

(2008) 12 AHC CK 0096

Allahabad High Court

Case No: None

Laxmi Devi

APPELLANT

Vs

Additional District Magistrate
and another

RESPONDENT

Date of Decision: Dec. 1, 2008

Hon'ble Judges: Bala Krishna Narayana, J

Final Decision: Allowed

Judgement

B.K. Narayana, J.

Heard Sri S.K. Chaturvedi, learned counsel for the petitioner and learned Standing Counsel for the respondents.

The instant writ petition has been filed by the petitioner for quashing the notice dated 07.05.1993 issued by the respondent no.1 and the orders dated 14.09.1993 and 28.08.1995 passed by respondents no.1 and 2 respectively (Annexure Nos.6 and 9 to the writ petition).

The brief facts of the case are that the petitioner purchased a semipucca house having a total area of 83.64 Sq. metres including covered area of 55 Sq. metres by a sale deed dated 10.06.1991 for a total sale consideration of Rs.1,01,000/- and paid the requisite stamp duty on the aforesaid instrument of sale. Case No.30 of 1991 was instituted against the petitioner under Section 33/47A of the Indian Stamp Act on the basis of a notice dated 06.12.1991 in which it was mentioned that the actual market value of the property purchased by the petitioner by sale deed dated 10.06.1991 was Rs.1,50,000/- and not Rs.1,01,000/- as shown in the sale deed and the stamp duty payable thereon was Rs.21,750/- and hence, the petitioner was liable to make good deficiency in stamp duty to the tune of Rs.7,105/- on the aforesaid instrument of sale. The Case No.30 of 1991 was decided exparte and the deficiency of stamp duty mentioned in the notice dated 06.12.1991 was affirmed by the respondent no.1.

Aggrieved with the order of respondent no.1, the petitioner preferred a revision before respondent no.2, which was allowed by order dated 26.08.1992 and the case was remanded back to the respondent no.1 for decision afresh in accordance with law after affording the petitioner opportunity of hearing. Subsequently, after remand, the respondent no.1 issued a fresh notice to the petitioner on 07.05.1993 and in the said notice, market value of the property purchased by the petitioner was shown to be Rs.3,00,000/ and a deficiency of stamp duty of Rs.28,855/ was indicated in the said notice. After remand, the respondent no.1 decided the case by order dated 14.09.1993 on the basis of the second notice dated 07.05.1993 holding that the market value of the property of the petitioner was Rs.3,00,000/ on which Rs.43,500/ was payable as stamp duty and since an amount of Rs.14,645/ only had been paid as stamp duty, the petitioner was liable to pay deficiency of stamp duty of Rs.28,855/ together with Rs.1,000/ as penalty. The order dated 14.09.1993 was challenged by the petitioner by filing a revision before the respondent no.2, which was numbered as Stamp Revision No.713 of 199394, which was partly allowed by order dated 28.08.1995 and the amount imposed as penalty was set aside. However, the deficiency of stamp duty as assessed by the respondent no.1 was affirmed.

The learned counsel for the petitioner submitted that the respondent no.1 acted without jurisdiction in deciding the case on the basis of a fresh notice. There is no provision under the Stamp Act empowering the respondent no.1 to issue a fresh notice after the matter was remanded back to him by the respondent no.2 for deciding the question of stamp duty.

Learned Standing Counsel made a feeble attempt to defend the orders passed by the respondent nos.1 and 2 but failed to place any provision under the Stamp Act under which the respondent no.1 could have issued a second notice after the remand of the case.

I have heard the learned counsel for the parties and examined the record.

It is not in dispute that proceedings under Section 33/47A of the Stamp Act was initiated against the petitioner on the basis of the notice dated 06.12.1991. Initially the case was decided by the respondent no.1 by accepting the market value of the property given in the notice dated 06.12.1991 and the order of the respondent no.1 was set aside by the respondent no.2 by his order dated 26.08.1992 on the revision preferred by the petitioner and the respondent no.2 while passing the order dated 26.08.1992 had not directed the respondent no.1 to issue a fresh notice. After remand, the case was liable to be decided on the basis of the material on record and not on the basis of any fresh notice.

In my opinion, the respondent nos.1 and 2 committed a manifest error of law in deciding the proceedings against the petitioner on a fresh notice, which was issued after the remand by the respondent no.2 instead of deciding the same on the basis of the original notice dated 06.12.1991.

In view of the aforesaid, the writ petition is allowed and the orders dated 14.09.1993 and 28.08.1995 passed by respondent nos.1 and 2 respectively (Annexure Nos.6 and 9 to the writ petition) are quashed. The matter is remitted back to the respondent no.1 with a direction to decide the same on the basis of notice dated 06.12.1991 after hearing all the parties as expeditiously as possible preferably within a period of two months from the date of production of certified copy of this order. There shall be no order as to costs.