(2015) 09 AHC CK 0147

In the Allahabad High Court

Case No : Writ C. No. 50091 of 2013

Anand Kumar Agarwal and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:
Stamp Act, 1899 — Section 33

Citation : (2015) 113 ALR 547 : (2015) 129 RD 41

Hon'ble Judges : Bharati Sapru, J.

Bench : Single Bench

Advocate : Nisheeth Yadav, for the Appellant

Final Decision : Allowed

Judgement

Bharati Sapru, J.—Counter and Rejoinder Affidavits have been exchanged and, therefore, this matter is being disposed of at the stage of admission itself. Heard Sri Nisheeth Yadav, learned Counsel for the petitioners and Sri V.P. Singh Kachhwah, learned Standing Counsel for the respondents-State.

2. This writ petition has been filed by the petitioners seeking a writ of certiorari to quash the judgment and order dated 6.4.2013 passed by the Revisional Authority and the order dated 30.9.2004 passed by the Additional District Magistrate (Finance & Revenue) under the provisions of section 33/47-A of the Indian Stamp Act.

3. The facts of the case are that the petitioners purchased a residential plot vide registered sale deed dated 6.5.2003 at Civil Station (City), Allahabad, Municipal No. 17-B, Elgin Road, Allahabad. The stamp duty was paid at the residential rates. Thereafter, a show cause notice was given to the petitioners showing the stamp deficiency on the basis of spot inspection report dated 2.8.2003. The petitioners filed their objection on 19.10.2003 stating that the plot has been purchased as a residential piece of land and proper stamp duty has been paid on it. Proceedings had been initiated under section 33/47-A of the Indian Stamp Act.

4. It is the contention of the petitioners that while deciding the matter, the A.D.M. (F & R) referred to the objection of the petitioners dated 19.10.2003 but did not give any reason for declaring the land as commercial land despite the fact that the petitioners had also placed before A.D.M. (F & R) exemplars of some similar plots of the same rates.

5. Learned Counsel for the petitioners has contended that when the proceedings were initiated on the basis of an ex parte spot inspection the requirement of the Stamp Act was that an opportunity of hearing should have been provided to the petitioners and, therefore, the objections as well as the evidence filed along with it should have been considered seriously.

6. The State has also filed a counter affidavit wherein the plea taken by the State is that the petitioners had purchased the impugned land for commercial purpose and, therefore, the Collector has fixed commercial rates for the land. However, while discussing the matter on merits the Collector has relied on the factum of the purpose for which the land has been purchased instead of deciding as to what was the actual price of the plot on the relevant date and whether the residential use, which was shown for the plot was correct or not.

7. The petitioner in his objection has taken a clear plea that on the date when the land was purchased it was registered for residential use and had even filed other exemplars to show that plots were being sold for residential use. It is not material to go into the question as to what was the purpose for which the plot was purchased but what was material was that the Collector should have decided as to what was the value of the land on the date when the sale deed was executed.

8. Having heard learned Counsels on both sides and having perused the material on record it becomes clear that even though a serious objection was raised by the petitioners with regard to the use and value of the land on the proximate time, the same has not been discussed by the respondents in their orders and even though the entire proceedings were initiated on the basis of an ex parte report. A proper hearing was not given to the petitioners and no proper findings have been recorded with regard to the existing value of the land on the date of execution of the instrument.

9. The matter, therefore, requires reconsideration by the Collector. The matter is remanded to the Collector for re-examination. He will consider the objections of the petitioners as filed on 19.10.2003 and will also examine the exemplars filed along with it. The impugned orders are, therefore, set aside. The matter on remand may be reexamined by the Collector within a period of three months from the date a certified copy of this order is being placed before it. Certified copy of this order may be placed before the Collector within the next ten days. No frivolous adjournment will be granted to the petitioners.

10. The Writ Petition is allowed. Any moneys deposited by the petitioners during the pendency of these proceedings shall remain in deposit and shall be subject to

the final orders passed by the Collector.

