AD-26
Ct No.09
22.03.2024
TN

CPAN 389 of 2024
In
WPA 4744 of 2023
IA No: CAN 2 of 2024

Progressive Uddyog and others
Vs.
Sharad Kumar Dwivdedi (IAS), Collector, North 24 Parganas

Mr. Arabinda Chatterjee,
Mr. Arkadipta Sengupta,
Ms. Aayushi Mukherjee
.... for the petitioners

Mr. Debapriya Chatterjee
.... for the alleged contemnor

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1. Learned counsel for the alleged contemnor, who has preferred the present application for modification of the parent order, submits that at the relevant juncture, contrary to 7% as recorded in the parent order by this court, the appropriate rate chargeable as stamp duty was 8% for municipal areas.

2. It is contended that the writ petitioners' document was executed in the month of June, 2006 and, as such, falls under the Note annexed to Schedule IA of the Stamp Act as amended in West Bengal which enumerates that from October 21, 2002 to July 31, 2006, the rate was 8% for municipal areas. On and from July 31, 2006, the West Bengal Finance Act, 2006 came into force which amended the 8% to 6%

which again was substituted by the West Bengal Finance Act of 2007 with effect from April 01, 2007, which introduced a line of distinction between properties worth Rs. 25 lakh or less and those above the said amount. For properties above Rs. 25 lakh, the 6% was re-worked to be 7%. However, the said two Financial Acts of 2006 and 2007 are not applicable, since it is clear from the 2006 Finance Act itself that the rate immediately prior to July 31, 2006 was 8% for municipal areas.

3. Learned senior counsel appearing for the writ petitioners controverts the contentions of the applicant. Learned senior counsel places reliance on Article 23 of Schedule IA of the Stamp Act, in particular, Clause (b) thereof, which clearly distinguishes between properties not exceeding Rs. 25 lakh and those exceeding the said amount. For the latter, the percentage of stamp duty payable is 7 of the market value which applies to the case of the petitioners, since the deed was executed in the month of June, 2006.

4. Learned senior counsel places reliance on the 2006 Finance Act which reduced the amount of 8% to 6%. However, learned senior counsel submits that on a composite reading of the 2007 and 2006 Finance Acts, the amount payable as it last stood was 7% of the market value.

5. A careful reading of the relevant provisions as placed by learned counsel for the parties reveals as follows:

6. As on July 30, 2006, the rate of stamp duty payable for municipal areas, as per the Note supplied immediately after Schedule IA was 8%. In fact, as per the said note, from October 21, 2002 to July 31, 2006, 8% was the stamp duty chargeable for municipal areas. It is only by the West Bengal Finance Act, 2006, with effect from July 31, 2006, that the said 8% was reduced to 6% which again was subject to an amendment by the West Bengal Finance Act of 2007 which came into effect on and from April 01, 2007, substituting the expression “6 per centum” to 6 per cent for properties of value of or below Rs. 25 lakh and 7% for properties worth above that amount.

7. However, the said change came only on and from April 01, 2007.

8. There are two indicators to show that in June, 2006, when the writ petitioners’ deed was entered into, the stamp duty payable for municipal areas was 8%. The first such indicator is the mention in Section 2(2)(b) of the West Bengal Finance Act of 2006 that for the words “eight per centum”, the words “six per centum” shall be substituted which necessarily implies that immediately before July 31, 2006, the stamp duty was 8% which was reduced by the 2006 Finance Act to 6%.

9. The second indicator is the Note which is annexed to the Schedule IA of the Stamp Act as amended in West Bengal which enumerates that from October 21, 2002 to July 31, 2006, the stamp duty payable was 8% for municipal areas, which was never amended.

10. Thus, the present applicant/alleged contemnor is justified in arguing that it was wrongly mentioned in the order of this court dated August 29, 2023 that the stamp duty payable at the relevant point of time was 7%.

11. In view of the above observations, the expression "at the rate of seven percent" used in paragraph no. 40 of the said order dated August 29, 2023 passed in WPA No. 4744 of 2023 shall be read as 8% of the valuation of the property.

12. In view of the above correction, the entire order of this court dated August 29, 2023 is required to be recalled, since in the first place the authorities had assessed the stamp duty to be 8% (the correct rate) which was impugned in the said writ petition.

13. Accordingly, the order dated August 29, 2023 passed in WPA No. 4744 of 2023 is hereby recalled and accordingly, CAN 2 of 2024 is allowed.

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14. In view of the order passed on CAN 2 of 2024 recalling the order under contempt, there is no scope of keeping the contempt application alive.

15. Accordingly, CPAN 389 of 2024 is dismissed in the light of the above observations.

16. Accordingly, the Registrar General of this court shall disburse the amount of Rs. 6,32,900/- to the Collector, North 24 Parganas, in lieu of stamp duty which was payable by the petitioners in respect of the document-in-question within three weeks from date.

17. Insofar as the interest component on the same which has accrued on the said amount in the meantime, the Registrar General shall refund the same to the petitioners, within four weeks from the date of the application made by the petitioners in that regard, upon deducting the official charges.

18. There will be no order as to costs.

19. 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.)