(2013) 02 AHC CK 0252

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 29332 of 1999

Ashok Kumar APPELLANT

Vs

Chief Controllign Revenue Authority and Others RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Uttar Pradesh Financial Corporation Act, 1951 — Section 4

Citation : (2013) 6 ADJ 534 : (2013) 98 ALR 777 : (2013) 5 AWC 4495 : (2013) 119 RD 322

Hon'ble Judges : Arvind Kumar Tripathi, J

Bench : Single Bench

Advocate : S.K. Shukla and R.K. Pandey, for the Appellant;

Final Decision : Allowed

Judgement

Arvind Kumar Tripathi, J.—Heard learned counsel for the petitioner, learned Standing Counsel and perused the record. The controversy in the present case is whether the stamp has to be paid on the amount of the auction or on the basis of market value and circle rate.

2. The present writ petition has been preferred for quashing of the order dated 26.3.1996 and 15.3.1999 passed by respondent No. 2, Additional District Magistrate (Finance and Revenue) Bulandshahr and respondent No. 1 Chief Controlling Revenue Authority/Board of Revenue, U.P. at Allahabad, respectively, Annexures 6 and 9 to the writ petition.

3. On 22.7.1999 operation of the impugned orders as annexure 6 and 9 to the writ petition was stayed until further orders.

4. Learned counsel for the petitioner submitted that the plot No. 20/3 situated in the industrial area, Sikandarabad, District Bulandshahr was put for public auction by the U.P. Financial Corporation. Since the petitioner was the higher bidder and purchased the property in open public auction for consideration of a sum of Rs. 4,30,000/- hence the deed was executed and the stamp duty was paid on the

amount of auction purchase. A sum of Rs. 2,15,000/- was paid on the same day, however, subsequently, the balance amount of consideration was paid in installment and the last installment for a sum of Rs. 26,875/- was payable by 15.5.1996. The sale-deed was executed by the U.P.F.C. in favour of petitioner on 19.10.1992. On 21.10.1992 the Sub Registrar, District Bulandshahr submitted a report and recommended for initiating a proceeding for deficiency in stamp duty. On 24.9.1997 the Area Manager of U.P.S.I.D.C. Limited Sikandrabad, District Bulandshahr issued a certificate to the effect that the entire dues was paid and no dues certificate was issued. The Manager (Law) U.P.F.C. also issued a certificate on 2.4.1994 that the amount of loan obtained by M/s. Swadeshi Metal Box (borrower) for a sum of Rs. 8,67,000/- or any dues was not to be transferred to the petitioner apart from a sum of Rs. 4,30,000/- which was the sale consideration in open auction, regarding the dues against the borrower. However, for remaining balance amount the recovery certificate was issued by the U.P.F.C. against the promoter of M/s. Swadeshi Metal Box (borrower). After execution of sale-deed notice was issued by the respondent No. 2 for appearance and to file reply on 18.10.1995.

Thereafter, in pursuance of the notice issued by the respondent No. 2 the objection was filed by the petitioner in case No. 654/93 stating therein that the petitioner had already paid the sufficient amount of stamp duty on the sale consideration for which the property was purchased in a open public auction hence there was no deficiency in the stamp duly. The respondent No. 2 without considering the fact of this case and without application of mind illegally and arbitrarily passed the order that there was deficiency of stamp duty of Rs. 2,66,925.62. Against the order passed by respondent No. 2 on 26.3.1996 the review application was filed. The revision was also preferred against the order dated 26.3.1996 before the Board of Revenue. The operation of the impugned order was stayed, however, subsequently, revision was dismissed by the respondent No. 1 by impugned order dated 15.3.1999 hence the present writ petition was preferred in which interim order was passed. The deed was registered on 19.10.1992 and the petitioner has purchased only the land and the shed existing over the plot in dispute and any machinery or other items of the unit was not purchased by the petitioner. He further submitted that since the property was purchased in a open public auction hence the market value of that property will be the amount offered by the higher bidder and since the petitioner was higher bidder hence property was transferred to him. He also contended that a notification was issued by the Government u/s 9 of the U.P.F.C. Act that any conveyance deed executed by the U.P.F.C. for the sale of the property, on the price of the property fetches in public auction, would be treated as the market value for the purposes of payment of stamp duty. Hence the impugned orders passed by the respondent Nos. 1 and 2 are illegal, arbitrary and the same are liable to be set aside.

5. Learned Standing Counsel opposed the aforesaid prayer and submitted that as far as the auction amount shown for a sum of Rs. 4,30,000/- is concerned that is

not the entire consideration of the sale-deed because in view of the para 6 of the deed as framed in between vendor and vendee (petitioner), the petitioner agrees to pay all outstanding dues of U.P.S.I.D.C. against the borrower under the terms of lease deed dated 7.6.1982 and further agrees to abide by the terms and conditions contained therein. Hence whatever dues was there on the date of auction petitioner agreed to pay that balance amount also, which was due against the borrower apart from the auction amount for a sum of Rs. 4,30,000/-. Hence the consideration and market value of auction amount has to be considered including the balance amount, which was balance against the borrower and as such there is no illegality in the order while deciding the market value. This aspect was not disclosed by the petitioner though it was duty of the petitioner to disclose at the time of registration and to pay stamp duty on that amount.

6. Considered the argument of learned counsel for the parties. When reference was made by the district Registrar, Bulandshahr para 6 of the deed was considered and referred, which is as follows "the vendee also agrees to pay all outstanding dues of the U.P.S.I.D.C. against the borrower under the terms of lease deed dated 7.6.1982 and further agrees to abide by the. terms and conditions contained therein". The auction amount was shown to be a sum of Rs. 4,30,000/- the loan amount was Rs. 8,67,000/- which was to be returned with interest. The sale-deed was executed in favour of the petitioner on 17.10.1992 and in view of the agreement para 6 of the deed petitioner agreed to pay the outstanding dues of the U.P.S.I.D.C., which was against the borrower on the date of auction in view of the terms of the lease deed dated 7.6.1982. If petitioner agreed to pay the existing dues against the borrower then while considering the consideration that amount was also required to be considered for payment of stamp duty and stamp duty was admittedly paid only on auction on amount shown to be Rs. 4,30,000/- in which any dues was not included. According to learned counsel for the petitioner the recovery certificate was issued against the borrower and it appears that the balance loan amount was recovered because no dues certificate was issued and the certificate was issued to the effect that the property in question was free from all encumbrances and as such there was no deficiency in payment of dues,

7. As far as the market value in the present case is concerned, the property was transferred in a open public auction to the higher bidder and what was the amount in open public auction that would be the market value of the property in question. In a property transferred through auction by the U.P.F.C. circle rate or any exemplar has not to be considered because regarding the property in question whatever amount was offered by the higher bidder is a market value of the property of borrower. Admittedly the State Government has also issued a notificate u/s 9 of the Act that any conveyance deed executed by the U.P. State Finance Corporation for the sale of a property on the price, the property fetches in public auction, would be treated as the market value for the purposes of payment of stamp duty. However, without bringing on record any substantive or

constructive material to prove that the market value disclosed in the instrument of sale-deed regarding the property in question was on the lower side the market value was determined. In the present case no such material or evidence are available on record hence in the present case the market value would be the consideration mentioned in the sale-deed because the same was the market value of the property offered by the higher bidder in open public auction. However, while considering the market value of the property in question para 6 of the condition mentioned in the sale-deed, as also mentioned in the reference by the District Registrar, was also required to be considered for determining the market value of the property in question for the purposes of payment of stamp duty. However, it appears that nothing was due against the borrower to be recovered by the U.P.S.I.D.C. As the same had already been recovered from the borrower because in view of the no dues certificate and the certificate issued by the Manager (Law) of the U.P.F.C. the property in question was free from all encumbrances.

8. In view of the aforestated facts and circumstances, the order dated 26.3.1996 and 15.3.1999 passed by respondent No. 2, Additional District Magistrate Finance and Revenue, Bulandshahr and respondent No. 1 Chief Controlling Revenue Authority/Board of Revenue, U.P. at Allahabad respectively, annexure 6 and 9 to the writ petition are hereby quashed. Accordingly, present writ petition is allowed. No order as to costs.