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Calcutta High Court

Case No: C.O. No. 2313 of 1999

Anjali Sadhukhan	APPELLANT
Vs	
Collector (Registration Cells)	RESPONDENT

Date of Decision: Aug. 7, 2001

Acts Referred:

- Stamp Act, 1899 - Section 3, 47A, 47A(2), 47A(3)
- West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 1994 - Rule 1

Citation: 106 CWN 366 : (2002) 1 ILR (Cal) 87

Hon'ble Judges: Malay Kumar Basu, J

Bench: Single Bench

Advocate: Jiban Platan Chatterjee, S. Khandakar and S. Haque, for the Appellant;Swapan Kumar Mukherjee and Partha Pratim Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

Malay Kumar Basu, J.
This revisional application is directed against the order dated July 16, 1999 passed by the learned Divisional Commissioner, Presidency Division in Appeal Case No. 49 of 1997-1998 under which he set aside the order of collector dated June 1, 1998. The learned Collector by his above order directed the revisional applicant who was the Petitioner-vendee before the learned Collector to pay penalty to the extent of Rs. 1,20,000.00 plus a sum of Rs. 8,000.00 as deficit stamp duty after rejecting his prayer for an order allowing him to pay the difference in stamp duty of Rs. 8,000. Op arising out of the fact that he had got his property situated in West Bengal registered at Bombay by paying the stamp duty which fell short of the stamp duty payable in West Bengal by Rs. 8,000.00. This was in view of an amendment of the first provision of Section 3 of this Indian Stamp Act under which it was provided that any document relating to properties situated in West Bengal but executed outside West Bengal the stamp duty found to be short-paid was to be paid by that vendee to the Collector concerned of the State of West

Bengal within three months of the receipt of such documents in West Bengal in order to ensure the validity of that document in the eye of law and to avoid penalty that may be imposed after detection of such instrument at any subsequent stage. In the present case the revisional applicant having seen the notification in the newspaper to the above effect after the registration of the deed in respect of the purchased property in West Bengal was completed, rushed to the competent collector of West Bengal with a prayer for accepting the difference in stamp duty which was found to be falling short. The learned Collector passed the impugned order dated June 1, 1998 imposing a penalty to the extent of Rs. 1,20,000.00 that is, at the rate of ten times of the total stamp duty payable in West Bengal. The applicant-vendee then moved against that order of the learned Collector before the learned Commissioner Presidency Division but learned Commissioner after reversing the said order directed that the learned ""Collector should hear the matter again on the question whether there had been any under-valuation of the property in question and after determining the correct market value of the property he shoul4 give necessary direction upon the vendee to make payment of the amount due as found by him and he has remanded the matter to the Collector with such a direction.

2. Being aggrieved by that order the vendee-applicant has preferred this revisional application challenging the same as illegal, erroneous and unsustainable. Mr. Chatterjee, learned Advocate appearing on behalf of the applicant has contended that the learned Collector as well as the learned Commissioner fell into error by passing such orders. According to him the learned Collector could not impose any penalty in view of the admitted position that the Petitioner-vendee approached him for accepting the additional stamp duty which had been short-paid as a result of the registration having been done at Bombay and since the applicant was within the prescribed time limit of three months from the dale on which the registered deed in question became available to (him, the Collector had no other alternative but to accept the offer; made by him and allow him to deposit balance amount of stamp duty. But, in stead, the learned Collector in violation of the clear provision of s; 3, first provisional (bb) has by his order imposed a penalty as aforementioned. Mr. Chatterjee, Learned Advocate, contends that when his client moved against that order of the learned Collector before learned Commissioner, Presidency Division, the latter also/failed to appreciate the correct position of law in this regard and directed the Collector to do something which under the law there was no scope for him to do. The learned Commissioner has opined that the Collector in such circumstances ought to have determined the market value of the property in question and thereafter to assess the stamp duty payable thereon and giving this direction to the learned Collector he has remanded the matter being .totally unmindful of the mandatory provisions of Section 47A of the Indian Stamp Act under which such a question; of determination of the market value of the property cannot be taken up by the Collector suo motu unless it is referred to by the registering authority to him. Here this basic pre-condition has not been fulfilled. The registering authority has not made any such reference and the proceeding was started on the basis of a petition filed by the applicant under the amended provision of Section 3, first proviso Clause (bb). Therefore it is very clear that the collector or for that

matter, the learned Commissioner could not have any scope for entering into the question of determining the market value of the property.

3. Mr. Mukherjee, learned Advocate for the opposite party has drawn my attention to the provision of Rule 1 of the West Bengal Stamp (Prevention of under Valuation of instruments) Rules 1994. According to this Rule the appellate authority has to decide whether or not the market value of any property "as determined in the order of the Collector" under Sub-Section 2 or Sub-Section 3 of Section 47A is correct or not. He contends that the learned Commissioner has passed his order in view, of this provision. But this contention is not acceptable. The learned Commissioner can pass an order under this Rule only when the learned Collector has given his verdict on such a question of market value of the property. In other words, such a question must be in issue before the learned Collector but this question was not at all in issue before him. No registering authority referred any such lapse in connection with the registration of any deed to the Collector or the "learned Commissioner. It was nobody"s case that the market value ,of the property was not correct. Under such circumstances the learned Commissioner had no scope under the provisions of the Indian Stamp Act to raise this point or call for its determination. The simple question which fell for determination in the proceeding before the learned Collector arising out of a petition filed by the applicant-vendee was whether his prayer for allowing him to deposit the balance stamp duty should be allowed or not. In view of the clear provisions of the amended Section 3 of the. Stamp Act as mentioned above no penalty would be imposed if the vendee offers to pay the amount of stamp duty found falling short within the prescribed time limit. The hands of the Learned Collector were tied and he could not impose any such penalty as has been directed to be paid by the vendee in the impugned order of the learned Collector. Therefore, there is no doubt that the learned Collector passed his order dated June 1, 1998 erroneously in ignorance or disregard of the amended provisions of Section 3 of the Stamp Act and the impugned order of the learned Commissioner also Clearly suffers from error of the same kind in view of the reasons discussed above.

4. in the result the impugned order is set aside and the revisional application stands allowed. The learned Collector is hereby directed to realize the defect stamp duty amounting to Rs. 8,000.00 (Eight thousand only) from the Petitioner and pass necessary order regularizing the registered deed in question.