

(2017) 02 MP CK 0100

MADHYA PRADESH HIGH COURT

Case No: 15900 of 2011

D. K. Construction

APPELLANT

Vs

State of Madhya Pradesh.

RESPONDENT

Date of Decision: Feb. 6, 2017

Hon'ble Judges: Sanjay Yadav

Bench: Single Bench

Advocate: Priyankush Jain, A.P. Singh

Judgement

1. Issue which arises for consideration is whether the Authority viz. Collector of Stamp and the Appellate Authority viz. Board of Revenue are justified in holding that the General Power of Attorney executed by respondents No.3 and 4 in favour of petitioner in respect of land bearing Khasra No.63/5/1/3, 63/5/2, 63/5/1/1, 63/5/1/2, 63/4/1 comprising 1.98 acres and Khasra No.66/1/3 comprising 0.12 acre, aggregating 2.10 acres, situated at Village Chuna Bhatti, Tahsil Huzur District Bhopal, contains element of transfer attracting stamp duty applicable to conveyance.

2. The General Power of Attorney in question which was executed and registered on 15.3.2002 besides being irrevocable (Clause 16 stipulates that "this Power of Attorney shall be irrevocable and we shall not revoke it in any manner whatsoever and if we do any act contrary to this power of attorney the same shall be null and void and ineffective against us"), also contained Clause 8, which is in the following terms : "8. To enter into agreement of sale/booking of the portions of the share of M/s D.K. Constructions in terms of agreement of the said project and/or shops/offices to be constructed with prospective purchasers and to receive the sale consideration in part or in full in his name and to execute and sign on its behalf the necessary agreement of sale and the conveyance deed in favour of the purchaser subject to the provisions of M.P. Prakoshtha Swamitva Adhiniyam, 1976 and to

present the same for registration propose in the office of SubRegistrar, Bhopal and to admit and acknowledge the execution of the same and receipt of sale consideration as having been received by the firm, D.K. Construction."

3. Being trite it is that it is the contents/recitals and not the form of an instrument which is relevant to attract the stamp duty (Please see : Omprakash vs Laxminarayan (2014) 1 SCC 618 wherein it is held that "if in a document certain recitals are made then the Court would decide the admissibility of the document on the strength of such recitals and not otherwise"), the Collector of Stamp in purported exercise of the power under Article 48-B of the Stamp Act, 1899, initiated an action for imposition of duty in consonance with Article 48(f-1) of Schedule 1-A and passed the following order : - "VERNACULR MATTER OMITTED"

4. Petitioner challenged the order before the Board of Revenue, which affirmed the order passed by Collector of Stamp, by its order-dated 28.4.2010 which is being challenged vide this petition.

5. It is contended that the Revenue Authority i.e. Collector of Stamp did not afford an opportunity of hearing. The contentions are belied from the findings in paragraph 7.1 of the Board of Revenue that :

"VERNACULR MATTER OMITTED"

6. The petitioner has not commended to any cogent material to establish that these findings are perverse. The petitioner was thus given ample opportunity of hearing, but despite notice and opportunity to lead evidence, petitioner chose to remain ex parte. Thus, it is the petitioner who has to blame himself for not availing the opportunity.

7. Next contention that the Revenue Authority has misconstrued the terms of Power of Attorney and the provisions contained under Article 48(f-1) of Schedule 1-A of the Stamp Act, 1899. The said clause was brought in vogue vide Section 3 of the M.P. 1997 Act in amendment in the 1899 Act, as under : "3. Amendment of Schedule I-A. - In Schedule 1-A of the Principal Act, in Article 48, - (i) For clause (f), the following clauses shall be substituted, namely :- (f) when given for consideration and authorising the attorney to sell or transfer any immovable property. The same duty as a conveyance under Article 23 on the market value of the property. (f-1) when given without consideration in favour of persons who are not his or her spouse or Children, or mother or father and authorising the attorney to sell or transfer any immovable property The same duty as a conveyance under Article 23 on the market value of the property. (ii) the existing explanation shall be renumbered as

explanation I thereof and after explanation I as so renumbered, the following explanation shall be inserted, namely :- "Explanation II :- Where under clause (f) and (f-1) duty has been paid on the power of attorney and a conveyance relating to that property is executed in pursuance of power of attorney between the executant of power of attorney and the person in whose favour it is executed, the duty on conveyance shall be the duty calculated on the market value of the property reduced by duty paid on the power of attorney". The Objects and Reasons for the above amendment were to check the tendency to execute power of attorney authorising the attorney to sell or transfer immovable property in place of a conveyance deed and to increase the revenue of the Government in the State of Madhya Pradesh.

8. Article 48 in the 1899 Act as amended by M.P. 1997 Act was substituted by M.P. 2002 Act. The new provision, Article 45 in respect of power of attorney in Schedule 1-A which was brought in by M.P. 2002 Act reads as follows : "SCHEDULE-1A Stamp Duty on Instruments (See section 3) Description of Instrument Proper Stamp Duty (1) (2) 45. Power of attorney [as defined by section 2(21)] not being a proxy :- (a) when authorising one person or more to act in single transaction, including a power of attorney executed for procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents; Fifty rupees (b) when authorising one person to act in more than one transaction or generally; or not more than ten persons to act jointly or severally in more than one transaction or generally; One hundred rupees. (c) when given for consideration and authorising the agent to sell any immovable property. The same duty as a conveyance (No. 22) on the market value of the property. (d) when given without consideration to a person other than the father, mother, wife or husband, son or daughter, brother or sister in relation to the executant and authorising such person to sell immovable property situated in Madhya Pradesh. Two percent on the market value of the property which is the subject matter of power of attorney. (e) In any other case; Fifty rupees for each person authorized. Explanation-I. - For the purpose of this article, more persons than one when belonging to the same firm shall be deemed to be one person. Explanation-II. - The term "registration" includes every operation incidental to registration under the Registration Act, 1908 (16 of 1908)."

9. In *Government of Andhra Pradesh vs P. Laxmi Devi (2008) 4 SCC 720*, it has been held : "19. It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly. As often said, there is no equity in a tax vide *Commissioner of Income Tax v. Firm Muar, AIR 1965 SC 1216* . If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute. Hence the High Court fell in error in trying to go by the supposed object and intendment of the Stamp Act, and by seeking to find out the hardship which will be caused to a party by the impugned amendment of

1998."

10. In the case at hand, Clause 8 of the General Power of Attorney, in clear terms, empowers the agent not only to enter into agreement of sale but also to receive the sale consideration. The term leaves no iota of doubt that the General Power of Attorney was executed for consideration, therefore, the Attorney was empowered to retain the consideration. Even otherwise, as per Clause (f-1) (supra), if the Power of Attorney when given without consideration in favour of persons who are not his or her spouse or children, or mother or father and authorising the attorney to sell or transfer any immovable property, it attracts the same duty as a conveyance under Article 23 on the market value of the property.

11. Taking any view of the matter, when the impugned order is adjudged on the above analysis, the same cannot be faulted with.

12. Consequently, petition fails and is dismissed. No costs.