

Anguri Buildwell Private Limited vs State Of U.P And 2 Others on 3 March, 2025

Author: Piyush Agrawal

Bench: Piyush Agrawal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29272

Court No. - 2

Case :- WRIT - C No. - 675 of 2022

Petitioner :- Anguri Buildwell Private Limited

Respondent :- State Of U.P And 2 Others

Counsel for Petitioner :- Vishal Khandelwal

Counsel for Respondent :- C.S.C.

AND

Case :- WRIT - C No. - 400 of 2022

Petitioner :- Anguri Buildwell Private Limited

Respondent :- The Deputy Commissioner Stamp And 2 Others

Counsel for Petitioner :- Vishal Khandelwal

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

1. Heard Shri Vishal Khandelwal, learned counsel for the petitioner and Shri Siddharth Singh, learned Standing Counsel for the State - respondents.

2. Since learned counsel for the parties submit that the issues involved in these writ petitions are similar, therefore, the same are being decided by the common order. With the consent of the parties, Writ C No. 675 of 2022 is taken as a leading case for deciding the controversy involved in these writ petitions.

WRIT - C No. - 675 of 2022

3. The instant writ petition has been filed against the impugned order dated 27.11.2021 passed by the Deputy Commissioner, Stamp, Agra Division, Agra as well as the impugned orders dated 29.01.2020 and 24.07.2019 passed by the Additional District Magistrate (Finance & Revenue), Agra.

4. Learned counsel for the petitioner submits that on 08.06.2012, a sale deed was executed in favour of the petitioner, but at the time of submission of the sale deed for registration, the registering authority refused to register the sale deed on the ground of deficiency of stamp duty. Thereafter, on 22.11.2018, the sale deed of the petitioner was cancelled, against which an appeal was preferred, which is still pending.

5. He further submits that vide impugned order dated 24.07.2019, the Additional District Magistrate has imposed the deficiency of stamp duty, together with interest and penalty, against which the petitioner filed a restoration application on 24.01.2020, which was rejected vide impugned order dated 29.01.2020. Against the aforesaid orders, the petitioner preferred an appeal, which has been dismissed vide impugned order dated 27.11.2021.

6. Learned counsel for the petitioner further submits that the proceedings have wrongly been initiated against the petitioners as the provisions of section 47-A(1) of the Indian Stamp Act were complied with and therefore, the proceedings under section 47-A(1)(d) of the Indian Stamp Act are not applicable. He further submits that the Collector was required to return the instrument for presenting again after removing the deficiency of stamp duty as alleged, but the same was not returned to the petitioners and a perverse finding was recorded that the petitioners refused to pay the deficiency of stamp duty and therefore, neither section 47-A(1)(a) of the Act was complied with, nor section 47-A(1)(d) is applicable in the facts of the present case. He further submits that section 33 of the Stamp Act is not applicable as the petitioners presented the instrument for registration, which has been denied. It is not the case of the respondents that a photocopy of the instrument was presented before any of the authorities and therefore, no proceeding under section 33 of the Stamp Act can legally be initiated against the petitioners. He further submits that the proceeding under section 47-A of the Indian Stamp Act was initiated against the petitioner on the basis of the sale deed dated 08.06.2012, but the said sale deed had already been cancelled vide order dated 22.11.2018 and therefore, no question arises for initiating the present proceedings. He further submits that once the original sale deed was refused to be registered and directed to pay the deficit

of stamp duty, but the original was not returned for representing for registration. Therefore, the impugned proceedings cannot be said to be justified.

7. Per contra, learned Standing Counsel supports the impugned orders and submits that the deficiency of stamp duty was pointed out by the registering authority and after intimating the same, the petitioners refused to make the deficiency good. Once the petitioners refused to make the deficiency good, the proceedings against the petitioners are justified.

8. After hearing learned counsel for the parties, the Court has perused the record.

9. It is not in dispute that till date, the petitioners' instrument has not been registered. It is admitted that the petitioners presented the instrument for registration, but instead of registering the same, deficiency of stamp duty was pointed out and thereafter, the proceedings were initiated against the petitioners and recovery was sought to be made against them. The record shows that after determining the deficiency of stamp duty, the instrument was not returned to the petitioners for presenting again in accordance with section 23 of the Registration Act, 1908. It is also not on record that the petitioners, without removing the deficiency, had again represented the instrument for registration.

10. The petitioners, by way of supplementary affidavit (Annexure No. SA - 1) has brought on record the order dated 01.08.2012, in which it has been noted as follows:-

"???? ?????? ??? ???? ?????? ?? ?????? ??? ?????? ??? ??, ??? ?????? ??
????????????? ?????? ??? ???? ???? ?????????? ??? ?????? ??"

11. On perusal of the aforesaid noting by the concerned Officer only shows that the petitioners refused to make the deficiency good and the proceedings were initiated accordingly. In the said document, nowhere it has been mentioned that after detecting the deficiency of stamp duty, the instrument in question was returned to the petitioners and the petitioners again presented the instrument for registration. Once this vital fact is not in dispute, the proceedings cannot be justified.

12. For adjudicating the controversy, section 47-A(1)(a) & (d) of the Indian Stamp Act are quoted below:-

"Section 47-A(1)(a) If the market value of any property which is subject of any instrument, on which duty is chargeable on the market value of the property as set forth in such instrument is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908, shall, notwithstanding anything contained in the said Act, immediately after presentation of such instrument, and before accepting it for registration and taking any action under Section 52, of the said Act, require the person liable to pay stamp duty under Section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in its accordance with Section

23 of the Registration Act, 1908.

(b)

(c)

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in clause (a) and presents the instrument again for registration, the registering officer shall, before registering the instrument refer the same to the Collector for determination of market value of the property and the proper duty payable thereon."

13. Section 47-A(1)(a) of the Indian Stamp Act provides that when the instrument is presented for registration, if any, deficiency is found, the same is to be intimated to the party and the instrument is returned for presenting again in accordance with section 23 of the Registration Act, 1908. Section 47-A(1)(d) further provides that if the person does not remove the defect and again presents the instrument for registration, then the proceeding can be initiated for determining the market value of the property and proper stamp duty payable thereof.

14. In the case in hand, the instrument was presented for registration, in which deficiency of stamp duty was found, but the instrument was not returned as contemplated under section 47-A(1)(a) of the Indian Stamp Act. Further, once the instrument is not returned, the applicability of section 47-A(1)(d) of the Act will not come into play merely because a noting has been made that the petitioners refused to make deficiency good as referred to herein above. The respondents have utterly failed to specifically complied with section 47-A(1)(a) of the Indian Stamp Act for returning the instrument in question. No material has been brought on record to show that the instrument was returned after it was found deficient stamp duty and the petitioners, even thereafter, without making deficiency good, again represented the same. In absence of returning the instrument after deficiency was found, the proceedings under section 47-A(1) cannot be initiated against the petitioners.

15. In view of the facts & circumstances of the case stated above, the impugned orders passed in these writ petitions cannot be sustained in the eyes of law. The impugned orders passed by the authorities below in these writ petitions are hereby quashed.

16. The writ petitions are, accordingly, allowed.

17. The Authority concerned will be at liberty to proceed strictly in accordance with law after complying with the provisions of section 47-A(1)(a) of the Indian Stamp Act.

18. It is made clear that any amount already deposited by the petitioners pursuant to the impugned orders shall be returned to the petitioners within a period of two months from the date of production of a certified copy of this order.

Order Date :- 3.3.2025 Amit Mishra