

Court No. - 2

Case :- WRIT - C No. - 34742 of 2024

Petitioner :- M/S Srsd Buildcon Venture Llp

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Astha Misra, Avneesh Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

1. Heard Dr. Avneesh Tripathi, learned counsel for the petitioner and Sri Arvind Mishra, learned Standing Counsel for the State - respondents.

2. Learned counsel for the petitioner submits that the impugned notice has been issued in the grab of succumbing the order dated 02.07.2024 passed by the Division Bench of this Court in batch of petitions (leading Writ-C No. 6757 of 2024) and refers para no.s 14 & 15, which reads as under:-

*"14. Despite that Circular issued, it is a fact that the Sale Certificate issued in favour of the petitioners were not filed in Book-1. While we were inclined to impose heavy cost on the erring officers, we have been assured by learned Additional Chief Standing Counsel that appropriate enquiry would be made against the erring officials who may have failed to give effect to the Circular letter dated 5.3.2024 and we have been further assured that no exception would be made in present and in future in giving effect to the law declared by the Supreme Court in **Smt. Shanty Devi L. Singh (supra)**. Thus, we have been assured that in future, all Sale Certificate issued by the 'Revenue Officers' (as considered in **Smt. Shanty Devi L. Singh (supra)**) would be filed in Book I, without delay i.e. within 15 days from the receipt of a Sale Certificate by the concerned registering authority.*

15. In view of the facts noted above, we must observe that in case of any non-compliance of the above, the revenue authorities may remain exposed to heavy costs at their own risk in any litigation that may arise, hereafter. To that effect, we further require the Inspector General of Registration to issue necessary administrative instructions as may not allow any further fruitless litigation to arise, in similar facts."

3. In support of his submission, he has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **Shanti Devi L. Singh Vs. Tax Recovery Officer and Others, (190) SCC (Tax) 356** wherein the Hon'ble Apex Court has drawn the distinction in para no. 7, copy of which has been annexed in the instant writ petition, and refers para 11, which reads as under:-

"There are two provisions in the [Stamp Act](#) which provide for the adjudication of stamp duty. Under [s. 31](#), it is open to the executants of any document, at any stage but within the time limit set out in [s. 32](#), to produce a document before the Collector of Stamps and require him to adjudicate on the question whether the document should

bear any stamp duty. The Collector thereupon may adjudicate the stamp duty himself or refer the matter to the Chief Controlling Revenue Authority of the State. In turn, it is open to the Chief Controlling Revenue Authority to refer the matter to the High Court for an authoritative decision (Sections 32 and 56). This procedure could have been followed by the petitioners if they wished to seek an answer to the question whether the certificate of sale is liable to stamp duty but they have not done it and the time limit under [Section 32](#) has run out. The other provision that may become applicable is Section 33. Under this section, if any document (and this includes a certificate of sale) is presented to the Registrar for registration and the Registrar is of opinion that it is a document which should bear stamp duty but that it has not been stamped, it is his duty to impound the document and send it on to the Collector of Stamps for necessary adjudication (s. 38). This contingency has also not happened. The third contingency, also provided for in [Sections 33](#) is when a party wishes to rely upon the certificate of sale as a piece of evidence before a court or an authority entitled to take evidence. Such court or authority will also have to impound the document and shall not admit the same in evidence unless the stamp duty chargeable and the stipulated penalty are paid. This situation has not arisen so far but may arise at some time in future. It is unnecessary to anticipate the same and decide the issue. We shall therefore leave the issue of stamp duty to be adjudicated upon in the normal course, as and when found necessary, and express no views thereon at this stage."

4. He has further placed reliance upon the judgment of this Court in the case of ***M/s Eva Agro Feeds Private Limited Vs. State of U.P. and 3 others (Writ-C No 36746 of 2023)***, a copy of which has been annexed as Annexure No.12 to this writ petition.
5. He next submits that the present notice has been issued only to succumb the legal binding proposition of this Court as well as of Hon'ble Apex Court.
6. Sri Arvind Mishra, learned Standing Counsel raises a preliminary objection about the maintainability of the present writ petition and submits that it's a simple show cause notice to which the petitioner has efficacious alternative remedy to submit the reply to it and therefore the petition is not maintainable.
7. Rebutting to the said submission, Shri Tripathi has placed reliance upon the judgment of this Court passed in the case of ***Anupam Infrastructures & Land Development Pvt. Ltd. Vs. State of U.P. (Civil Misc. Writ Petition No. 49085 of 2002)*** and refers para nos.12, 13, 14, 16 & 17.
8. To buttress his submission, Sri Tripathi further submits that for taking action, reasons to believe must be recorded which is absent in the present notice.
9. He further referred para nos. 44 & 45 of the writ petition.
10. Sri Arvind Mishra, counsel appearing for the State could not rebut the said submission made by Shri Tripathi, counsel for the petitioner and submits that the stamp duty can be levied only after the passing of the order, but he could not satisfy the court's query as to why notice has been issued in spite of law laid down by the Court.

11. In view of the above, let the District Magistrate- Ghaziabad/respondent no.3 appear in person before this Court tomorrow i.e. 24.10.2024 at 10:00 A.M. along with the records to assist the Court.

12. List tomorrow i.e. **24.10.2024 at 10:00 A.M., as fresh.**

13. In the event, the District Magistrate, Ghaziabad/respondent no.3 does not appear before the Court tomorrow i.e. 24.10.2024 at 10:00 A.M., the Court will take a serious view in the matter.

14. Sri Arvind Mishra, Standing Counsel is directed to communicate about this order to the District Magistrate concerned today itself.

Order Date :- 23.10.2024

Pravesh Mishra