

Court No. - 5

Case :- WRIT - C No. - 3149 of 2011

Petitioner :- Ram Lochan Yadav

Respondent :- State Of U.P. Through Secretary And Others

Counsel for Petitioner :- Anil Kr. Aditya, Gulrez Khan

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

1. Heard Mr. Gulrez Khan for the petitioner and learned Standing Counsel for State.

2. By means of this writ petition, the petitioner is assailing the order dated 30.6.2008 passed by respondent no. 4 and the order dated 11.10.2010 passed by respondent no. 2 in the proceedings under Section 47 A of Indian Stamp Act.

3. Brief facts of the case are that the petitioner has a land vide sale deed dated 16.6.2005 of some portion plot no. 184 ka area 1-36 acre situated at Village Nagepur Pargana Barahawal tehsil Sakaldiha Distt. Chandauli, from one Prahlad. It is stated that the land in question is in the shape of pond and being used for growing singhara/ agricultural purpose. At the time of registration of sale deed dated 16.6.3005, the petitioner has paid due stamp duty treating the land in question as agricultural land however respondent no. 5 has referred the matter before the Collector for re-valuation of deficiency stamp duty and thereafter Case No. 38 / 116 of 2005-06 was registered under Section 47 A (1) of the Indian Stamp Act and thereafter by the order dated 30.6.2008 passed by respondent no. 4 deficiency of stamp duty along with penalty as well as interest have been imposed upon the petitioner. The petitioner has challenged the said order in Appeal before the Commissioner but the same has also been dismissed vide order

dated 11.10.2010. Hence the present petition.

4. Learned counsel for the petitioner submits that the petitioner has only purchased some portion of land in question, which is a private pond land and being used for growing singhada/ agricultural purpose. He submits that in view of the notification / letter dated 24.11.2006 issued by Chairman, Board of Revenue, the District Magistrate has been authorized to hear the case relating to deficiency of stamp duty up to Rs. 1 lakh and above; the Additional District Magistrate (Finance & Revenue) has been authorized to hear the cases more than 50001/- to 1,00000/- and also the Assistant Inspector General (Stamp) / Deputy Inspector General (Stamp) / Sub Divisional Magistrate has been authorized to hear the case up to Rs. 50,000/-. He submits that in the case in hand the alleged deficiency of stamp duty is about Rs. 4 lakh therefore, the District Magistrate was the competent authority to hear and decide the case of the petitioner but the impugned order has been passed by the Additional District Magistrate (Finance and Revenue) respondent no. 4, which was without jurisdiction according to the notification dated 24.11.2006.

5. He submits that the said point has specifically been raised before the authorities below and same has also been mentioned in para 16 of the present writ petition but in the counter affidavit filed by the State only bald assertion has been made that the District Magistrate has power to delegate the same to the Additional District Magistrate (Finance and Revenue) to hear the case, however no material has been brought on record.

6. He further submits that the property in question was private pond where the seller has exercised fisheries right as well as agricultural activities. He further placed reliance upon the report

dated 21.2.2008 copy of which has been annexed as Annexure no. 4 to this writ petition, wherein after spot inspection, the land in question has been shown as private pond. He further submits that in spite of the said report as well as notification dated 24.11.2006, the impugned orders have been passed, which are wholly illegal, perverse and liable to be quashed. He prays for allowing the writ petition.

7. *Per contra*, learned Standing Counsel has supported the impugned order and submits that the orders have rightly been passed. He submits that the petitioner in the garb of agricultural activity purchased the property in question paying less stamp duty though the land in question is adjacent to abadi land and having higher value, which is also apparent from the report submitted by Tehsildar 21.2.2008, therefore, the impugned orders are justified. He prays for dismissal of this writ petition.

8. The Court has perused the records.

9. It is not in dispute that Notification dated 24.11.2006 issued by the Chairman, Board of Revenue, U.P. authorizes the District Magistrate to hear and decide the cases relating to stamp deficiency of Rs. 1 lakh and above; further below the limit of Rs. 1 lakh, Additional District Magistrate and Assistant Inspector General (Stamp) / Deputy Inspector General (Stamp) / Sub Divisional Magistrate have been authorized respectively. It is not in dispute that the case in hand is relating to alleged stamp deficiency of about Rs. 4 lakh. In the counter affidavit, it has been submitted that the District Magistrate has delegated his powers to the Additional District Magistrate (Finance and Revenue) to hear the stamp deficiency cases but no material has been brought on record to support the said argument. Thus in view of the

notification dated 24.11.2006, the case of the petitioner should have been decided by the District Magistrate himself. Further the records reveals that in the appeal, the Commissioner has recorded a finding in respect of the plea of the petitioner that the order is without jurisdiction in pursuance of notification dated 24.11.2006 but no finding whatsoever has been recorded by the appellate court to controvert the said plea taken by the petitioner. The record further reveals that no material was placed before this Court either in the counter affidavit or at the time of hearing to controvert the said notification dated 24.11.2006 though copy of which has been annexed as Annexure no. 5 to this writ petition. Once the notification dated 24.11.2006 is not rescinded, the order passed by the Additional District Magistrate (Finance and Revenue) cannot be said to be in accordance with law. Once at the very beginning, the proceedings is vitiated, the further proceedings cannot be justified in the eyes of law. Thus the impugned orders cannot be sustained in the eyes of law and liable to be set aside.

10. In view of above, the writ petition is **allowed**. The impugned orders are set aside. The matter is remanded to the Collector / District Magistrate, Chandauli, who shall decide the same *de novo*, by reasoned and speaking order, in accordance with law, after affording due opportunity of hearing to all the stock holders, expeditiously, within a period of four months from the date of production of certified copy of this order, if there is no other legal impediments.

11. The petitioner is directed to serve a certified copy of this order before respondent no. 3 within three weeks from today.

Order Date :- 30.11.2023
Rahul Dwivedi/-