
(2011) 03 AHC CK 0357

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 66621 of 2010

Sumit Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: March 8, 2011

Acts Referred:

- Stamp Act, 1899 - Article 23, 33, 33, 47A

Citation: (2011) 3 ADJ 712 : AIR 2011 All 135 : (2011) 4 AWC 3374

Hon'ble Judges: Pankaj Mithal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Pankaj Mithan, J.

Heara Sri V.C. Srivastava, learned Counsel for the Petitioner and Sri Nimai Das, learned Standing Counsel for the Respondents.

2. Necessary pleadings have been exchanged between the parties and counsel for the parties agree for final disposal of the writ petition at admission stage itself.

3. The instrument in question is a deed of gift dated 11.2.2009 executed by one Ramesh Chand Lohia in favour of his grand-son in respect of a property of Rs. 61 lakhs in value, as disclosed in the Gift-deed. However, on the objection of Sub-Registrar its value was enhanced to Rs. as Rs. 61 lakhs for the purposes of stamp duty and on the said value stamp duty of Rs. 4,27,100/- was duly paid.

4. On an inspection made on 21.4.2009, a report was submitted thereon on 27.2.2009 and the matter was referred under Sections 33/47-A of the (Indian) Stamp Act, 1899 (hereinafter referred to as the "Act") for determination of the market value and the deficiency in payment of stamp duty. Pursuant thereto Collector, Stamp, Bijnor vide order dated 11.6.2010 determined the deficiency in stamp duty after adjusting the stamp duty already paid as Rs. 2,71,220 and imposed a penalty of Rs.

69,161/- which was directed to be deposited by June 2010 failing which a sum of Rs. 4,068/- per month as interest was leviable. The aforesaid order was upheld in appeal which was dismissed by the Commissioner of the Division vide order dated 11.10.2010.

5. The aforesaid two orders have been assailed by the Petitioner in the present writ petition, on one of the grounds that the first floor portion of the property was residential in nature and, therefore, the authorities under the Act have erred in valuing the said portion as commercial.

6. The more important aspect involved in this writ petition is whether the authorities under the Act are competent u/s 47-A of the Act to determine the market value of the property referred to in the gift-deed in question for the purposes of levy of stamp duty.

7. A Gift-deed is chargeable to stamp duty under Article 33 of Schedule 1-B of the Act, which is reproduced as under:

Description of instrument	Proper Stamp-duty
33. Gift-Instrument of, not being a Settlement (No.58), or Will or Transfer (No.62)	The same duty as a Conveyance No. 23 clause (a) for a consideration equal to the value of the property.
Hiring Agreement or Agreement of Service-See "Agreement" (No.5)	

Emphasis supplied

8. It provides that a gift is chargeable to stamp duty as a conveyance provided under Article 23 Clause (a) for a consideration equal to the value of the property.

9. It may be noted that in the above Article words used are "value of the property" as distinguished from the "market value", meaning thereby that for the purposes of determining stamp duty on a gift-deed market value is not required to be mentioned/determined. The disclosure of the value of the property in the gift is sufficient for the purposes of payment of stamp duty.

10. A perusal of Section 47-A of the Act indicates that it comes into play only where the market value of the property in the instrument is disclosed to be lesser than that determined in accordance with the Rules made under the Act. So disclosure of market value of the property is mandatory for the applicability of Section 47-A of the

Act and it should be less than the market value determined under the Rules i.e. the circle rate prescribed/notified under the Act/Rules.

11. Thus, there is a clear departure in the language used in Article 33 of the Schedule 1-B of the Act and Section 47-A of the Act. Section 47-A of the Act uses the expression in "market value" whereas for levying stamp duty on a gift-deed Article 33 of Schedule 1-B of the Act uses the expression "value of the property".

12. The legislature in its wisdom has differently used the words "value of the property" and "market value" in the Act. It is not without purpose. "Market value" refers to the value of the property prevailing in the market on which the prospective purchaser is ready and willing to purchase and seller is ready and willing to sell the property in the ordinary course of business. Therefore, market value is a bilateral transaction depended upon the will of two persons. On the other hand, "value" simply connotes the estimated monetary worth of the property in the eyes of the seller and is in the nature of a unilateral act.

13. In conveyance, such as sale of property, generally two parties, i.e. seller and purchaser are involved and the market value of the property is determined on the basis of the market forces i.e., demand and supply of the commodity. In a deed of gift it is only the person making the gift who is relevant. It is up to him how he values his property. The value of the property in the eyes of the person receiving the gift is not material. This being the situation, the legislature has deliberately used the word "value of the property" in Article 33 while subjecting the gift to stamp duty and has refrained from using the term "market value".

14. Accordingly, when market value is not at all relevant for levying stamp duty on a gift deed the provisions of Section 47-A of the Act does not come into play which necessitate determination of market value.

15. In view of aforesaid facts and circumstances, the impugned orders passed by the authorities below are patently without jurisdiction and cannot be sustained in law. The writ petition as such is allowed and a writ of certiorari is issued quashing the order dated 11.6.2010 and 11.10.2010 (Annexures-5 and 6 to the writ petition). However, there shall be no order as to costs.