
(2014) 07 AHC CK 0214
In the Allahabad High Court
Case No : Misc. Single No. 2259 of 2006

Chhail Bihari

APPELLANT

Vs

Additional Commissioner (Jud)

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Stamp Act, 1899 — Section 2(14), 27
Uttar Pradesh Land Revenue Act, 1901 — Section 44

Citation : (2014) 106 ALR 539 : (2014) 124 RD 524

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Parmesh Kumar Jaiswal, Advocate for the Appellant

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Parmesh Kumar Jaiswal, for the petitioners and Standing Counsel for the respondents. The writ petition has been filed against the orders of Assistant Commissioner Stamp dated 24.5.2004, imposing deficiency of stamp duty, registration fee and penalty etc. on sale-deed dated 25.6.2003 of the petitioners and Additional Commissioner dated 7.1.2006, dismissing, appeal of the petitioners, against aforesaid order.

2. The petitioners purchased 1/2 share in plots 820 (area 0.028 hectare), 821 (area 0.020 hectare) and 822 (area 0.036 hectare) (total 0.084 hectare) situated in village Balapur, pargana Chandi, district Shravasti, from its owner Sampati through registered sale-deed dated 25.6.2003. According to the provisions of section 27 of Indian Stamp Act, 1899 (hereinafter referred to as the Act) read with Rule 6 of U.P. Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as the Rules), plot numbers, area, land revenue, nature of land were mentioned. It was also disclosed that in the land in dispute four trees of mango and one bamboo clump were existed and its valuation were separately assessed to Rs. 16,000/- Valuation of the land was assessed at the rate of agricultural land in Circle Rate fixed by the Collector. Agreed sale consideration was disclosed to

Rs. 20,000/- but valuation of Rs. 26,000/- was determined for payment of stamp duty, at the rate prescribed in Circle Rate for agricultural land and stamp duty was paid accordingly.

3. The Collector Stamp initiated proceedings (registered as Case No. 06/66/864) u/s 47A(4) of the Act on the report of Tahsildar dated 8.9.2003 that stamp duty on the transferred land was payable at the rate of abadi land but it was paid at the rate of agricultural land. It is alleged that show cause notice was issued to the petitioners on 24.11.2003 but in spite of service on them on 7.12.2003 and filing of an application on 16.12.2003, they had not contested the case nor adduced any evidence in support of their claim. Additional Collector by an ex-parte order dated 24.5.2004 assessed the market value of the transferred land at the rate of abadi land and imposed deficiency of stamp duty of Rs. 11,900/-, registration fee of Rs. 2680/- and penalty of Rs. 23,800/-. The petitioners filed an appeal (registered as Appeal No. 6) from the aforesaid order, which was dismissed by order of Additional Commissioner, dated 7.1.2006. Hence this writ petition has been filed.

4. The petitioners submitted that the land in dispute was agricultural land in which trees were planted. The petitioners valued the transferred land at the rate of agricultural land as fixed in Circle Rate for the locality and separately valued the trees and bamboo clump which was mentioned in the sale-deed for the purposes of stamp duty. Additional Collector did not conduct any inquiry. Ex parte report of Tahsildar was not admissible in evidence as held by this Court in Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla, In this case, apart from the report of Sub-Registrar, there is no other material on record. Thus the findings is based upon no evidence.

5. Admittedly, transferred land is agricultural land and is recorded as such in the revenue record. In the Counter Affidavit, it has been mentioned that it was recorded as "parti" land. Although trees and bamboo clump was there as mentioned in the sale-deed. By the impugned order, its valuation was assessed at the rate of abadi land. Supreme Court in Prakashwati (Smt) Vs. Chief Controlling Revenue Authority, Board of Revenue, U.P. at Allahabad and Others, held that the house is built on a very small area i.e. 68.84 sq. yards only in a town which is not a metropolis. Presumably the smallness of the area would not suggest the same by itself to be a costly property or be situated in a prestigious or posh locality, where the upper classes would rub shoulders to acquire it. Secondly, its being situated in an area which is close to Samrat Vikram Colony, said to be a decent locality, where people of high income group reside, does not by itself make it a part thereof. We are doubtful whether the said factum of closeness by itself would cast any reflection on the price of the property in question. Seemingly, influenced by the factor of the close proximity of Samrat Vikram Colony, the Assistant Commissioner, Stamps, for one does not know how, determined the monthly rental value of the property at Rs. 1500 per mensem and worked out the price of the house on that basis. Similar view has been taken

by this Court in Smt. Anasuya Singh v. Commissioner 2008 (104) RD 725 (HC-LB). Thus only on the basis of proximity of the agricultural land to abadi land, its market value cannot be determined at the rate of abadi land.

6. So far as the nature of the land on the date of sale-deed is concerned, land in dispute was recorded as agricultural land in revenue record. Khasra is being prepared by Revenue Department in exercise of statutory duty. Paragraphs-A-55 to A-73 of U.P. Land Record Manual give detail procedure for preparation of khasra. Paragraph-A-59, partial of "rabi" season has to be completed up to 30th April. Under Para-graphs-A-72 and A-73, the land use is required to be mentioned. In discharge of official duty, if lekhpal reported the land being an agricultural land and no constructions and trees were reported, it will not be open to the Collector to say that land was used for residential purposes, without there being any contrary evidence on record.

7. Supreme Court in Shri Chandrika Singh and others Vs. Raja Vishwanath Pratap Singh and another, held that the question as to whether a particular land is "land" u/s 2(14) to which the provisions of the Act are applicable would require determination of the question whether the land is held or occupied for purposes connected with agriculture, horticulture or animal husbandry and that is a matter which has to be determined either in accordance with the provisions of sections 143 and 144 and if such a determination has not been made and such a question arises or is raised in a suit before a Court, the procedure laid down in section 331A must be followed by the Court. This would be so even in a case where a building exists on the land and the land is claimed to be appurtenant to the building because in such a case it will be necessary to determine the extent of the land that is appurtenant to the building, i.e. whether the entire land or only a part of it is so appurtenant to the building and for that reason is not held or occupied for purposes connected with agriculture, horticulture or animal husbandry. In view of entry in the Khatauni for the year 1377-F (Ex. A-1) which must be presumed to be correct in view of section 44 of the U.P. Land Revenue Act, 1901, the said land was held by the respondents as Bhumidhar. The question whether the suit land is or is not held for purposes connected with agriculture arises in the suit filed by the respondents. There is no declaration in relation to land in dispute u/s 143 of the Act. It was, therefore, not open to the Civil Judge to decide, on its own, the question whether the said land was held or occupied for purposes connected with agriculture, horticulture or animal husbandry and after holding that it is not so held refuse to follow the procedure laid down in section 331A on the ground that the said provision has no application to the land in dispute.

8. Issue as to whether in absence of any declaration u/s 143 of U.P. Act No. 1 of 1951, the land recorded as agricultural land in the revenue record can be treated as non- agricultural land for the purposes of stamp duty, came for consideration before this Court in Smt. Neelam Gupta v. Commissioner 2007 (102) RD 147. This Court held that only on the basis of report of Additional Collector, the land

recorded in the revenue record as agricultural land cannot be treated as non-agricultural land. This judgment has been consistently followed by this Court in *Veer Bal Singh v. State of U.P.* 2009 (109) RD 124, *Smt. Kusum Lata Jaisawal v. State of U.P.* 2010 (109) RD 414, *Ashish Kumar v. State of U.P.* 2010 (111) RD 164 (HC-LB), Misc. Single No. 1793 of 2008, *Suresh Kumar v. Commissioner and others*, decided on 24.4.2013. In *Kishore Chandra Agrawal v. State of U.P.* 2008 (104) RD 235 (DB), Division Bench held that in exercise of powers under the Act, the Collector has no jurisdiction to hold an agricultural land as non-agricultural land.

9. Supreme Court in *Distt. Registrar and Collector, Hyderabad and Another Vs. Canara Bank Etc., , and Dr. Chiranji Lal (D) by LR.* Vs. *Hari Das (D) by LR.*, relying upon the judgment of Privy Council in AIR 1925 83 (Privy Council) , held that it clear that the provisions of the Stamp Act cannot be held to have been framed solely for the protection of revenue and for the purpose of being enforced solely at the instance of the revenue officials. Power to impound a document and to recover duty with or without penalty thereon has to be construed strictly and would be sustained only when falling within the four corners and letter of the law. In view of the aforesaid discussions, the writ petition succeeds and is allowed. The orders of Additional Collector dated 24.05.2004 and Additional Commissioner dated 7.1.2006 are set aside. The Collector is directed to refund the excess amount deposited by the petitioners within a period of two months.