

2013 (6) AWC 6435 (SC)

(SUPREME COURT)
K. S. Radhakrishnan and A. K. Sikri, JJ.
Civil Appeal No. 6619 of 2013 with several other C.A. Nos.
Decided on August 8, 2013

Tirupati Developers Versus State of Uttarakhand and others
--

Stamp Act, 1899—Sections 33, 38 and 47A—Stamp duty—Deficiency—Eleven agreements for sale executed in favour of appellant/petitioner—Stamp duty paid on these documents—Deficient—Deputy Registrar concerned impounded all these documents and directed appellant/petitioner to make up for deficit stamp duty alongwith penalty imposed and interest—Deputy Registrar rightly impounded documents and sent for adjudication—Courts below rightly held that subject-matter of documents fell under Section 33 and not under Section 47A—Subsequent conduct of parties in cancelling agreements for sale—Cannot be reason for not taking action under Section 33/38—Action necessitated when documents produced before Deputy Registrar and he found same to be deficient—Subsequent cancellation of agreements for sale would be of no avail—Stamp duty payable reduced by High Court—Likewise High Court also set aside order of Assistant Commissioner (Stamps) in so far as interest payment was imposed upon appellant/petitioner—Even High Court reduced penalty to 15% of deficit stamp duty, thereby giving sufficient succour to appellant/petitioner—No further relief can be granted to appellant.

[Paras 2, 3, 12, 14 and 16 to 18]

The stamp duty is payable on 50% of the value of consideration of the sale agreement. As per this, in the

illustrative case, where the total consideration was ₹ 24,70,000, stamp duty was to be calculated on ₹ 12,35,000. Instead the appellant had paid stamp duty of ₹ 10,000 only. It is manifest, therefore, that the stamp duty paid on the document was deficient which was rightly impounded by the Deputy Registrar and sent for adjudication. In fact, this legal position was even conceded to by the appellant before the High Court.

[Para 12]

The main argument of the petitioner/appellant before the High Court was that at the relevant time the stamp duty was payable at the rate of ₹ 80 per thousand whereas the Assistant Commissioner (Stamps) had calculated the same at the rate of ₹ 125 per thousand. This argument has been accepted by the High Court whereby stamp duty payable is reduced and relief to that extent has already been given. Likewise the High Court has also set aside the order of the Assistant Commissioner (Stamps) in so far as the interest payment was imposed upon the appellant. Even the penalty is reduced to 15 percent only.

[Para 16]

Last attempt of the appellant was that no adjudication was permissible at all because of the reason that these agreements for sale were subsequently cancelled, that too within two months of the execution thereof. The subsequent conduct of the parties in cancelling the agreements cannot be a reason for not taking action under Section 33/38 of the Act. That action was necessitated when the documents were produced before the Dy. Registrar and he found the same to be deficient. The subsequent cancellation would be of no avail. In any case, keeping in view this aspect the High Court reduced the penalty to 15 percent of the deficit stamp duty, thereby giving sufficient succour to the appellant.

[Para 17]

No further relief can be granted to the appellant.

[Para 18]

Judgment and order dated 29.9.2011 of High Court of Uttarakhand at Nainital in Writ Petition (M/S) No. 2068 of 2011. affirmed.

JUDGMENT

A. K. Sikri, J.—Leave granted.

2. Eleven Agreements for sale were executed in favour of the petitioner herein. In each of these agreements a part of land comprising area 0.385 Hectare, falling in khasra No. 25 situated in village Mahua Kheda, Tehsil Kashipur, Udham Singh Nagar, Uttarakhand was sought to be purchased by the petitioner. The petitioner had also paid earnest money of varying amounts against the total consideration which are agreed to in each of the agreements. For example, in one agreement dated 4.12.2007, total consideration mentioned was ₹ 24,70,000 and at the time of signing the agreement for sale, an advance amount of ₹ 6,15,000 was paid. A sum of ₹ 10,000 was paid as stamp duty on this deed of Agreement of Sale. In a similar manner, other 10 agreements were also presented for registration, paying a sum of ₹ 10,000 as stamp duty on each of them.

3. The Deputy Registrar concerned impounded all these documents as he felt that the documents were not sufficiently stamped. Matter was referred by him to the Assistant Commissioner (Stamp and Registration) for adjudication of proper stamp duty and to recover deficit stamp duty from the petitioner. Notices were issued to the petitioner by the Assistant Commissioner (Stamp and Registration) and an enquiry was conducted. After receiving his objections, the Assistant Commissioner (Stamp and Registration) passed the orders holding that the stamp duty paid on these documents was deficient. In each of the cases, he directed the petitioner to make up for the deficit stamp duty alongwith penalty imposed as well as interest. For example, in respect of, document, illustrated

above, the petitioner was called upon to pay ₹ 1,44,375 as deficient stamp duty and ₹ 70,000 as penalty with interest. Similar orders were passed in other ten cases.

4. Challenging these orders, the petitioner preferred revision petition before the Additional Commissioner, Kumaon Mandal, Nainital which was, however, dismissed by an order dated 10.3.2011. That order was challenged by filing writ petitions in the High Court of Uttarakhand, Nainital which have met the same fate in so far as an issue regarding deficient stamp duty is concerned. However, partial relief is given to the petitioner modifying the orders of Deputy Registrar, inasmuch as deficient stamp duty is worked out at ₹ 88,800 and not ₹ 1,44,375. On this amount reduced penalty of 15% is imposed. i.e., ₹ 13,320.

5. Similar corrections are made in other writ petitions in so far as exact quantum of deficit stamp duty is concerned and the writ petitions are allowed partly to this extent.

6. Undeterred and unsatisfied with the aforesaid outcome, present special leave petitions are filed invoking extraordinary jurisdiction under Article 136 of the Constitution of India, impugning the aforesaid verdict dated 29th September, 2011 of the High Court of Uttarakhand, Nainital.

7. Operative portion of the impugned order reads as under :

"Considering the peculiar facts and circumstances of the case that the agreement for sale had been cancelled within a period of two months from the date of execution of agreement for sale coupled with the fact that no opportunity of hearing was afforded to the petitioner on the point of imposition of penalty, this Court is of the opinion that to meet the ends of justice, penalty be imposed at the rate of 15 percent of the deficit stamp duty. This order shall not be treated as a precedent for other cases".

8. Ms. Vibha Datta Makhija, learned counsel who appeared on behalf of the petitioner in all these cases, referred to the provisions of Section 2, Section 3 and Section 10 of the Indian Stamp Act, 1899 (hereinafter to be referred as the Stamp Act), on the basis of which her submission was that at the time of agreement to sale, stamp duty is not payable at all. She, further argued that in the instant cases, the Assistant Commissioner (Stamps) had adjudicated the matter under Section 33/38 of the Act which was clearly illegal as these provisions were not applicable and instead, the case should have been dealt with under Section 47A of the Stamp Act.

9. In so far as first argument of the petitioner's counsel is concerned, on the reading of the aforesaid provisions of the Indian Stamp Act to which our attention was brought, one would get an impression that there is some merit in the said submission. However, this argument ignores that there is a State amendment thereto and applicability of this provision demolishes the aforesaid plea comprehensively.

10. Section 28 of the Stamp Act reads as under :

"28. *Direction as to duty in case of certain conveyances.*—(1) When any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect to such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by

any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration ; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the consideration paid by the sub-purchaser :

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(5) Where a sub-purchaser takes an actual conveyance of the

interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be

chargeable on a conveyance for the consideration obtained by such original seller or, where such duty would exceed five rupees, with duty of five persons."

11. The aforesaid provision has to be read with Article 5 (b-1) of Schedule 1B of the Indian Stamps Act, as applicable to the State of Uttarakhand, which is as under :

Description of Instrument	Proper Stamp Duty
<p>(b) If relating to the sale of an immovable property where possession is not admitted to have been delivered nor is agreed to be delivered nor is agreed to be delivered without executing the conveyance :</p> <p><i>Provided that when conveyance in pursuance of such agreement is executed, the duty paid under this clause in excess of the duty payable under Clause (c) shall be adjusted towards the duty payable on the conveyance."</i></p>	<p>The same duty as on conveyance [No. 23 Clause (a) on one half of the amount of consideration as set forth in the agreement.</p>

12. The conjoint reading of the aforesaid provisions would clearly depict that the stamp duty is payable on 50% of the value of consideration of the sale agreement. As per this, in the illustrative case chosen by us, where the total consideration was ₹ 24,70,000, stamp duty was to be calculated on ₹ 12,35,000. Instead the appellant had paid stamp duty of ₹ 10,000 only. It is manifest, therefore, that the stamp duty paid on the document was deficient which was rightly impounded by the Deputy Registrar and sent for adjudication. In fact, this legal position was even conceded to by the appellant before the High Court which has been recorded in the impugned judgment as follows :

"It is admitted to both the parties that the petitioner is liable to pay the stamp duty, which is payable on 50 percent of the valuation of the sale consideration on the date of execution of the agreement for sale".

13. In so far as second argument predicated on, Section 47A of the

Stamp Act is concerned, we find no substance therein. Section 33 of the Act, which was invoked in the present case reads as under :

"Every person having by law or consent of parties authority to receive evidence and every person in-charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion with duty is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same".

14. As per the aforesaid provisions, every person having, by law or consent of parties authority to receive the evidence or every person in-charge of a public office is duty bound to impound the instrument when produced before him, and he finds that such an instrument is not duly stamped. The agreements in question were presented before the Deputy Registrar for registration who felt that the stamp duty on these documents was deficient. Therefore, it

is rightly held by the courts below that the subject-matter of the documents fell under Section 33 of the Act and not under Section 47A of the Act.

15. Presumably, knowing this legal position, this argument was, though, taken before the Assistant Commissioner (Stamps) and was not, thereafter, pressed before the High Court.

16. The main argument of the petitioner before the High Court was that at the relevant time the stamp duty was payable at the rate of ₹ 80 per thousand whereas the Assistant Commissioner (Stamps) had calculated the same at the rate of ₹ 125 per thousand. As mentioned above, this argument has already been accepted by the High Court whereby stamp duty payable is reduced and relief to that extent has already been given. Likewise the High Court has also set aside the order of the Assistant Commissioner (Stamps) in so far as the interest payment was imposed upon the appellant. Even the penalty is reduced to 15 percent only.

17. Last attempt of Ms. Makhija was that no adjudication was permissible at all because of the reason that these agreements for sale were subsequently cancelled, that too within two months of the execution thereof. We are of the opinion that the subsequent conduct of the parties in cancelling the agreements cannot be a reason for not taking action under Section 33/38 of the Act. That action was necessitated when the documents were produced before the Dy. Registrar and he found the same to be deficient. The subsequent cancellation would be of no avail. In any case, keeping in view this aspect the High Court reduced the penalty to 15 percent of the deficit stamp duty, thereby giving sufficient succour to the appellant.

18. We are of the opinion that no further relief can be granted to the appellants. Thus, these appeals are dismissed as devoid of any merits.

19. No costs.