

(2011) 01 AHC CK 0304

Allahabad High Court

Case No: C.M.W.P. No. 66499 of 2010

Aruba Khan

APPELLANT

Vs

Chief Controlling Revenue
Authority/Commissioner
Moradabad Division and Others

RESPONDENT

Date of Decision: Jan. 29, 2011

Acts Referred:

- Stamp Act, 1899 - Section 47, 47A(3), 56(1A)
- Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 - Rule 9

Citation: (2011) 3 ADJ 488 : (2012) 4 AWC 3746 : (2011) 112 RD 601

Hon'ble Judges: Abhinava Upadhyaya, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Abhinava Upadhyaya, J.

Heard learned Counsel for the Petitioner and the learned Standing Counsel.

2. The present writ petition has been filed challenging the order passed u/s 56(1-A) of the Indian Stamp Act, as well as the order passed u/s 47-A(3) of the said Act.

3. The claim of the Petitioner is that he had purchased certain agricultural property by executing a registered sale deed on 3.4.2008 for a sale consideration of Rs. 5,54,000/- at Bag Munshi Lalta Prasad, Kunda, Tehsil - Sadar Rampur.

4. It is alleged that upon a reference being made, proceedings u/s 47-A(3) were initiated and a deficiency of stamp duty to the tune of Rs. 70,180/- and penalty of Rs. 70,180/-, total amount Rs. 11,40,360/-, was determined vide order dated 27.05.2009 by the Additional District Magistrate (Finance & Revenue), Rampur.

5. On coming to know about the said order, the Petitioner preferred an appeal before the Commissioner u/s 56(1-A). The main contention of the Petitioner before

the Appellate Authority was that he was not served with the notice of initiation of proceedings u/s 47-A(3) and it is alleged that the Collector passed the order affirming the order u/s 47-A(3) without considering the objection raised by the Petitioner regarding service of notice upon him of the proceedings u/s 47-A(3).

6. Learned Counsel for the Petitioner has drawn my attention to the provisions of Rule 9 of the U.P. Stamp (Valuation of Property) Rules, 1997, whereby mode of service of notice is provided. For ready reference, Rule 9(d) is quoted hereunder:

9. "Service of notices, etc.: All notices, orders and other documents required to be served upon any person shall be deemed to be duly served:

(d) In any other case, if it is addressed to the person, to be served, and

(i) is given or tendered to him or his authorised agent, or

(ii) is sent by registered post to that person, or

(iii) if such person cannot be found and notice or order or the document sent to him through registered post is received back un-delivered, is affixed on some conspicuous part of his last known place of residence or business, or is given or tendered to some adult member of his family.

7. From the aforesaid provision, it is clear that first the notice is to be served upon the person himself or it can be sent through registered post and if the registered post is also received back undelivered, then the same can be served by affixation at a conspicuous place.

8. In the counter-affidavit filed by learned Standing Counsel, no material has been brought forth as to whether any other method was adopted inasmuch as whether notice was sent through registered post or not. However, a document has been filed which is said to be a notice to the Petitioner by affixation at the last known address.

9. From the aforesaid rule it is clear that affixation is permissible only when the notice could not be served through registered post. That exercise having not been undertaken by the authority concerned, the Petitioner is justified in claiming that no notice has been served upon him and the appellate authority in not considering this aspect of the matter regarding proper service of notice to the Petitioner has erred in law.

10. Under the circumstances, in absence of notice to the Petitioner, the proceedings initiated u/s 47-A(3) cannot be said to be justified and consequentially, the appellate order cannot also be sustained. Accordingly, the order passed u/s 56(1-A) of the Indian Stamp Act is set aside as well as the order passed u/s 47-A(3) dated 27.05.2009 is quashed and the matter is remanded back to the Collector before whom the Petitioner will furnish his objection within one month from the date of the certified copy of this order, if ready to the work available to the post and the Collector thereafter will proceed in accordance with law as provided u/s 47 of the

Indian Stamp Act and pass appropriate orders.

11. It is further provided that till any further orders are passed by the Collector after such remand, the interim protection granted by this Court vide its order dated 12.11.2010, will continue to operate.

12. Subject to the aforesaid directions, the writ petition is allowed.

13. No order as to cost.