(2011) 10 AHC CK 0156

In the Allahabad High Court

Case No : C.M.W.P. No. 34727 of 2003

Dinesh Tiwari APPELLANT

Vs

Commissioner, Gorakhpur and others RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Stamp Act, 1899 — Section 47A(2)

Citation : (2012) 3 AWC 2343

Hon'ble Judges : Sunit Hali, J

Bench : Single Bench

Advocate : Rama Shankar Mishra and Arun Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Sunil Hali, J.—Heard learned counsel for the parties. Land measuring 1.3/5 decimal in the Plot No. 36/5 alongwith Plot No. 112 situated in Ward No. 9. Town Area. Salempur was purchased by the petitioner from Shobhit Kumar for a sum of Rs. 4,50,000 through registered sale deed dated 31.3.1999. The sale deed reveals that there are three rooms in the ground floor and three rooms in the first floor. The sale deed does not mention any shop in the said building. The value of the land was shown to be Rs. 98,000 and the house was shown as Rs. 3,60,000. A complaint was filed against the petitioner before the Sub-Registrar, district Deoria on 19.1.2000 u/s 47A (2) of Indian Stamp Act. 1899 for determination of the market value of the property and proper stamp duty payable thereof.

2. On the complaint being received, the S.D.M., Salempur, Deoria sought a report from the Naib Tehsildar about the property conveyed through the said sale deed. The report was submitted by the Naib Tehsildar on 18.8.2002 wherein he has given the details of the property. He has mentioned in his report that there are two shops in the ground floor and two rooms in the first floor. The rent of the house is about Rs. 1,500 per month. On the basis of this report, the Deputy District Magistrate, Salempur, district Deoria has recorded the findings that the

value of the property is Rs. 8,68,464 and the petitioner is required to pay Rs. 69,250 as stamp duty. He ordered that the petitioner is required to pay Rs. 32,870 as stamp duty alongwith interest @ 1.5% per month. An appeal was preferred against this order which stands dismissed on 25.2.2003. Under these circumstances, the present writ petition has been filed.

3. Section 47A of the Indian Stamp Act, 1899 contemplates that if market value of any property, which is subject of an instrument, has not been determined in accordance with rules, proceedings shall be initiated against the purchase of the property. The nature of proceedings contemplated under the aforesaid Section is to recover any additional duty which would be chargeable on the said instrument where on the basis of the re-determination of the market value by the concerned authority. In order to understand the import of the Act what is required to be done is that :

(A) Where it is found that the market value has not been determined in accordance with rules, re-determination of the same in consonance with the rules.

(B) If on fresh determination, it is found that the additional stamp duty is payable, same is to be recovered from the buyer.

4. It is important that for determination of the market value of the property, the date of registration of the sale deed would be a determinative factor. The determination of the market value will co-relate to the date of its execution and registration. The mode of determination of market value can be adopted by following methods :

(A) That if there are rules/circle rate provided by concerned authority of that particular area, that has to be applied.

(B) By examining the various sale deeds executed in the area on the dates which are nearly approximate to the date of sale deed.

5. According to the petitioner, the mode adopted by the respondents in determining the market value is based upon the report submitted by the Naib Tehsildar. The market value and commercial potential of the area has been determined on 19.8.2002 and not on the date when the property was purchased, i.e., 31.3.1999. The market value of the property has to be determined as it exists on the date of execution of sale deed. According to the sale deed, there is no mention that there exists two shops in the ground floor. The petitioner concedes that subsequent to the purchase of land he has constructed two shops. The stamp duty is charged on the valuation of the transaction and not on the valuation which it may acquire in future. As a matter of fact, the consideration amount is determined by the mutual agreement of the purchaser and buyer. The market value has been defined as a value which is offered by the seller and accepted by the buyer. There can be instances where in order to avoid stamp duty, the property may be under-valued, it is in order to safeguard this aspect that a survey is conducted by the Prescribed Authority and accordingly the rates

for a particular area are determined. So, determination of the market value cannot be assessed by straight jacket formula but it depends upon many factors. The market value of the property may fluctuate from time to time and that is why the date of sale deed is important in determination of market value.

6. The Deputy District Magistrate, Salempur, Deoria has proceeded to determine the market value of the property on the premises that it both residential and commercial. Accordingly, he on the basis of being both commercial as well as residential, determined the market value in terms of the circle rate fixed on 28.10.1999. According to that circle rate, the value of commercial area is Rs. 1,500 per Sq. Metre and the minimum value of the commercial building in urban and semi urban area have been worked out at Rs. 3 per sq. ft. Accordingly, an amount of Rs. 8,68,464 has been worked out.

7. While scanning through the manner in which the assessment has been made it clearly emerges that the stamp authority has worked out the aforementioned rate on the premises that the property is commercial. This assumption is based on the report submitted by the Naib Tehsildar on 9.8.2002. The report of the Naib Tehsildar on which reliance has been placed, has not indicated what was the situation on 31.3.1999 when the sale deed was executed. It was incumbent upon him to have indicated the status of the property as it exists on the date of execution of the sale deed, which is clearly missing from the report of the Naib Tehsildar as also from the order passed by the Sub-Divisional Magistrate, Salempur. Deoria.

8. The law regarding payment of stamp duty is dependent upon the valuation of the property as shown in the sale deed. The only area for an enquiry that can be permitted is as to whether market value has been correctly fixed at the time of execution of the sale deed and also as to whether there exists any shop on the date the sale deed was executed. The market value of the said property has been recorded as residential on the date of sale deed. Le., 31.3.1999. There is no power vested with the Collector to assess the market value of the property on the basis of its future value which the property may acquire. It is what seems to have been done in the present case.

9. Reliance has been placed on the judgment of this Court in Ramjan Alt v. Commissioner, Agra Division. Agra, 2008 (105) RD 122 and Anil Kumar and another v. State of U.P. and others, 2002 (108) RD 413.

Now it is also important to note that there is no finding recorded that the property had acquired commercial value at the time of execution of the sale deed.

I therefore, allow this writ petition and set aside the order dated 12.5.2003, passed by respondent No. 2 and the order dated 18.7.2003, passed by respondent No. 1 and remand the matter back to the Collector. Salempur, Deoria to determine the market value by considering the following things :

(A) Description of the property as it is shown in the sale deed.

(B) The market value of the property on the date, i.e., 31.3.1999.

Let the enquiry be completed within a period of two months from the date of production of a certified copy of this order. The Collector is directed to submit compliance report to the Registrar General, High Court. Allahabad by or before 31.12.2011 for which index of the file shall be maintained.

