(2014) 09 AHC CK 0173

In the Allahabad High Court

Case No : Writ C. No. 4873 of 2006

Chhedi Lal APPELLANT

Vs

Commissioner Allahabad Division RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2014) 107 ALR 495

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : Murtuza Ali and S.C. Verma, Advocate for the Appellant

Judgement

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Surya Prakash Kesarwani, J.—Heard Sri Devesh Kumar Verma holding brief of Shri S.C. Verma, learned Counsel for the petitioner and Sri Nimai Das, learned standing Counsel for the respondents. This writ petition has been filed challenging the order dated 31.8.2004 passed by the Additional Collector, District Pratapgarh and the order dated 6.12.2005 passed by the Commissioner, Allahabad Division, Allahabad.

2. Briefly stated fact of the present case are that the petitioner purchased certain plots of land of village Sheetalmau, Pargana Rampur Tehsil Lalganj, District Pratapgarh vide registered sale-deed dated 24.11.2003. The stamp duty was paid on a value of Rs. 3,16,000/-. A spot inspection was conducted on 7.6.2004 by the Sub-Registrar, Lalganj, in which, he found that on the back side of the vended property, the purchaser has constructed a wall and on the other two sides pillars have been made. On the basis of this report, the ADM (F and R), Pratapgarh initiated proceedings under section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as the ''Act''). The petitioner submitted his objection. He stated that on the date of execution of sale-deed, the vended property was and it still continues to be the agricultural land and agricultural

operations are going on. He also stated that after execution of the sale-deed a wall on the back side of the vended property was constructed and pillars on two sides have been made for protection of property. The ADM recorded the finding that on the back side, there is a wall and remaining land has been demarcated by constructing pillars. He came to the conclusion that in future the remaining land shall be used for residential or commercial purpose. On these assumptions, he passed the order dated 31.8.2004 in stamp case No. 168 determining the deficit stamp duty of Rs. 96,300/- and imposed penalty of Rs. 10,000/-.

3. Aggrieved with this order, the petitioner preferred Appeal No. 1 of 2004 before the Commissioner, Allahabad Division, Allahabad. By a very brief order dated 6.12.2005, the Commissioner held that it cannot be denied that some portion of the vended property is being used for residential purpose. After recording the said finding, he set aside the penalty and reduced the deficit amount of stamp duty to 50%.

4. Aggrieved with this order, the petitioner has filed this writ petition.

5. Learned Counsel for the petitioner submits that the findings recorded by the ADM as well as the Commissioner are based on surmises and presumption. There is no evidence on record that the land in question was a residential land at the time of execution of sale-deed. The finding of the Commissioner that some portion of the land is being used for residential purpose is wholly without any evidence on record. Wall in question was existing as on the date of execution of sale-deed. As per report of the Sub-Registrar the wall and pillar was constructed by the purchaser. He therefore, submits that the impugned order being wholly erroneous, deserves to be set aside.

6. Sri Nimai Das, learned standing Counsel submits that once it is not disputed that at the time of inspection, a wall was found on the vended property, the petitioner should have produced evidence that it was not constructed after execution of the sale-deed. He submits that the finding recorded by the authorities with regard to non-agricultural use of vended property is the finding of fact, and therefore, cannot be interfered in a writ jurisdiction under Article 226 of the Constitution of India.

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

8. I find that the report of Sub-Registrar, which was submitted after several months of the dates of execution of the sale-deed, it is mentioned that merely on the back side of the vended property, there is a wall, which has been constructed by purchaser. The Additional District Magistrate recorded a finding in the impugned order that the pillars have been made to the demarcate the property. No finding has been recorded either by the Additional District Magistrate or by the Commissioner that the wall on the back side of the vended property and the pillars were existing on the date of execution of the sale-deed. The Additional District Magistrate has valued the property as residential one merely on the

assumption that the vended property shall be used for residential or commercial purpose.

9. Thus according to own findings of the ADM, the valuation has been made on the possibility of future commercial or residential use of the vended property. The Commissioner assumed without any evidence on record that certain portion of the vended property is being used as residential. There was no evidence for this assumption.

10. In view of above discussion, I find that valuation of the vended property as residential and consequent determination of deficit stamp duty by the ADM as reduced by the Commissioner, are based on no evidence. The vended property was purchased as agricultural land. There is no evidence of its residential use as on the date of execution of the sale-deed. Valuation cannot be increased on the basis of possibility of future use of the property as residential or commercial. Along with rejoinder-affidavit, the petitioner has filed a copy of Khasra of the plot-in-question for the Fasli Year 1417, in which also the crop of paddy is shown in the plot in question. This shows that even in Fasli Year 1417, the vended property was being used for agricultural purpose.

11. Under the circumstances, the impugned orders cannot be sustained.

12. In view of above, the writ petition is allowed. The impugned order dated 31.8.2004 passed by the Additional Collector, Pratapgarh and the order dated 6.12.2005 passed by the Commissioner, Allahabad Division, Allahabad in Appeal No. 1 of 2004-05 are hereby set aside. Any amount deposited in excess shall be refunded to the petitioner by the respondents within a month along-with simple interest @ 8% per annum. The writ petition is allowed as indicated above.