(2013) 05 AHC CK 0371

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 42685 of 2011

Ajay Kumar Srivastava APPELLANT

Vs

Commissioner, Allahabad Division and Others RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:
Stamp Act, 1899 — Section 56(1A)

Citation : (2013) 6 ADJ 166 : (2013) 5 ALJ 355 : (2013) 99 ALR 658 : (2013) 6 AWC 6304 : (2013) 120 RD 60

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : B.N. Asthana, S.K. Purwar and P.K. Asthana, for the Appellant;

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Heard Sri Asthana, learned counsel for the petitioner and learned Standing Counsel for respondents. They agree for disposal of the writ petition finally on the basis of the pleadings on record.

2. The orders impugned order are dated 3.8.1998 passed by the Additional Collector (Finance and Revenue) and dated 23.5.2011 passed by the Commissioner in revision thereto.

3. The authorities by the aforesaid orders have assessed the market value of house No. 78/38-J, Basant Vihar Colony, Civil Lines, Allahabad which was transferred by sale-deed dated 28.7.1994 in favour of the petitioner and have accordingly determined the deficiency in stamp duty. A penalty of ten times of the deficiency so determined was imposed which was reduced to twice the amount of deficiency in stamp duty by the revisional authority.

4. Sri Asthana, learned counsel for the petitioner in attacking the impugned orders has raised three contentions:

(1) The house in question was a single storied building and, therefore, the

authorities have erred in adding the value of the first floor which was constructed later on, in assessing its market value.

(2) There was no provision under the Indian Stamp Act, 1899 (in short ''Act'') for imposing the penalty and, as such, order imposing penalty is without jurisdiction.

(3) The Commissioner of the Division has no authority to decide the appeal filed u/s 56(1-A) of the Act and the appellate power which is exercisable by the Chief Controlling Revenue Authority is not delegable.

Point No. 1

5. The sale-deed in question dated 28.7.1994 describes the property as a single storied building. The inspection on the basis of which it has been treated to be double storied was made in the year 1998 and that too ex-parte. The exact date of inspection has not come on record. The said inspection cannot throw light over the existence of first floor construction at the time of sale. On the other hand, the report of the Sub-Registrar dated 30.7.1994 by which the matter was referred for determination of the market value and deficiency in stamp duty is silent with regard to any construction on the first floor.

6. There is no finding by any of the authorities that the description of the property in the sale-deed is incorrect or untrue or that it is not sufficient to assess its market value.

7. In view of the above as none of the authorities have recorded a categorical finding that the first floor was already in existence at the time when the sale-deed was executed. The authorities erred in taking the constructed area of the aforesaid property 348.48 sq. meters in assessing its market value.

Point No. 2

8. The sale-deed in question is of 28.7.1994. The order assessing the market value of the property therein has been passed by the Additional Collector (Finance and Revenue) on 3.8.1998 and a penalty ten times of the deficient stamp duty of Rs. 38,062.50 was imposed and subsequently reduced to twice of it.

9. The power to levy penalty has been provided under sub-section (4) of Section 47-A of the Act. The said provisions has been inserted vide U.P. Act No. 22 of 1998 w.e.f. 1.9.1998. Even Section 35 of the Act which provides for imposition of penalty equal to ten times the amount of the proper duty or deficient portion thereof was also added vide U.P. Act No. 22 of 1998 w.e.f. 1.9.1998, Both the above provisions were not in existence at the time the sale-deed was executed or the order impugned was passed by the Additional Collector (Finance and Revenue). In Kaka Singh Vs. The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another, , a Division Bench of this Court and in Girish Kumar Srivastava v. State of U.P. and others, 1998 All CJ 199, a Full Bench of this Court have held that Collector has no power u/s 47-A as

it stood at the relevant time to impose penalty.

10. In view of the above, the order of penalty passed in the present case cannot be approved and is held to be without jurisdiction.

Point No. 3

11. The order passed by the Collector u/s 47-A of the Act is both revisable and appealable u/s 56 of the Act. The revision lies u/s 56(1) of the Act whereas appeal is provided u/s 56(1-A) of the Act. The power under both the provisions is different.

12. Petitioner has filed revision and not appeal which means that he invoked the jurisdiction u/s 56(1) of the Act.

13. The powers of the Chief Controlling Revenue Authority which may be delegated to the subordinate revenue authorities have been specified in Section 76-A of the Act. It provides that the State Government by notification in the Official Gazette may delegate all or any of the powers conferred on the Chief Controlling Authority by certain Sections of the Act including one exercisable u/s 56(1) of the Act to subordinate revenue authorities as may be specified. The said power has been delegated by notification dated 17.10.2002 (Annexure 4 to the writ petition). Therefore, the argument that the power is not delegable is misconceived. The power to decide revision can be delegated as has rightly been delegated to the Commissioner by the aforesaid notification.

14. The revision was in respect of more than Rs. 50,000/- and as such was cognisable by the Divisional Commissioner. Therefore, the order passed by the Commissioner is not without jurisdiction.

15. In view of the aforesaid facts and circumstances, the impugned orders dated 3.8.1998 and dated 23.5.2011 passed in revision are quashed.

16. Any amount deposited by the petitioner pursuant to the impugned orders shall be returned within a period of one month from the date of production of a certified copy of this order before the authority concern. The petition is allowed.

