(2014) 08 AHC CK 0115

In the Allahabad High Court

Case No : Writ-C No. 44629 of 2014

Ashok Kumar APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:
Stamp Act, 1899 — Section 33, 56

Citation : (2014) 107 ALR 143 : (2014) 125 RD 1

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : Satendra Kumar Upadhyay, Advocate for the Appellant

Judgement

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Surya Prakash Kesarwani, J.—Heard Mrs. Anupma Parasar, learned Counsel for the petitioners and Sri B.P. Singh Kachhwah, learned Standing Counsel for the respondents. This writ petition has been filed challenging the order dated 11.4.2012 passed by the Additional District Magistrate (Finance & Revenue), Aligarh, respondent No. 3 in Stamp Case No. 115 of 2011-12, under section 33/47-A of the Indian Stamp Act, 1899 in respect of Instrument No. 6205 dated 10.11.2010 pertaining to Plot No. 1112, area 0.656 hectare of Village Pisawa, Tehsil Gabhana, district Aligarh, the order dated 20.4.2013 rejecting the restoration application and the order dated 21.9.2013 passed in Appeal No. 61 of 2013.

2. Briefly stated the facts of the present case are that part portion of Plot No. 1112, as mentioned above, was purchased vide sale deed dated 10.11.2010. With respect to this instrument a report dated 1.7.2011 was submitted by A.I.G. Stamps. A notice for deficiency of stamp duty under section 33/47-A of the Act, was issued to the petitioner which was duly served upon him. However, the petitioner did not appear and as such an ex parte order dated 11.4.2011 was passed by the respondent No. 3 in Stamp Case No. 115 of 2011-12 determining

the market value of the property at three times of agricultural rates as given in the valuation list. The said valuation was taken by the respondent No. 3 on the ground that the part portion of the same plot was sold by Instrument Nos. 3367 and 3368 dated 2.6.2010 as residential plots @ Rs. 1100/- per Sq. Mts. In the light of these two exemplars, the respondent No. 3 valued the vended property at three times of the minimum valuation rates of agricultural land and thus, determined the market value of the vended property at Rs. 36,80,160.00. The stamp duty was determined at Rs. 2,57,670/-. The petitioner had paid stamp duty of Rs. 86,000/-. Consequently, the deficiency of stamp duty of Rs. 1,71,670/- was found. A demand of the aforesaid deficiency in stamp duty was created and a penalty of equal amount was imposed by the impugned ex parte order dated 11.4.2012 without recording any reason with regard to quantum of penalty. The restoration application filed by the petitioner was rejected by the respondent No. 3 vide order dated 20.4.2013.

3. Aggrieved with this order, the petitioner filed Appeal No. 61 of 2013 under section 56 of the Act, before the respondent No. 2 which was dismissed vide order dated 21.9.2013. However, the appellate authority also did not record any reason or basis for imposition of penalty of equal amount.

4. The submission of the learned Counsel for the petitioner is that the vended property is an agricultural land and, therefore, the valuation could not have been determined either at residential rates or three times of the valuation rate of agricultural land or on the basis of exemplars in question. The vended property is recorded in the revenue records as agricultural land and, therefore, the valuation has to be made as an agricultural land. The penalty imposed is wholly arbitrary and illegal and in any circumstances, it is highly excessive, inasmuch as, no reasons have been recorded to impose the penalty for an amount equal to the amount of alleged deficiency of duty. She submits that the proceedings for penalty is a quasi judicial proceeding and, therefore, the impugned order imposing the penalty without recording any reason for the quantum of penalty is wholly arbitrary and illegal.

5. Shri B.P. Singh Kachhwah appearing for the State-respondent supports the impugned order. He submits that the penalty has been imposed well in accordance with law.

6. I have carefully considered the submissions of the learned Counsel for the parties.

7. It is not in dispute that the part portion of the same plot No. 1112 was sold by Instrument Nos. 3367 and 3368 dated 2.6.2010 at the rate of Rs. 1100/- per Sq. Mts. as residential land. The vended property being portion of the same plot, the determination of value thereof by the respondent No. 3 at three times of the valuation rates of agricultural land which comes almost half of the value as disclosed in the other two instruments relied as exemplars, cannot be said to be arbitrary or without any basis. On these facts, I do not find any infirmity in the

determination of the market value of the vended property as well the determination of deficiency in stamp duty.

8. However, I find force in the submissions of the learned Counsel for the petitioner with regard to the quantum of penalty. No reasons have been recorded in the impugned order by the respondent No. 3 as well as by the respondent No. 2 with regard to the quantum of penalty.

9. Under the circumstances, levy of penalty is upheld, but the quantum of penalty, which cannot be sustained. In my opinion, interest of justice would be better served, if the amount of penalty is reduced to Rs. 50,000/-. In view of the above discussions, this writ petition is disposed of modifying the impugned orders to the extent that the levy of penalty is reduced to Rs. 50,000/-.