

(2011) 08 AHC CK 0190

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 40656 of 2004

Ansal Housing and Construction
Ltd. and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 4, 2011

Acts Referred:

- Stamp Act, 1899 - Section 33, 33(5), 47A, 56A
- Stamp Rules - Rule 350

Citation: (2011) 8 ADJ 570 : (2012) 115 RD 48

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: Vijay Prakash, for the Appellant;

Final Decision: Disposed Of

Judgement

Arun Tandon, J.

In view of the order of this Court dated 28th July, 2011, the Stamp Reporter has submitted a fresh report dated 3rd August, 2011. It has been recorded therein that in view of the order of the Hon'ble The Acting Chief Justice dated 27th May, 2010, this petition is now cognizable by a Single Judge.

2. Heard Sri Keshari Nath Tripathi, learned Senior Advocate Assisted by Sri Vijay Prakash, learned Counsel for the Petitioner and learned Standing Counsel for the State-Respondents.

3. This writ petition has been filed by a construction company duly incorporated under the Companies Act.

4. Facts in short relevant for deciding the present writ petition are as follows:

Certain land was acquired by the State Government in the district of Ghaziabad and was transferred to Uttar Pradesh State Industrial Development Corporation (for short "UPSIDC"), which is a statutory corporation created under U.P. State Industrial Development Area Act. UPSIDC in turn is stated to have issued a letter of allotment of 87.10 acres of undeveloped land in favour of the Petitioner-company for developing a housing colonies in the housing Sector of Tronica City, Ghaziabad. In terms of the letter of allotment, a memorandum has also been executed between the UPSIDC and the Petitioner-company on 7th July, 1997. The said document was transcribed on a stamp paper worth Rs. 50/- only and was not registered.

5. By means of the notice dated 25th August, 2003, Project Officer of UPSIDC informed the Petitioner-company that the memorandum executed between the Petitioner-company and UPSIDC was liable to be registered and stamp duty was liable to be paid thereon treating the same to be a lease-deed. This letter of the Project Officer was subjected to challenge by the Petitioner by means of Civil Misc. Writ Petition No. 45017 of 2003, wherein no interim order was granted and the writ petition remained pending.

6. The Additional Collector (Finance and Revenue) in exercise of powers under Sections 33 and 47-A of the Indian Stamp Act read with Rule 350 of Indian Stamp Rules, issued a notice informing the Petitioner that prima facie stamp duty to Rs. 2,82,52,235/- was payable on the memorandum. The Petitioner-company may, therefore, appear and show-cause as to why such deficiency in the stamp duty be not raised alongwith penalty and interest. It is against this show-cause notice that this second writ petition has been filed.

7. On behalf of the Petitioner it is contended before this Court that the proceedings initiated under Sections 33 and 47-A of the Indian Stamp Act in terms of the notice are bad for following reasons:

(a) the memorandum was executed in the year 1997 when present notice has only been issued in the year 2003 i.e. after more than four years of the period prescribed u/s 33 of the Indian Stamp Act, and therefore, bad

(b) memorandum executed between the Petitioner-company and UPSIDC does not answers the description of lease,

(c) provisions of Section 47A of the Indian Stamp Act, as amended in the year 1998 and thereafter in the year 2002 are prospective in nature and shall have no application on the deed which was executed in the year 1997.

8. Reference has also been made to the interim order, which has been made to the judgment of this Court in Civil Misc. Writ Petition No. 73277 of 2010, which has been decided in the open Court but could not be completed because of time prayed by the learned Standing Counsel for informing the Court as to what action is proposed against the officers concerned, wherein this Court has held that the deed executed

by the Petitioner-company in favour of purchasers of the developed land/flats cannot be said to be the first transferrer of the immovable property.

9. Learned Standing Counsel in reply points out that the present writ petition is premature. It is always open to the Petitioner to raise all such objections before the authority concerned at the first instance. Issues of facts involved need examination and therefore, at this stage writ is not the proper remedy. Learned Standing Counsel further points out that under proviso to Section 33(5) of the Indian Stamp Act, there is a power with the State Government to extend the period of initiation of proceedings beyond four years. If any such plea is raised in response to the notice issued before the authority concerned, relevant Government Order shall be examined before proceedings any further. He explains that the issue as to whether the particular document answers the description of lease or not has to be adjudicated with reference to the intention of the parties on reading of the document as a whole. Such exercise needs to be undertaken by the authority who has issued the notice. This Court may not interfere in between.

10. So far as the applicability of the amendments made in the year 1998 and thereafter in the year 2002 are concerned, the applicability thereof is yet to be examined by the authority concerned.

11. Learned Standing Counsel points out that this Court in Civil Misc. Writ Petition No. 73277 of 2010 has held that Tripartite deed executed by UPSIDC, the Petitioner-company and the subsequent purchasers, cannot be said to be first transferrer of the property. The judgment has to be read for the purpose it has decided the issue only. The document executed between the Petitioner-company and UPSIDC, is a lease or not is an independent issue to be examined by the authority concerned.

12. Having considered the submissions made by the learned Counsel for the parties and having examined the records of the present writ petition, I am of the considered opinion that serious factual issues raised can always be agitated and examined by the authority after a reply is filed by the Petitioner to the notice, which has been issued. The competence of the authorities under the Indian Stamp Act to proceed with the matter is dependent on the fact as to whether the State Government has permitted the exercise of power u/s 33 of the Indian Stamp Act even after expiry of four years of the execution of the document or not in the facts of this case. If such objections are raised by the Petitioner, it will be suitably considered by the authority, with reference to the document/orders, which may be brought on record before it.

13. Similarly the issue as to whether the deed executed between the UPSIDC and Petitioner-company answers the description of lease or not, has to be examined with reference to the intention of the parties and the terms and conditions agreed upon, as well as the law applicable on the subject. Such exercise must necessarily be

done at the first instance by the authority, who has issued the notice.

14. It may be recorded that after the order is passed by the Additional Collector in proceedings under Sections 33 and 47-A of the Indian Stamp Act, an efficacious statutory appeal u/s 56A of the Indian Stamp Act has been provided for. This Indian Stamp Act is a complete code and it provides a machinery for redressal of the grievance/issue which may arise in respect of levy/demand of the stamp duty on the document executed.

15. So far as the judgment dictated by me in open Court in Civil Misc. Writ Petition No. 73277 of 2010 alongwith connected writ petition is concerned, suffice is to record that the subject matter of consideration in the said writ petitions was the Tripartite deed executed and the finding recorded therein have to be read with reference to the Tripartite deed. Nature of deed executed between UPSIDC and Petitioner-company subject-matter of the present notice, has not been examined therein. All issues are therefore, left open to be agitated by the Petitioner at the time of filing his reply to the notice issued.

16. In view of the aforesaid, this writ petition is disposed of with liberty to the Petitioner-company to file its reply, which must be so done within four weeks from today alongwith a certified copy of this order. On such reply being filed, the Additional District Magistrate (Finance and Revenue), Ghaziabad is directed to take into consideration all the objections which may be raised by the Petitioner. He shall decide the same by means of a reasoned speaking order, preferably within one month thereafter.