(2013) 09 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 51954 of 2013

Gurjeet Singh Chaddha and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Citation : (2013) 9 ADJ 648 : (2013) 101 ALR 818 : (2014) 1 AWC 88 : (2013) 121 RD 505

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Mahesh Chandra Joshi, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Tandon, J.—The Order passed by the First Appellate Authority under the (Indian) Stamp Act dated 24.4.2006 as well as order passed by the Chief Revenue Officer, U.P. Allahabad in appeal u/s 56 of the (Indian) Stamp Act dated 7.6.2013, are challenged by means of the present writ petition. It is not in dispute that the document, which was subject-matter in the aforesaid proceedings has been executed in the year 12.1.2001 and the proceedings in accordance with the provisions of Stamp Act had been initiated against the petitioner in the year 2001 itself. In view of the said facts, the provisions of the U.P. Stamp (Valuation of Property) Rules 1997 as applicable on the date of initiation of the proceedings are to be taken into consideration.

2. According to the petitioner, the order impugned are bad on three grounds:

(a) an application was made by the petitioner for leading oral evidence, which has not been considered in its true perspective and, therefore, the orders are bad;

(b) that the Respondent Authorities have illegally included the gallery, which had been constructed inside the building within the covered area; and,

(c) Rule 5 as applicable in the year 2001 was arbitrary. The valuation of the land should not have been taken into consideration. According to the petitioner, it is for removing the said defect in Rule 5, that it was amended in the year 2006. Therefore, the valuation of property covered by the deed should have been calculated in accordance with the Rules of 2006.

3. Heard Sri Mahesh Chandra Joshi and learned Standing Counsel.

As already noticed above, the deed subject-matter of consideration in the present proceedings was registered in the year 2001. Proceedings under the (Indian) Stamp Act were also initiated in the year 2001 and, therefore, the valuation of the property, which is subject-matter of the sale-deed has to be worked out in accordance with U.P. Stamp (Valuation of Property) Rules 1997 for the purposes of calculating the amount of stamp duty payable on the said transaction under Article 23 of the Schedule 1 to the (Indian) Stamp Act. It may be clarified that under Article 23 of the Schedule (b) stamp duty payable on the deed has to be calculated on the market value of the property ad valorem and for the purpose, it is necessary that the market value of the movable property be determined in accordance with the provisions of U.P. Stamp (Valuation of Property) Rules 1997 as applicable on the date of the transaction.

4. Under Rule 5(c)(ii) of the U.P. Stamp (Valuation of Property) Rules 1997, the market value of the properties made out for commercial use had to be determined as follows:

5. Admittedly, there has been no infraction of the aforesaid Rule 5(c)(ii) as was applicable in the year 2001 in the matter of determination of the value of the properties, which is subject-matter of the sale-deed in question. This Court may now deal with the contentions, which have been raised.

6. The plea qua leading oral evidence having not been offered is concerned, this Court may record that the application for leading oral evidence was made in the year 2002 before the First Authority. After the proceeding were decided, a Revision was filed before the Chief Revenue Officer, Board of Revenue, Allahabad. The petitioner filed also a writ petition before the High Court being Writ Petition No. 52958 of 2002 during the pendency of the revision.

7. The Chief Revenue Officer decided the revision vide order dated 10.3.2005 and the matter was remanded to the Collector for decision afresh. In terms of the order of remand the Collector decided the matter afresh on 20.4.2006.

8. This Court made a query from the counsel for the petitioner as to whether under the order of remand dated 10.3.2005, the First Appellate Authority permitted the petitioner to lead any oral evidence in the matter or not. Counsel for the petitioner states that no such direction was issued by Appellate Authority.

9. This Court finds no reason raising for penalty any grievance of denial of opportunity to lead oral evidence having raised at this stage. In the present petition no facts have been disclosed either for questioning the denial of

opportunity to lead oral evidence or to establish any prejudice to the petitioner because of such leave having not been granted. It appears that the petitioner wants to raise a dead issue based on an application made in the year 2002 when the proceeding giving rise to the present writ petition are subsequent to an order of remand passed by the First Appellate Authority in the year 2005. Even otherwise, this Court finds that the petitioner has failed to establish any prejudice because of denial of opportunity to lead oral evidence. Therefore, the challenge to the order impugned in this regard is rejected. Even otherwise, it may be recorded that an order of the Statutory Authority cannot be challenged on a ground not pressed before it.

So far as inclusion of the area of gallery within the covered area is concerned, suffice is to state that except making vague allegations that the gallery should not have been treated to be within the constructed area, no material facts have been mentioned as to whether the gallery infact was covered or not. This Court further finds that no such plea was raised before the Appellate Authority and consequently there is no finding on that issue also.

10. From the order impugned, this Court finds that the basic issue canvassed before the authority below as to whether the building, which was shown as residential property in the sale-deed in fact, was a commercial property to be used for the said purpose. Both the authorities on the basis of evidence on record including inspection of property have returned a concurrent finding that the building was used as a hotel and was a commercial building. Accordingly, the market value of the property has been determined under Clause 5(c)(ii) of the 1997 Rules as then applicable. There is hardly any challenge worth consideration to the findings of fact so recorded by the authorities below.

11. This takes the Court to the last issue raised on behalf of petitioner namely the challenge to the Rule 5(c)(ii) of the 1997 Rules as it stood prior to its amendment in 2006. The rule has already been quoted above. Except for pointing out that there has been change in the manner of determination of the market value of commercial property under the amending Rules of 2006, no further fact have been pleaded to demonstrate as to how the earlier rule was arbitrary or bad.

In the opinion of the Court, the Rules of 1997 as they stood up to the date of their amendment in 2006, laid down a different procedure for determination of the market value of the commercial properties and the manner so prescribed has been altered by the Rules Framing Authority under the amending Rules of 2006. But this change in the manner of determination of the market value will not mean that the earlier rules were arbitrary or unjustified.

12. It is always open to the Rules Framing Authority to change the manner of determination of the market value of the properties.

13. The challenge to the Rule 5(c)(ii) of Rules 1997 also does not have much substance, which is based on one fact i.e. change in the manner of determination

of market value as affected by 2006 Rules. Writ petition has no merit, it is accordingly dismissed. Respondents are at liberty to recover the balance outstanding amount in accordance with law.

