37 15.06.2022

PA(SS)

MAT 497 of 2022
With
CAN 1 of 2022
Suresh Chandra Gupta
Vs.
The State of West Bengal and Others

Mr. Saptansu Basu, Sr. Advocate
Mr. Sunanda Mohan Ghosh,
Mr. Ayan Banerjee, Advocates
... for the appellant
Mr. T. M. Siddiqui,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee, Advocates
... for the State

This appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 07.03.2022 whereby WPA 586 of 2022 has been disposed of with certain directions.

The record reflects that initially there was a dispute relating to the payment of stamp duty and the Collector and Deputy Inspector General of Registration, Range-I (DIG,RR-I) had passed the order dated 07.04.2017 calculating the deficit stamp duty under Section 47A of the Indian Stamp Act, 1899. This order was subject matter of challenge in appeal before the Commissioner who by order dated 28.07.2021 found that there was omission of the registering officer in serving upon the appellant notice under Section 47A(2) of the Act which was a material defect, not curable at the appellate stage, therefore, the learned Commissioner had set aside the order passed by the DIG,RR-I and had directed the ADSR to follow the procedure laid down in Section 47A(1), (2) and (3) of the Act and the ADSR was directed to thereupon refer the matter to DIG,RR-I.

Record further reflects that in pursuance to the said direction, ADSR had carried out the assessment and had given the notice to appellant of deficit amount dated 13.12.2021 which was subject matter of challenge in the writ petition.

Submission of the learned Counsel for the appellant is that the learned Single Judge proceeded on the incorrect factual premises that order of Commissioner was under challenge in the writ petition and that the order of learned ADSR is non-reasoned order, hence cannot be sustained.

Learned Counsel for the respondent has submitted that the ADSR has followed the due procedure and now the matter will be referred to the DIG,RR-I wherein the appellant will be given opportunity of hearing and he will have full opportunity to raise all the permissible grounds.

Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that learned Single Judge had proceeded on the incorrect factual premises as if the writ petition was directed against the order of the learned Commissioner and has examined the correctness of the order of the Commissioner whereas the prayer clause of the writ petition reveals that the notice dated 13.12.2021 issued by the ADSR, Baruipur, South 24 Parganas was subject matter of challenge in writ petition. By this notice, the appellant is required to pay the deficit stamp duty within 30 days of receipt of the notice on the basis of the e-assessment. Hence, we are unable to sustain the order of the learned Single Judge which is accordingly set aside. Since, the issue raised by the petitioner in the writ petition has not been examined, therefore, we remit the matter back to the learned Single Judge for fresh decision in accordance with law.

**(Prakash Shrivastava, C.J.)**

**(Rajarshi Bharadwaj, J.)**