(2017) 03 AHC CK 0209

ALLAHABAD HIGH COURT

Case No: 6413 of 2017

Super Infraheights(A Partnership Firm)Thru.Its Partner & Anr — APPELLANT

Vs

State Of U.P. Thru. Prin. Secy. Tax & Registration & Ors. — RESPONDENT

Date of Decision: March 28, 2017

Acts Referred:

- Indian Stamp Act, 1899, Section 31, Section 31, Section 31 - Adjudication as to proper stamp

Hon'ble Judges: Amreshwar Pratap Sahi, Sanjay Harkauli

Bench: Division Bench

Advocate: Ram Ji Das,Anoop Kumar

Judgement

1. Heard Shri Ram Ji Das, learned counsel for the petitioners and learned Standing Counsel for all the respondents.

2. This writ petition questions the correctness of the order dated 17.03.2017 passed the Addl. District Magistrate, Finance and Revenue - Respondent No.3 accepting the report submitted by the Sub-Registrar, Safipur, District ? Unnao, on the ground that the authority has failed to exercise its jurisdiction as vested in it in terms of Section 31 for adjudicating as to the proper stamp duty leviable on the proposed instrument which the petitioners desire to get registered before the Sub- Registrar.

3. The contention is that the Sub-Registrar has submitted a report with regard to valuation of the property in terms of circle rates as also its valuation on it being

determined as a commercial property. Thus, the various parameters of valuation have been indicated in the report, but the Collector while proceeding to accept the report has failed to determine the duty chargeable on the instrument that is proposed to be registered.

4. Learned Standing Counsel submits that as a matter of fact, the Collector has accepted the proposal and therefore, the same should be treated to be a determination.

5. Section - 31 as contained in Chapter - III of the Indian Stamp Act, 1899 is extracted hereinunder:-

> "31. Adjudication as to proper stamp.? (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than [fifty naye paise]) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment the instrument is chargeable.
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> (2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:
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> Provided that:
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> (a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and
>
> (b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid."

6. A perusal of the aforesaid section leaves no room for doubt that as soon as a proposed instrument is presented before the Collector then the Officer has to determine the duty, if any, with which the said instrument is liable to be charged.

7. Thus, the determination has to be by way of an expression of a definite opinion in the matter about the duty which can be levied on the proposed instrument. This, in our opinion, should not be confused with any further stamp duty leviable, the determination whereof is subject to the provisions of Section 47-A, where if any deficiency is found in the stamp duty offered at the time of registration, the same may be separately determined.

8. Consequently, the Collector or the Officer authorised to take a decision under Section 31 is under an obligation to determine the duty chargeable on the instrument by a clear and reasoned order.

9. In our opinion, the impugned order passed by the Addl. District Magistrate is not only unclear but it also does not disclose any reason or specify the duty which is chargeable on the instrument that is proposed for being registered by the petitioners.

10. Accordingly, the writ petition deserves to be allowed. The writ petition is allowed. The order dated 17.03.2017 passed by the Respondent No.3/the Addl. District Magistrate (Finance and Revenue) District - Unnao is quashed. The Addl. District Magistrate/Respondent No.3 is directed to pass a fresh order in the light of the observations made hereinabove within three weeks of the date of production of certified copy of this order.

11. The writ petition is allowed with the aforesaid observations and directions.