(2015) 02 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5309 of 2004

V. Chandra Sekhar and Others APPELLANT

Vs

The Chief Controlling Revenue Authority and Others RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Stamp Act, 1899 — Section 49, 49(d), 49(d)(6)

Citation : AIR 2015 AP 88 : (2015) 3 ALD 279 : (2015) 4 ALT 249

Hon'ble Judges : P. Naveen Rao, J.

Bench : Single Bench

Advocate : Resu Mahender Reddy, for the Appellant

Final Decision : Dismissed

Judgement

P. Naveen Rao, J.—The case of the petitioners is that first petitioner claims to have purchased the flat bearing No. G-11 on the ground floor of the building known as Ballad Estate admeasuring 1378.97 square feet and a common area of 100 square feet together undivided share of the land admeasuring 59.76 square yards out of 2548.67 square yards on plot No. 7 in Sy. No. 180/1 with premises bearing No. 12-5-35/A/9, Tarnaka, Hyderabad under registered sale deed dated 02.07.2001 in document No. 1311/2001 registered in the office of Sub-Registrar, Maredpally, Secunderabad. Similarly, the 2nd petitioner purchased the flat bearing No. G-10 on the ground floor in the same building admeasuring 992.20 square feet with common area of 100 square feet together with undivided share of land admeasuring 38.22 square yards out of 2548.67 square yards under registered sale deed dated 02.07.2001 bearing document No. 1312/2001 registered in the same office. Petitioners obtained market value certificate from the 3rd respondent on 28.04.2001, which suggested payment of stamp duty for the transaction at Rs. 1,12,035/- insofar as first petitioner is concerned and Rs. 77,345/- insofar as the 2nd petitioner is concerned. Accordingly, stamp duty was purchased to a tune of Rs. 1,00,000/-for the first petitioner and Rs. 70,000/- for the 2nd petitioner. On the stamps purchased, petitioners got engrossed the sale deed to present the same for execution and registration. When these two documents engrossed and presented before the 3rd respondent for verification as well as for registration, the 3rd respondent informed 1st the petitioner that he should engross only on stamp paper of value of Rs. 52,305/- and remaining amount of Rs. 47,695/- should be paid by way of cash. Similarly, for the 2nd petitioner she was directed to engross on stamp paper of Rs. 42,525/- and the remaining amount of Rs. 34,820/- should be paid by way of cash. As directed by third respondent, cash was paid. At the time of presentation of the document after the payment of cash as suggested by the 3rd respondent, petitioners have detached the stamp papers bearing Sl.Nos.15409 to 15412 each worth of Rs. 10,000/- for total of Rs. 40,000/- from the sale deed of first petitioner and stamp papers bearing Sl.Nos.15401 to 15404 each worth Rs. 10,000/- (2 papers) and each worth of Rs. 5,000/- (2 papers) for total of Rs. 30,000/- from the sale deed of the 2nd petitioner and in the place of detached stamp papers matter typed on white sheets were attached and presented for registration. Accordingly, the documents were registered.

2. Since the removed stamp papers are unfit for use for any other purpose and as stamp duty was not utilized for the purpose for which purchase was made, petitioners represented for refund of unused stamp duty as envisaged under Section 49 of the Stamp Act. The 2nd respondent passed orders rejecting their request for refund in proceedings No. GSO.1/17532/2001, dated 04.10.2001 and GSO.1/17533/2001, dated 04.10.2001, respectively. Aggrieved thereby, petitioners filed revisions before the 1st respondent. The 1st respondent rejected the revision petitions by his orders in Proc. No. CCRA1/29405/2001 and CCRA1/29406/2001, dated 17.01.2004 Aggrieved thereby, this writ petition is instituted.

3. The stand of the respondents in the counter affidavit filed by the first respondent is that there is no provision in Indian Stamp Act to allow refund of the amount of stamp duty in case stamp paper was already used for a document got registered after detaching of some stamp papers and replaced by plain papers with the same matter got typed. Therefore, petitioners are not entitled for seeking refund of the amount paid towards purchase of stamp papers.

4. Heard learned counsel for the petitioners and learned Assistant Government Pleader for respondent-State.

5. Learned counsel for the petitioners submits that petitioners were initially mislead by the registering authority in indicating total stamp duty payable and petitioners were not informed that portion of the amount should be paid by way of cash. Therefore, petitioners bona fidely purchased the required stamp papers on payment of stamp duty and the matter was got typed for presentation before the registering authority. If only registering authority has informed the petitioners that the amount equivalent to the amount of Rs. 47,695/- in case of the 1st petitioner and Rs. 34,820/- in case of 2nd petitioner had to be paid by way of cash only, petitioners would not have purchased the stamp papers for the

total extent. Therefore, the stamp papers purchased without they being used for the purpose for which they have purchased and already spoiled, petitioners are entitled to seek refund of the amount.

6. Learned counsel by placing reliance on the provision contained in Section 49(d), (2) and (6) of the Stamp Act, contend that provision enables to make allowance for the impressed spoiled stamps and the case of the petitioners falls within the said provision and, therefore, they are entitled to make allowance for the spoiled stamp papers which are not used ultimately for registration of the documents.

7. On the contrary, learned Assistant Government Pleader submits that the provision relied upon by the learned counsel for the petitioners is not applicable. Such provision is applicable to the contingencies mentioned therein and contingency in the present case is not covered by the said provision, and, therefore, the rejection of the request of the petitioners was validly made and petitioners are not entitled to the relief claimed in the writ petition.

8. The facts are not in dispute. In the instant case, the instrument was executed. When the Sub-Registrar raised an objection that the entire duty payable should not be in the form of engrossed stamps, but cash should be paid to the extent required, the stamp papers which were already typed was removed and the matter was typed on plain papers. Thus, the instrument was executed. Thus, the question for consideration is can the petitioners ask to refund the duty paid by them?

9. To appreciate the rival contentions, it is necessary to consider the relevant provision in the Stamp Act. Chapter-V of the Indian Stamp Act deals with allowances for the stamps in certain cases. Section 49 deals with the allowance for spoiled stamps. Section 49 enables making of such allowance for impressed spoiled stamps in the cases mentioned therein. Sub-clause (d) of Section 49 deals with the stamp used for an instrument executed by any party thereto. Heavy reliance is placed on sub-clauses (2) and (6) of Section 49(d), which read as under:

Section 49. Allowance for spoiled stamps:

(a) to (c) x x x x

(d) the stamp used for an instrument executed by any party thereto which:

(2) has been afterwards found unfit by reason of any error or mistake therein, for the purpose originally intended;

(1) to (5) x x x x

(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value;"

10. As can be seen from the plain reading of the above provisions, the present instruments are not covered by the said provisions. There is no other provision in sub clause (d) or in other clauses of Section 49 which deal with contingency in this case. As noticed above, making of allowances for impressed stamps would only arise if any of the provisions mentioned in Section 49 are attracted. In other words, if the contingencies mentioned in Section 49 are not attracted, the individual is not entitled to ask for refund.

11. The settled principle of law is that if there is no provision made in the statute for refund of the amount already paid, no right is vested in the individual to seek such refund. The issue of refund of amount paid under the Stamp Act was considered by full bench of this Court in Manganti Suryanarayana v. The Board of Revenue, Government of Andhra Pradesh AIR 1976 Andhra Pradesh 150. The Full Bench held that the revenue is not required to refund the amount if no provision is made in the Stamp Act. Though facts in issue are slightly different, the principle laid down therein would apply to the facts of this case also. Kerala High Court decision in Abdul Jaleel Vs. State of Kerala, has no application to the facts of this case. The claim in that case was directly governed by similar provision to that contained in Section 49(d)(6) of Indian Stamp Act. In view of the clear provision therein, the person was held entitled to refund of money spent. The claim of petitioner is not covered by clauses 2 and 6 of Section 49(d) of Indian Stamp Act. In the instant case, since no provision is made in the statute for such refund, the orders impugned cannot be said to have been made in excess of power and authority or made in arbitrary exercise of power, nor can be declared as illegal. Petitioners are not entitled to relief claimed in the writ petition. Writ petition fails and is accordingly dismissed.

Miscellaneous petitions if any pending in the writ petition shall stand closed.

