

(2000) 07 AHC CK 0041
In the Allahabad High Court
Case No : C.M.W.P. No. 7557 of 1996

Aniruddha Kumar and Ashwini Kumar	APPELLANT
Vs	
Chief Controlling Revenue Authority, Uttar Pradesh, Allahabad and another	RESPONDENT

Date of Decision : 19-07-2000

Acts Referred:

Stamp Act, 1899 — Section 27, 33, 47A, 47A(1)
Stamp Rules, 1899 — Rule 340, 341, 342, 343, 344
Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956 — Section 64
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (2000) 3 AWC 2587 : (2000) 91 RD 566

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : N.D. Kesari, for the Appellant; S.C., Sanjay Goswami, for the Respondent

Judgement

D.K. Seth, J.—The petitioner had purchased 500 square meters of land out of plot No. 412/0/15-0 situated in Phulpur town area, Allahabad under registered sale deed on 1st May. 1992, setting forth Rs. 50.000 as market value of the property. Proceeding was initiated by the Collector for determining the market value of the property u/s 47A, read with Section 33 of the Stamp Act. By an order dated 8th February. 1993. the Collector had held that the market value was Rs. 1,79,970 and, therefore, the stamp duty payable was Rs. 16.240 and directed the payment of the difference by the petitioner. A revision being Stamp Revision No. 111 of 1993-94 was preferred by the petitioner. By an order dated 17th January, 1996. the revision was dismissed. It is this order which is subject-matter of challenge in this petition.

2. Pointing out from the impugned orders, Mr. N. D. Kesari, learned counsel for the petitioner contends that on the revenue records, the land was recorded as agricultural land with bhumadhari interest. He also points out that the boundary

of the land shows that the land surrounding the disputed plot are agricultural lands. Unless there is a declaration u/s 143 of the U. P. Zamindari and Land Reforms Act. according to him. the character of the said land cannot be treated to be residential (abadi) even for the purpose of determining the market value of the land for the purpose of payment of stamp duty. Therefore, according to him, the valuation of the land on the ground that the land is situated within town area and that it is in close proximity of residential area the land is to be treated with the potential of the residential plot, is wholly erroneous, misconceived and, therefore, cannot be sustained. According to him. it is the value as on the date of transfer that has to be calculated and not the future potential of the land that can be taken into account. He next contends that the land being agricultural land, the valuation is to be determined according to Rule 341 of the Stamp Rules and not otherwise. Since the valuation set forth is more than the value that could be determined under Rule 341, there was no authority or jurisdiction on the Collector or any other authority u/s 47A, read with Section 33 of the Stamp Act to make a reference. Therefore, according to him, the proceeding is wholly without Jurisdiction and void. According to him, it is only when the market value is less than the minimum value as provided in Rule 341, only then a reference could be made either u/s 33 or u/s 47A and not otherwise and as such, the reference is bad and, therefore, on such a reference the Collector could not have assumed Jurisdiction. He then contends that even then while calculating the market value, the Collector did not take into account any materials for the purpose of determination thereof. It is only on a presumption that the land is a residential plot and that the land in the area are to be determined on the circle rate, which is Rs. 300. per square metre. Therefore, this is perverse and not based on any material. According to him. in view of Rule 349, read with Section 47A of the Stamp Act. the market value could have been determined on various factors. But here, no such factor having been taken into consideration, the valuation is based on no material. He further contends this as an alternative submission and not his primary submission. He next contends that the Collector had not taken into account the materials placed on record, particularly the affidavit and the revenue records produced by him. He contends that the revisional authority has also not gone into all these questions and had cursorily affirmed the order of the learned Collector. Therefore, the same suffers from same perversity as that of the order of the Collector. Therefore, the petition should be allowed and the impugned orders should be set aside.

3. Mr. Sanjay Goswami, learned standing counsel on the other hand contends that Rule 341 is a guideline and only to be taken assistance as a guiding factor. It is binding neither on the parties nor on the Collector. On the other hand, according to him. it is a provision, which is provided as a guiding factor for the registering authority to determine if the amount is less than the minimum value then only the necessity of a reference u/s 47A sub-section (1) shall arise. It has no other utility. It is only a guiding factor to determine that the market value has not been correctly stated so as to enable the registering authority to satisfy itself

that this is a case fit u/s 47A, sub-section (1). It has no other utility. Therefore, it cannot have any application at the time when the market value is determined after the reference is made. According to him, when a reference is made, the market value has to be determined according to Rule 341, read with Section 47A of the Stamp Act. Thus, two provisions according to him provide that for determining the market value, the Collector has to take into account various factors as provided in the said section and the rule respectively, including Rule 348. which provides for prescription of circle rate being average rate of the particular area. But none of these factors are conclusive and binding but are factors which ought to have taken into account for the purpose of determining the market value. He further contends that as on the date of transfer, the valuation has to be determined. Though the future potential may not be taken into account but the potential of the land as on the date of transfer can also be a relevant consideration for determining the market value. He then contends that whether the land is residential area or agricultural plot, is wholly immaterial. The value of the land is determined on the basis of its utility as on the date of transfer having regard to the various factors as discussed by him in the course of his submission. It will not make any difference if the land is agricultural or a residential plot in order to determine the market value having regard to the various factors, which ought to have taken into consideration in so determination. He then contends that there are decisions which points out that the market value is to be determined on the basis of the materials available to the Collector having regard to the various factors referred to by him. He also submits that the land is situated within a residential area and that the area of the land that has been purchased does show that it was for the purpose of using as a residential plot. That apart, the land being situated within the town area and being very small though agricultural but the correct usage will be a determining factor even though there was no declaration u/s 143 of the U. P. Zamindari and Land Reforms Act for determining the valuation. Whether there is a declaration or not, is, according to him, immaterial for the purpose of determination of the correct market value u/s 47A of the Stamp Act. On these grounds, he prays that the petition be dismissed.

4. Both Mr. Kesari and Mr. Goswami had cited certain decisions in support of their respective submissions, which would be referred to at appropriate stage.

5. I have heard both the learned counsel at length.

6. Admittedly, from the materials on record, it appears that the land is agricultural land. This proposition is also not seriously disputed by Mr. Goswami. An agricultural land cannot be treated to be a residential plot until there is a declaration u/s 143 of the U. P. Zamindari and Land Reforms Act. Admittedly, in this case, there was no such declaration u/s 143 of the aforesaid Act. Mr. Kesari had pointed out that the land is situated in the town area and that by reason of Section 1 of the U. P. Zamindari and Land Reforms Act, the provisions of said Act are inapplicable in respect of the land within the town area. But by reason of

Urban Area Zamindari Abolition Act. particularly in view of Section 64. thereof, the agricultural land situated in the town area will be treated and shall be governed by the provisions of U. P. Zamindari and Land Reforms Act. But this provision will not be of any help to us for the present purpose. Since Mr. Goswami has not disputed the character of the land as that of agriculture, it is not necessary to go into these questions. We may proceed with the case admitting the land to be an agricultural land not a residential plot.

7. Section 33 of the Stamp Act provides for examination of an instrument. If it is under-valued and chargeable to a higher stamp duty. then the same can be gone into-for the purpose of determining the deficit in the stamp duty payable on the said instrument. Section 47A of the Stamp Act prescribes specific provision in aid of Section 33 of the Act so as to enable the Collector to determine the correct value when it is so found to have been incorrectly valued by the registering authority. Various subsections provided for various modes, methods and manners under which a reference could be made and how on such a reference the valuation can be determined. Section 47A refers to the rules framed therefore the aid of which would be taken at appropriate stage.

8. A plain reading of sub-section (1) of Section 47A shows that when the registering authority finds that the value set forth in an instrument is less than the minimum value determined in accordance with rules, in that event the registering authority is empowered to refer the same to the Collector for determination of the market value of such property and the duty payable thereon. Rule 341 prescribes how the minimum market value is to be found out. Thus, a combined reading of Section 47A subsection (1) and Rule 341 shows that Rule 341 is a guideline for determining the minimum market value to find out if the valuation set forth in the instrument is even less than the minimum market value, and then he can assume Jurisdiction to refer the same to the Collector. Thus, Rule 341 is a guiding factor to be taken into account for the purpose of determining the minimum market value in order to enable the registering authority to satisfy itself that the instrument produced before him, is one fit for reference under sub-section (1) of Section 47A. We may note that the expression used "Is less than even the minimum market value". The use of the expression presupposes that the valuation is to be less than the minimum value which could be determined according to rules. But at the same time, sub-rule (2) prescribes that without prejudice to sub-section (1), if the registering authority has reason to believe that the market value set forth in the instrument has not been truly set forth, then he can refer the matter to the Collector under sub-section (2). Thus, the contention of Mr. Kesari to the extent that unless the value is less than the minimum as provided in sub-section (1) read with Rule 341, the registering authority cannot assume Jurisdiction to refer the same u/s 47A and the Collector could not have assumed Jurisdiction upon such a reference and that the entire proceeding is void and without jurisdiction cannot be accepted. By reason of sub-section (1). when the value is less than the minimum in terms of Rule 341, then the registering authority may refer the same to the Collector. Then again by

reason of sub-section (2), he has the same Jurisdiction to refer wherever he has reason to believe that the market value set forth in the instrument, has not been truly set forth even if the valuation set forth may be higher than the minimum market value. Thus, I am unable to agree with the contention of Mr. Kesari that the proposition impugned in these proceedings is void or the orders passed are without Jurisdiction as such.

9. A combined reading of Section 33 and Section 47A along with Rules 340 to 350 indicates that there are two stages. The first stage is the satisfaction of the authorities, who are competent to make reference either u/s 33 or u/s 47A. For the purpose of making such a reference, the authorities competent to make such reference, are to satisfy themselves about the necessity of such reference. For that purpose, it has also provided in Rule 340 that what are the materials to be set forth in the instrument and Rule 341 is a guiding factor for the purpose of determining the minimum market value. This is a guideline provided for the purpose of determining the market value in order to enable the authorities concerned to determine as to whether the value set forth is less than the minimum market value and on the basis of such satisfaction, it is an enabling factor to make a reference by the authority competent to do so. Rule 341 has not provided any guideline for the purpose of determining the market value by the Collector. In fact it is a provision in order to enable as to whether a reference is to be made or not. Therefore, aid of Rule 341 cannot be taken in at the time of determination of the market value. Thus, I am unable to agree with the contention of Mr. Kesari to the extent that in order to determine the market value, aid of Rule 341 is a must. On the other hand, the decision in the case of Kaka Singh Vs. The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another, which is also reported in 1986 ALJ 49 cited by both Mr. Kesari and Mr. Goswami points out that Rule 341 is only a guiding factor and was framed by the Legislature only for limited purpose for providing a guideline. Only function of Rule 341 is to enable the registering authority to be satisfied that the market value is less than the minimum value so as to enable him to refer the document to the Collector for determination. Thus, I am fortified on my view which I have taken above by the ratio decidendi in the decision in the case of Koka Singh (supra), as laid down in paragraph 15 thereof.

10. In order to advance his contention, Mr. Kesari had relied on a decision in the case of Smt. Indumati Chitale Vs. Government of India and another, to contend that the valuation of the land cannot be determined on the basis of square metre but has to be determined on the basis of acre as unit for valuation. But the distinctive feature with regard to the facts of the said case is that it was a large chunk of agricultural land measuring about 17.57 acres. Whereas the present land is only 599 square metre, equivalent to 5 bis was. Therefore, this decision may not help Mr. Kesari in the present case. However, Mr. Kesari had also sought to draw inspiration from this decision to the extent that when the land is agricultural land recorded in the revenue records even though situated in town area, cannot be treated as a land other than agricultural land. There might

be some substance in the submission of Mr. Kesari having regard to Section 64 of the Urban Area Zamindari Abolition Act. but "then for our present purpose. it would not be necessary to go into the said question.

11. Mr. Kesari has also relied on a decision in the case of Basli Ram v. Nagar Nigam, Ghaziabad 1999 (90) RD 636. in which it was held that unless there is a declaration u/s 143 of the U. P. Zamindari and Land Reforms Act, the character of the land cannot be changed. This decision also may not help us for our present purpose in view of the fact that Mr. Goswami had not disputed about the character of the land as that of agricultural one.

12. Section 27 of the Stamp Act provides the factors that affect the duty set forth in an instrument. In sub-section (2), it provides that an instrument relating to an immovable property chargeable with ad valorem duty on the value of the property requires setting forth of various factors as may be prescribed in the Rules and the Act. In Rule 340. the particulars which are to be incorporated in the instrument have since been prescribed. The purpose of this provision is to find out as to the duty payable on the instrument in order to facilitate the determination of the valuation set forth in the instrument itself. Such setting forth is necessary in order to enable the authority competent to refer either u/s 33 or u/s 47A to determine the market value to find out that the market value has been- truly set forth in the instrument. In case it is not truly set forth, in that event, the authorities mentioned in the said two Sections are competent to make a reference. Now once a reference is made either u/s 33 or u/s 47A, the Collector can assume Jurisdiction even if the satisfaction of the referring authority is imperfect. Inasmuch upon such reference, a person does not suffer any prejudice since it is subject to determination by the Collector in accordance with the provisions provided in the said Section and the Rules which requires giving of an opportunity to the party concerned. Therefore, even if the referring authority had not acted properly or there was no scope for its satisfaction for making a reference still then the reference would not be bad and such a situation will not preclude the jurisdiction of the Collector to enter into the reference. It is open to the Collector to find out in the reference that the valuation has been truly set forth in that event it may dismiss the reference. Therefore, assumption of jurisdiction by the Collector even on a bad reference, does not prejudice a person and as such, it cannot be contended that the reference is bad and as such the Collector had no jurisdiction. On the other hand, even on such a reference, the Collector has jurisdiction to determine the market value or to find out the validity of the reference. The Collector has every Jurisdiction to determine as to whether the reference has been validly made or not or the valuation has been truly set forth or not.

13. Be that as it may. in the present case. it is not disputed that the opportunity was not given. On the other hand, it is contended that certain materials were not taken into account by the Collector. One of the material was the affidavit and others are the revenue records. Since (he character of the land is not being

disputed, therefore, non-reference thereto would not disturb us for our present purpose. At the same time, an affidavit cannot have any impact on the question since the affidavit has no value as evidence for the purpose of determining the character of the land in view of Section 143 of U. P. Zamindari and Land Reforms Act based on the revenue records so produced.

14. In the present case, from the revenue records, admittedly, the land appears to be an agricultural land. Even though some fraction has been purchased, still then on the date of purchase it remained agricultural land and, therefore, it cannot be treated to be a residential plot and the valuation cannot be determined straightway on such an assumption that the land is situated in close proximity of residential plot and that the land has to be treated as residential plot and the valuation is to be determined on the basis of building potential. In fact, the market value has to be determined on the basis of the character of the land as well as usage thereof and user of the same having regard to the other factors as are provided in the Act and the Rules. It would be immaterial whether the land is residential plot or agricultural land and for the purpose of determining the market value, since the market value is to be determined on the basis of the factors that are laid down in the Act and the Rules.

15. Rule 340A provides for circulation of a circle rate, which according to Mr. Goswami is an average rate of an area. In his usual fairness, Mr. Goswami has pointed out that the provisions contained in Rule 340A is also a guiding factor and is not a binding principle. The valuation that has to be determined is the market value, which may be less or more than the circle rate depending on each individual case having regard to the various factors which had to be weighed at the time of determining the valuation. As rightly contended by Mr. Kesari as well as Mr. Goswami. Rule 340A is also a guiding factor which lays down the guideline about the average market value of the land situated in the area. The circle rate cannot be treated to be binding and unenforceable. It is to be treated as average rate of market value in the area. The market value of a particular land is to be determined having regard to the various factors as are necessary to be gone into. In so determining, the circle rate may also be one of the factor to be taken into consideration. The price may be more or less than the circle rate prescribed having regard to the facts of each case, which has to be taken into account by the authorities concerned.

16. So far as the reference to Rule -344 by Mr. Kesari is concerned, that relates to the stage prior to reference is made. The second stage begins after the reference is made for which a different procedure is provided for determining the market value. At the second stage, the provisions, contained in Rule 341 cannot be applied. Similarly, Rule 344 also cannot be applied. Rule 344 provides for making a reference u/s 33 for working out the valuation according to Rule 341. This provision does not contain anything to indicate that this has to be taken into consideration while determining the market value at the second stage. In fact, Rule 344 is the rule relating to the first stage, namely, the stage for making

reference. The rules applicable in the second stage are Rules 347 onwards. Rule 347 requires the authority to give opportunity to the party concerned, while Rule 348 provides for representation in a proceeding u/s 47A (1) or under sub-section (2) or under Rules 344, 345 and 346 on behalf of the authority making reference. Rule 349 prescribes the procedure under which the market value has to be determined. But even when determining such market value, the value shall not be less than the value as provided in Rule 341. Thus, Rule 341 is the minimum value below, which the valuation cannot be determined. Rule 349 prescribes that in course of enquiry, the Collector has to consider such documents as may be adduced in evidence. He may also take oral evidence as may be relevant or material with regard to the subject-matter involved. Thus, Rule 349 lays down a very wide scope for determining the market value by the Collector under which it can take into account the circle rate as provided in Rule 348 and all other factors that might weigh with him for the purpose of determining the valuation.

17. Mr. Kesarl had referred to a decision in the case of Rakesh Kumar Agarwal v. Chief Controlling Revenue Authority, Allahabad/Board of Revenue, U. P.. Allahabad 1997 (88) RD 383, wherein it was held that if there is no exemplar to substantiate the fixation of valuation, in that event if the valuation is made on the basis of conjecture and surmises, the same cannot be sustained. Relying on this decision, Mr. Kesarl had contended that in the present case, there is no exemplar used for the purpose of determining the valuation except the circle rate on the basis that the land was residential plot, which according to him, is by conjecture and surmises and, therefore, cannot be sustained.

18. On the other hand, Mr. Goswami had relied on a decision in the case of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, . Relying on the said decision, he contends that the market value has to be determined on the basis of the potential of a land on the date when it is being transferred. He had very fairly pointed out that the decision was related to a proceeding under the Land Acquisition Act, where for the purpose of determination of compensation future potential of the land is also to be taken into account. But according to him, the same principle cannot be a consideration in the present case. Inasmuch here the person purchasing the property is not being deprived of any right but acquiring a right for future potential and the vendor had sold the land at a price which satisfied him about the utility of the land as on the date of transfer. Therefore, the determination is to be made according to the potential of the land as was obtainable for the vendor and not for the vendee. I must record my appreciation of the submission made by Mr. Goswami to the extent of the high standard of fairness of a State Counsel. In fact, the submission that has been made by him, appears to be a sound proposition of law.

19. In the present case, the market value is to be determined on the basis of the value that would satisfy the vendor. Thus, the question of future potential cannot

be a factor for determining the market value of such a land for the purpose of stamp duty payable under the Stamp Act. The vendee pays the price that satisfies the vendor and, therefore, it is the utility of the land as on the date of transfer by the vendor and as such, if the land was an agricultural land, it has to be treated as such and the valuation has to be done accordingly. Whether in future the purchaser puts the land into residential use or changes the character is immaterial for the purpose of payment of stamp duty. The principle that has been laid down in *P. Ram Reddy (supra)* can be attracted for the purpose of determining the market value only to the extent of potential as on the date of transfer and not beyond. Thus, the market value has to be determined according to the factors, which includes the situation of the land, the amenities available in and around and various other factors, including the close proximity of the residential area as well as any transfer made immediately before the transfer or after the transfer in close proximity if such documents are produced in respect of the area that similarly situated land by either of the parties.

20. In the case of *Prakashwati v. Chief Controlling Revenue Authority. Board of Revenue, Allahabad*. 1996 AWC 1331, the Apex Court had held that situation of a property in an area close to a decent colony not by itself would make it part thereof and should not be a factor for approach of the authority in determining the market value. According to the said decision, valuation has to be determined on constructive materials which could be made available before the authorities concerned.

21. Having regard to the submissions made by respective parties and the materials placed before this Court, it appears that the authority had proceeded to determine the market value on the basis of transfer that the disputed land transferred was a residential plot on the basis of its potential in future. This presumption does not appear to be sound and reasonable.

22. Both the orders passed by the Collector as well as in revision are, hereby, quashed accordingly. The Collector shall determine the market value on the reference in accordance with law having regard to the factors which are necessary to be gone into in the light of the observations made above and having regard to the law laid down by the different decisions as may be cited before him in course of the proceedings as he may rely upon. The parties would be at liberty to represent their respective cases and lead evidence, if they are so advised. The Collector may ask for or require further materials for the purpose of determining the market value, if he so desires. The materials already on record may also be taken into account. Such determination is to be made by the Collector as early as possible.

23. This writ petition is thus disposed of with the observations as made above. No costs.