

(2005) 11 UK CK 0014
In the Uttarakhand High Court
Case No : Writ Petition No. 639 of 2001

Ashish Nanda

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 09-11-2005

Acts Referred:

Stamp Act, 1899 — Section 47A, 47A(1)
Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 — Rule 3, 4
Uttar Pradesh Stamp Rules, 1942 — Rule 340, 340A, 341, 341(1), 341(2)

Citation : AIR 2006 Utt 30

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Siddhartha Sah, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—By the present writ petition the petitioner has prayed for a writ of certiorari quashing the orders dated 30-3-2001 and 27-5-1998 as well as the orders dated 29-3-2000 and 26-11-1997.

2. Briefly stated, the petitioner has purchased land of khata by virtue of sale deed dated 5-4-1994 land of Khata No. 49-Ka area 2 Nali 4 Mutthis by virtue of sale deed dated 5-4-1994. The sale deed in question was valued at Rs. 67,215/- and the stamp duty according to the petitioner was paid to the extent of Rs. 9800/-. However, a notice was issued u/s 47A of the Indian Stamp Act stating therein that the petitioner having purchased 2 Nali 4 mutthis land which is situated about 200 meters away from the motorable road and he is required to pay the deficiency to the extent of Rs. 28,697.50p. The petitioner has objected to the said notice on the ground that he has paid the stamp duty on the basis of the circle rate determined by the Collector and, therefore, the notice is liable to be dropped.

3. On the basis of the objections filed by the petitioner a report was called from the Patwari which shows that there is no residential house as there was no roof

at the relevant time when the sale deed was executed and the circle rate, according to the Patwari, was ranging Rs. 21,000/- to Rs. 24,000/- per Nali. The report is quoted below:

(Vernacular matter omitted....Ed.)

4. However, the Additional District Magistrate vide his order dated 26-11-1997 has come to the conclusion the value of the land is Rs, 1,93,560/- in accordance with Rs. 425/- per sq. meter and according to the Additional District Magistrate the land 2 nali 4 mutthis comes to 455:437 sq. meter and, therefore, the valuation will come to Rs. 1,93,560/-, The Collector has also come to the conclusion that there is a pucca construction to the extent of 600 sq. meter and the value has been calculated on the basis of Rs. 2330/- per sq. meter and since there is a half construction, therefore value has been calculated to be Rs. 71,456/- and the total value was Rs. 2,65,016/- and the stamp duty to be levied being Rs. 38,497/-. Aggrieved by the said order the petitioner has preferred a revision before the Commissioner Kumaon Mandal, Nainital. The Commissioner has remanded the matter that so far as the valuation of the residential portion is concerned but has not interfered with the matter so far as the valuation of the land is concerned. However, the matter was sent back for fresh calculation so far as the residential house is concerned. After the remand of the case the Additional Commissioner vide his order dated 29-3-2000 has calculated the valuation of the constructed portion to the extent of Rs. 40,000/- was calculated and the deficiency was required to the extent of Rs. 24,130/-. The petitioner has filed revision against the said order. The revision was dismissed and so far as the stamp duty of the constructed portion is concerned it remained the same to the extent of Rs. 40,000/-.

5. Counsel for the petitioner has submitted that in view of the report of the Patwari the valuation of the land is between Rs. 21,000/- per Nali to Rs. 24,000/- per Nali so far as the land is concerned and the same cannot exceed more than the said rate.

6. So far as the constructed portion is concerned, from the report it will appear that there was no constructed house when the sale deed was executed in the year 1994. The report, shows that on the land in dispute there is no BAGH or GHAR and, as such, the value has to be calculated on the basis of the sale deed and the relevant date is when the sale deed was executed. The market value has to be determined on the basis of character of the land as well as user thereof on the relevant date when the sale deed was executed. Any subsequent change in the property will not affect the rights of the petitioner and the notice on the basis of any subsequent changes can not be said to be legally justified. The report of the Patwari clearly shows that there is no residential property. He has referred a decision reported in AIR 1981 707 (SC) . The observations are quoted below (Para 5):

It was contended that even so the finding of the High Court on the question of

adverse possession was given without at all considering the materials and evidence on the basis of which the two courts had concurrently found that the plaintiff had acquired title by adverse possession. It is true that the plaintiff did not come up in appeal before this Court against the first Judgment of the High Court, obviously because the order passed by the High Court was not a final one but was in the nature of an interlocutory order as the case had been remanded to the Additional Judicial Commissioner and if the said court had affirmed the finding of the trial Court, no question of filing a further appeal to the High Court could have arisen. Thus, the appellant could not be debarred from challenging the validity of the first Judgment of the High Court even after the second judgment by the High Court was passed in appeal against the order of remand. In support of this contention, the counsel for the appellant relied on a decision of this Court in the case of Satyadhan Ghosal and Others Vs. Sm. Deorajin Debi and Another, where under similar circumstances this Court observed as follows:

In our opinion order of remand was an interlocutory judgment which did not terminate the proceedings and so the correctness thereof can be challenged in an appeal from the final order.

In coming to this decision this Court relied on an earlier decision in the case of Keshardeo Chamria Vs. Radha Kissen Chamria and Others, where the same view was taken.

7. The learned Counsel has also referred 1999 RD 313 : 1999 ALJ 1143 Rajbir and Ors. v. Dy. Director of Consolidation, Meerut and Ors. The observations are quoted below (Para 5):

In the case of Preetam Singh (Dead) by L.Rs. and others Vs. Assistant Director of Consolidation and others, the Supreme Court did not hold that the order of remand, interlocutory order or otherwise. In the case of AIR 1981 707 (SC) there is clear finding of the Supreme Court that an order of remand is an interlocutory order.

8. Rules have been framed under the Indian Stamp Act known as The Uttar Pradesh Stamp Rules, 1942 for purposes of stamp duty. Rule 341 of the Stamp Rules is quoted below:

341. For the purposes of payment of stamp duty, the minimum market value of immovable property forming the subject of an instrument of conveyance, exchange, gift, settlement, award or trust, referred to in Section 47-A(1) of the Act, shall be deemed to be not less than that as arrived on the basis of the multiples given below:

(i) Where the subject is land-(a) in case of Bhumidhari - 800 times the land revenue;

(b) in case of Sirdari land - 400 times the land revenue;

(c) where the land is not assessed to revenue but net profits have arisen from it

during the three years immediately preceding the date of the instrument 25 times the annual average of such profits;

(d) where the land is not assessed to revenue and no profits have arisen from it during the three years immediately preceding the date of the instrument 400 times the assumed annual rent;

(e) where the land is non-agricultural and is situate within the limits of any local body referred to in Clause (c) of Sub-rule (i), Rule 340 - equal to the value worked out on the basis of the average price per square metre, prevailing in the locality on the date of the instrument,

(ii) where the subject is grove or garden(a) If assessed to revenue the value of the land shall be worked out in the manner laid down in Rule 341(1) (a) and the value of the trees standing thereon shall be worked out according to the average price of the trees of the same size, and age prevailing in the locality on the date of the instrument.

(b) If not assessed to revenue or is exempted from it, the value thereof shall be determined at 20 times the annual rent plus the premium or 20 times of the annual average of income which has arisen during the three years immediately preceding the date of instrument and the value of the trees thereon shall be determined in accordance with Rule 341(ii)(a).

(iii) Where the subject is building-

(a) Where the building is assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants - 25 times the actual or assessed annual rental value, whichever is higher as the case may be;

(b) where the building is not assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants - 25 times the actual or assumed annual rental value, whichever is higher as the case may be.

9. Rules 3 and 4 of the U. P. Stamp (Valuation of Property) Rules, 1997 also provide the criteria and the same are quoted below:

3. Facts to be set forth in an instrument.- In case of an instrument relating to immovable property chargeable with an ad valorem duty, the following particulars shall also be fully and truly stated in the instrument in addition to the market value of the property;-

(1) In case of land;

(a) included in the holding of a tenure holder, as defined in the law relating to land tenures:

(i) the Khasra number and area of each plot forming part of the subject-matter of the instrument;

(ii) whether irrigated or un-irrigated and if irrigated, the source of irrigation;

- (iii) if under cultivation whether do-fasali or otherwise;
- (iv) land revenue or rent whether exempted or not and payable by such tenure holder;
- (v) classification of soil, supported in case of instruments exceeding twenty thousand rupees in value, by the certified copies, or extracts from the relevant revenue records issued in accordance with law;
- (vi) location (whether lies in an urban area, semi-urban area, or country side); and
- (vii) minimum value fixed by the Collector of the District;

4. Fixation of minimum rate for valuation of land, construction value of non-commercial building and minimum rate of rent and commercial building.- (1) The Collector of the district shall biennially, as far as minimum value per acre/per square metre of land, the minimum value per square metre of construction of non-commercial building and the minimum monthly rent per square metre of commercial building, situated in different parts of the district taking into consideration the following facts-

- (a) in case of land-
 - (i) classification of soil;
 - (ii) availability of irrigation facility;
 - (iii) proximity to road, market, bus-station, railway station, factories, educational institutions, hospitals and Government officers; and
 - (iv) location with reference to its situation in urban area, semi-urban area or countryside.

10. In Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others, , the Apex Court has held as under (Para 5):

The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is matter for common knowledge in order to escape such duty by unfair practice, many a time under valuation of a property or lower consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds are on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast on authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village; from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is likely value of such property in

that area. In its absence it would be very difficult for such Registering Authority to assess the valuation of such instrument. It is to give such support to the Registering Authority the Rule 340-A is introduced. Under this Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area concerned.

11. However, the Supreme Court in *Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others*, has observed as under (paras 5 and 6):

...Thus the circle rate, as aforesaid is merely guideline and is also indicative of division of exercise of power between the Registering Authority and the Collector.

...This circle rate in no way effects any party when finally determining its value. In the present case, the vires of this Rule is not under challenge nor there is any challenge that there was no such material before the Collector to enhance for subsequent year by 20 per cent. We do not find any such ground raised nor appellants could point out any (sic) raised before the authorities concerned. On the contrary, learned Counsel for the State submits that there was sufficient material before the State showing the trend of increase in land prices during the relevant years in question to sustain the fixation of 20% enhanced price for the next year in question.

12. In *Mukesh (Minor) v. Chief Revenue Controlling Authority/Board of Revenue, U.P., Allahabad and Ors.* 2005 ALJ 1678 it has been held as under (Para 6):

Having heard the learned Counsel for the parties, I proceed to deal with the principal argument advanced by the learned Counsel for the petitioner to the effect that the authorities have committed error by proceeding to assess the value of the instrument on the basis of future potentialities of the land. . Learned Counsel for the petitioner has urged that the finding recorded by the revisional authority by placing reliance in the case of *Administrator General of West Bengal Vs. Collector, Varanasi*, is erroneous inasmuch as the said decision related to the assessment of compensation under the Land Acquisition Act where the criteria is different. To the aforesaid extent the argument of the learned Counsel for the petitioner has to be accepted inasmuch as the principle of assessing the future potential value of a property for the purpose of levying stamp duty cannot be pressed into service for the purpose of calculating the stamp duty under the Indian Stamp Act. The reliance placed by the revisional authority on the aforesaid decision, therefore, was totally misplaced. This aspect of the matter requires to be looked into in the light of the decisions of the Stamp Act itself. The Apex Court in the case of *Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others*, , paragraph *Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others*, , had held that the imposition of stamp duty on sale deeds is one the actual market value of such property and not the value described in the instruments. The market value of a property may vary from village to village, from location to location and even

may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is the likely value of such property in that area.

13. In *Aniruddha Kumar and Anr. v. Chief Controlling Revenue Authority, Uttar Pradesh, Allahabad and Anr.* 2000 (18) LCD 1203 the learned single Judge of the Allahabad High Court has held as under:

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 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 47-A. We may note that the expression used is less than even the minimum market value." The use of the expression pre-supposes 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 47-A 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 the orders passed are without jurisdiction as such.

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 Act, 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 340-A 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 factors 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.

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 change the character is immaterial for the purpose of payment of stamp duty. The principle that has been laid down in *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, 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.

In Rakesh Chandra Mittal and Others Vs. Addl. District Magistrate and Another, , the Division Bench of the Allahabad High Court has held as under (Para 10):

It is well settled that market value of the property has to be determined with reference to the date on which the document is executed. Market value as such keeps on varying and changing. Any subsequent improvement or change in the nature of user of the land, which may result into enhancement of the market value of the property, is not to be taken into account and it is only the value of the property on the date of execution of the document that is to be considered for the purpose of determination of proper stamp duty payable on the instrument.

14. The Collector while issuing notice u/s 47-A of the Indian Stamp Act has not applied his mind and has arbitrarily fixed the stamp duty ignoring the report of the Patwari. It appears that the case has been decided only on presumptions as will appear from the order itself that the land can be used for commercial purposes. There is no evidence of the use of the land for commercial purposes at the time of the execution of the sale deed and as such the notice deserves to be quashed.

15. In view of aforesaid, a writ of certiorari is issued quashing the orders dated 30-3-2001 and 27-5-1998 passed by respondent No. 2 and orders dated 29-3-2000 and 26-11-1997 passed by respondent No. 3, The matter is remanded to the Additional Commissioner (Judicial), Kumaon Division for deciding the same in accordance with law.

The writ petition is allowed. No order as to costs.