(2006) 06 PAT CK 0056

In the Patna High Court

Case No : C.W.J.C. No. 13765 of 2003

Uma Shankar Sah — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Registration Act, 1908 — Section 78
Stamp Act, 1899 — Section 9

Citation : (2006) 4 PLJR 124

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—Heard Mr. Ashok Kumar Choudhary, counsel for the petitioner and the J.C. to G.P.VII representing the State. Also heard Mr. R.N. Mukhopadhya, counsel appearing on behalf of the respondent Regional Rural Bank.

2. The petitioner seeks to challenge the proceedings of Certificate Case No. 6 of 2002-03 instituted against him before the Subdivisional Certificate Officer, Banka. The certificate case was instituted by the Collector, Banka for recovery of the amount allegedly payable as stamp duty (Rs. 12,600/-) and registration fee (Rs. 5000/-) on the deed of simple mortgage executed by the petitioner in favour of the respondent bank in connection with a loan taken by him.

3. The relevant facts of the case are simple and brief. In the year, 1996, the petitioner took an agriculture loan of Rs. 2 lacs from the Bhagalpur - Banka Kshtriya Gramin Bank, Bounsi branch. He was required to make a simple mortgage of his land(s) as security for repayment of the loan amount. The petitioner executed a deed of simple mortgage in favour of the bank and it. was presented for registration before the registry office, Banka some time in the month of July, 1996. At. that time it was understood and accepted by every-one, including the bank authorities and the Registrar that a document for taking a bank loan upto Rs. 2 lacs for agriculture purposes was exempt from stamp duty

and registration fee. The deed of mortgage was accordingly registered without payment of any stamp duty and registration fee as Bond No. 15389/1996, dated 1.8.1996.

4. The petitioner took the loan amount and in due course refunded it to the bank. The admitted position is that the loan taken by the petitioner stands completely liquidated and there is no dispute between the bank and the petitioner on that score.

5. Later on it was realised that the mortgage deed was in fact not exempt from payment of stamp duty and registration fee and it was wrongly registered without payment of the aforesaid two charges. The Collector accordingly got the certificate case instituted for realisation of the amount as stated above.

6. The stand of the Collector is simple and straight-forward. It is pointed out that the State Govt. in exercise of its powers u/s 9 of the Indian Stamp Act, 1899 and Section 78 of the Indian Registration Act, 1908 issued exemption notifications bearing Nos. 698 and 699, dated 17.6.1995. Under these two notifications exemptions were granted from payment of stamp duty and registration fee for registration of a document for agriculture loan (upto Rs. 2 lacs) given by Nationalised Banks. On 1.8.1996 when the mortgage deed executed by the petitioner was registered, the question of exemption was governed by the two notifications, dated 17.6.1995. It is further pointed out that the Regional Rural Banks or for that matter the State Bank of India are not covered by the definition of nationalised bank as the Regional Rural Bank and the State Bank of India are established under the Regional Rural Banks Act and the State Bank of India Act respectively. Nationalised banks are only those erstwhile private banks that were taken over by the Bank Nationalisation Act. The notifications extending the exemption to loans granted by the Regional Rural Banks and the State Bank of India came later on 15.12.1998 being notification No. 1714 (under Section 9 of the Indian Stamp Act) and 1713 (under Section 78 of the India Registration Act).

7. It is contended on behalf of the Collector that documents for taking agriculture loans from Regional Rural Banks or from the State Bank of India, thus, got the benefit of exemption from payment of stamp duty and registration fee only from 15.12.1998 and not from any date prior to it.

8. To someone charged with the responsibility of collection of State revenue the Collector''s contention would appear to be correct and valid. But seen in the larger perspective the stand appears to be wholly unreasonable, unjust, unfair and untenable. Here it needs to be made clear that it was not the source of the loan but its object and purpose that was the main consideration for the grant of exemption. The object and purpose of the grant of exemption from payment of registration fee and stamp duty on documents relating to agricultural loans was unquestionably to facilitate agriculture borrowing and, thus, to promote agriculture in the State. The object of the exemption was not to promote the business of the nationalised banks over those of the Regional Rural Banks and

the State Bank of India. In the later case the exemption notification, dated 17.6.1995 would be plainly arbitrary, unreasonable and discriminatory and would have to be struck down on those grounds. Once it is clear that the object and purpose of the exemption notification, dated 17.6.1995 was to promote agriculture and not to promote the business of the nationalised banks, it would become apparent that the omissison to mention the Regional Rural Banks and the State Bank of India in that notification was quite unintended and it was merely the result of administrative inadvertance. As soon as the lacuna omission was discovered, it was remedied by issuing the notifications, dated 15.12.1998 bringing the loans granted by the Regional Rural Banks and the State Bank of India also under the cover of exemption. The notifications issued on two dates (16.6.1995 and 15.12.1998) must, therefore, be read taking into account the basic Government policy and the intention behind the grant of exemption to bank loans. It would, therefore, follow that though the two notifications, dated 15.12.1998 did not say so in express words, those must be held to be operative retrospectively with effect from 15.6.1995, the date on which the earlier notifications were issued.

9. In light of the above discussions I am plainly of the view that the action of the Collector in initiating a certificate proceeding for recovery of the stamp duty and the registration fee for the deed of mortgage executed by the petitioner is quite unsustainable in law. The certificate and. the proceeding arising therefrom in Certificate Case No. 6 of 2002-03 are accordingly quashed.

10. In the result this writ petition is allowed but with no order as to costs.