(2015) 08 AHC CK 0021

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/S) No. 5206 of 2013

Deepak Agarwal and Others APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:
Stamp Act, 1899 — Section 56

Citation : (2015) 8 ADJ 175

Hon'ble Judges : Rajan Roy, J

Bench : Single Bench

Advocate : Vishal Kumar Upadhyay, for the Appellant

Final Decision : Allowed

Judgement

Rajan Roy, J—Heard learned counsel for the parties. The short point involved herein is as to whether the execution of a deed of assignment referable to Article 63 of Schedule 1-B attracts the provisions of Section 47-A of the Indian Stamp Act for determination of stamp duty payable as also for determination of market value or not.

2. This legal issue is no longer res integra as the same has already been considered and decided by the Supreme Court in the case of Residents Welfare Association, Noida Vs. State of U.P. and Others, (2009) 1 CLR 1032 : (2009) 6 JT 448 : (2009) 6 SCALE 94 : (2009) 14 SCC 716 : (2009) 6 SCR 112 : (2009) 7 UJ 3150 of the said judgment are quoted hereunder:--

"44. A plain reading of Article 63 of Schedule 1-B to the Stamp Act would, however, show that the stamp duty chargeable to a document is not on the market value of the property but on consideration indicated in the same. It is only the rate of duty, which is to be taken from Article 23. Therefore, if Article 63 of the Stamp Act is to be applied, duty shall be paid on the consideration of the amount of consideration shown in the deed itself and not on the market value of the land or the construction thereon. Therefore, it is clear from a reading of

Article 63 that it would apply in case of a transfer of lease by way of an assignment and Article 23 applies in case of a conveyance by way of sale.

48. Section 47-A would be applicable only when Article 23 is applicable. In case Article 63 applies, the registering officer does not have any jurisdiction to enquire into the market value of a property under Section 47-A of the said Act. It is to be noted that the power under Section 47-A of the Act can be exercised in respect of an instrument presented for registration on which duty must be charged on its market value. Thus Section 47-A applies in case of an outright sale. Since in this case, the instrument in question is not an outright sale but a leasehold right, therefore, the question arises whether the condition precedent mentioned in the Act has been fulfilled and, if not, the reference under Section 47-A was invalid. Moreover, even if we assume that Section 47-A applies in this case, we have to enquire whether the appellant intentionally tried to undervalue the property in the alleged document."

3. Article 63 of Schedule 1-B of the Indian Stamp Act is also quoted hereunder:--

"Description of instrument:

63. TRANSFER OF LEASE

by way of assignment and not by way of under-lease.

Exemption--Transfer of any lease exempt from duty.

Proper Stamp-duty:

The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the consideration for the transfer."

From the aforesaid it is evident that Article 63 of Schedule 1-B attracts the same rate of stamp duty as applicable to a deed of conveyance but its market value is not required to be determined and the said rate is to be applied on the consideration as mentioned in the deed of assignment, therefore, proceedings under Section 47-A are not attracted.

4. In the present case this plea was specifically raised by the petitioners before the appellate authority in the appeal under Section 56 and the same has also been noted by the appellate authority but surprisingly enough it has not been considered nor decided. The appellate authority has dismissed the appeal cursorily without due and proper application of mind.

5. Learned counsel for the petitioners submits that in fact the aforesaid judgment of the Supreme Court was placed before the appellate authority but it was not taken into consideration.

6. This Court has been noticing almost every day that the appellate authority exercising the power under Section 56 merely reiterates the findings and observations of the Collector under Section 47-A without properly applying its mind to the pleas raised in the appeal.

7. For the reasons aforesaid the writ petition is allowed. The order dated 31.12.2007 passed by Additional District Magistrate (F & R), Lucknow, under Section 47-A and the appellate order dated 30.7.2013 passed by Deputy Commissioner Stamp, Lucknow Region, Lucknow in Appeal No. 538/ Sta/2007-08/363 are hereby quashed. Consequences to follow accordingly as per law. The amount, if any, deposited by the petitioners shall be refunded to them. Let a copy of this order be sent to the Principal Secretary Stamp & Registration, U.P. Government, Lucknow.

