(2014) 08 AHC CK 0106

In the Allahabad High Court

Case No : Writ-C No. 43714 of 2014

Asha Tomar APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Citation : (2014) 107 ALR 139 : (2014) 125 RD 5

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : S.K. Tyagi, Advocate for the Appellant

Judgement

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Surya Prakash Kesarwani, J.—Heard Sri S.K. Tyagi, learned Counsel for the petitioner and Sri B.P. Singh Kachhawah, learned Counsel for the respondents. Briefly stated the facts of the present case are that the instrument No. 3578 was executed on 3rd June, 2013 by one Omkar Tyagi in favour of the petitioner in respect of house No. B-606 area 29.75 sq. metre situate at Pocket-B, Sainik Vihar Colony, Housing Scheme, Meerut showing consideration of Rs. 7,50,000/- which was said to be the market value and stamp duty of Rs. 45,000/- was paid thereon. A report was submitted by Sub Registrar, Meerut-IV dated 9th July, 2013 indicating that the said property was purchased by the vendor Sri Omkar Tyagi vide instrument No. 5885 dated 22nd September, 2010, showing the market value/consideration at Rs. 12,28,000/-. This, prima facie, indicated suppression of market value in the instrument in question.

2. Under the circumstances, proceeding was initiated by the respondent No. 3, under section 47A of the Indian Stamp Act, 1899, who passed the order dated 14.11.2013 determining the deficiency in stamp duty of Rs. 30,960/-. Penalty of Rs. 15,000/- was also imposed. Aggrieved with this order petitioner filed a Revision No. 9 of 2013/14 before the respondent No. 2 which was rejected by the impugned order dated 28.5.2014.

3. Submission of Sri Tyagi is that vended property in question is a very small house. An explanation with regard to market value was submitted before the respondent No. 3, clarifying that the vendor of the property in question has earlier got executed a sale deed from her wife in his favour showing the consideration on a very higher amount for bank loan purpose which was not the market value. He, therefore, submits that the market value as disclosed in the instrument in question is totally correct. The petitioner being a very poor person is not able to afford to pay the alleged deficiency of stamp duty as well as penalty. He further submits that no reason has been recorded for imposition of penalty and it has been imposed mechanically.

4. Sri B.P. Singh Kachhawah, learned Standing Counsel submits that the impugned order does not suffer from any infirmity. The deficiency of stamp duty has been determined and penalty has been imposed in accordance with law.

5. I have carefully examined the submissions of learned Counsel for the parties. It is undisputed that the petitioner had filed an objection dated 10th September, 2013, a copy of which has been filed as Annexure-2, stating therein that the seller of the vended property in question had purchased it from his own wife Smt. Savita Tyagi by registered sale deed on 22nd September, 2010 showing the consideration at a much higher amount which was not the real market value. This was done by the vendor for the purpose of taking loan from the bank. Submission of the petitioner has been noted by the respondent No. 3 but no finding was recorded thereon. This submission was not even rejected. No reasons has been recorded in the impugned order for imposition of penalty of Rs. 15,000/-.

6. Considering the facts and circumstances of the case in its entirety, I am of the view that quantum of penalty needs to be reduced. In view of the above, discussions, the writ petition is partly allowed. The penalty is reduced from Rs. 15,000/- to Rs. 2,000/-. The impugned orders are modified accordingly.

