THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.3471 OF 2004

ORDER:

This writ petition is filed under Article 226 of Constitution of India, challenging the memo number M.Ed/8311/2002/DR/PF Dated 10.11.2003 and the distraint order dated 03.12.2003 issued by the first respondent and determining the deficit stamp duty and imposing penalty three times of the amount of deficit duty, declaring the same as illegal, arbitrary and without jurisdiction and consequently to set-aside the above memo and distraint order.

It is the case of the petitioner that he purchased house bearing H.No.12-128 in an extent of 875 sq.ft R.C.C ground floor and 875 sq.ft R.C.C in first floor in plot No.128 in an extent of land admeasuring 200 sq yds situated in Adarshnagar, Qutbullapur Village & Mandal of Ranga Reddy District, for total consideration of Rs.6,97,500/- from Smt. K. Ammaji, represented by her Agreement of Sale-cum-General Power of Attorney, Sri Kuna Srinivasa Goud under a registered sale deed, bearing document No.8311/2002 dated 07.10.2002. Though the property was purchased for Rs.6,97,500/-, the petitioner paid stamp duty on the market value of the property at Rs.7,57,500/-.

The first respondent issued notice dated 21.01.2003 alleging that the petitioner suppressed facts in the document bearing No.8311/2002 and calling him to appear on the date fixed. On 07.02.2003, the petitioner filed his objections to the notice requesting him to make a spot inspection. Again a notice dated 23.04.2003 was issued by the first respondent calling for objections by 01.05.2003. The petitioner filed objections on 07.02.2003 and requested the first respondent to consider the same, as objections for the said notice and requested to take measurements of the property in his presence. But, without considering his objections, the first respondent passed a distraint order on 03.12.2003 and for prosecution under Section 64 of the Indian Stamp Act.

The petitioner further contended that the memo dated 10.11.2003 is bereft of any reasoning and even the objections filed by the petitioner were not referred in the said memo. It is also contended that the first respondent did not take measurements of the building by personal inspection in the presence of the petitioner and further imposed penalty three times on the deficit duty apart from filing prosecution under Sections 27, 64 & 64A of the Indian Stamp Act.

It is further contended that the first respondent is not authorized to act in accordance with Section 70(2) of the Indian Stamp Act, as the first respondent lacks power to act within Section 70(2) of the Indian Stamp Act. Penalty of three times of the deficit stamp duty can be levied under Section 70(2) of the Indian Stamp Act, only in case of stay of prosecution or compounding of the offence, but not simultaneously. Therefore, the order imposing penalty of three times of amount of deficit stamp duty is illegal and prayed to set-aside the same.

During hearing, the learned counsel for the petitioner would contend that since the memo is bereft of any reasoning, the memo under challenge, and in the absence of any reference to the objections filed by the petitioner, the order is invalid. Added to that, the first respondent is not competent to impose penalty in view of Section 70(2) of the Indian Stamp Act, in the absence of stay of prosecution granted by any authority, but the first respondent while launching prosecution under Section 64 of the Indian Stamp Act imposed penalty of three times of the amount over the deficit stamp duty and as such, it is illegal and arbitrary to the provisions of the law.

Whereas, the learned Government Pleader would contend that Section 70(2) of the Andhra Pradesh Stamp Amendment Act 16 of

2002 permits the first respondent to levy penalty of three times of the deficit stamp duty and stay of prosecution and compounding is not a pre-condition to levy penalty. Therefore, the order is free from any defects, and prayed to dismiss the same.

Undisputedly, the petitioner purchased the property for consideration of Rs.6,97,500/- under a registered document No.8311/2002 dated 07.10.2002 and notices dated 21.01.2003 and 23.03.2003 were issued by the first respondent calling upon him to appear on the date fixed for the proposed prosecution and penalty under the provisions of the Indian Stamp Act. In the notice dated 21.01.2003, the first respondent specifically called upon the petitioner to appear before him on 31.01.2003 at 11:00 AM, as the facts and circumstances of the case revealed during inspection work that the document was obtained on stamp duty worth Rs.90,900/- instead of Rs.1,85,640/- as the property value was about Rs.15,47,000/-. Thus the notice spelt out that the petitioner deliberately suppressed the facts relating to valuation of the property attracting Section 27 of the Indian Stamp Act, as such he is liable for punishment under Section 64 of the Indian Stamp Act. Further, the respondents called upon the petitioner to get the offence compounded under Section 70(2) of the Act, but it is contended that the petitioner filed objections on 07.2.2003 to inspect the property in his presence while disputing the claim of the first respondent.

As seen from the notice dated 21.01.2003, the first respondent did not call upon the petitioner to file his objections, but, called upon him to appear before him on the date and time fixed in the said notice. Instead of appearing before the first respondent, the petitioner sent objections. Therefore, non-consideration of objections dated 07.02.2003 submitted by the petitioner is not a ground.

As the petitioner neither appeared nor paid deficit stamp duty, as demanded in notice on 10.11.2003, a notice for filing prosecution was issued to the petitioner under Section 27 of the Act proposing to file prosecution against both the vendor and vendee under the registered sale document No.8311/2003, on the ground that the petitioner suppressed the facts which attracts Section 27 of the Act.

As the petitioner failed to pay the deficit stamp duty plus three times penalty of deficit stamp duty, a distraint order was passed on 03.12.2003 proposing to collect Rs.3,82,925/- which is inclusive of all expenses and exclusive of interest at the rate of 6% on the said amount, but the petitioner did not pay the deficit stamp duty of penalty.

It is the case of the petitioner that he did not suppress any material fact to attract Section 27 of the Indian Stamp Act and hence he is not liable to pay penalty.

According to Section 27 of the Act, the consideration, if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. Thus, Section 27 obligates the vendee and vendor under the document, as to disclose all the relevant facts affecting the chargeability of an instrument, but with duty. The intention of the section is obvious and it is intended to ascertain whether a stamp duty payable in accordance with the requirements of Stamp Act, has been duly paid or not. The present instrument is not falling within the notification under Section 9(1) for claiming the revised stamp duty. If the value of the property was not set forth in a document nor was it stamped for value, it is the value that may or may not be actually set-forth. According to Section 64 of the Act, failure to comply with the provisions of Section 24 would be liable for prosecution. Thus, mere failure on the part of the parties, to set out in a document to comply with Section 27 does not either render a document inadmissible. For that, one will have to act according to the Section and appropriate article. It is a fact that, if a party to a document makes an untrue statement as to the consideration, it affects the chargeability of the instrument for the stamp duty and thereby it amounts to commission of an offence under Section 64 of the Act.

In the instant case, the main grievance of the petitioner is that the property was purchased only for Rs. 6,97,500/- but paid stamp duty on the value of Rs.7,57,500/- whereas the first respondent contention is that the value of the property was Rs.15,47,000/- and called upon the petitioner to pay the deficit stamp duty and penalty of three times of the deficit stamp duty by exercising the power available under Section 70(2) of the A.P. Amended Act No.16 of 2002.

One of the contentions urged by the learned counsel for the petitioner is that only when prosecution and compounding is stayed, the first respondent is entitled to levy penalty of three times over the deficit stamp duty. But, this contention is not supported by any provision in the Indian Stamp Act.

Section 27 read with Sections 64 & 64A of the Indian Stamp Act enables the authorities under the Act to prosecute the parties to document who undervalued the property or failed to furnish the full particulars. At the same time, Section 70(2) of the Act enables the Chief Controlling Revenue Authority, or any officer generally or specially authorized by it in this behalf, may stay any such prosecution or compound any such offence by levying a compounding fee which shall include the deficit stamp duty, if any and penalty of three times of the deficit stamp duty.

Here, the first respondent demanded for payment of deficit stamp duty and penalty while proposing to prosecute the petitioner. But, collection of deficit stamp duty and penalty would arise only in case the petitioner agreed to compound the offence punishable under

Section 27 read with Sections 64 & 64A of the Act. 'Compounding crime' means (a) an agreement not to prosecute or not to inform against someone who has committed a crime (b) the knowledge of the actual commission of a crime, and (c) the receipt of property or other consideration in exchange for the agreement. (vide page 161 of West's Legal Thesaurus Dictionary by William Statsky). Thus, compounding of offence punishable under Section 27 read with Sections 64 & 64A of the Act is entering into an agreement not to prosecute the petitioner. Such an act must be voluntary.

In the present facts, the first respondent issued notices calling upon the petitioner to appear on the day fixed by him i.e. 31.01.2003 at 11:00 AM. Instead of appearing before the first respondent, the petitioner sent objections which is not provided under rules. Thereupon, the first respondent passed an order on 21.01.2003 addressing the petitioner to pay deficit stamp duty and three times of penalty and also passed a distraint order on 03.12.2003 proposing to collect an amount of Rs.3,82,925/-, which is inclusive of expenses and exclusive of interest at the rate of 6%. Such collection of deficit stamp duty and penalty would arise only when the offence is compounded under Section 70 Clause (2) of the Act. But here, the petitioner did not enter into an agreement with the first respondent for not prosecuting him and agreeing to pay compounding fee, deficit stamp duty and penalty of three times. When the petitioner did not agree to compound the offence punishable under Section 27 read with Sections 64 & 64A of the Act, the first respondent is incompetent to issue a demand for the deficit stamp duty and penalty of three times stamp duty expenses and interest. At best, the first respondent is entitled to launch prosecution after obtaining necessary permission from the Collector in compliance with Section 70(1) and if the petitioner is found guilty by the Competent Court for the offence punishable under Section 27 read with Sections 64 & 64A of the Act, the Magistrate may impose penalty under Section

64A, collect the penalty and deficit stamp duty. Therefore, issue of distraint order for recovery of the amount i.e deficit stamp duty, penalty, expenses and interest is arbitrary and illegal and without sanction of law.

The other contention of the petitioner is that, the first respondent is incompetent to collect compounding fee, deficit stamp duty and penalty of three times of deficit stamp duty under Section 70 Clause (2) of the Act. According to Section 70 Clause (2), the Chief Controlling Revenue Authority, or any officer generally or specially authorized by it in this behalf alone is competent to stay prosecution of the petitioner or compound the offence. Section 76-A Clause (b) enables the Chief Controlling Authority to delegate powers conferred on him for the purpose of Sections 45(1), (2), 56(1) and 70(2) to such subordinate Revenue Authority as may be prescribed in the notification. Delegation of power under Section 76-A Clause (b) is only by way of notification either general or special. But no such notification is brought to the notice of this Court issued by the Government. However, it needs no further examination, as the demand for payment of deficit stamp duty penalty of three times to the deficit stamp duty, expenses and interest at the rate of 6% by way of distraint is without any authority and sanction of law. On this ground alone, the distraint is liable to be set-aside. Accordingly, the distraint order dated 03.12.2003 is declared as illegal.

Sofaras proposal of prosecution is concerned, for the offence punishable under Section 27 read with Sections 64 & 64A of the Act after obtaining sanction from the Collector under Section 70(1), the first respondent or the person who is authorized in that behalf may launch prosecution. In the present facts, the proposed prosecution was not challenged on the ground that there was no sanction from the Collector as is required under Section 70(1) of the Act. Therefore, the respondents are not required to establish prior sanction from the Collector. However, it is clear from the provisions of Stamp Act that prosecution can be launched subject to obtaining sanction from the Collector under Section 70(1) of the Act. Therefore, the proposed prosecution is not in violation of any of the mandatory requirements under the Act and the same cannot be set at naught, as it does not suffer from any legal infirmity. Hence, I am not inclined to declare the impugned memo dated 10.11.2003 for prosecution of the petitioner for the offence punishable under Section 27 read with Sections 64 & 64A of the Act, as illegal and arbitary.

In the result, the writ petition is allowed-in-part, declaring the distraint order dated 03.12.2003 as invalid, while upholding the memo number M.Ed/8311/2002/DR/PF Dated 10.11.2003 for launching the proposed prosecution for the offences punishable under Section 27 read with Sections 64 & 64A of the Act of the Indian Stamp Act.

Consequently, miscellaneous applications pending if any shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated 15.07.2016
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