(2003) 02 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14193 of 1997

The Punjab State Cooperative Bank Ltd. APPELLANT

Vs

Union Territory Administration RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 9
Constitution of India, 1950 — Article 226, 227
Punjab Reorganisation Act, 1966 — Section 88

Citation : (2003) 1 ILR (P&H) 662 : (2003) 134 PLR 552

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Sarjit Singh and Vikas Singh, for the Appellant; K.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Through this writ petition filed under Articles 226/227 of the Constitution of India, the Punjab State Cooperative Bank Limited (A Scheduled Bank) - petitioner has prayed for the issuance of writ in the nature of mandamus for quashing the proceedings initiated on the basis of notice dated 29.7.1997 and for issuance of a direction to respondent No. 2 - Estate Officer. UT Administration, Chandigarh to accept a lease deed executed in its favour of behalf of the petitioner bank in respect of plot measuring 2430.39 sq. yards in Sector 34 Chandigarh on a paper without stamp duty under the Indian Stamp Act, 1899. It is stated that the petitioner bank was allotted site measuring 2430.39 sq. yards in Sector 34, Chandigarh on lease hold basis for 99 years vide allotment letter dated 19.7.1991 at the rate of Rs. 15,515/- per square yard. The total premium is Rs. 3,77,07,656/-. At the time of allotment, petitioner bank had duly paid Rs. 94,26,911/- being 25% of the total premium. The remaining amount was to be paid in instalments. According to Clause 12 of the allotment letter, petitioner bank was required to execute lease deed in favour of respondents. The lease deed is required to be executed on non-judicial stamp paper of the value of Rs. 13,00.920/-. Petitioner bank is a "cooperative society" under the Punjab Cooperative Societies Act is entitled to exemption under the Stamp Act. There is notification dated 15.7.1948 of the Punjab Government which exempted the Cooperative Societies from the stamp duty in respect of the instruments executed by or on behalf of any society relating to the business of the society. In view of that notification, petitioner bank requested the UT Administration, Chandigarh not to insist upon the bank paying stamp duty on lease deed to be executed by it.

2. There was, however, no provision for exempting the petitioner bank from payment of stamp duty under the Chandigarh Lease Hold of Sites and Building Rules, 1973 framed under the Capital of Punjab (Development and Regulations) Act, 1952. Petitioner therefore, requested the Finance Secretary to consider the matter in consultation with the Law Department of the Administration and convey the decision. Instead of conveying the decision to the petitioners bank as to whether petitioner bank was to execute lease deed on a paper after granting the exemption under the Stamp Act or such exemption was not available, a notice was received by the petitioner - bank from respondent No. 2 on 31.7.1997 that as the lease deed has not been executed in accordance with the provisions of Clause 17 of the allotment letter why the proceedings for cancellation of lease should not be initiated. Petitioner bank has paid the entire consideration on account of premium and is also paying regularly the ground rent in respect of the site in question. Building on the site is also under construction.

3. Section 9 confers powers on the Government to reduce or remit or compound duties. According to the amendment made by the Punjab Government in Section 9 Clause (a), a proviso had been added which reads as under:

"Provided that with respect to instruments which are chargeable with duty under Schedule 1-A, such reduction or remission may, by notification, be granted by the State Government."

4. The State Government is thus empowered to issue notification regarding any payment of stamp duty on execution of any document. In accordance with the powers conferred by this amended clause, the Government of East Punjab issued a notification on 15.7.1948 whereby the Governor of East Punjab was pleased to order in respect of instruments executed by or on behalf of any Society for the time being registered or deemed to be registered under the Cooperative Societies Act, all instruments executed by any such society and relating to the business of the society, the remission in the whole of the East Punjab of stamp duty with which such instruments are chargeable under the said Act. Copy of the subsequent notification dated 9.2.1962 is Annexure P-5. No stamp duty is chargeable on any instrument in Punjab, which is executed by or on behalf of a cooperative Society, registered under the Punjab Societies Act. Petitioner bank purchased a plot at Jalandhar vide registered sale deed dated 11.11.1994 for a sum of Rs. 26,00,000/-. No stamp duty was paid. Annexure P-6 is the copy of the sale deed.

5. Respondents contested this writ petition. It was urged that Clause 12 of the allotment letter clearly provides that the management shall have to execute a lease deed within a period of six months from the date of allotment in the prescribed proforma in such a manner as may be directed by the Estate Office. The stamp duty leviable is Rs. 1300920/- according to the prevalent rate and all other expenses in respect of the execution/registration of lease deed shall be borne by the petitioner. It was urged that once having accepted the allotment on the terms and conditions mentioned therein and in token of having been accepted once the first instalment is paid, the petitioner is bound by the terms and conditions mentioned therein. Petitioner cannot be allowed to say subsequently that Clause 12 is not applicable in its case, petitioner being estopped by the rule of estoppel. In the Chandigarh Lease Hold of Sites and Building Rules, 1973 under which the petitioner has been allotted the land, there is no provision for exempting an individual or an organisation from the provisions of the stamp duty.

6. I have heard learned counsel for the petitioner, learned counsel for the respondents and have gone through the record.

7. Stamp duty is payable under the Stamp Act as amended by the State Government. The composite State of Punjab vide notification dated 15.7.1948 exempted cooperative societies from the stamp duty. Notification dated 15.7.1948 reads as follows:

"In exercise of the powers conferred by Clause (a) of the Indian Stamp Act, 1899 (11 of 1899). The Governor of East Punjab is pleased to order in respect of instruments executed by or on behalf of any society for the time being registered or deemed to be registered under the Cooperative Societies Act of instruments executed by any officer or member of any such society and relating to the business of the society. (other than those falling with in list I of the seventh schedule to the Government of India Act, 1935), the remission in the whole of East Punjab of the Stamp duty with which such instruments are chargeable under the said Act."

8. The said notification continues to be in force not only in the present State of Punjab but also in all the four successor States which were carved out by the Re-organisation of the composite State of Punjab, including UT Chandigarh Administration by virtue of Section 88 of the Punjab Reorganisation Act, 1966.

9. It was held in State of Punjab and Others Vs. Balbir Singh and Others, by the Hon''ble Supreme Court that when there is no change of sovereignty and it is merely an adjustment of territories by the reorganization of a particular State, the administrative orders made by the Government of the erstwhile State do not automatically lapse or are rendered ineffective, but continue to be in force and effective and binding on the successor States unless they are modified, changed or repudiated by the Governments of the Successor States. It is well established that when one State is absorbed in another whether by accession, conquest,

merger or integration, all contracts of service between the prior Government and its servants automatically terminate and thereafter those who elect to serve in the new State, and are taken on by it, serve on such terms and conditions as the new State may choose to impose. The said principle is not applicable to he case of absorption of one State in another by accession, conquest, merger, or integration. It would be chaotic if this principle were to be applied to the case of re-organization of States in the same country.

10. Therefore, the administrative orders passed by the Government of the erstwhile State of Punjab continued to be the orders of the Governments of the concerned successor States.

11. Learned counsel for the petitioner submits that the UT Chandigarh was earlier part of the composite State of Punjab. UT Chandigarh was carved out when the re-organization of the composite State of Punjab took place in 1966. Notification dated 15.7.1948 of the composite State of Punjab will apply with full force to UT, Chandigarh.

12. Faced with this position, learned counsel for the respondents submits that there is nothing on the record to show that notification dated 15.7.1948 of the composite State of Punjab is still in operation.

13. Suffice it to say, when it is note shown that the said notification was modified, changed or repudiated by the Chandigarh Administration, it will be presumed that the said notification is still operative.

14. Learned counsel for the respondents further submits that the Indian Stamp Act is a Central Act, which is independently applicable to UT Chandigarh. The Union Territory, Chandigarh has not adopted the Stamp Act as applicable to the Punjab.

15. Suffice it to say, on the reorganization of the State of Punjab, present Punjab and Haryana were carved out, besides some territory of the composite State of Punjab was given to Himachal Pradesh while some area adjoining to Chandigarh constituted UT, Chandigarh. The laws applicable in the composite State of Punjab shall be deemed to be applicable to all areas carved out on re-organization of the composite State of Punjab unless they were modified, hanged or repudiated.

16. For the reasons given above, this writ petition is allowed. Notice dated 29.7.1997 is quashed. Union Territory Administration, Chandigarh is directed to accept the lease deed executed in its favour on behalf of the petitioner-bank in respect of plot measuring 2430.39 sq. yards in Sector 34, Chandigarh on a paper without stamp duty.

