

Court No. - 2

Case :- WRIT - C No. - 41137 of 2010

Petitioner :- Sahas Degree College Thru Secretary Nadeem Hasan

Respondent :- State Of U.P. Thru District Magistrate J.P. Nagar And Others

Counsel for Petitioner :- Ankit Kumar Rai,K.M. Misra

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 41138 of 2010

Petitioner :- Sarvari Educational Society Thru Adhyaksh Mohd. Aslam

Respondent :- State Of U.P. Thru District Magistrate J.P. Nagar And Others

Counsel for Petitioner :- Ankit Kumar Rai,K.M. Misra

Counsel for Respondent :- C.S.C.

And

Case :- WRIT - C No. - 41854 of 2010

Petitioner :- Sahas Degree College Thru Secretary Nadeem Hasan

Respondent :- State Of U.P. Thru D.M. J.P. Nagar And Others

Counsel for Petitioner :- Ankit Kumar Rai,K.M. Misra

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Sri Atul Dayal, learned Senior Counsel assisted by Sri Ankit Kumar Rai, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State-respondents.
2. Since the similar controversy involved in the aforesaid writ petitions, all the writ petitions are being decided by this common order.
3. For convenience, the facts of Writ-C No. 41137 of 2010 is being delineated here:-
4. By means of instant writ petition, the following prayer has been made:-

"(i) Issue a writ, order or direction in the nature of certiorari calling for the records of the case and quash the impugned order dated 27.09.2008 (Annexure No.3) to this writ petition) passed by the respondent no.3 as well as the Appellate Order dated 01.06.2010 (Annexure No.5 to this writ petition) passed by the respondent no.2;

(ii) Issue a writ, order or direction in the nature of Mandamus declaring Section 2(14-A) inserted in the Indian Stamp Act, 1882 by means of U.P. Act No.38 of 2001 as unconstitutional, void, inoperative and ultra vires being repugnant to the provisions of two Central enactments namely Transfer of Property Act as well as Muslim Personal Law (Shariat) Application Act, 1937 (Act No. 26 of 1937);

(iii) Issue a writ, order or direction in the nature of Mandamus restraining the respondent from making recovery of the amount in question from the petitioner pursuant to the impugned order dated 27.09.2008 (Annexure no.3 to this writ petition) passed by the respondent no.3 as well as the Appellate Order dated 01.06.2010 (Annexure No.5 to this writ petition) passed by the respondent no.2

(iv)

(v)"

5. Learned Senior counsel for the petitioner submits that Ale Hasan made an oral gift in respect of his Bhumidhari land in Khata No. 76, Khasra Nos. 602/3 and 605/2, total area 1.250 Hectare situate in Village Bilana, Tehsil Amroha, District J.P. Nagar in favour of Sarvari Educational Society on 22.12.2005, which was accepted and possession was handed over to the Society. A memorandum was also drawn on the same date. Further, Mohd. Aslam, in the capacity of Manager, of the Sarvari Educational Society made an oral gift in favour of Sahas Degree College, which stood accepted through its Secretary namely Nadeem Hasan S/o Ale Hasan on 06.02.2006 and memorandum in the form of Yaddast was written on 28.02.2006. All the gifts were oral as per the Muslim Personal Law, which has been accepted. Thereafter, on the basis of an ex-parte report, proceedings under Section 47-A of the Stamp Act were initiated to which the petitioner submitted his reply, but not being satisfied from the same, an order dated 27.09.2008 was passed, determining the deficiency stamp duty, amounting to Rs.11,25,000/- as well as equal amount of penalty has been imposed, against which an appeal was preferred, which also met the same fate.

6. Senior Counsel further submits that the hiba/gift was made, which was only written for yaddast, but the same was not registered as the same was not required to be registered, still the proceedings under Section 47-A of the Stamp Act have wrongly been initiated against the petitioner.

7. He submits that the Hon'ble Apex Court in the case of **Hafeeza Bibi & Ors. Vs. Shaikh Farid (Dead) by LRs. & Ors., 2011 (2) ARC 218** has held that there is no requirement for getting it registered under the Registration Act.

8. He further submits that no proceedings under Section 47-A of the Indian Stamp Act can be initiated, hence the proceedings are bad.

9. Per contra, learned Additional Chief Standing Counsel supports the impugned orders.

10. After hearing the parties, the Court has perused the record.

11. It is not in dispute that the hiba/gift was made orally and the doner made the declaration of hiba, which was accepted as gift by the donee and the possession was delivered under the Muslim Personal Law to which there is no requirement of getting in writing, Further, it is not required to be registered as held by the Hon'ble Apex Court in the case of **Hafeeza Bibi and Ors. (supra)** in para nos. 27 to 31, which reads as under:-

"27. The position is well settled, which has been stated and restated time and again, that the three essentials of a gift under Mohammadan Law are; (i) declaration of the gift by the donor; (2) acceptance of the gift by the donee and (3) delivery of possession. Though, the rules of Mohammadan Law do not make writing essential to the validity of a gift; an oral gift fulfilling all the three essentials make the gift complete and irrevocable. However, the donor may record the transaction of gift in writing. Asaf A. A. Fyzee in Outlines of Muhammadan Law, Fifth Edition (edited and revised by Tahir Mahmood) at page 182 states in this regard that writing may be of two kinds : (i) it may merely recite the fact of a prior gift; such a writing need not be registered. On the other hand, (ii) it may itself be the instrument of gift; such a writing in certain circumstances requires registration. He further says that if there is a declaration, acceptance and delivery of possession coupled with the formal instrument of a gift, it must be registered. Conversely, the author says that registration, however, by itself without the other necessary conditions, is not sufficient.

28. Mulla, Principles of Mahomedan Law (19th Edition), Page 120, states the legal position in the following words :

"Under the Mahomedan law the three essential requisites to make a gift valid : (1) declaration of the gift by the donor:

(2) acceptance of the gift by the donee expressly or impliedly and (3) delivery of possession to and taking possession thereof by the donee actually or constructively. No written document is required in such a case. [Section 129](#) Transfer of Property Act, excludes the rule of Mahomedan law from the purview of Section 123 which mandates that the gift of immovable property must be effected by a registered instrument as stated therein. But it cannot be taken as a sine qua non in all cases that whenever there is a writing about a Mahomedan gift of immovable property there must be registration thereof. Whether the writing requires registration or not depends on the facts and circumstances of each case."

29. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not

required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law.

*30. In considering what is the Mohammadan Law on the subject of gifts inter vivos, the Privy Council in **Mohammad Abdul Ghani** stated that when the old and authoritative texts of Mohammadan Law were promulgated there were not in contemplation of any one any Transfer of Property Acts, any Registration Acts, any Revenue Courts to record transfers of possession of land, and that could not have been intended to lay down for all time what should alone be the evidence that titles to lands had passed.*

31. [Section 129](#) of T.P. Act preserves the rule of Mohammadan Law and excludes the applicability of [Section 123](#) of T.P. Act to a gift of an immovable property by a Mohammadan. We find ourselves in express agreement with the statement of law reproduced above from Mulla, Principles of Mahomedan Law (19th Edition), page 120. In other words, it is not the requirement that in all cases where the gift deed is contemporaneous to the making of the gift then such deed must be registered under [Section 17](#) of the Registration Act. Each case would depend on its own facts."

12. It is nobodies case that the hiba/gift deed was presented for registration. Once this fact is admitted by respondents that gift deed/hiba was not presented for registration, then proceedings under Section 47(A) of Indian Stamp Act cannot be pressed to service. Further, Section 47-A of the Act can only be applicable when any instrument/document is presented for registration and not otherwise. If the authorities were of the view that hiba/gift deed was required for payment of stamp duty, then the proceedings u/S 33 of the Stamp Act should have been initiated and not u/s 47-A of the Act.

13. This Court on various occasions has held that the proceedings under Section 47-A of the Stamp Act cannot be initiated for unregistered documents.

14. In view of the above facts as stated as well as law as mentioned above, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.

15. Accordingly, the writ petitions are **allowed**.

16. Any amount deposited by the petitioners pursuant to the impugned orders, shall be refunded to them within two months from the date of production of certified copy of this order.

Order Date :- 8.8.2024

Pravesh Mishra