

Zestha Developers Ltd. Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : Dec-26-2008

Reported in : AIR2009Utr50

Judge : B.S. Verma, J.

Appellant : Zestha Developers Ltd.

Respondent : State of Uttarakhand

Disposition : Petition allowed

Judgement :

ORDER

B.S. Verma, J.

1. Learned Counsel for the petitioner files rejoinder affidavit. The same is taken on record.
2. Since the controversy involved in both the writ petitions is similar, therefore, for the sake of convenience, they are being heard and decided together by this common judgment.
3. Both the writ petitions have been preferred to issue a writ of certiorari quashing the impugned order dated 20-12-2007 passed by respondent No. 3 (Annexure No. 8 to each writ petition). Prayer for mandamus has also been made to direct the

respondent No. 3 to pass appropriate orders for registration of the sale deed executed on 25-4-2007 by respondent No. 6 in favour of the petitioner.

4. Relevant facts, giving rise to the present writ petitions, in brief are that according to the petitioner, the petitioner is a company registered under Indian Companies Act, 1956. The petitioner is engaged in the business of developing residential colonies. The petitioner entered into negotiations for purchase of land in Tehsil Kichha District Udham Singh Nagar with respondent No. 6 and made an application for permission as contemplated under Section 154(4)(3)(a) of the U.P.Z.A. and L.R. Act 1950 as applicable in Uttarakhand. The respondent No. 1 granted permission to the petitioner vide Government Order dated 1-11-2006 with the condition that the petitioner shall use the land within a period of two years for the purpose for which permission is granted. The sale consideration was paid by the petitioner in parts to respondent No. 6. As per condition mentioned in the agreement for sale, the entire sale consideration was to be paid to the vendor before 31-12-2006 and due to some delay in making payment of part of sale consideration, the vendor demanded interest/damages.

5. The petitioner deposited the amounts of Rs. 10,28,700/- and Rs. 4,28,500/- respectively in the two matters in cash with the Treasury and stamp papers were issued to the petitioner on 15-2-2007. On 25-4-2007, the petitioner purchased land from respondent No. 6 and the sale deeds were executed on the same day vide Annexure No. 4. Due to unavoidable reasons, the sale deeds executed on 25-4-2007 could not be presented for registration before the Sub-Registrar Kichha in the month of April 2007, rather it was presented for registration on 1-5-2007. The sale deeds were not registered on the pretext that the sale deed had been presented for registration after expiry of the period of 180 days. Consequently, the petitioner made an application on 25-5-2007 to the District Magistrate, Udham Singh Nagar for seeking extension of time. Inadvertently, the word 'execution' was used in the application in place of the word 'registration' and for that reason, the controversy in the matter had arisen.

6. When nothing was heard on the application made to the Collector for extension of time and as the petitioner was suffering huge losses of interest on the borrowed

amount, therefore, he again presented the sale deeds for registration before respondent No. 4 on 3-12-2007 along with an application under Section 25(1) of the Indian Registration Act. The Sub-Registrar forwarded the application with his recommendation to the Registrar as provided under Section 25(2) of the said Act. On 19-12-2007, the petitioner submitted yet another application before the Sub-Registrar stating therein that the sale deed was executed on 25-4-2007 but the same could not be registered in the month of April 2007. It was further stated that the entire sale consideration had already been given to the vendor and on account of non-registration of sale deed, he is suffering unnecessarily. The petitioner's application under Section 25(1) of the Indian Registration Act was rejected by respondent No. 3 by his order dated 20-12-2007, which is impugned in the present writ petitions.

7. On behalf of the respondent Nos. 3 to 5, counter-affidavit has been filed. It is stated therein that the petitioner made an application to the District Magistrate Udham Singh Nagar on 28-8-2006 on the prescribed form for purchase of land out of Khata No. 109 of village Phulsunga, Tehsil, Kichha, District Udham Singh Nagar for developing the residential colony. Report was sought from Tehsildar/S.D.M. Rudrapur. The report was received on 29-8-2006. The application was sent to the Additional Secretary, Revenue, Government of Uttarakhand for approval under Section 154(4)(3)(a) of the U.P.Z.A. and L.R. Act 1950 by letter No. 1161 dated 6-8-2006. Permission was accorded by the Government by G.O. dated 1-11-2006. The sanction was valid for a period of 180 days next from the date of issuance of such permission. The petitioner made an application to the District Magistrate on 25-5-2007 requesting for extension of time. The application of the petitioner was referred to the Principal Secretary (Revenue) of the Government. The District Government Counsel gave his opinion on 18-12-2007 to the effect that since the approval for purchase of land was granted on 1-11-2006, the same was valid upon 180 days, but the petitioner failed to submit the sale deed for registration before the Sub-Registrar, therefore, the petitioner is not entitled to any relief under Section 25 of the Registration Act.

8. It is also stated in the counter-affidavit that the sale deed was shown to have been executed on 25-4-2007 and the stamp duty had been shown to have been

deposited on 15-2-2007. On 3-12-2007, application under Section 25 of the Registration Act 1908 was made by the petitioner for seeking extension of 4 months' time to get the sale deed registered. The application of the petitioner was rejected by the District Registrar Udham Singh Nagar by order dated 20-9-2007. In pursuance of the order the Sub-Registrar Kichha returned the documents to the petitioner on 24-12-2007. The petitioner without getting any permission/authority started to carry out construction illegally and a case was registered against the petitioner in the Court Prescribed Authority Regulated Area.

9. The respondent No. 6 has also filed his counter-affidavit, who has supported the case of the petitioner.

10. Petitioner has filed rejoinder-affidavit in each case. The averments made in the writ petition have been reiterated in the rejoinder affidavits.

11. I have heard learned Counsel for the parties and perused the averments made in the writ petition, counter-affidavits and the rejoinder affidavits.

12. The short controversy to be decided in these writ petitions by this Court is whether the learned District Registrar was right In rejecting the application of. the petitioner on the ground that the sale deed was not executed within a period of 180 days from the date of permission, which was granted under Section 154(4)(3)(a) of the U.P.Z.A. and L.R. Act.

13. The learned District Registrar before deciding the application has also framed the points to be decided. Point No. 1 is whether the sale deed was executed within 180 days from the date of permission, i.e. 1-11-2006, in favour of the petitioner. Point No. 2 is whether the sale deed was executed on 25-4-2007. Point No. 3 is what was the reason for delay in presenting the document before the Sub-Registrar for registration and Point No. 4 is whether the permission, which was granted by the State Government on 1-11-2006 is effective or not? and Point No. 5 is whether the application under Section 5 of the Limitation Act can be allowed and delay can be condoned.

14. The petitioner has stated in paragraph No. 7 of the writ petition that the sale deeds were executed on 25-4-2007. The reply has been given in para No. 24 of the counter-affidavit filed by the State. There is no specific denial of the date of execution of sale deeds and the respondent No. 6 in paragraph No. 9 of his counter-affidavit has admitted that the sale deeds were executed on 25-4-2007.

15. The application moved by the petitioner has been rejected on several grounds. Firstly, on the ground that sale deeds were not registered within 180 days from the date of permission granted by the Government, i.e. on 1-11-2006. Secondly, Suresh Chandra, who was having a power of attorney moved an application before the Collector and requested therein for extension of time, of permission beyond 180 days. It was mentioned in that application that the registered sale deeds could not be executed within the stipulated time, as mentioned in the permission. Thirdly, on the ground that the reasons, which have been shown in the application under Section 25 of the Registration Act are not sufficient to allow the application for extension of time.

16. The petitioner has filed photocopy of the sale-deed (Annexure No. 4) and the date of execution is 25-4-2007. According to the petitioner, the stamps were purchased from the Treasury on 15-2-2007. In writ petition No. 2001 of 2008, the document was executed by respondent No. 6 Dhananjay Singh, while in Writ Petition No. 1998 of 2008, the document was executed by respondent No. 6 Mritunjay Kumar Singh. The certificate of stamps was issued by the, Treasury on 15-2-2007, which is annexed as Annexure No. 3 along with the copy of the sale deed in each case. In both the sale deeds, the date of execution has been written as 25-4-2007. No notice was issued by the District Registrar (respondent No. 3) to respondent No. 6 to verify the date of execution of sale deed before passing the impugned order. Since in his counter-affidavit filed by the respondent No. 6, the date of execution of deed has been admitted and the stamp duty, which was used in execution of sale deeds in question had been purchased by the petitioner prior to the date of execution, the finding to the effect that the date of execution of sale deed is doubtful is not based on any material evidence. Merely by mentioning in the application that the registered sale deed could not be executed, the said finding has been recorded by the Registrar.

17. According to the petitioner, it has been stated in paragraph No. 8 of the writ petition that due to unavoidable reasons, the sale deed, which was executed on 25-4-2007 could not be presented before the Sub-Registrar in the month of April 2007 and it was presented for registration before Sub-Registrar Kichha on 1-5-2007. The petitioner was informed that since the sale deed is being presented after expiry of 180 days of granting of permission, as such it is not possible to register the same. Ultimately, the petitioner made one application on 25-5-2007 to the District Magistrate through Attorney Holder for seeking extension of time, which has been annexed as Annexure No. 5. It is also stated in paragraph No. 9 that 'due to inadvertent oversight the word 'execution' was used in the application dated 25-5-2007 in place of the word 'registration'. This mistake had crept in due to insufficient knowledge of legal terminology. The meaning which petitioner sought to convey can be culled out from the opening sentence of second paragraph of the application wherein it is mentioned that the registered sale deed could not be executed within stipulated period of 180 days.'

18. The Registrar in his order impugned has held that the sale deed could be registered only within 180 days from the date of permission, which was granted by the Government on 1-11-2006. The Registrar has not at all dealt with the question whether the sale was complete on the date of its execution or the sale would complete on the date of registration. It is well settled that the sale as per Section 54 of the Transfer of Property Act completes on the date of its execution.

19. The registration would effect under Section 47 of the Indian Registration Act from the date of its execution. The Apex Court in the case of Thakur Kishan Singh (Dead) v. Arvind Kumar MANU/SC/0015/1995 : (1998 Revenue Judgment Page 378 : AIR 1995 SC 73, Supreme Court of India) has held that the registered document operates from the time of its execution and not from the time of the registration.

20. Learned Counsel appearing for the respondent No. 6 has also not disputed this proposition of law during the course of arguments.

21. It is also established as has been admitted by the respondent No. 6 that the execution of sale deed was made on 25-4-2007 within 180 days from the date of

permission by the State Government.

22. Section 23 of the Indian Registration Act provides time for presenting documents, which reads as under:

23. Time for presenting documents.-- Subject to the provisions contained in Sections 24, 25 and 26; no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or where it is appealable, within four months from the day on which it becomes final.

23. Now, the second question remains whether the application for extension of time, which was moved under Section 25 of the Registration Act, was moved within four months of the expiry of first four months. The Registrar has power to extend the time of four months under Section 25 of the Registration Act on payment of fine, which reads as under:

25. Provision where delay in presentation is unavoidable.-- (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

24. It is thus clear that a document may be presented for registration within a period of four months from the date of its execution, as provided under Section 23 of the Registration Act and if the document is not presented for registration within a period of four months from the date of execution due to some unavoidable circumstances or reasons, the Registrar has power to extend further four months'

time for registration of document on payment of fine which may extend up to ten times of the amount of proper registration-fee under Section 25 of the said Act after satisfying himself as to the delay owing to unavoidable circumstances or reasons. It is not disputed that the application under Section 25 of the Registration Act was moved before the Registrar on 3-12-2007 and the time of four months was expiring on 24-12-2007. A copy of application has been annexed as Annexure No. 6 to the writ petition in both the cases. The reasons shown in the application is due to some unavoidable circumstances, the seller and purchasers could not register the sale-deeds within four months from the date of its execution. According to petitioner, the date of execution of sale deeds is 25-4-2007, which has been admitted by respondent No. 6 (seller) in his counter-affidavit.

25. Learned Counsel for the petitioner has contended that the petitioner was not heard before passing the impugned order on the application to explain as to what are those unavoidable circumstances. The learned District Registrar at his own rejected the application on two grounds-firstly that the sale deeds in question were not executed within 180 days from the date of permission, which was granted by the State Government for purchase of the land by the petitioner and secondly, on the ground that no sufficient reason was shown. Further it is pointed out that the District Registrar did not apply his mind. The impugned order was by the Registrar and the application was rejected in a mechanical manner on the basis of the opinion of the District Government Counsel (Revenue) given to him. The Registrar has also rejected the application being not maintainable and refused to extend the time, for registration of sale deed.

26. By a perusal of the impugned order it reveals that no notice was issued to respondent No. 6 to verify the fact whether the sale deeds were executed by respondent No. 6 on 25-4-2007. The best persons were the executants of the sale deed, who could make a statement on which date they executed the sale-deeds.

27. Before this Court, the petitioner in both the writ petitions has stated in paragraph No. 5 that the sale consideration was given by the petitioner to respondent No. 6 in parts as per the details given in the chart, which has been annexed as Annexure No. 2 in both the writ petitions. It is further stated that as per

condition mentioned in the agreement of sale, the entire sale consideration was to be paid to the vendor before 31-12-2006 and due to some delay in making payment of part of sale consideration, the vendor demanded interest/damages after the execution of sale deeds. For the aforesaid reason, the sale deeds could not be registered within four months from the date of its execution, as has been provided under Section 23 of the Registration Act.

28. The explanation which has been given before this Court has been accepted by the respondent No. 6 in his counter-affidavit. Learned District Registrar never asked either the petitioner or the respondent No. 6 to offer the explanation as to what are those unavoidable circumstances before passing the order impugned and rejected the application in a mechanical manner on the basis of the opinion of the District Government Counsel (Revenue).

29. The learned District Registrar has fell into error in holding that since the documents were not executed within a period of 180 days from the date of permission (1-11-2006), which was granted by the State Government.

30. The sale is complete on the date of execution of the sale deed. The document of sale of Immovable property requires compulsory registration under Section 17 of the Indian Registration Act, therefore, the petitioner moved application under Section 25 of the said Act.

31. Now, the only question remains where the circumstances for presenting the document with delay for registration were unavoidable. Since the respondent No. 6 has also admitted in his counter-affidavit that there was some dispute on account of delay in making payment of sale consideration so the document could not be presented within the stipulated time. Learned District Registrar, therefore, has also committed error in holding that the application was not maintainable. If the application is presented after the expiry of first four months, as has been provided under Section 23 of the Registration Act, but before expiry of next four months thereafter, the application is very well maintainable. This finding of the Registrar is altogether perverse that the registration of sale deeds was not made within 180 days from the date of permission of the State Government.

32. Now, it has to be seen whether the application can be allowed on payment of fine as has been mentioned in Section 25 of the said Act. Section 25 provides that the fine shall not exceed ten times of the proper registration fees.

33. During the course of arguments, the learned Counsel for the petitioner Sri Manoj Tiwari has stated at the Bar that the petitioner is ready to pay the maximum amount of fine as contemplated under Section 25 of the Indian Registration Act if the application of the petitioner is allowed.

34. In the peculiar facts and circumstances of the case, both the petitioner as well as respondent No. 6 offered explanation before this Court that due to delay in making the payment of sale consideration as was promised by the petitioner to pay to the respondent No. 6, the dispute was raised by respondent No. 6 and the respondent No. 6 has admitted this fact in paragraph No. 7 of the counter-affidavit filed by him in both the petitions. In the above facts and circumstances of the case, in my view, the order passed by the District Registrar is liable to be set aside.

35. In the result, both the writ petitions succeed.

36. Both the writ petitions are allowed. The impugned order is set aside. The application of the petitioner under Section 25 of the Indian Registration Act in each writ petition (copy Annexure-6 to the writ petition) is allowed, subject to payment of ten times of the proper registration fees as fine which shall be deposited by the petitioner within a period of six weeks from today with the Sub-Registrar concerned and the Sub-Registrar shall deposit the amount of fine in the proper head.

37. If the aforesaid amount of fine is deposited by the petitioner within the stipulated time along with the document for its registration, the Sub-Registrar shall get the document registered. It is also clarified that this order shall not affect the power of the Registrar to examine the document under Section 47-A of the Stamps Act as to whether the stamp duty has been paid as per circle rate/market value.