(2010) 02 AHC CK 0239

In the Allahabad High Court

Case No : Writ-C No. 54879 of 2009

Amir Jahan Begum and another APPELLANT

Vs

State of U.P. and others RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:
Stamp Act, 1899 — Section 47(A3), 56(1)(A)

Citation : (2010) 02 AHC CK 0239

Hon'ble Judges : Abhinava Upadhya, J

Final Decision : Allowed

Judgement

Abhinava Upadhya, J.—Heard learned Counsel for the petitioner Sri D.V. Jaiswal and learned Additional Chief Standing Counsel Sri Sanjay Goswami.

2. Petitioner has filed the present writ petition against the order passed under section 47 (A3) of the Indian Stamp Act (hereinafter referred to as the "Act") whereby deficiency of stamp duty has been determined by the Collector and against the order passed under section 56 (1)(A) passed by the Additional Commissioner in appeal filed against the order of the Collector.

3. The main ground of learned Counsel for the petitioner for challenging the aforesaid orders is that these orders have been passed without following the procedure prescribed by law and without application of mind.

4. The contention of learned Counsel for the petitioner is that he had purchased a house situate in Mohalla Rajdwara, Rampur for a sum of Rs. 7,70,000/ and as per the circle rate in the area, stamp duty was paid to the tune of Rs. 46,000/ after executing a sale deed dated 19.4.2008. The said sale deed was registered without any objection. After the registration of the sale deed, it is alleged that an inspection was made by the Assistant Inspector General (Registration) who submitted its report on 26.5.2008, stating therein that the aforesaid sale deed has been deficiently stamped as the property has been under valued. Upon the aforesaid report, notice was issued to the petitioner who submitted its reply on

25.8.2008 stating therein that the property has been valued in accordance with the circle rate and no material has been concealed in the sale deed executed for the purpose of purchase of the said property.

5. The Collector not being satisfied with the reply of the petitioner proceed to pass an order under section 47 (A3) of the Act holding that the sale deed dated 19.4.2008 has been deficiently stamped against the petitioner. The petitioner preferred an appeal which was also dismissed, hence this writ petition.

6. According to learned Counsel for the petitioner, he had purchased the aforesaid property which is said to be a residential house in which the petitioner from time before had installed and was running an Atta Chakki in a portion of the premises and was paying rent for the same to the erstwhile owner of the house. It was also contended that there was no other commercial activity going on nor was there any workshop as mentioned in the order impugned. It was also asserted that the inspection made by the Assistant Inspector General (Registration) was an exparte inspection and was done prior to the issuance of notice under section 47 (A3) to the petitioner. The petitioner requested the concerned authority to make a fresh inspection which was turned down. The order under section 47 (A3) has been passed on relying upon the inspection report dated 26.5.2008 as submitted by the Assistant Inspector General (Registration). No further inspection was held by the concerned authority even after request was made to it.

7. I have gone through the order of the Collector. The said order does appear to have been passed without application of mind and without considering the contentions raised by the petitioner. The only basis of the order is the exparte report. No fresh report was called for after the initiation of proceedings under. Section 47 (A3) of the Act nor any effort has been made by the Collector to determine the correct market value of the property in question. Similarly, the order of Commissioner under section 56 (1A) has also been passed without considering the contention raised by the petitioner. Under these circumstances the order of the Collector under section 47 (A3) as well as the order of Commissioner under section 56 (1A) cannot be sustained and are hereby set aside with the result the writ petition succeeds and is allowed.

8. It is further made clear that the amount pursuant to the notice under section 47 (A3) of the Indian Stamp Act that has been paid by the petitioner shall be refunded to him within a period of two months from the date of presentation of a certified copy of this order. In case, the said amount is not paid within two months then after the expiry of two months, the petitioner will be entitled to interest at the rate of 10% per annum till actul payment is made.