**(2013) 10 AHC CK 0229**

**In the Allahabad High Court**

**Case No :** C.M.W.P. No. 25501 of 2013

Ashok Kumar Garg — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

**Date of Decision :** 08-10-2013

**Acts Referred:**

**Citation :** (2014) 102 ALR 285 : (2014) 3 AWC 2481 : (2013) 121 RD 680

**Hon'ble Judges :** Arun Tandon, J

**Bench :** Single Bench

**Advocate :** Abhishek Kumar, for the Appellant;

**Final Decision :** Allowed

## Judgement

Arun Tandon, J.—Heard learned Counsel for the petitioner and learned Standing Counsel for the State-respondents. With reference to the notice issued u/s 33/47-A of the Indian Stamp Act, an order was passed by the Additional Collector (Administration) on 28th March, 2011 determining the deficiency of stamp duty on the deed in question as Rs. 3,91350/-, penalty of Rs. 98,000/- was imposed. Total sum of Rs. 4,89,350/- was demanded. Against this order, the petitioner filed an appeal before the Commissioner u/s 56 of the Indian Stamp Act, which was allowed vide order dated 17th October, 2011 and the matter was remanded to the Collector for fresh spot inspection and for fresh order being passed on the basis of market value of the property in question.

2. After remand, in the order-sheet dated 4th December, 2012, reference is made to the spot inspection done. For the first time, the Collector decided to include the cost of constructions standing over the plot purchased by the petitioner comprising of 4 stories and 24 flats. The demand of stamp duty has been increased to Rs. 11,26,500/-, a like sum of amount has been levied as penalty. Not being satisfied, the petitioner filed an appeal before the Board of Revenue, Allahabad/Chief Controlling Revenue Authority, U.P. u/s 56-A of the Indian Stamp Act. Member, Board of Revenue has dismissed the appeal under

order dated 7th March, 2013. It is against these two orders that the present writ petition has been filed.

3. On behalf of the petitioner it is contended that the authorities could not have gone behind the notice, which was issued u/s 33/47-A of the Indian Stamp Act culminating in an order dated 28th March, 2011, inasmuch as the State had not filed any appeal against the said order. Under the order of remand, the respondents could not have improved upon the facts and could not have included the constructions, which were raised subsequent to purchase of the land by the petitioner for the purposes of determining the market value.

4. It is the case of the petitioner that before the appellate authority, said contention was specifically raised and has also been noticed in the order impugned. It was the specific case of the petitioner that constructions of the flats had been raised after purchase of the plot in 2010 till the date of fresh inspection in the year 2012. For the purpose reference was also made to the order of the Development Authority sanctioning the map for constructions. The Board of Revenue even after noticing the said fact has only relied upon the inspection report, which records that at present there were constructions of four stories, six flats each, total 24 flats and therefore, the value of the constructions had also to be included in the sale-deed for determining its market value.

5. According to the learned Counsel for the petitioner, the stand taken is fallacious and is clearly a case of non-application of mind to the legal position, namely that the stamp duty is to be determined with reference to the value of the property on the date of execution of the sale-deed/its registration and not with reference to the further improvement made thereafter on the land.

6. Having noticed the said contention, this Court required the learned Standing Counsel to demonstrate in the facts of the case as to how the value of these 24 flats could be added without recording a finding as to when these flats were constructed, specifically in the circumstance, when under earlier proceedings the Collector had not found any error in computation of the value of the property with regard to the standing constructions. No reply could be furnished.

7. The Board of Revenue has completely lost sight of the legal position that the valuation of the property is to be determined with reference to the status of the property on the date of execution of the sale-deed/its registration and not with reference to the further improvement made thereafter.

8. Since the Board of Revenue has lost sight of the aforesaid aspect of the matter, the order impugned cannot be legally sustained. Order of the Board of Revenue dated 7th March, 2013 is hereby quashed. Let the appeal filed by the petitioner is restored to its original number. It shall be decided afresh within three months from the date a certified copy of this order is filed before the Board of Revenue. The Board of Revenue shall pass a reasoned speaking order. It shall record specific finding as to whether there is any reason/justification for including the value of the flats for determining the stamp duty when in the original

 

proceedings there was no mention of any standing constructions on the date of execution of the sale-deed/its registration. The contention of the petitioner that in fact no inspection has taken place after order of remand and no inspection report is available on record, shall also be gone into by the Board of Revenue and specific findings shall be recorded on the basis of material evidence on record. The present writ petition is allowed subject to the observations made above.

 