

(2013) 12 CAL CK 0005

Calcutta High Court

Case No: C.O. No. 3282 of 2013

Noble Trexim Pvt. Ltd.

APPELLANT

Vs

Smt. Basabi Dutta Chowdhury
and Others

RESPONDENT

Date of Decision: Dec. 9, 2013

Acts Referred:

- Stamp Act, 1989 - Article 5(f)

Citation: (2014) 2 CHN 654

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Jay Saha and Mr. Asish Chakraborty, for the Appellant; Probal Kumar Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the plaintiff and is directed against the Order No. 85 dated August 22, 2013 passed by the learned Civil Judge (Senior Division), 1st Court, Alipore in Title Suit No. 38 of 2007 thereby disposing of two applications, one filed by the plaintiff and another by the defendant, wherein the plaintiff has been directed to deposit the assessed stamp duty of Rs. 78,75,063/- as per assessment of the stamp duty and penalty by the Collector. In a suit, on the basis of a development agreement relating to an immovable property, the question of valuation of the suit property and the payment of stamp duty and the penalty thereon arose. The matter come up before this Court and by an order dated September 26, 2011 in C.O. No. 3163 of 2011, this Hon'ble Court directed for re-assessment of the valuation to be made for the purpose of the stamp duty payable together with penalty for impounding a deed. Thereafter, the learned Trial Judge referred the matter to the Collector for determination of valuation, and he submitted the market value of the property to the tune of Rs. 11,24,86,620/-. The stamp duty chargeable thereon

comes to Rs. 78,74,063/- and the penalty thereon has been determined at Rs. 1,000/- and thus, the total amount payable for impounding is to the tune of Rs. 78,75,063/- and this is apparent from Annexure-P/3 at page no. 52. The defendant has filed an application for a direction upon the plaintiff to pay such stamp duty and penalty and the plaintiff has filed an application for rejection of the report of the Collector. On the basis of such assessment, the learned Trial Judge passed the impugned order directing the plaintiff to deposit the said duty along with the penalty. Both the applications have been disposed of accordingly by the impugned order. Being aggrieved, this application has been filed.

2. Now, the question is whether the impugned order should be sustained.

3. Upon hearing the learned Advocates of both the sides and on perusal of the materials on record, I find that in order to shortcut the matter to come to a decision over the matter in dispute, it may be recorded herein that by the order dated September 26, 2011 in C.O. No. 3163 of 2011, one of the learned Judges of this Hon'ble Court has directed as follows in the matter:-

In the result, the order impugned stands set aside. The learned Judge is once again requested to act in terms of the earlier order dated May 19, 2011. The parties shall be liberty to present documents before the learned Judge to enable him arrive at the correct figures. Once the stamp duty payable together with penalty is assessed in accordance with law, the petitioner may proceed to act in terms of the order to be passed by the learned Judge and in such event, the instruments in question shall be admitted in evidence and follow-up action shall be taken by the learned Judge in terms of Section 38 of the Act. In the event the learned Judge is unable to assess the amount of stamp duty and the penalty payable by the petitioner or if the petitioner disputes the assessment once again, the learned Judge shall refer the matter to the Collector for appropriate decision in accordance with law.

4. Upon receiving such a direction, the learned Trial Judge himself did not decide anything but he referred the matter to the Collector, who assessed the stamp duty and the penalty payable by the plaintiff/petitioner herein to the tune as indicated above.

5. Thus, I find from the aforesaid facts and circumstances that the first part of the order passed by this Hon'ble Court has not been followed by the learned Trial Judge. The parties were given liberty to present documents before the learned Trial Judge to enable him to arrive at a correct figure. This has not been followed by the Trial Judge. When the matter was sent to the Collector, he assessed the stamp duty and the penalty to be paid by the petitioner to the tune as recorded above.

6. It is pertinent to mention that when the matter was sent to the Collector, the petitioner sent a representation to the Collector indicating that he might be permitted to present his contention as to the valuation and that the valuation should be assessed as per amended provisions of the Indian Stamp Act as

applicable by the amendment by West Bengal vide Annexure-P/2 at page no. 47. But, such submission of the petitioner was not attended to by the Collector at all. No document has been called for by him but assessment has been done in his own way by the Collector.

7. As the said assessment is not in compliance with the directions of this Hon"ble Court passed in the aforesaid civil revision, in my view, the said report submitted by the Collector cannot be accepted.

8. Moreover, the agreement between the owner and the promoter had taken place in the year 2005 and if the valuation is to be assessed by the Collector independently, he must take into consideration the valuation of the land when the agreement was held and not at the present market value. So, the Collector having not followed the directions of the Hon"ble Court, in my view, the impugned findings cannot be supported at all. The learned Trial Judge has also failed to adhere to the directions given by the learned Judge of this Hon"ble Court.

9. It is also pertinent to mention that as per amendment of the Indian Stamp Act, 1989 as applicable in West Bengal, the Articles of 5(f) and 48(g) of Schedule 1A of the Stamp Act as applicable in the State of West Bengal are to be followed in the matter of assessment of the Stamp Duty and the penalty. But, these provisions have not also been followed while assessing the stamp duty and the penalty by the Collector.

10. In that view of the matter, the impugned order cannot be sustained. The learned Trial Judge has passed the impugned order illegally and material irregularity in accepting the assessment as forwarded by the concerned Collector, South 24 Parganas.

11. The application, therefore, succeeds and is allowed. The impugned order is hereby set aside.

12. The learned Trial Judge is directed to assess the stamp duty as well as the penalty to be paid by the plaintiff/petitioner herein afresh in the manner as laid down in Articles 5(f) & 48(g) of Schedule 1A of the Stamp Act as applicable in the State of West Bengal, keeping in view the orders dated September 26, 2011 passed by this Hon"ble Court in C.O. No. 3163 of 2011 and also the above observations. Such exercises must be done by the learned Trial Judge within a period of 3 months from the date of communication of this order. Thereafter, he shall proceed with the suit in accordance with law.

13. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.