OD-3

ORDER SHEET
WPO/166/2019
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

INDIA MEDIA SERVICES PRIVATE LIMITED
VS
COLLECTOR OF STAMP REVENUE, KOLKATA, GOVERNMENT OF WEST BENGAL AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 12TH May, 2023.

Appearance :
Mr. Deepan Sarkar, Adv.
Mr. Biswaroop Mukherjee, Adv.
...for the Petitioner

Mr. Ratnanko Banerjee, Adv.
Mr. Jishnu Chowdhury, Adv.
Mr. G. Khaitan, Adv.
Mr. Ratul Das, Adv.
...for the Added Respondent

Mr. Ayan Banerjee, Adv.
Mr. S. Chaudhury, Adv.
...For State

The Court: The writ petition has been filed by a company incorporated under the companies Act, 1956 for direction upon the respondents to refer the nomination agreement dated December 5, 2005 and the Memorandum of Understanding dated August 7, 2006 to the High Court at Calcutta in terms of Section 57 of the Indian Stamp Act, 1899 (hereinafter referred to as the Stamp Act), for an opinion of the High Court on the stamp duty payable. The petitioner contends that the documents were insufficiently stamped and the provisions of Section 57 should be invoked to answer the substantial question of law regarding the stamp duty payable in respect of the afore-mentioned documents.

The background to the filing of the writ petition is that a dispute arose out of the said nomination agreement between the writ petitioner and the added respondent No.5. The arbitration clause in the said nomination agreement was invoked. Arbitration proceedings commenced. When the respondent No.5 sought to rely upon the said nomination agreement, the learned Arbitrator impounded the said document by an order dated July 8, 2017 and directed that the document be filed with the collector of Stamp Revenue Kolkata, for necessary endorsement indicating the stamp duty that was payable.

The respondent No.1, by an order dated August 30, 2017 assessed the stamp duty under Article 23 A of Schedule 1A of the Stamp Act, 1899 as Rs. 11,26,39,488 and a penalty of the same amount was levied under Section 35. The order dated August 13, 2017 was challenged by two writ petitions being WP No.23428 W of 2017 and WP No.27751 (w) of 2017.

The writ petitions were disposed of and the matter was remanded for further adjudication. The order dated August 30, 2017 was set aside, by order dated November 24, 2017.

During pendency of the proceedings before the Collector, the respondent No.5 filed a writ petition being WP 4475(W) of 2018, seeking a declaration that the nomination agreement was duly stamped and not covered by the West Bengal amendment to Section 23 Schedule 1A of the Stamp Act. After the remand and during the pendency of the writ petition, the collector made another fresh assessment and the stamp duty was assessed at Rs.3,79,39,028/- along with a penalty at Rs.3,64,21,466/- totaling to Rs. 7,43,60,494/-.

The writ petition along with the connected application CAN 3632 of 2018 was disposed of by a coordinate bench on June 25, 2018 with a direction that the decision /assessment of the authority be referred to the Chief Controlling Revenue Authority, Kolkata, under Section 56 of the Indian Stamp Act, 1899 for a decision on the respective claims of the parties. As a condition precedent to the said reference, the Co-ordinate Bench permitted the respondent No.5 to use the document in evidence before any forum with a further direction that the order of assessment would be kept in abeyance if the respondent No.5 deposited 75% of the total sum with the collector of stamp revenue, Kolkata. The amount was directed to be kept in an interest bearing fixed deposit account in the name of the collector, with any Nationalized Bank, subject to the final decision of the Chief Controlling Revenue Authority.

The said order was challenged by two appeals before a Division Bench of this Court vide MAT 593 of 2018 and MAT 624 of 2018.The Hon'ble Division Bench, by judgment and order dated September 24, 2018, allowed the appeals, inter alia, holding that once the Collector of a particular State (Telangana) had endorsed a document under Section 42 of the Stamp Act, 1899 and certified that proper stamp duty had been paid notwithstanding the fact that the nomination agreement was subsequently entered into in the state of West Bengal, the instrument was admissible in evidence and could be acted upon and authenticated as if the document had been stamped from the very inception. The Division Bench found that whatever defect may have occurred in the execution and registration of the nomination agreement, the said defect had been cured by legal fiction in terms of the provisions of Section 42 of the Stamp Act.

Aggrieved by the afore-mentioned order, the petitioner preferred a special leave petition before the Hon'ble Apex Court. The Special Leave Petition was dismissed as infructuous and the Hon'ble Apex Court declined to interfere with the order of the Hon'ble Division Bench by its order dated January 18, 2019. Thus, the finding of the Hon'ble Division Bench that the nomination agreement was sufficiently stamped and admissible in evidence attained finality between the parties.

Suppressing the above fact of dismissal of the SLP, this writ petition was filed. The petitioner is aggrieved by the inaction of the respondents in not referring the two documents to the High Court for an opinion in terms of Section 57 of the Stamp Act. The petitioner contends that the Memorandum of understanding was not allowed to be filed in evidence by the learned Arbitrator on the ground of insufficiency of stamp duty and as such the stamp duty should be assessed by the High Court and the petitioner be allowed to pay the deficit stamp duty.

The allegation of insufficiency of the stamp duty paid in respect of the nomination agreement, is no longer available as the matter attained finality. Hence, the first part of prayer (a) of the writ petition for reference of the nomination agreement to the High Court in terms of Section 57(d) of the Stamp Act, cannot be allowed as the nomination agreement dated December 5, 2005, was found to be adequately stamped and legally admissible in evidence.

With regard to the other document which the petitioner prays for reference under Section 57(d) of the Indian Stamp Act, 1899, so that the same could be used as evidence in any proceeding, including the arbitration proceeding, which has resulted in passing of an award, this Court finds that the said document was neither executed in West Bengal nor any action in furtherance thereof had taken place within the jurisdiction of the State of West Bengal. The property in respect of which the memorandum of understanding had been entered into, is also situated beyond the State of West Bengal. The respondents did not have role to play in the assessment of the stamp duty payable in respect of the said document dated August 7, 2006. Further, neither was the document impounded at any stage nor were actions under Sections 31, 40 or 41 of the Indian Stamp Act, 1899 initiated by the Collector within the jurisdiction of the State of West Bengal. Under such circumstances, before any action is contemplated under Section 56(2) of the Stamp Act, leading to a doubt in the mind of the collector and unless the Chief Controlling Revenue Authority fails to give his decision in terms of Section 56(3) of the Stamp Act, invocation of Section 57(d), would not arise. Hence, the other part of prayer (a) in the writ petition for reference of the memorandum of understanding dated August 7, 2006 to the High Court at Calcutta in terms of Section 57(d) of the Indian Stamp Act, 1899 is also not available as no doubt had been arisen in the mind of the Collector of Stamp Revenue, Kolkata, Government of West Bengal with regard to the said document.

The writ petition (WPO/166/2019) is dismissed. There shall be no order as to costs. With the dismissal of the writ petition old GA 1666 of 2019 corresponding to new GA 1 of 2019, is also disposed of.

(SHAMPA SARKAR, J.)

S.De/As.