02
11.08.2021
TN

CO No. 2047 of 2019

Sri Barid Baran Roy
Vs.
Gopal Banerjee and others

(Via video conference)

Mr. Gopal Ghosh

.... for the petitioner

Mr. Raja Basu Chowdhury,
Mr. Rahul Poddar

.... for the opposite party no.13

Mr. Saptanshu Basu,
Mr. Aniruddha Chatterjee,
Mr. Anindya Bose,
Mr. Chandrachur Chatterjee,
Mr. Diptendu Mondal

.... for the opposite party no.14

Mr. Rishabh Dutta Gupta,
Mr. Arijit Bardhan

.... for the opposite party nos.15 and 16

The present dispute concerns an order of the trial court accepting the assessment made by the Collector in respect of a particular plot of land, which was the subject-matter of an agreement, sought to be relied on by the plaintiff/petitioner for the purpose of proceeding with the suit for specific performance of the said agreement.

Learned counsel for the petitioner argues that the Collector gave no opportunity to the petitioner to present the petitioner's version of the appropriate valuation of the property and unilaterally assessed such stamp duty. The court, as such, acted without jurisdiction in accepting such assessment mechanically without granting any opportunity to the plaintiff/petitioner to controvert such assessment.

It is further contended by learned counsel for the petitioner that since the prayer for specific performance in the suit is restricted to Schedule-'D' of the plaint and the plaintiff/petitioner has already deposited adequate stamp duty in respect of the sale deeds executed in connection with the other portions of the property encompassed by the agreement, the trial court also acted without jurisdiction in directing the plaintiff to pay the entire stamp duty for the property afresh, overlooking the effect of Section 5 of the Stamp Act.

Learned senior counsel appearing for the opposite parties, in reply, contends that, in the event the petitioner has a grievance against the assessment, it is always open to the petitioner to approach the appropriate authorities under the Stamp Act for refund.

That apart, it is argued that Section 33 of the Indian Stamp Act, 1899 (for brevity "the 1899 Act") does not distinguish, as such, between the entire subject-matter of the agreement-in-question and any particular portion thereof, but envisages stamp duty to be paid on the entire document sought to be relied on.

Learned counsel for the petitioner places reliance upon a co-ordinate Bench judgment of this court, rendered in *Bidhan Nirman Pvt. Ltd. vs. State of West Bengal*, reported at *2013 (5) CHN 6,* in support of the proposition that the market value of the subject property cannot be determined arbitrarily without mentioning the methods/basis of such determination and without granting an opportunity of hearing to all the interested parties. Hence, it is further contended by the petitioner, the impugned order is vitiated by contravention of the proposition laid down in the said report.

A perusal of Section 33 of the 1899 Act clearly shows that, as rightly contended on behalf of the opposite parties, the provision does not contemplate segregation of any portion covered by the agreement, in respect of which the claim of specific performance or other reliefs has been restricted in the plaint, for the purpose of impoundment. The contemplation of the said section encompasses the document, sought to be relied on, as a whole and, as such, the argument of the petitioner, that the petitioner is liable to deposit stamp duty only for the portion of the subject property regarding which relief has been sought in the suit, does not hold water.

That apart, in the event the petitioner has any grievance against such assessment by the Collector, ample recourse is available to the petitioner for seeking refund of the amount under Sections 44 and 45 of the 1899 Act itself. Although the petitioner sought to rely on Section 47A of the 1899 Act (as amended in West Bengal) in support of the proposition that the authorities specified under sub-section (3) thereof can only determine the market value after giving the parties concerned an opportunity of being heard, does not hold good in the present case, since Section 47A(1) contemplates a situation where the Registering Officer, under the Registration Act, 1908, while registering any instrument (including an agreement), has reason to believe that the market value of the property has not been duly set forth in the instrument, such Officer shall take appropriate steps within the purview of the said section for assessment of the market value.

Such a situation has not arisen in the present case, since the Collector assessed the market value on the request of the civil court and there was no option left before the court itself but to accept such assessment as it is, within the contemplation of Sections 33 and 35 of the 1899 Act.

Hence, the ratio laid down in the cited report does not apply to the present case.

Accordingly, there is no merit in the revisional application. CO No.2047 of 2019 is dismissed on contest, without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)