(2011) 07 DEL CK 0199

In the Delhi High Court

Case No : LPA 640 of 2009

Sunil Bagai APPELLANT

Vs

GNCT of Delhi RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0199

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—After hearing arguments we had dismissed the appeal yesterday i.e. 7.7.2011. We had recorded that reasons would be dictated in Chamber and would be made available to the Appellant today i.e. 8.7.2011.

2. The appeal was dismissed in limine by a cryptic order holding that there was no merit in the appeal. The Appellant preferred a Petition for Special Leave to Appeal before the Supreme Court. Vide order dated 4.3.2011, the order dated 11.12.2000 dismissing the appeal has been set aside. The appeal has been restored for fresh hearing.

3. Relevant facts, noted by the learned Single Judge, are that the Appellant had sought a direction that the Collector of Stamps should refund Rs. 18,277/- together with interest @ 24% per annum with effect from 14.8.2001 to the Appellant and that the Appellant be paid damages in sum of Rs. 1,00,000/- on account of mala fide, oppressive and capricious acts of the Respondent.

4. The learned Single Judge has noted the back drop facts pleaded by the Appellant.

5. The facts were that property No. C-8/8235, Vasant Kunj, New Delhi was demised in perpetuity, under lease-hold, by DDA to a person from whom father

of the Appellant got executed an agreement to sell, power of attorney and will, for consideration in sum of Rs. 3.6 lacs. No sale deed was executed.

6. The learned Single Judge noted that this transaction took place in the year 1990 and only on 30.5.1996, Appellant''s father sought conversion of the lease-hold rights to free-hold and that too, in his name. He did so under a policy of the DDA. Requisite payment was made by Appellant''s father to DDA.

7. On 2nd December, 1997 DDA issued an unexecuted conveyance deed to the Appellant''s father, requiring the same to be stamped by the Collector of Stamps after requisite stamp duty was paid. Appellant''s father deposited the said unexecuted conveyance deed with the Collector of Stamp on 25.3.1998 and required the Collector of Stamps to determine the stamp duty payable with reference to the price at which the flat was sold by DDA and such conversion charges which were being paid by the Appellant''s father. The Collector of Stamps took the position that since Appellant''s father had purchased the property under a colour of an agreement to sell, power of attorney and will and for the reason the documents were for consideration and possession had changed hands, the stamp duty payable would be with reference to the said sale consideration.

8. Appellant''s father filed a writ petition, registered as W.P.(C) No. 3264/98 stating that the Collector of Stamps could not adjudicate on the stamp duty payable with reference to price paid to the original allottee.

9. In a judgment reported as The Collector of Stamps Vs. Hemlata and Another, it has been held by this Court that the stamp duty payable was with reference to the sale price of the property as charged by DDA plus the conversion charges to be paid and hence the writ petition filed by the father of the Appellant was allowed by a learned Single Judge on 4.11.1999.

10. The Collector of Stamps challenged the decision of the learned Single Judge by filing a letters patent appeal, pointing out that the decision in Hemlata''s case was a subject matter of challenge before the Supreme Court.

11. In the letters patent appeal, vide the order dated 6.12.2000, it was directed that upon Appellant''s father giving an undertaking to make good the deficiency in the stamp duty, if Supreme Court set-aside the decision of this Court in Hemlata''s case, the Collector of Stamps who charged such stamp duty as was stated to be payable by the father of the Appellant and released, after stamping, the unexecuted conveyance deed.

12. The Collector of Stamp, after stamping the unexecuted conveyance deed, handed over the same to Appellant''s father on 23.1.2001.

13. Before Appellant''s father could submit the papers to DDA for execution of the conveyance deed, he died on 31.1.2001.

14. Being the son, Appellant sought mutation of the flat in favour of his mother and this took time. Unfortunately, the previous conveyance deed which was

handed over by DDA became redundant inasmuch as a new conveyance deed had to be executed in the name of the mother of the Appellant and by the time DDA could do so, stamp duty got enhanced from 8% to 13%.

15. Appellant deposited the unexecuted conveyance deed for cancellation and refund of the stamp duty paid and submitted the fresh conveyance deed, unexecuted, but in his mother''s name and deposited stamp duty in sum of Rs. 40,905/- being @ 13% of the consideration mentioned in the conveyance deed.

16. Deducting the usual 10% out of the stamp duty paid initially in sum of Rs. 25,142/-, the Collector of Stamps released Rs. 22,628/-.

17. The Supreme Court ultimately dismissed, vide the order dated 23.4.2003, the appeal filed against the decision in Hemlata''s case and it was only then that the issue attained finality.

18. In the interregnum the Appellant''s mother got registered the conveyance deed in her name.

19. It was thereupon that the Appellant and his mother joined in a common action when they filed WP(C) No. 1153-54/2005 seeking the prayers aforenoted.

20. Declining relief, after noted the aforesaid facts, learned Single Judge has held that till the Supreme Court adjudicated on the matter by 23rd April, 2003, the conveyance deed had been executed in the name of the mother of the Appellant. On the issue of delay, learned Single Judge has opined that the Collector of Stamps was litigating on a bona fide legal issue and that the importance of the issue on which the Collector of Stamps was litigating is self evident by the fact that against the decision rendered by this Court in Hemlata''s case Supreme Court granted leave to appeal and may have ultimately dismissed the appeal, but the grant of leave to appeal would show that an important question of law was found, to be adjudicated upon, by the Supreme Court.

21. This, in a nutshell is a reason given by the learned Single Judge to deny the relief sought for.

22. Needless to state that the result of the delay on account of the rival legal position taken was that stamp duty payable got enhanced from 8% to 13% and thus the claim that difference be refunded is not sustainable.

23. We concur with the reasoning of the learned Single Judge and would supplement the same by holding that the claim for damages is a claim under Tort and not for violation of any statutory obligation. The claim had to be by way of suit and upon proof of malice. We highlight that in the writ petition, the Appellant and his mother have stated that the action of the officers was "proved malafide oppressive, capricious, illegal and arbitrary." Of necessity, the concerned officers had to be impleaded as Respondents by name. We find none having been impleaded. The writ petition suffers from the defect of non-joinder of necessary parties. Claim for damages for the Tort of having acted oppressive or capricious

cannot be enforced under a writ jurisdiction and thus, we hold that the writ petition was not even maintainable. Further, the writ petition filed in the year 2005 was barred by delay and latches for the reason as pleaded in the writ petition, everything was over by September, 2001, when the conveyance deed was executed in the name of the mother of the Appellant and by 5.3.2002, Rs. 22,628/- was refunded. If at all, cause of action to claim damages had accrued, by September, 2001 and in any case on 5.3.2002 when Rs. 22,628/- was refunded. Writ petition filed on 16.3.2005 is beyond 3 years of 5.3.2002. We remind ourselves that for the claim of damages pertaining to Tort of having acted with malice, period of limitation to enforce a claim is one year.

24. These are our reasons to supplement the reasons of the learned Single Judge.

25. The appeal is dismissed.

26. We refrain from imposing costs.

