwal Mandal, Pauri, whereby, the revision under Section 56 of the Stamp Act preferred by the petitioner being Stamp Revision No. 4 of 2012-13 'Suman Devi vs. State' has been dismissed, and as a consequence thereto, the deficiency of stamp has been determined by the Assistant Collector as to be to the tune of Rs. 38,550/- and the penalty, which has been imposed on it, is of Rs. 8,560/-, i.e. total Rs. 47,110/- has been affirmed and imposed on the petitioner.

2. The argument of the learned counsel for the petitioner is that he is the purchaser of the property, by virtue of the sale deed, which is part of the record of the writ petition, being sale deed dated 19.06.2009. The said sale deed has been executed by the three co-sharers of the property and as per the decipher

made there in the sale deed total land which has been sold to the petitioner lying in Khata No. 71 Khasra No. 252 having a total area of 0.8910 hectare, out of it the respective parts of the co-sharers being 7/60 hectares has been sold to the petitioner by the sale deed in question.

3. The proceedings under Section 47A of the Stamp Act is alleged by petitioner that it was initiated on a complaint submitted against the petitioner contending thereof that the stamp duty which was paid on the sale paid by the petitioner on the sale deed executed in his favour was short and, hence, the proceeding was drawn against him on the premise that as per the ratio laid down in the Government Order No. 4118 dated 23.07.2000, which will fall within the category of law as defined under Article 13 of the Constitution of India, coupled with the fact that since the propriety of the said Government Order has not been put to challenge, the reason for assessing the deficiency of Rs. 38,550/- is on the ground that under the terms of the said Government Order dated 23.07.2000, if a co-tenure holder sells his share of property, which falls to be less than Rs. 1,000/- sq.mts. of area, in that eventuality, the stamp duty would be payable by treating the land as to be an abadi land and consequently based on the aforesaid analogy as propounded by the Government Order dated 23.07.2000 the Assistant Collector (1st Class) has assessed the deficiency of the stamp duty as has been levied a deficiency of Rs. 38,550/- on which he has been imposed with a penalty of Rs. 8,560/-. Thus has been made liable to pay a total sum of Rs. 47,110/- (in total) towards the deficiency for the stamp duty on the said sale deed dated 19.06.2009.

4. In the counter affidavit the stand taken by the Standing Counsel on behalf of the State is that the intention of the three sellers by joint sale deed dated 19.06.2009 was with a malicious intention to deprive of the revenue which would have otherwise accrued to the State Government, and it aims to prohibit the sale of small fragments of agricultural land, apart from it every seller has to be made liable to pay stamp and cannot escape the liability towards the stamp payable to State revenue. The act of different sellers selling their share by a composite sale deed was malicious it was an attempt to evade the stamp.

5. Further more, the Government order imposing the restriction on fragmented sale deed and fees of stamp by the Government Order dated 23.07.2000 was well within the powers of the State conferred by Section 75 of the Act. It is also the case of the State the stamp levied at the rates of abadi was well as per the circle rates fixed by the Collector. Besides this there was no rejoinder filed by the petitioner in reply to counter which was served on them as back as on 25.02.2016. Thus the stand of the State in their counter affidavit remained uncontroverted.

6 At this stage when the matter was being argued finally, this Court has got no other option except to accept the ratio as propounded by the Government Order No. 4118 dated 23.07.2000, that the valuation of the property, which has been sold as per the said Government Order if it falls to be less than an area of

1,000/- sq.mts. of individual tenure holder share then the stamp duty payable on it would be levied as per the rates which is applicable on the abadi land as assessed by the Collector. In the absence of the said Government Order being placed on record or in the absence of challenge to the validity of the said Government Order dated 23.07.2000, which would be a subordinate legislation being law as defined under Article 13 of Constitution of India this Court is of the view that the rationale which has been adopted by the Assistant Collector for determining the deficiency of the stamp duty cannot be faulted of because it is based on the Government Order No. 4118 dated 23.07.2000, but as far as the penalty is concerned, the issue pertaining to the imposition of penalty on a sale deed, which has been hold out to be deficiently stamped whether penalty can be imposed under Section 47A2. Initially issue came up for consideration before the Division Bench of the Allahabad High Court in a judgment as reported in AIR 1986 Allahabad 107 'Kaka Singh vs. The Additional Collector and District Magistrate (Finance and Revenue) & Another', wherein, the Division Bench of Allahabad High Court in its paragraph 17 has held that the legislature under Section 47A has not empower the Collector or any authority liable to impose a penalty on the deed deficiently stamped, which has occurred in the execution of the sale deed. Paragraph 17 is quoted hereunder:

"17. We find force also in the argument of the petitioner's learned counsel that since Section 47A does not empower the Collector to impose penalty in the event of his finding that the market value was not truly set forth in the instrument, such an order imposing the same would be beyond Section 47-A. For imposing penalty in a case like the present, power was specifically to be conferred. In the absence of a specific provision made in that respect, it is not possible to uphold the contention of the Standing Counsel that penalty could be imposed whenever and wherever the Collector under Section 47-A finds that the value set forth was not true. Section 47-A as stated above, was brought in recently to cover a case of evasion. While enacting Section 47-A, the legislature although empowered the Collector to determine the market value of the property, which is the subject of conveyance and the duty payable thereon, it did not make any provision empowering the Collector to impose penalty."

7. The said ratio as propounded by the Division Bench of the Allahabad High Court stood affirmed by the Full Bench judgment of Allahabad High Court reported in 1198(1)A.R.C. 337 'Girjesh Kumar Srivastava & Another vs. State of U.P. & Others', wherein, the said ratio after considering the impact of Rule 350 to be read with Section 47A of the Act had reiterated the stand that if the sale deed is found to be deficiently stamped except the amount of deficiency of stamp no penalty can be imposed for the purposes to control the evasion of stamp, more particularly, when the same is not being empowered to be imposed under the Act itself. The said ratio about the empowerment to impose the penalty has been considered in paragraph 5 of the Full Bench judgment, which is quoted hereunder:

"By Section 2 of U. P. Act No. XI of 1969 which came Into force on 1st October, 1969, Section 47Awas Inserted after Section 47 in the parent act. Sub-section (I) of this section provides that if the market value of any property which is the subject of any instrument on which duty is chargeable on the market value of the property, as set forth in such Instrument is less than even the minimum value determined in accordance with any rules made under this Act the registering officer appointed under the Indian Registration Act, 1908, shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. Sub-section (2) provides that if the registering officer while registering any instrument on which duty is chargeable on the market value of the property has reason to believe that the market value of the property which is the subject of such instrument, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. Under sub-section (3) of this section, the Collector is required to determine the market value of the property which is the subject of the instrument and the duty payable thereon. This sub-section further provides that the difference, if any, in the amount of duty shall be payable by the person liable to pay duty. Sub-section (4) of Section 47 A which deals with the situation in hand reads as follows :

Section 47A (4) The Collector may. suo motu, or on a reference from any Court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the Board of Revenue in that behalf within four years from the date of registration of any instrument on which duty is chargeable on the market value of the property not already referred to him under sub-section (1) or sub-section (2), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject of such instrument and duty payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty payable thereon in accordance with the procedure provided for in subsection (3). The difference, if any. In the amount of duty, shall be payable by the person liable to pay the duty."

Both sub-sections (3) and (4), provide for payment of difference in the amount of duty as a result of determination of the market value of the property by the Collector. The sub-sections make no reference to payment of penalty as has been done in sub-section (5) of Section 33, sub-section (1) of Section 38and in clause (b) of Section 40(1) of the Act. The Legislative intent is very clear and it shows that if after accepting the market value of the property as given in the instrument the same is found to be deficiently stamped the person liable to pay stamp duty shall not only be liable to pay the deficiency therein but shall also be liable to pay penalty. However, the legislature has deliberately made a difference in a case where on the market value of the property as shown in the instrument, there is no deficiency in stamp duty but such deficiency is revealed as a result of a fresh determination of its market value by the Collector under sub-section (3) or sub-section (4) of Section 47A of the Act. If the Legislature wanted that in such a case also where deficiency in stamp duty has been revealed as a result of a fresh determination of market value of the property a penalty should be Imposed, a specific provision to that effect would have been made. The Stamp Act was enacted in the year 1899 and Section 47A was inserted by the U. P. Legislature seventy years later in the year 1969. The Legislature was fully aware of the fact that the Act makes provision for payment of penalty of an amount not exceeding ten times of the amount of proper duty or the deficient portion thereof. However, while enacting Section 47A, the Legislature has deliberately refrained from making any provision for payment of penalty whatsoever. The only inference which can be drawn is that while exercising power under Section 47A of the Act if the Collector, after determination of the market value of the property, comes to the conclusion that its value has not been correctly set forth in the instrument, he can only require payment of difference in the amount of duty as a result of such determination but he cannot Impose any penalty on account of the deficiency in stamp duty which may have been revealed as a result of such redeterminatton of market value of the property."

8. The judgment as reported in AIR 1986 Allahabad 107 has been consistently followed by the Court particularly in a judgment as reported in AIR 2008 Allahabad 176. Paragraph 6 and 20 are quoted hereunder:

"5. Section 47-A refers to minimum value determined in accordance with Rules made under the Act, as held by the Apex Court in Ramesh Chandra Bansal v. District Magistrate, confers power upon a registering authority to deal with the case of under valuation. Section 47-A uses the words 'minimum value' determined in accordance with any Rules made under the Act in Sub clause (1) of Section 47-A. A Division Bench of this Court in Kaka Singh v. The Additional Collector and District Magistrate (Finance and Revenue) Bulandshahr and Anr. 1986 A.L.J. 49 has held that Section 47-A empowers the Collector to deal with those cases where the parties by arrangement deliberately under valued the property while setting forth the market value less than the minimum value determined under Rule 341 with a view to defraud the Government of legitimate revenue by way of stamp duty. In the present case, it is not disputed by the respondents that the petitioners have not paid even the minimum value fixed under the Rules i.e. 'circle rate'. The power appears to have been exercised under Sub section (3) of Section 47-A. It may be noticed that in Sub section (3) of Section 47-A, power has been conferred on the Collector to examine any instrument within four years from the date of registration on which duty is chargeable on a market value of the property. The Collector, if after such examination, has 'reason to believe' that the market value of such property has not been truly set forth, he may determine the market value of such property and duty payable thereon. On a close reading of Sub section (3) of Section 47-A the words used therein are 'reason to believe' and 'market value' of such property. These are key words.

20. 14. There is another aspect of the case. The sine qua non for invoking the provisions of Section 47-A(3) of the Act is that the Collector has reason to believe that the stamp duty has not been properly set forth in the instrument as per market value of the property. Once the instrument is registered and the prescribed stamp duty as prescribed by the Collector as has been paid, the burden to prove that the market value is more than the minimum as prescribed by the Collector under the rules, is upon the Collector. The report of the Sub Register or Tehsildar itself is not sufficient to discharge that burden. Reference can be made to a Division Bench judgment of this Court in Kaka Singh v. The Additional Collector and District Magistrate (Finance and Revenue) Bulandshahr and Anr. 1986 A.L.T 49."

9. In view of the aforesaid ratio laid down by the Full Bench of the Allahabad High Court, this Court is of the view that so far as the parameters adopted for determining the deficiency of the stamp by the Assistant Collector based on the Government Order dated 23.07.2000, it cannot be faulted of, but as far as the imposition of penalty is concerned, since the same has been held out to be beyond the scope of powers under Section 47A vested with the Collector in the light of the judgment of the Full Court of Allahabad High Court, this Court partially allows the writ petition only so far it relates to the imposition of penalty and quashes the same, but as far as the determination of deficiency of stamp to the tune of Rs. 38,550/- is concerned, the same is substantiated to be rightly levied in pursuance to the Government Order dated 23.07.2000 and nothing contrary to the implications of the said Government Order has been placed before this Court or argued, this Court is in agreement with the ratio laid down by the Government Order dated 23.07.2000 as regards treating the area sold by co seller, having an area of less than 1000 sq.mts has to be assessed by the assessing authority as to be an abadi land even if it is recorded as an agricultural land in the revenue records as such, because the same is permissible to be imposed by exercising its power under Section 75 of the Act and, hence, holds that the deficiency, which has been levied, was absolutely just and proper.

10. Consequently, the writ petition partially succeeds only to the extent of imposition of penalty, but as far as the deficiency of the stamp duty is concerned, that stands affirmed. The petitioner would remit the deficiency within a period of two months from the date of receipt of the certified copy of this order.