(2012) 08 AHC CK 0213

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16824 of 2000

Alok Chandra Agarwal APPELLANT

Vs

Chief Controlling Revenue Authority-cum-Additional Commissioner and Others RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:
Stamp Act, 1899 — Section 56

Citation : (2013) 1 ALJ 575 : (2013) 1 ALJ 212

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : T.S. Dabas, for the Appellant;

Final Decision : Dismissed

Judgement

B. Amit Sthalekar, J.—This petition has been filed by the petitioner challenging the order of the Additional Collector (Finance and Revenue), Pilibhit dated 15.10.1997 and the revisional order dated 30.11.1999 passed by the Chief Controlling Revenue Authority-cum-Additional Commissioner (Executive), Bareilly Division, Bareilly. The facts of the case, in brief, are that the petitioner is the purchaser of Plot No. 380 measuring 3.04 acres situate in village Pakadia Naugawan Ehatmali District Pilibhit (land in question). The sale deed was executed on 17.10.1995. On a report being called from the Tehsildar a notice was issued to the petitioner as to why proceedings be not initiated for the recovery of deficiency of the stamp duty. The petitioner filed his objections on 5.9.1997 and he has taken a plea that the land in question is situated next to a river and quality of the soil is sandy. Further objection taken is that the value of the land in question is Rs. 60,000/- per acre and taking this valuation of the land in question, stamp duty has been paid by the petitioner and the same is correct and that there is no deficiency of the stamp duty. From the report of the Additional Collector (F & R), Pilibhit it has come on the record that the land in question is situated about 1 km. distance from Devha river and the stamp duty has been paid taking the valuation of the land to be about Rs. 60,000/- per acre, total valuation being 1,82,400/-.

2. However, the respondent No. 2 has determined the deficiency of the stamp duty on the basis that the circle rate prevailing in the village as on 1.12.1994 was Rs. 1,55,000/- per acre and, therefore, the total valuation of the land in question which measures 3.04 acres will come to Rs. 4,71,200/- and, therefore, the stamp duty which has been paid by the petitioner was not according to the circle rate and the deficiency was liable to be recovered from the petitioner. The respondent No. 2 has also not accepted the report of the Tehsildar dated 9.2.1996 wherein it has been stated that the valuation of the land in question would be Rs. 50,000/- to Rs. 60,000/- per acre and, therefore, the total value of 3.04 acres of land would be Rs. 1,82,400/-. However, from the findings recorded, it has come on the record that the land in question is purely being used for agricultural purposes and there are no trees over it and no building situate on the land and the land is also situated beyond the limits of the Nagar Panchayat. There is a bore well on the land. Partly accepting the condition of the land as described in the report of Tehsildar dated 9.2.1996, the respondent No. 2 has proceeded to determine the valuation of the land in question under the prevailing circle rate being Rs. 1,55,000/- per acre and has rejected the valuation determined by the Tehsildar that the valuation of the land should be taken as Rs. 50,000/- to Rs. 60,000/-.

3. Aggrieved by the order of the respondent No. 2, the petitioner preferred a revision No. 75/44/98 u/s 56 of the Indian Stamp Act 1899 and the revisional authority has declined to accept the report of Tehsildar dated 9.2.1996 in its entirety so far as the valuation of the land in question is concerned and has proceeded to accept the circle rate determined by the Collector as on 1.12.1994 to be the determining factor of the valuation of the land in question.

4. I have heard Shri T. S. Dabas, learned counsel appearing for the petitioner and Shri Mata Prasad, learned Addl. Chief Standing Counsel appearing for the respondents.

5. From perusal of the impugned order dated 15.10.1997 of the Additional Collector-respondent No. 2 it is seen that the respondent No. 2 has given cogent reasons in accepting the report of the Tehsildar partly so far as the nature of the land is concerned. He has recorded that in the report of the Tehsildar dated 9.2.1996 it has been mentioned that the land in question is purely agricultural land and is situated about 1 km. distance from the Devha river; that there are no trees or any building over the said land and in fact, there is a bore well on the land in question and, therefore, the valuation of the land cannot be determined at Rs. 50,000/- to Rs. 60,000/- per acre and in such a situation the circle rate as on 1.12.1994 will have to be accepted.

6. Shri Dabas, learned counsel for the petitioner has placed reliance on an other order of the Additional Collector given in the case of another land situate in the

same village (Annexure-3 to the writ petition) wherein 26.55 acres of land under the sale deed was in question. His submission is that in that case the Additional Collector has accepted the report of the Tehsildar as against the prevalent circle rate of Rs. 1,55,000/- as on 1.12.1994. I have gone through the order of the Additional Collector. In the said order which has been filed as Annexure-3 to the writ petition, the facts are entirely different from the facts of the present case. In that case very valid and sound reasons have been given by the Additional Collector for accepting the report of the Tehsildar as against the circle rate fixed by the Collector. The Additional Collector has recorded a finding that from the report of S.D.O. Pilibhit dated 9.10.1997, in that case, it is seen that the land in question was situated right next to the river, that there were 6 mango trees over the land valuing about Rs. 9000/-, 5 Neem trees valuing about Rs. 7,500/-, and 4 Eucalyptus trees valuing about Rs. 2,400/-. In the report of the Tehsildar it has also been mentioned that there were constructions which were in a ruined condition over the land whose total value could not have been more than Rs. 15000/-. It is having regard to the condition of the land that the Additional Collector, in the illustrated case relied upon by the learned counsel for the petitioner, has proceeded to accept the report of the Tehsildar as against the circle rate fixed by the Collector.

7. At this stage, the Additional Chief Standing Counsel referred to a decision of this Court reported in Santosh Kumar Vs. Additional District Magistrate (Finance and Revenue), Bijnor and Others, . This Court in that judgment has held that circle rate is not to be accepted blindly but it is the duty of the Additional Collector while determining the deficiency of the stamp to also examine the actual nature of the land and whether the land could actually fetch the price as mentioned in the circle rate. The relevant paragraphs 7 and 8 of the said judgment read as under:

7. The market value of the property depends on several factors. It would be difficult to give any exhaustive description of list of such factors, but the real fact is that mere location of a property by itself may not yield such result, as a property with lesser locationary advantage may yield. For example, if property is occupied by tenant or is under the control of person having some criminal background, even if it is based on one of the best location in the city, may not be of such market value as one may not find willing to buy such property. The market value is directly concerned about the availability of free and voluntary buyer on such price. A price on paper does not mean a market value though it may be valued in the account book.

8. The authority concerned have completely erred in law and in fact, both by mere referring the location of the building and without considering any other factor, which add or reduces its value.

The Court has referred the facts of that case in paragraph 10, which reads as under:

10. The Court is really disturbed in finding out the approach and the manner in which the authorities in this case have proceeded to determine market value particularly when the petitioner brought to their notice that the house is in dilapidated condition, earning a meagre sum of Rs. 7,296 p.a. Towards rental value, owned and occupied by several tenants and one, who purchase it, will have to purchase certain litigations with the existing tenants. Even the revisional authority has committed similar error. It has referred to the contentions raised by the petitioner about occupancy of the property in dispute by tenants and its dilapidated condition, but has not considered its impact on the market value of the property in question and has simply proceeded on conjectures and surmises ignoring the above reducing factor.

8. Thus it will be seen that in the case referred to by the learned Additional Chief Standing Counsel the construction over the land was in a dilapidated condition. The only distinguishable feature is that there were tenants residing in the constructed portion whereas in the present case the construction over the land in question was in total ruin. Therefore, in the facts and circumstances of the case, it cannot be said that the order of the Additional Collector is not based upon spot situation and ground realities of the land in question and, therefore, the illustrative order of the Additional Collector in another case (Annexure-3) is completely distinguishable from the facts of the present case. In the circumstances, I find absolutely no illegality or infirmity in the impugned orders. The petition lacks merit and is accordingly dismissed.