(2006) 07 AHC CK 0189

In the Allahabad High Court

Dharam Pal (D) through L.Rs. APPELLANT

Vs

Addl. Commissioner (Judicial) Allahabad Division and Others RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Citation : (2006) 4 AWC 4203 : (2006) 2 RD 236

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of the present writ petition, petitioners have challenged the order of the Additional Commissioner (Judicial), Allahabad Division, Allahabad dated 9.7.2003 by which the Revision No. 86/6-2002-03 against the order of the Additional District Magistrate (Finance), Kaushambi dated 30.7.2002 has been rejected.

2. The petitioners purchased plot No. 72 measuring 0.352 hect., which is claimed to be an agricultural plot from his brother, Mool Chand for Rs. 22,000 against the sale deed dated 12.6.2002 and had paid the stamp duty on the amount of Rs 25,000. A proceeding has been initiated against the petitioners for the deficiency of stamp duty under the Indian Stamp Act on the basis of the report of the Lekhpal in which it was reported that there was one diesel pumping set and one pucca room on the plot, which has not been valued and the stamp duty on the said amount has not been paid. The value of the said asset has been determined at Rs. 1 lac. In pursuance of the notice issued by the Additional District Magistrate (Finance), Kaushambi, the petitioners filed objections stating therein that there was no pumping set and pucca room on plot No. 72 and it appears that by mistake the Lekhpal has reported so. The Additional District Magistrate (Finance), Kaushambi without getting the fact verified passed an order on 30.7.2002 and demanded additional stamp duty at Rs. 8,000 on the estimated value at Rs. 1 lac of pumping set and pucca room and a sum of Us. 240 has also been levied as penalty, petitioners filed the revision against the said order. Before

the revisional authority the petitioners filed affidavit-dated 26.8.2002 in which in paragraph 4 it has been specifically stated that there was no pumping set and construction on the petitioners land. Revisional authority has rejected the revision and confirmed the order of the Additional District Magistrate (Finance), Kaushambi without getting the fact verified as to whether there was any pumping set or construction on the land in dispute. Being aggrieved, the present writ petition has been filed.

3. Heard Sri Shiv Kumar Yadav, learned Counsel for the petitioners and learned standing counsel.

4. Learned Counsel for the petitioners submitted that Additional District Magistrate (Finance), Kaushambi, has merely relied upon the report of the Lekhpal. He submitted that when the petitioners have filed the objections before the Additional District Magistrate (Finance), Kaushambi challenging the correctness of the report of the Lekhpal and submitted that there was no construction or any pumping set on the land in dispute. The Additional District Magistrate (Finance), Kaushambi, ought to have verified the fact but without making any further verification, merely on the basis of the report of the Lekhpal, additional stamp duty at Rs. 8,000 has been raised. He further submitted that in the affidavit, it has been categorically stated that there was no construction and pumping set on the land in dispute. The revisional authority without making any verification confirmed the order of the Additional District Magistrate (Finance), Kaushambi. He further submitted that after the impugned order the petitioners moved application before the Sub-Divisional Magistrate, Sirathu. Kaushambi, stating therein that there was no pumping set or construction on the land in dispute and requested for the spot inspection and in pursuance thereof, spot inspection was made by the Tehsildar and a report dated 18.7.2003 was given in which it has been stated that in plot No. 72, there was no pumping set or any construction and pumping set and a room was found constructed in plot No. 74. The report is Annexure-9 to the writ petition. On these facts, it is stated that the order of the Additional District Magistrate (Finance), Kaushambi and revisional authority are liable to be set aside.

5. Having heard the learned Counsel for the parties, I have perused the impugned orders. In my view, the impugned orders are not sustainable.

6. Once the petitioners have challenged the report of the Lekhpal that there was no pumping set or construction on the land in dispute and has categorically stated in this regard, the Additional District Magistrate (Finance), Kaushambi, ought to have directed for further inspection by the Competent Authority to verify the fact. Additional District Magistrate (Finance), Kaushambi, has Illegally without getting the fact verified has accepted the report of the Lekhpal and demanded additional stamp duty at Rs. 8,000 on the estimated value of pumping set and construction valued at Rs. 1 lac. The Additional Commissioner (Judicial), Allahabad Division, Allahabad, has also illegally upheld the order of the Additional District Magistrate (Finance), Kaushambi, without getting the verification about

the correctness of the report of Lekhpal, which was specifically challenged. The report of the Tehsildar dated 18.7.2003 also shows that there was no pumping set or construction on the plot No. 72, which is in dispute and pumping set and the construction was found in plot No. 74. Thus, on the fact of present case stated above whether there was any pumping set or construction on the land in dispute, purchased by the petitioners, requires reconsideration by the Additional District Magistrate (Finance), Kaushambi.

7. In the result, writ petition is allowed. The impugned orders dated 9.7.2003, passed by the Additional Commissioner (Judicial), Allahabad Division, Allahabad in Revision No. 86/6-2002-2003 and Additional District Magistrate (Finance), Kaushambi dated 30.7.2002 are set aside. The matter is remanded back to the Additional District Magistrate (Finance), Kaushambi, to decide the matter afresh in the light of the observations made above. The Additional District Magistrate (Finance), Kaushambi, is directed to pass appropriate orders in accordance to the law within a period of two months from the date of filing of certified copy of the order.