(2009) 09 AHC CK 0005

In the Allahabad High Court

Gopi Cold Storage (P.) Ltd. APPELLANT

Vs

Chief Controlling Revenue Authority and Others RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : (2010) 1 AWC 426

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—Heard Sri N.C. Rajvanshi, the learned senior counsel for the petitioner and the learned standing counsel appearing for the respondents.

2. The petitioner purchased an agriculture land in Garh Mukteshwar, District Ghaziabad, vide sale-deed dated 13.4.1994 and paid stamp duty as per the prevailing rates applicable on the agriculture land. Based on the said sale deed, the name of the petitioner was mutated in the revenue records. Subsequently, on the basis of an Audit Report of the Deputy Registrar, Garh Mukteshwar, proceedings u/s 47A of the Indian Stamp Act was initiated against the petitioner to show cause as to why deficiency of stamp duty and penalty be not imposed for not paying the stamp duty as per the prevailing rates applicable for commercial purpose. The petitioner, upon receiving the notice, filed its objection and submitted that the land was agriculture in nature and that the circle rate applicable on an agriculture land was paid and that the petitioner had paid the stamp duty as per the rates applicable and that there was no undervaluation of the instrument in question. The petitioner also relied upon the report of the Tehsildar which indicated that the land in question was an agricultural land and was being used for agricultural purposes and that crops was standing on it.

3. The prescribed authority, after considering the material evidence on record, held that there was a deficiency of stamp duty. The authority considered and relied upon the audit report and ignored the report of the Tehsildar. The petitioner, being aggrieved, filed a revision which was also dismissed. The

petitioner has thereafter filed the present writ petition.

4. Having heard the learned Counsel for the petitioner and, having perused the impugned orders, the Court finds that the impugned orders cannot be sustained and are liable to be quashed. The sole basis for the imposition of the deficiency of stamp duty is the audit report submitted by the Deputy Registrar. A perusal of the report indicates that the purchaser is a Cold Storage and had purchased an agricultural land and that the said land could be used in future for commercial purposes and therefore, the rate for commercial land should be made applicable for the purposes of the stamp duty.

5. In my opinion, the approach adopted by the authority relying upon the report of the Deputy Registrar is patently erroneous and cannot be sustained. Admittedly, the land in question is an agricultural and is not an abadi land. Consequently, the rates applicable on an agricultural land is required to be considered for the purpose of payment of stamp duty. The imposition of deficiency of stamp duty on the ground that the land could be used in future for commercial purposes is erroneous. The mere fact that the land has a potential value for being used for commercial purpose in future will not make the land commercial nor would it change the use of the land. So long as the land is recorded as an agricultural land and its use has not been changed by the authorities, the rates applicable for the purpose of stamp duty will be that as prescribed for the agriculture land. This view of mine is fortified by a catena of cases which the Court had considered in Ashok Kumar Dubey Vs. State of U.P. and Others, The said judgment is squarely applicable to the present facts of the case.

6. In view of the aforesaid, the impugned orders cannot be sustained and are quashed. The writ petition is allowed. The security which was furnished by the petitioner pursuant to the interim order dated 22.5.2002 shall be returned to the petitioner.