(2011) 08 AHC CK 0156

In the Allahabad High Court

Case No : Writ Petition No. 535 of 2002

Suresh Tulsidas Kilachand APPELLANT

Vs

Collector, Almora & Anr. RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Stamp Act, 1899 — Article 35, 63, Schedule 1B
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 156, 165

Citation : (2011) 08 AHC CK 0156

Hon'ble Judges : B.S.Verma, J

Final Decision : Dismissed

Judgement

Heard learned counsel for the parties.

By means of this writ petition, the petitioner has sought a writ for setting aside the order dated 1492001 passed by the Collector Almora in Stamp Case No. 36/19992000 and also the orders dated 12122001 and 2942002 passed by Commissioner Kumaun Division and Additional Chief Revenue Commissioner Nainital in Stamp Revision No. 2/20012002 and Revision No. 22 of 20022003 respectively.

Proceeding in Stamp Case No. 36/992000, Sub Registrar Almora Vs. Sri Suresh Tulsidas Kilachand under the Stamps Act was registered in the Court of District Magistrate/Collector Almora. It appears that the instrument of lease deed for a period of thirty years was executed on 1911996 in respect of 21 Nali, 10 Muthi land and building existing in Khatauni Khata No. 1 of Patti Khas Parja, Almora. The petitioner had paid stamp duty of Rs. 1,56,745/ on the said instrument. It appears that the provisions of the U.P. Zamindari Abolition and Land Reforms Act were applicable to the land in question.

Notices were issued to the petitioner and the valuation of the land and building in question was got done by Tahsildar Almora. The petitioner submitted his reply that the land was given on lease for a period of thirty years on which the stamp duty was paid at the rate of Rs. 40,000/ per Nali amounting to Rs. 1,56, 745/.

The petitioner also alleged that surplus stamp duty had been paid on the instrument.

The learned Collector after hearing the learned counsel for the parties and on perusal of the material on record has held that there is deficiency of stamp duty to the tune of Rs. 1,25,425/, therefore, the impugned order dated 1492001 has been passed for recovery of the said amount from the petitioner within a period of one month.

Aggrieved, the petitioner preferred Stamp Revision No. 2/20012002 before the Commissioner, Kumaun Division Nainital. The learned revisional court did not find favour with the revisionistpetitioner and dismissed the revision by order dated 12122001 on the ground that the transferable rights have been given to the lease holder, therefore, the instrument has to be treated as sale deed.

Further aggrieved by the order dated 12122001 revision was preferred before the Additional Chief Revenue Commissioner (Circuit Court) Uttaranchal, Nainital. The second revisional court too did not find favour with the petitioner and dismissed the revision by his order dated 2942002, which gave rise to the present writ petition.

Counter affidavit has been filed on behalf of the respondents, wherein it has been stated that the petitioner has paid the stamp duty on the property in question valuing the same on the basis of the lease consideration @ Rs. 8000/ per month whereas the stamp duty should have been valued on the market value of the land and rent of the building.

The contention of the learned counsel for the petitioner is that the stamp duty has been paid by the petitioner, which is payable on conveyance No. 23 as provided under the Indian Stamps Act. On the other hand, the argument of the learned counsel for the respondents is that because the property in question has been shown to transfer all the rights of enjoyment for a term of 90 years, therefore, the stamp duty is payable as on sale deed. The contention of the learned Brief Holder for the State is that the order passed by the Collector is legal and the revision preferred by the petitioner against the order of the Collector has been rightly dismissed by the Commissioner vide order dated 12122001 and the learned Additional Chief Revenue Commissioner too has rightly dismissed the revision by his order 2942002.

For a just decision of the case, a reference to the provisions of Section 156 and 165 of the U.P.Z.A. and L.R.Act is necessary. Section 156 reads as under:

?156. Letting of land. (1) No bhumidhar or asami shall let for any period whatsoever any land comprised in his holding except

(a) in the cases provided for in section 157, or

(b) to a recognized educational institution for a purpose connected with instruction in agriculture, horticulture or animal husbandry.

(2) In this Chapter the word ?Lease? and its cognate expressions have the meaning assigned to them in the Transfer of Property Act, 1882 (IV of 1982).?

Section 165 of the U.P.Z.A. and L.R.Act reads as under:

?165. Effects of lease in contravention of section 157. Where a bhumidhar has let out his holding or any part thereof in contravention of the provisions of section 156 or section 157 the lessee will, notwithstanding anything contained in any law or contract or document of lease, become and be deemed to be

(a) where the total area of the land held by him together with the land held by his family, including the land, if any, let out to him or any member of his family, does not exceed twelve and a half acres, bhumidhar with nontransferable rights thereof, and,

(b) where the total area as aforesaid exceeds twelve and half acres, a purchaser thereof and the provisions of sections 154 and 163 shall mutatis muntandis apply.

ExplanationFor the purpose of this section, the term ''family'' shall have the meaning assigned to it in section 154.?

I have perused the impugned order dated 1492001 passed by the Collector, Almora. Finding has been given by the learned Collector that the lease was granted in contravention of the provisions of Section 156 of the U.P.Z.A. and L.R.Act.

So far as the contravention and noncontravention of the lease is concerned, it cannot be a basis of the determination of the stamp duty. The stamp duty has to be paid in accordance with the prevailing provisions of Article 35 of Schedule IB of the Stamps Act.

In the case at hand, the lease deed was executed in favour of the petitioner for a period of 30 years, but undisputedly the title of the property was not transferred in favour of the petitioner.

Having heard the submissions of the learned counsel for the petitioners, I am of the view that the learned Collector/District Magistrate Almora has committed a manifest error of law in holding that the document of lease deed constitute to be sale deed as rights to transfer the property have been given to the petitioner. Schedule IB deals with the stamp duty payable on instruments under the Indian Stamp Act, 1899. The petitioner has paid the stamp duty as provided under Article 35 of Schedule IB of the Stamp Act. There is specific provision under Article 63 of the Stamps Act that lessee can also transfer lease rights to any other person if there is a condition in the lease deed for transfer of lease rights. The document in question nowhere indicated that the leaseholder was given any title in the property in question and only lease rights were given for a period of 30 years. Moreover, the learned Commissioner and the Additional Chief Revenue Commissioner, Circuit Court, Uttaranchal, Nainital also fell into error in holding that the effect of the lease deed in question would be that of a sale deed and the stamp duty thereon would be payable as on sale deed. The approach of the authorities below is not justified.

Admittedly in the case at hand, the lease deed in favour of the petitioner was executed on 1911996. Therefore, the stamp duty as prevailing on those dates was payable on the instrument as provided under Article 35 of Schedule IB of the Stamp Act and the stamp duty as a Conveyance No. 23 was payable.

In the course of arguments, learned Brief Holder, appearing for the respondents has fairly submitted that the amendment was made in Article 35 subsequent to the execution of the lease deeds in question in the case at hand and a provision has been made w.e.f. 3042001 by U.P. Act No. 9 of 2001 that where the lease purports to be for a term exceeding thirty years or in perpetuity or does not purport to be for any definite term, the stamp duty shall be payable for a consideration equal to market value of the property which is the subject of the lease. The amendment has not been enforced retrospectively.

For the reasons and discussion made in the foregoing paragraphs, I am of the considered view that the impugned orders passed by the authorities below are not tenable in the eye of law. The writ petition therefore, deserves to be allowed outright.

The writ petition is allowed. The impugned orders are set aside. Costs easy.

If any stamp duty had been paid in pursuance of the impugned orders by the petitioner, the same shall be refunded to the petitioner.

