

Rakesh Tekariwal vs Addl. Commissioner Admin.-I Devipatan ... on 2 January, 2025

Author: Manish Mathur

Bench: Manish Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?A.F.R.

Neutral Citation No. - 2025:AHC-LK0:53

Court No. - 19

Case :- WRIT - C No. - 3700 of 2019

Petitioner :- Rakesh Tekariwal

Respondent :- Addl. Commissioner Admin.-I Devipatan Division Gonda And Ors

Counsel for Petitioner :- Mayank Sinha,Girish Chandra Sinha

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Head Mr. G.C. Sinha learned counsel for petitioner and learned State Counsel for opposite parties.
2. Petition has been filed challenging order dated 5th August, 2016 passed under Section 33 of the Indian Stamp Act 1899 indicating deficiency in stamp duty and imposing penalty alongwith interest thereupon. Also under challenge is the revisional order dated 15th January, 2019 rejecting revision preferred by the petitioners.

3. Learned counsel for petitioner submits that the property in question alongwith three other properties were purchased by petitioner in an auction held by Allahabad Bank on 4th July, 2015 whereunder petitioner's bid being highest, was accepted whereafter a single sale deed dated 13th July, 2015 was executed in respect of all the four properties indicating the location, boundaries and area of all the four properties. It is submitted that with regard to property No.4, the sale deed indicated it as being located in gata No. 215/1289. It is also submitted that subsequent to execution of the aforesaid sale deed, the Allahabad Bank issued a notice dated 9th October, 2015 to the petitioner specifically indicating that due to a clerical mistake, the gata number was inadvertently indicated with regard to plot No.4 in the sale deed for which correction would be required. It is submitted that in pursuance of the aforesaid, a correction deed dated 17th October, 2015 was thereafter executed between the bank and the petitioner, which however is being taken by the opposite parties as a fresh sale deed instead of correction deed and has therefore been made chargeable to stamp duty as a fresh deed of conveyance.

4. Learned counsel submits that even in the memorandum of revision, a specific ground had been taken that since the subsequent deed dated 17th October, 2015 merely sought to delete the plot number without any amendment in the area or boundaries of the plot in question, the said deed would clearly come within definition of correction of a clerical mistake and can not be treated to be a fresh deed of conveyance and therefore deficiency in stamp duty has been wrongly imposed upon petitioner. Learned counsel has adverted judgments rendered by Co-ordinate Benches of this Court in the cases of M/s Kailash Mansarover Build Con. Pvt. Ltd. versus State of U.P. reported in AIR Online 2018 Allahabad 5175 and Meenu Pathak versus Revisional Authority/Dy. Commissioner, Stamp and others reported in AIR 2017 Allahabad 132.

5. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner with submission that it would be evident from a perusal of the impugned orders that the deed dated 17th October, 2015 has correctly been indicated as a fresh deed of conveyance on which insufficient stamp duty has been indicated and therefore imposed. It is submitted that with regard to plot No.4 indicated in the sale deed dated 13th July, 2015, the gata number has been specifically indicated in the sale deed not for the first time but the same was also indicated in the auction notice and the sale certificate issued in favour of petitioner. It is further submitted that a complete deletion of the gata number in the earlier sale deed can not be deemed to be a mere correction since it would indicate rights having been created over the property in question due to deletion of such gata number, particularly when the aforesaid gata number had earlier also been indicated not only in the auction notice but also in the sale certificate duly signed and issued by the Allahabad Bank. It has been submitted that due to the said fact, the execution of subsequent deed terming it to be a correction deed is against provisions of Section 14 and 15 of the Stamp Act as well as Clause 18 of the Appendix 1(B) of the Schedule to the Act and therefore also it would not come within category of a corrigendum under Clause 34(A) of the Appendix 1(B) of the Act.

6. It has also been submitted that the aforesaid gata No. 215/1289 is in fact in the name of guarantor Mr. Samay Prasad Mishra who is the progeny of the mortgagors towards the guarantee of loan and therefore it is submitted that by virtue of deletion of the gata number, the property would in fact revert to the guarantors, which therefore would indicate fresh transfer of interest on the property

and therefore has been rightly adjudicated as fresh deed of conveyance and not deed of correction.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record the following question requires adjudication:-

Whether the deed dated 17th October, 2015 can be considered to be a corrigendum or a fresh deed of conveyance?

8. With regard to aforesaid question, it is evident from the record that after execution of the sale deed dated 13th July, 2015 in pursuance of public auction in favour of petitioner, the bank issued a letter dated 9th October, 2015 to the petitioner indicating the fact that with regard to plot No.4, the gata No. 215/1289 against the said plot was inadvertently indicated and requires correction. In pursuance of the aforesaid letter, the deed dated 17th October, 2015 has been executed between the bank and the petitioner indicating it to be a corrigendum. The said deed specifically states that with regard to plot No.4 as indicated in the sale deed dated 13th July, 2015, the gata number has been inadvertently mentioned and would require to be ignored. The deed further states that the corrigendum would not have any effect on the valuation of property since the area and boundaries of the plot have been correctly indicated in the sale deed dated 13th July, 2015.

9. A perusal of the impugned orders would make it evident that subsequent deed dated 17th October, 2015 has been considered as a fresh deed of conveyance on the ground that deletion of a gata number can not be construed as a mistake particularly when the aforesaid gata number was clearly mentioned in the sale certificate issued by the bank earlier. The orders impugned also indicate the fact that there is no provision under the Indian Stamp Act for deletion or addition of gata numbers of plots which are the basis of the instrument of transfer and furthermore that by means of the deed dated 17th October, 2015, the effect thereof would be that the aforesaid gata number indicated in various documents would also required to be ignored, which is against provisions of Indian Stamp Act.

10. Apart from the reasons indicated in the impugned order, the counter affidavit filed by opposite parties have also adverted to provisions of Sections 14 and 15 of the Act as well as Clause 18 of the Appendix 1-B of the Act.

11. With regard to aforesaid, it is evident that the term conveyance has been defined in Section 2(10) of the Act in the following manner:-

"2(10) "Conveyance".-" conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for [by Schedule I, Schedule I-A or Schedule I-B], [as the case may be];"

12. Furthermore the term instrument has been defined under Section 2(14) of the Act in the following manner:-

"2(14) Instrument.- "instrument" includes every document and record created or maintained in or by an electronic storage and retrieval device or media by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;"

13. A conjoint appreciation of the aforesaid two provisions would clearly give the meaning of word 'an instrument of conveyance' and would include all such deeds which purport to create, transfer, limit, extend or extinguish any right or liability over the property whether movable or immovable and which is not otherwise specifically provided for.

14. Article 18 read with Article 23 of the Schedule 1(B) of the Act indicates certificate of sale and conveyance and proper stamp duty imposable thereupon. The aforesaid Articles are clearly relatable to Sections 2(10) and 2(14) of the Act.

15. Upon appreciation of the aforesaid provisions, it can clearly be culled out that for a deed to be termed as a deed of conveyance, the same should indicate provisions in terms of a sale as indicated in Section 54 of the Transfer of Property Act as per which a sale is transfer of ownership in exchange for price paid or promised or part paid and part promised.

16. The aforesaid conspectus of provisions of the Transfer of Property Act read with relevant provisions of Stamp Act would make it evident that for a deed to come within definition of conveyance, transfer of rights and liabilities and interest upon the property indicated in the instrument is necessary.

17. Upon applicability of aforesaid provisions of the two Acts, it is evident from a perusal of the deed dated 17th October, 2015 that only effect of the deed is deletion or ignoring the gata No. 215/1289 against the plot No.4 defined in the sale deed dated 13th July, 2015.

18. It is also evident from the wordings of the deed that there is no concomitant change either in the area of property or even in the boundaries thereof. In such circumstances, it can not be held that the deed dated 17th October, 2015 would create any fresh interest or liability upon a new plot of land which would be separate from the earlier deed dated 13th July, 2015.

19. The provisions of Sections 14 and 15 of the Stamp Act pertain to the aspect that no second instrument chargeable with duty shall be written upon a piece of stamp paper upon which an instrument chargeable with duty has already been written and every such instrument written in contravention of Sections 13 and 14 of the Act would be deemed to be unstamped.

20. Section 14 of the Act by its very definition is inapplicable in the present facts and circumstances since the deed dated 17th October, 2015 by any stretch of imagination can not be construed to be a second instrument chargeable with duty upon a piece of stamped paper on which duty has already been written since it is primarily a corrigendum issued for correcting a mistake indicated in the first deed of conveyance.

21. In view of aforesaid facts and circumstances and provisions of the Act, it is quite evident that the deed dated 17th October, 2015 can not be construed to be a fresh deed of conveyance since it does not change either the description, boundaries or area of the plot in question nor does it create a fresh right, interest or liability over new plot.

22. The aforesaid aspects have also been considered by a Division Bench of this Court in *Basdeo Singh versus State of U.P. and others* 2004 All.L.J. 831 in which following has been held:-

"We are further of the view that an arithmetical mistake has to be taken to be a mistake of calculation and a clerical mistake has to be taken to be a mistake in writing or typing. A mistake requiring elaborate arguments on question of fact or law cannot be categorized as clerical or arithmetical mistake. The petitioner has sought to claim a right asserting that there was an error of decision. Such grievance could be raised only in a proceeding challenging the award after getting reference made as contemplated under section 18 of the Act and not in the proceedings under Section 13-A of the Act. The question of enhancement of the compensation as sought for in the present case has to be determined in the appropriate proceeding after the reference is made as contemplated under section 18 of the Land Acquisition Act."

23. Similarly in the case of *Meenu Pathak (supra)* a Co-ordinate Bench of this Court has placed reliance on another judgment rendered this Court in the case of *Vineeta Agarwal versus Additional Commissioner (Administration)* in the following manner:-

"7. The mistake in mentioning the plot number in the lease deed is purely a clerical error which has arisen due to inadvertence of the parties, specially the office of the Allahabad Development Authority. The said correction deed does not create any new rights in favour of the petitioner. The petitioner by the said two documents read together only gets right in plot no.D-393 and, therefore, is liable for payment of stamp duty only once.

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9. In view of the above, the aforesaid deed dated 7.2.2006 is a deed of correction and since it was necessitated on account of clerical mistake it would be chargeable to stamp duty under Article 34-A of Schedule 1-B of the Indian Stamp Act, 1899 and stamp duty of Rs.10/- alone shall be payable on it. The petitioner has already paid a stamp duty of Rs.100/- on the said deed."

It has thereafter been held that since the deed in question in the aforesaid writ petition did not create any new right, it was therefore construed to be a correction deed chargeable under Article 34-A of Schedule 1-B of the Act and therefore stamp duty of Rs.10/- only would be payable.

24. This Court is in respectful agreement with aforesaid proposition of law as enunciated.

25. So far as the aspect that the gata number had earlier also been indicated in the auction and sale certificate and therefore can not be construed as a mistake is concerned, the said aspect also has been delineated in the deed dated 17th October, 2015 in which it has been specifically indicated that even in the e-auction notice, there was no mention of gata number with regard to the plot in question. This aspect takes care of the reasoning indicated in the impugned orders which clearly are against material on records.

26. In view of aforesaid, the impugned orders dated 5th August, 2016 and 15th January, 2019 being against the provisions of law are hereby quashed by issuance a writ in the nature of Certiorari. Further a writ in the nature of Mandamus is issued commanding the opposite parties to refund any amount deposited by petitioner in pursuance of impugned orders forthwith to the petitioner.

27. Learned counsel for petitioner has emphasized that since an illegal recovery has been made from petitioner, he is entitled to interest thereupon. He has placed reliance on judgment of Co-ordinate Bench of this Court in the case of M/s Kailash Mansarover Build Con. Pvt. Ltd.(supra).

28. Upon perusal of the aforesaid judgment, it is evident that Co-ordinate Bench of this Court has issued a general Mandamus to the State Government and all concerned authorities to pay simple interest at the rate of 8% per annum on all amounts of refund of stamp duty etc. under the Act to the concerned person for the period from the date of deposit till the date of refund. A copy of the order was also sent to the Chief Secretary, Principal Secretary, Law and Principal Secretary, Tax and Registration for compliance. The relevant portion is as follows:-

"28. Hon'ble Supreme Court has also held in the case of Sandvic Asia Ltd. (Supra) that such a situation is discriminatory in nature and causes great prejudice to the lacs and lacs of the assesseees. In the case of Tata Chemicals Ltd. (Supra) Hon'ble Supreme Court observed that the Government, there being no express statutory provision for payment of interest on the refund of excess amount/ tax collected by the revenue; cannot shrug off its apparent obligation to reimburse the deductors lawful money with accrued interest for the period of undue retention of such monies. The State having received the money without right and having retained and used it, is bound to make the party good, just as an individual would be under the like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. In the case of Hari Chandra (Supra), this Court held in similar circumstances in stamp matter that payment of interest on the money retained by the State Government is necessary when the money is to be returned under the orders of the appellate or the revisional authority. It has not been shown by the respondents that the law laid down in this judgement has been reversed or modified. In this judgement, this Court directed for payment of interest @ 8 per cent per annum from the date of deposit of money till the date of actual payment.

29. In view of the above discussions, a general mandamus is also issued to the State Government and all concerned authorities to pay within three months simple interest @ 8 per cent annum on all amounts of refund of stamp duty etc. under the Act to the

concerned person, for the period from the date of deposit till the date of refund.

30. In result, writ petition succeeds and is allowed as indicated above.

31. Let a copy of this order be sent by the Registrar General of this Court to the Chief Secretary, Principal Secretary Law and Principal Secretary, Tax and Registration for compliance. "

29. In view of aforesaid judgment, a further writ in the nature of Mandamus is issued commanding the opposite parties to ensure payment of 8% per annum simple interest to petitioner on the amount of deposit made by petitioner in pursuance of impugned orders from the date of deposit till the date of refund. Such payment of interest and refund shall be ensured within a period of three months from the date a certified copy of this order is served upon the said authorities.

30. Resultantly the petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 2.1.2025 prabhat