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(2010) 03 AHC CK 0112

In the Allahabad High Court

D.P.R. Foods Pvt. Ltd. APPELLANT

Vs

Commissioner Meerut and Others RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2010) 5 AWC 4649 : (2011) 6 RCR(Civil) 1104

Hon'ble Judges : Abhinava Upadhya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhinava Upadhya, J.—I have heard Sri R.K. Pandey, learned Counsel for petitioner and learned Standing Counsel appearing for the State.

2. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India on the ground that the proceedings initiated u/s 47(A3) of the Indian Stamp Act(hereinafter referred to as "the Act") by issuing the notice and the order passed thereon and subsequent order passed in appeal u/s 56(1A) of the Act is against the procedure prescribed by law and is illegal and therefore liable to be set aside.

3. The brief facts of the case are that the petitioner, D.P.R. Foods Pvt. Ltd. is a business concern. It purchased 950 sq. metre of land of Khata No. 22 Khasra No. 220/1 out of 0.999 hectare situated in village Hirapur, Pargana Baran Tehsil and District Bulandshahar on 20-03-2007. A sale deed was executed and registered after payment of stamp duty treating the property to be residential. According to the petitioner, it was a vacant land with some construction on it in the shape of room and toilet. It appears that after the registration of sale deed the Sub-Registrar-II, Bulandshahar, submitted its report on 24-03-2007 that the said property is in fact commercial property and was purchased for the same purpose and situated in a commercial area where all around commercial activities are going on. The land is secured by a thirty feet high wall with a huge gate upon

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which "Tata Khad and Beej Godam" is written. It was reported that by declaring the said property in the sale deed as residential, the petitioner has tried to undervalue the property for the purpose of avoiding stamp duty and therefore deficiency in stamp duty was reported to the Collector. The Collector took cognizance of this report and issued notice to the petitioner and in response to that the petitioner filed an objection on 04-06-2007 stating therein that it was a malafide action on the part of the Sub-Registrar to have submitted its report against the petitioner, and that the said property was purchased for residential purpose. The property was purchased from the vendor who had purchased the said agricultural land after paying the stamp duty applicable for agricultural land. Since there were some constructions on the land, the petitioner paid stamp duty on the basis of prevalent rate as applicable to residential land and therefore the stamp duty paid by him is just and proper.

4. The Collector in its impugned order dated 26-12-2007, while considering the objection of the petitioner, has given a finding that all around the petitioner''s plot commercial activities are going on, inasmuch as, the property is situated on Syana Road. On the north side there is Gur Godam of Sri Mool Chand, on the south side Yaka Factory and Plant of Mukesh Kedia, on the east side an old Milk Plant and on the west side is Syana main road and Budhu Milk plant. Thus, Commercial activities are going on in all around the petitioner''s plot and there is no reason to believe that the petitioner will use this property only for residential purpose.

5. It was not the case of the petitioner that this property had actually been used for residential purpose, on the contrary, the report was that it was used as godown of manure and seeds etc. From the description of the property, it appears that it was commercial in nature although, it is true that no further spot inspection was made of the property in question but this fact was not denied by the petitioner that all around the petitioner''s plot commercial activities are going on in full swing.

6. In the report, the Collector held that the property in question was in fact commercial property and the stamp duty as applicable to commercial property was to be paid by the petitioner. While paying the stamp duty, the petitioner did not make true and proper disclosure of the property in the sale deed which has resulted in loss of revenue in the shape of stamp duty and therefore, determined the deficiency of the stamp duty to the tune of Rs. 4,89,300/- plus penalty of Rs. 2,44,650/- and interest thereon. Against the aforesaid order, the petitioner preferred an appeal u/s 56(1-A) of the Act. The Commissioner has also affirmed the order of the Collector.

7. Hence this writ petition.

8. I have heard learned Counsel for the parties and gone through the order of the Collector as well as the order of the Commissioner and the objections filed by the petitioner.

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9. The said property was purchased on 20th March, 2007 and upon the report of the Sub-Registrar dated 24-03-2007, proceedings were initiated u/s 47-A(3) and after considering the objections filed by the petitioner and being dissatisfied with the same, it has been held by the Collector that it was not denied by the petitioner that the plot is in the hub of the commercial area and therefore, the stamp duty which has been paid on the basis of circle rate as applicable to the residential land is improper.

10. Learned Counsel for the petitioner has contended that the future potentiality of the land cannot be seen. Petitioner purchased the said property from an agriculturist who had paid the stamp duty on the said agricultural land. Learned Counsel for the petitioner further contended that due to the fact that there was certain construction standing on the said property the petitioner paid the stamp duty treating the property to be residential and therefore there was no material before the Collector to treat it as commercial and accordingly the order cannot be sustained.

11. It has further been argued that after the filing of the writ petition, this Court vide its order dated 30th October, 2009, directed spot inspection of the property to be made by a responsible Officer, namely, S.D.M, Bulandshahar. Pursuant to the the order, he made the spot inspection and submitted its report on 02-01-2010 wherein he has reported that 30 feet high boundry wall is standing on the property in question and cement sheets are lying on the land. The Garders, Angles and Pipes seems to have been removed from the land which were initially installed on the said property. It has also been reported that all around the property, commercial activities are going on. (Learned Counsel for the petitioner to fortify his contentions has placed reliance upon the decision reported in 2008 Allahabad Civil Law Journal (Vijay Kumar and Anr. v. Commissioner, Meerut) and in the case of Surendra Singh v. State of U.P. and Ors. reported in 2009 (106) R.D. 427 to impress upon the Court that the future potentiality of the land cannot be gone into and further, the burden lies upon the Collector to establish that the property in question is in fact not as declared by the petitioner in the sale deed).

12. I have gone through the judgments and I am in respectful agreement with the same. The burden of proof lies upon the Collector regarding the market value of the land. Although, this has not been denied that this land can be used for commercial purpose. Further, the Collector after considering the materials available, has recorded finding that all around the property commercial activities are going on which is also not denied by the petitioner in his objection and not even during the arguments before the courts below.

13. Under these circumstances, I do not see how the petitioner would fortify his claim that the said property is residential and not commercial. The property in question has 30 feet high wall and huge gates which is normally not the case with residential properties. Besides, it is also not denied that on the gate "Tata Khad and Beej Godam" was mentioned. It is unlikely that such writing would be

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made on the gates of residential properties. It appears that the property in question is in the middle of a commercial hub and the property in question would be put to use as per the sole discretion of the owner but so far as determination of stamp duty is concerned market value of the property has to be seen irrespective of the fact whether it is residential, commercial or agricultural. Since no procedure has been prescribed for determination of the fair market value of any property, the same principle is to be adopted which is normally undertaken for determination of compensation to be paid to the owners in the land acquisition proceedings under the Land Acquisition Act. This view has also been taken by this Court in the case of Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla, Therefore, once market value is to be determined as stated above then the nature of the land or its current use may not be very relevant if all around the plot in question properties are being sold and bought at the commercial rate then for determination of stamp duty the market value of the property would be the same as that of the property bought for commercial use.

14. Under the facts and circumstances, the petitioner has not been able to make out any case for interfering with the orders impugned under Article 226 of the Constitution of India by exercising extraordinary jurisdiction.

15. Hence, the writ petition fails and is accordingly dismissed. No orders, as to costs.

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