(2008) 09 AHC CK 0088

In the Allahabad High Court

Anshu Chhabara APPELLANT

Vs

Collector and Commissioner, Jhansi Division RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:
Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 23
Stamp Act, 1899 — Section 29, 52, 56

Citation : (2009) 1 AWC 512 : (2008) 105 RD 659

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Smt. Rama Goyal, the learned Counsel for the petitioner and Sri R.K. Chaubey, the learned Standing Counsel for the State of U.P.

The petitioner has challenged the validity and legality of the order dated 17th July, 2006 passed by the Collector Jhansi, whereby deficiency of stamp duty and penalty has been imposed u/s 47-A of the Stamp Act. The petitioner has also challenged the order dated 29th November, 2007 whereby the revision of the petitioner has been rejected by the Commissioner, Jhansi Division, Jhansi u/s 56(1) of the Stamp Act.

2. The facts leading to the filing of the present writ petition is, that the petitioner had purchased 250 square meters of land vide a registered sale-deed dated 3rd March, 2004 which was located in Civil Lines, Jhansi. The stamp duty was paid at the rate of Rs. 5,000/- per square meter treating it to be a residential plot. The sale-deed records that Rs. 1,26,000/- was paid towards stamp duty and Rs. 5,000/- was paid towards registration charges. It transpires that a complaint was made and, on that basis, an enquiry report was submitted by the Deputy Inspector General (Stamps) stating therein that the plot in question was located and surrounded by commercial buildings near the "Elite crossing" in Jhansi and

that the land had a potential value of Rs. 10,000/- per square meter.

3. On the basis of this report, the Collector initiated proceedings u/s 47-A of the Stamp Act.

The petitioner filed his objections stating therein that the stamp duty was paid on the basis of the prescribed rate of Rs. 5,000/- per square meter and that the land- in question was a residential land and that it was purchased for residential purposes. The petitioner also filed evidence namely, sale-deeds of adjoining areas by way of examplar and also filed the circle rate as well as the master plan of the city of Jhansi showing the length of a bazaar street.

4. The Collector without considering the circle rate and other evidence filed by the petitioner relied upon the report of the Deputy Inspector General dated 29th March, 2004 and held that there was a deficiency of stamp duty and that the petitioner had concealed material facts. The authority found that the land in question was surrounded by commercial buildings and that it was 116 meters from the main road of "Elite crossing" in Civil Lines, Jhansi, and therefore, the land in question had a potential value of Rs. 10,000/- per square meter and. accordingly, assessed the value of the land at Rs. 25,10,000/- and held that Rs. 2,51,000/- was payable towards stamp duty.

5. The authority found that only Rs. 1,25,000/- was paid as stamp duty, and accordingly, by its order, directed the petitioner to pay the deficiency of stamp duty amounting to Rs. 1,25,000/- and also imposed a similar amount towards penalty.

The petitioner, being aggrieved by the said order, filed a revision u/s 56(1) of the Act along with a stay application. It transpires that the revisional authority directed the petitioner to deposit the entire amount and, based on the said direction, the petitioner deposited a sum of Rs. 3,27,300/- on 20th July, 2007 which included deficiency of stamp duty and penalty amounting to Rs. 2,50,000/- and interest at the rate of 18% per annum amounting to Rs. 77.300/-.

6. The revisional authority, during its pendency of the revision. directed the A.D.M.(F & R) to make a spot inspection and submit a report which was submitted in which it was indicated that the circle rate of that area was Rs. 6,000/- per square meter upto 50 meters from the main road; Rs. 5000/- per sq meter between 50 meters to 150 meters and, beyond 150 meters, the rate was Rs. 4,000/- per square meter.

7. The A.D.M. further reported that the plot-in-question was approximately 119 meters from the main road. The Commissioner, without considering this report, has relied upon the report of the Deputy Inspector General (Stamps) dated 29th March, 2004 and affirmed the order of the Collector and rejected the revision of the petitioner. The petitioner, being aggrieved by the aforesaid order, has filed the present writ petition.

8. The learned Counsel for the petitioner submitted that the authorities

committed a manifest error in relying upon the report dated 29th March, 2004 and had committed an error in treating the land to be of commercial value and that the valuation assessed by the authorities at Rs. 10,000/- per square meter was purely based on surmises and conjectures. The learned Counsel further submitted that the petitioner had filed sale-deeds by way of examplars of the land in the vicinity of the plot in question which had not been considered. Further, the report of the A.D.M dated 1.10.2007 had not been considered by the revisional authority.

9. The learned Counsel further stated that under the master plan, the bazaar street has been defined to be till 30 meters from the main road whereas, the petitioner''s land is located 119 meters from the main road, and therefore, the said plot could not be treated to be a commercial land and that the land has to be assessed on the basis of the market value of the land for residential plots.

10. On the other hand, the learned Standing Counsel submitted that the authorities had rightly relied upon the report dated 29th March, 2004 which was made pursuant to an inspection in the presence of the petitioner and that the authorities were justified in imposing a deficiency of stamp duty treating the plot as commercial land since it was located in Civil Lines and was surrounded by commercial buildings. The learned Counsel further submitted that the land in question had a potential value for commercial purposes, and therefore, the value of commercial land was assessed. The learned Standing Counsel submitted that after investigation, the impugned orders was passed, which were based on findings of fact and therefore, the impugned orders should not be interfered in a writ jurisdiction under Article 226 of the Constitution of India.

11. Before proceeding further, it would be appropriate to consider the provisions of Section 47-A of the Indian Stamp Act as applicable in the State of U.P. which is quoted hereunder-:

47-A. Under- valuation of instrument-[(1) (a) If the market value of any property, which is the subject of any instrument, on which duty is chargeable on the market value of the property, as set forth in such instrument is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908, shall, notwithstanding anything contained in the said Act, immediately after presentation of such instrument, and before accepting it for registration and taking any action u/s 52 of the said Act, require the person liable to pay stamp duty u/s 29, to pay the deficit stamp duty as computed on the basis of minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with Section 23 of the Registration Act, 1908.

(b) When the deficit stamp duty required to be paid under Clause (a), is paid in respect of any instrument and the instrument is presented again for registration, the registering officer shall certify by endorsement thereon, that the deficit stamp duty has been paid in respect thereof and the name and the residence of the person paying them and register the same.

(c) Notwithstanding anything contained in any other provisions of this Act, the deficit stamp duty may be paid under Clause (a) in the form of impressed stamps containing such declaration as may be prescribed.

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in Clause (a.) and presents the instrument again for registration, the registering officer shall, before registering the instrument refer the same to the Collector for determination of market refer the same to the Collector for determination of market value of the property and the proper duty payable thereon.]

(2) On receipt of a reference under Sub-section (]), the Collector shall, after giving the parties a reasonable opportunity of being heard, and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject of such instrument, and the proper duty payable thereon.

(3). The Collector may, suo motu, on a reference from any Court or from the Commissioner of Stamps, or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any Officer authorised by the State Government in that behalf within four years from the date of registration of any instrument, on which duty is chargeable on the market value of the property not already referred to him under Sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property, which is the subject of such instrument, and the duty'' payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in such instrument, he may determine the market value of such property and the duty payable thereon:

Provided that, with the prior permission of the State Government an action under this sub-section may be taken after a period of four years but before a period of eight years from the date of registration of the instrument on which duty is chargeable on the market value of the property.

[Explanation-The payment of deficit stamp duty by any person under any order of the registering officer under Sub- Section(J) shall not prevent the Collector from initiating proceedings on any instrument under Sub-section (3)]

(4) If on enquiry under Sub-section(2) and examination under Sub-section (3), the Collector finds the market value of the property:

(i) truly set forth and the instrument duly stamped, he shall certify by endorsement that it is duly stamped and return it to the person who made the reference;

(ii) not truly set forth and the instrument not duly stamped, he shall require the payment of proper duty or the amount required to make up the deficiency in the same, together with a penalty of an amount not exceeding four times the amount of the proper duty or the deficient portion thereof.

[(4-A)] The Collector shall also require along with the deficit stamp duty or penalty required to be paid under Clause (ii) if Sub-section (4), the payment of a simple interest at the rate of one and half per cent per mensem on the amount of deficit stamp duty calculated from the date of the execution of the instrument till the date of actual payment.

Provided that the amount of interest under this subsection shall be recalculated if the amount of deficit stamp duty is varied on appeal or revision or by any order of a competent court or authority.

(4-B) The amount of interest payable under subsection (4-A) shall be added to the amount due and be also deemed for all purposes to be part of the amount required to be paid.

(4-C) Where realisation of the deficit stamp duty remained stayed by any order of any court or authority and such order of stay is subsequently vacated, the interest referred to in Sub-section (4-A) shall be payable also for any period during which such order of stay remained in operation.

(4-D) Any amount paid or deposited by or recovered from, or refundable to, a person under the provision of this Act, shall first be adjusted towards the deficit stamp duty or penalty outstanding against him and the excess if any, shall then be adjusted towards the interest, if any, due from him.]

(5) The instrument produced before the Collector under Sub-section (2) or under Sub-section (3), shall be deemed to have come before him in the performance of his functions.

(6) In case the instrument is not produced within the period specified by the Collector, he may require payment of deficit stamp duty, if any, together with penalty on the copy of the instrument in accordance with the procedure laid down in Sub-section (2) and (4).

12. Rule 7 of the Utter Pradesh Stamp (Valuation of Property) Rules, 1997 provides the procedure for adjudication of the dispute u/s 47-A of the Act, which is quoted hereunder.

7. Procedure on receipt of a reference or when suo motu action is proposed u/s 47-A. (1) On receipt of a reference or where action is proposed to be taken suo motu u/s 47-A, the Collector shall issue notice to parties to the instrument to show cause within thirty days of the receipt of such notice as to why the market value of the property set forth in the instrument and the duty payable thereon be not determined by him.

2. The Collector may admit oral or documentary evidence, if any, produced by the parties to the instrument and call for and examine the original instrument to

satisfy himself as to the correctness of the market value of the subject-matter of the instrument and for determining the duty payable thereon.

3. The Collector may:

(a) call for any information or record from any public office, officer or authority under the Government or local authority;

(b) examine and record the statement of any public officer or authority under the Government or local authority;

(c) inspect the property after due notice to the parties to the instrument.

4. After considering the representation of the parties, if any, and examining the records and other evidence, the Collector shall determine the market value of the subject matter of the instrument and the duty payable thereon.

5. If, as a result of such inquiry, the market value is found to be fully and truly set forth and the instrument duly stamped according to such value, it shall be returned to the person who made the reference with a certificate to that effect. A copy of such certificate shall also be sent to the Registering officer concerned.

6. If as a result of such inquiry, the market value is found to be undervalued and not duly stamped, necessary action shall be taken in respect of it according to relevant provisions of the Act.

13. A perusal of the aforesaid Rules indicate that the authority is required to hold an enquiry in such manner as may be prescribed by the Rules. Rule 7 provides for the holding of an enquiry but the method of holding the enquiry has not been given. Consequently, the market value of the land in question is required to be determined on the general principles applicable for the determination of the market value of the land in question.

14. In Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others, , the Supreme Court held that the circle rates are mere guidelines and prima-facie gives the rate of the area concerned. Similar view was again reiterated by the Supreme Court in State of Punjab and Others Vs. Mohabir Singh etc. etc.,

Consequently, the circle rates, as prescribed by the District Magistrate, does not indicate the market value of the land in question and only gives a guideline of the approximate value of the land.

15. In Maya Food v. C.C.R.A. 1999 R.J. 619, the Court held that the market value of the land cannot be determined with reference to the use of the land to which the buyer intends to put it in use and that, in determining the market value, the potential value of the land, as on the date of the sale, alone, could only be taken into account and not the potential value that it may fetch in the distant future,

16. Similar view was held in Shakumbari Sugar and Allied Industries Limited v. State of U.P. and Ors. 2007 (102) RD 842 and Smt. Sushila Verma Vs. State of

Uttar Pradesh, Commissioner/C.C.R.A. and Collector,

17. In Ram Khilawan v. State of U.P. 2005 (98) R.D. 511, the Court found that the entire basis of the determination of the market value for the purpose of stamp duty was an ex-parte report of the Tehsildar. The court held that an ex-parte inspection report may be relevant for initiating a proceeding u/s 47-A of Stamp Act but no reliance could be placed upon the said report thereafter. After initiation of the case, an inspection is to be made by the Collector or authority hearing the case after due notice to the parties to the instrument as provided under Rule 7 (3) of the Rules of 1997.

18. Moreover in the inspection report distance of the property from other residential or commercial properties and road must be shown and wherever possible sketch map must also be annexed along with the report so that the correct valuation could be ascertained with reasonable certainty.

19. In Vijay Kumar and Ors. v. Commissioner, Meerut Division, Meerut and Anr. 2008 (7) ADJ 293 the Court held that the burden to prove that the market value was more than the minimum value fixed by the Collector was upon the State Authorities and a mere report of approximate value of the land was not sufficient.

20. In the light of the aforesaid decisions, it is clear that the report dated 29th March, 2004 was relied upon by the authorities. This is a report which was submitted prior to the initiation of the proceedings u/s 47-A of the Act. Such report could form the basis of the initiation of the proceedings u/s 47-A of the Act but could not form the basis of evidence under Rule 7 of the Rules of 1997. In any case, the report is not based on any concrete evidence which could indicate the market value of the land in question. The said report only indicates the approximate value at the rate of Rs. 10,000/- per square meter.

21. In my opinion, the finding on the market value of the land is based on presumption and is patently against the material evidence on record. The authorities have estimated the value of the land at the rate of Rs. 10,000/- per square meter on the ground that the land in question is surrounded by commercial buildings and that the value of the land upto 9 meters from the main road was Rs. 15,000/- per square meter as fixed by the Collector and further concluded that since the land in question was beyond 9 meters, the value of the land was approximately Rs. 10,000- per square meter. This finding is patently perverse and against the material evidence on record.

22. The circle rate fixed by the Collector has been indicated in the report of the A.D.M. Dated 1.10.2007 which indicates that the value of the land upto 50 meters from the main road is Rs. 6,000/- per square meter and from 50 meters to 150 meters, the rate is Rs. 5,000/- per square meter. Admittedly, the land in question is 119 meters from the main road. Therefore, the rate applicable as per the Collector''s circle rate is Rs. 5,000/- per square meter. The petitioner has paid the stamp duty at the rate of Rs. 5,000/- per square meter. The authorities have valued the land at Rs. 10,000/- per square meter on the strength of the

finding that the land is surrounded by commercial buildings, and that, the said land has a potential value for commercial purposes.

23. In my opinion, such presumption cannot be drawn by the authorities. The Stamp Act is a fiscal statute and the provisions has to be interpreted strictly and literally. There is no room for presumptions or approximation. The market value of the land is required to be assessed on the nature of the land as existing on the date of the sale of that land. What the land could be put in use in future could not be taken into consideration by any stretch of imagination. The market value of the land as existing as on the date of the execution of the sale-deed is required to be considered. The potential value of the land, which could fetch in future is not required to be taken into consideration.

24. There is another aspect. Admittedly, the land is a residential land close to a commercial area. The mere fact that the land in question is surrounded by commercial buildings will not make a residential land into a commercial land unless the use of the land is converted in the master plan under the provisions of the U.P. Urban Development and Planning Act, 1973. The petitioner has also filed an extract of the master plan indicating that the distance of a bazaar street is 30 meters from the Elite crossing, Civil Lines, Jhansi. Consequently, as per the master plan, land upto 30 meters from the crossing is to be treated as commercial land and beyond 30 meters, the land is treated as a residential land. The petitioner''s land is admittedly beyond 30 meters.

25. In view of the aforesaid, the judgment cited by the learned Standing counsel in the case of Adarsh Kumar and Ors. v. State of U.P. and Ors. 2007 (7) ADJ 786 has no application to the facts and circumstances of the case. This Court finds that there is no suppression of material fact. The potential of the land, which it could fetch in future is not required to be spelt out in the recital of the sale-deed and such details does not amount to suppression of any material fact which could invite imposition of penalty.

26. In view of the aforesaid, the imposition of stamp duty and the imposition of penalty is patently illegal and without jurisdiction. The impugned orders cannot be sustained and are quashed. The writ petition is allowed.

27. It has come on record that the petitioner has deposited a sum of Rs. 3,27,300 on 20th July, 2007, which included a sum of Rs. 77,000 towards interest calculated at the rate of 18% per annum as imposed by the Collector in its order u/s 47-A of the Act. Since, the amount has already been deposited, the petitioner is entitled for a refund of the amount along with interest at the rate of 18% per annum calculated from the date of deposit till the date of actual payment made by the authority to the petitioner. The amount so deposited is required to be refunded to the petitioner within six weeks from the date of presentation of the certified copy of the order before the Collector.