

Court No. - 4

Case :- WRIT - C No. - 4772 of 2022

Petitioner :- Yogendra Kumar Kushwaha

Respondent :- Collector And 2 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- C.S.C.

along with

Case :- WRIT - C No. - 1210 of 2022

Petitioner :- Amit Mittal

Respondent :- Collector , Agra And 2 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- C.S.C.

and

Case :- WRIT - C No. - 7030 of 2023

Petitioner :- Ashok Kumar Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ashok Kumar Tripathi

Counsel for Respondent :- C.S.C.

and

Case :- WRIT - C No. - 7032 of 2023

Petitioner :- Himanshu Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ashok Kumar Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri Vedant Agarwal, learned Advocate holding brief of Sri Rahul Agarwal, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. By means of this petition filed under Article 226 of the Constitution, petitioner has questioned the notice issued by the Collector/Collector Stamp, Agra under the Indian Stamp Act, 1899 taking recourse to the provisions contained under Section 47A(2) of the said Act acting upon a reference made to him by Sub-Registrar, Agra dated 01.05.2019.

3. It is contended that the deed of transfer of interest of compensation has been taken to be a deed of conveyance as to immovable property and interest therein within the meaning of Entry 23 of Schedule I of the Stamp Act to find the petitioner *prima facie* guilty evading requisite stamp duty.

4. Sri Vedant Agarwal has placed before the Court the relevant provisions as contained under Section 2(10) of the Stamp Act, 1899 which defines "conveyance" and submits that the legislature has intended the word and expression "transferred" to be a factor falling within the definition of conveyance and, therefore, he submits that since the deed in question was only a transfer of interest, therefore, it would not have fallen within the definition of conveyance.

5. In support of his submission, Mr. Agarwal has taken the Court to the deed itself executed on 07.02.2018 by the original tenure holders that very much records that after taking possession as a result of compulsory acquisition of the land, tenure holders have received their part of compensation under the award but being not satisfied they have raised reference which is pending consideration before the concerned Court/Tribunal and since it would have taken time to get it adjudicated, it was thought appropriate to transfer 35% of the enhanced compensation, if awarded by the reference court.

6. Mr. Agarwal submits that this clearly establishes that there has been no transfer of immovable property, nor could have been possibly because the possession of the land had already been taken by the Collector invoking his power vide Section 6 of the Erstwhile Land Acquisition Act, 1898 and thus, the State became the owner of the land.

7. In support of the above legal submission, learned Advocate has cited before the Court the judgment in the case of **Vikas Jain v. State of UP & ors being Writ-C No.12543 of 2022 and connected matters decided on 05.08.2024** in which a Co-ordinate Bench of this Court interpreting the similar deed of transfer has relied upon Full Bench judgment in the matter of **CCRA v. M/s Anti Biotic Project Virbhadra Rishikesh [1979 AIR (All.) 355]** in which the instrument of conveyance has been held to be necessarily entailing with it effective transfer of the immovable property. His Lordship has referred to another Co-ordinate Bench judgment of this Court in the case of **Prem Singh v. State of UP & ors [2013 (119) RD 557]** that had relied upon Full Bench judgement in M/s Anti Biotic's case (*supra*). He has also relied

upon a judgment of the Supreme Court in the case of *M/s Jethmull Bhojraj v. State of Bihar & ors [1972 (1) SCC 714]*.

8. Meeting the submissions advanced by Mr. Agarwal, learned Standing Counsel has only relied upon what has been pleaded in paragraphs 5 & 11 of the counter affidavit filed on behalf of the State respondents in which vide paragraph 5 it has been pleaded that assignment deed is to be treated as a conveyance deed as rights and interest in the property were conveyed and further allegations have been leveled against the petitioner that he has not stated as to the true nature of the property regarding chargeability of the stamp duty as provided under Section 27 read with provisions of Entry 23 of Schedule I of the Stamp Act. It is further pleaded in paragraph 11 that there has been no transfer of land between the co-sharers so as to attract the provisions as contained under Section 55 of the First Schedule. It is also stated that **Prem Singh's** case (*supra*) is not applicable here.

9. Having heard learned counsel for the respective parties and having perused the record, I find that the transfer deed clearly transfers interest in terms of compensation fully acknowledging that property had stood transferred and vested with State. Relevant recitals made in it are reproduced hereinunder:

"यह भी विदित हो कि फरीक अव्वल द्वारा लगाया गया उक्त संदर्भ प्रार्थना पत्र वर्ष 2001 में या न्यायालय जिला जज, आगरा के यहां भेज दिया गया था जो कि एल .ए. वाद सं० 807 वर्ष 2003 के रूप में वहां दर्ज रजिस्टर हुआ और तब से 15 वर्ष व्यतीत हो चुके हैं किन्तु अभी तक उक्त संदर्भ वाद निर्णित नहीं हो सका है और पता नहीं उसके निर्णय में कितना समय और लगे और हाईकोर्ट और सुप्रीम कोर्ट में भी मामले के अंतिम निर्णय में कितना समय लग जाये और कब तक हमको वास्तविक मुआवजा मिल पाये। यही नहीं हमारे द्वारा उक्त संदर्भ वाद की पैरवी मे भी अच्छा खासा खर्चा आ चुका है और अभी पता नहीं है कि कितना और पैसा हमें खर्च करना पड़ेगा और हमारे पास पैसे की भी तंगी है और पैरवी के लिये पर्याप्त समय नहीं है , इन सभी वजहों से फरीक अव्वल अपनी उक्त अर्जित भूमि के मुआवजा प्राप्त करने के अधिकारों में 35 प्रतिशत भाग के हक हकूकों को स्वेच्छा से बेचना चाहते हैं जिसके लिये उसने अनेक लोगों से बातचीत की किन्तु फरीक दायम के अतिरिक्त अन्य व्यक्ति खरीदने एवं वाजिब कीमत देने के लिये रजामंद नहीं हुआ। अतः फरीक अव्वल ने अपनी खूब राजी खुशी एवं अपने दोस्तों और रिश्तेदारों से सलाह मशविरा करने के बाद और अपना लाभ देखते हुये अपनी उक्त अर्जित भूमि के मुआवजा प्राप्त करने के समस्त अधिकारों व हक हकूकों में से 35 प्रतिशत हकूकों के मुआवजे को क्रेता के हक में बेचने के लिये अपना मन बाया। जो कि हर प्रकार से पाक व साफ है और विक्रय योग्य है।"

10. Upon bare reading of the aforesaid recitals, it is clearly deducible that what was transferred was only the interest of 35% of enhanced compensation. Neither any transfer of the immovable property was effected upon, nor could have been, nor there has

been any acknowledgement of any rights and title vested with the tenure holders in respect of the immovable property which was liable to be transferred under the deed of transfer.

11. In such circumstances, therefore, the legal principles as enunciated in the judgment of the Supreme Court are worth reliance. Vide paragraph 10 of the judgment in the case of **M/s Jethmull Bhojraj** (*supra*), it has been held thus:

"10. The next point that arises for decision is whether delivery of the lands notified for acquisition was taken under Section 17(1) as contended by the appellant. The Government becomes the owner of the lands notified for acquisition only when the Collector takes possession of those lands either under Section 16 or under Section 17(1). Both those provisions provide that when the Collector takes possession under those provisions, the lands notified for acquisitions shall vest absolutely in the Government free from all encumbrances. Until and unless possession is taken under either of those provisions, the lands notified for acquisition do not vest in the Government. Section 48(1) of the Act provides:

"Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken."

12. In view of the above, therefore, once the land has stood acquired under the compulsory land acquisition proceedings and possession thereof stood transferred as is the admitted position in the present case then the State becomes the owner of the land and, so there is no question of any further transfer of such land or even any interest therein by the original tenure holders.

13. With these principles in the background, if I look to the definition of conveyance then the only question arises is as to whether the transfer is notional one or effective physical one. So as to form a deed of transfer of conveyance, whether it is a notional or effective one, a deed of transfer must convey in its recital that the immovable property is being transferred to fall within the definition of conveyance, otherwise any interest of transfer arising out of a property which does not vest any right in the tenure holder such case would not fall within the definition of conveyance and will certainly go out of the mischief of Entry 23 of the Schedule-I of the Stamp Act. In **Vikas Jain's** case (*supra*), the Co-ordinate Bench of this Court has very exhaustively dealt with the issue. Vide paragraph 13 it has dealt with the definition of conveyance and clearly held that *"the term denotes an instrument in writing by which some title or interest is transferred from one person to another. It would appear from this definition that an actual transfer of property is an essential feature of a "conveyance"*.

14. In so far as pleading that has been raised in paragraph 5 of the counter affidavit that transfer of rights and interest in immovable property would amount to deed of conveyance, would certainly not be a case here because there was no transfer of immovable property as discussed above. The question of transfer between co-sharers was not in issue here in the present case as the deed of transfer of interest has already been held to be not the deed of conveyance within the meaning of Section 2(10) of the Act.

15. Thus, in my considered view, the definition interpreted by the Co-ordinate Bench of this Court suffers from no vice of error of law. I, therefore, find no good ground to take a different view.

16. In such circumstances, therefore, the case certainly did not fall for taking recourse to proceedings under the Stamp Act, 1899 so as to cause a notice under Section 47(A) of the said Act. The authority has clearly exceeded its jurisdiction in the matter in issuing notice in a case which did not fall within the domain of the provisions of the Act. Hence the notice impugned deserves to be quashed.

17. The writ petition succeeds and is ***allowed***. The notice issued by the Collector/Collector Stamp, Agra, dated 20.02.2020 as also the entire proceedings of the Stamp Case No.D201901010002891 is hereby quashed.

Order Date :- 20.9.2024

P Kesari