(2008) 07 AHC CK 0139

In the Allahabad High Court

Case No : W.P. (M/S) No. 1130 of 2006

Haridwar Hotels Pvt.Ltd. APPELLANT

Vs

Chief Revenue Commissioner/Chief Controller, Revenue "Tribunal, Uttaranchal, Dehradun & Anr. RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:
Stamp Act, 1899 — Article 23, Schedule 1

Citation : (2008) 07 AHC CK 0139

Hon'ble Judges : P.C.Verma, J

Final Decision : Allowed

Judgement

1. This writ petition has been filed by the petitioner challenging the orders dated 182006 and 612006 passed by the Chief Revenue Commissioner/Chief Controller, Revenue Tribunal, Uttarakhand, Dehradun and Additional District Magistrate (Finance), Haridwar respectively. These orders are contained in Annexure 1 and Annexure 2 to the writ petition respectively.

2. Facts giving rise to these impugned orders are that the petitioner which is an incorporated private limited company purchased a piece of land measuring 2117.33 square metre pertaining to Khasra No. 91 in the residential area of municipal limits of Haridwar for a consideration of Rs. 25 lakhs from Sri Ashwani Kumar its owner.

3. The petitioner paid the stamp duty on Rs. 25,00,000/.

4. An anonymous complaint was received by the Additional District Magistrate (Finance), Haridwar that the petitioner has paid lesser stamp duty on the conveyance (sale deed), by which the land was purchased. The Additional District Magistrate (Finance) after scrutiny of the sale deed found that in the sale deed the land was shown to be residential and at the time of sale deed the circle rate of the residential area was Rs. 3500/ per square metre and according to this, the ADM (Finance) has calculated Rs. 74,10,655/ as the value of the property. This

amount was further multiplied by one and half times on the basis of the fact that the petitioner was a hotel company and was constructing a hotel and thus valued the property amounting to Rs. 1,11,16,000/. According to the ADM (Finance), stamp duty was paid on Rs. 25,00000/ only and on the rest amount of Rs. 86,16,000/, no stamp duty was paid. Therefore, stamp duty calculated on the rest amount was Rs. 8,61,6007 and by his order dated 612006, the ADM (Finance) imposed the penalty of Rs. 8,61,600/ and sent a notice of recovery of Rs. 17,23,200/. Against this order, a revision under Section 56 of the Stamp Act was filed. The revisional Court, on the same reasoning as given by the ADM (Finance), affirmed the order of the ADM (Finance) and dismissed the revision.

5. I have heard learned Counsel for the parties and have gone through the record.

6. Stamp duty is liable to be paid under Section 3 of the Indian Stamp Act, 1899. The charging Section 3 provides that subject to the provisions of this Act and the exemptions contained in Schedule I, the instruments shall be charged with duty of the amount as indicated in the Schedule as the proper duty therefor. The proviso appended to Section 3 provides that except otherwise expressly provided in this Act, and notwithstanding anything contained in clauses (a), (b) and (c) of this Section or in Schedule I or IA the following instruments shall, subject to the exemptions contained in Schedule IA or IB be chargeable with duty of the amount indicated in Schedule IA or IB as the proper duty therefor respectively. Subclause (ii) of clause (bb) appended to the proviso of Section 3 is relevant, which provides that in the case of instruments mentioned in Schedule IB, on or after the date the U. P. Stamp (Amendment) Act, 1952, comes into force, and relates to any property situated, or to any matter or thing done or to be done in Uttar Pradesh, and is received in Uttar Pradesh. The instrument has been defined in subsection 14 of Section 2 of the Stamp Act that the "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. Word ''Instrument'' is used in word ''conveyance'', which is defined under subsection 10 of Section 2 of the Act, which reads that "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable is transferred inter vivos and which is not otherwise specifically provided for by Schedule I, Schedule IA or Schedule IB as the case may be. In article 23 of Schedule IB appended to the Act, as applicable in the State of Uttar Pradesh and also applicable in the State of Uttarakhand, provides for stamp duty on conveyance, which reads as under:

Description of Instrument

Proper Stampduty

23. CONVEYANCE as defined by Section 2(10) not being a Transfer charged or exempted under No. 62

(a) if relating to immovable property where the amount or value of theconsideration of such conveyance as set forth therein or the market value of the immovable property which is the subject of such conveyance, whichever is greater does not exceed Rs. 500.

Where it exceeds Rs. 500; but does not exceed Rs. 1000.

And for every Rs. 1000 or part thereof in excess of Rs. 1000. One hundred and twenty five rupees:

Sixty rupees.

One hundred and twenty five rupees:

Provided that the duty payable shall be rounded off to the next multiple of ten rupees.

7. A conjoint reading of these Sections with article 23 clearly reveals that the stamp duty shall be payable on the consideration of the conveyance or on the market value of the immovable property which is subject of such conveyance, whichever is greater. For the purpose of levy of stamp duty, rules have been framed under Section 75 of the Indian Stamp Act by the State Government. In exercise of the powers conferred under Section 75, the State of Uttar Pradesh has framed the rules known as Uttar Pradesh Stamp (Valuation of Property) Rules, 1997. The rules prescribe the division of the districts in various circles and for each circle, for the purpose of valuation, the circle rate is notified under Rule 4(3) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997.

8. The petitioner has annexed as Annexure 4 to the writ petition the circle rate of the vicinity of that area of the purchased land, which is Rs. 50 lakhs per hectare, if it is more than 0.20 hectare (2000 square metre). On the basis of this circle rate, according to the petitioner, the market value of the property would be Rs. 10,58,665/. Market value has been notified under the rules as under:

The rate of land in undeveloped urban area the following rates shall be applicable on the undeveloped land situated within the municipal area. On the purchase of land of (600 square metre) or less than that, stamp duty shall be payable at the residential rate of above developed areas/mohallas/colonies. Undeveloped shall mean uneven land or land having pits, which does not have complete urban facilities.

Area/place/village

Bhupatwala khurd/chak Bhupatwala Bhupatwala Kalan/Shekhupura alias Kankhal, Jagjeetpur within municipal limits/jwalapur within municipal limits/ Haripur Khurd

On Purchase of 0.20 hectare (2000 square metre) land

Rs. 60 lakhs per hectare

If more than 0.20 hectare

Rs. 50 lakhs

per hectare

The above rate shall be applicable on the land situated 100 metres away from the main road.

9. From the above, it is clear that if the land is more than 0.20 hectare, the market value would be Rs. 50 lakhs per hectare. Since the petitioner has purchased more than 0.20 hectare, therefore, the market value shall be calculated as per the circle rate i.e. @ Rs. 50 lakhs per hectare, which means that Rs. 50 lakhs would be the value of 10,000 square metre. Since the petitioner has purchased only 2117.33 square metre, therefore, as per this circle rate, the market value of the property comes to Rs. 10,58,665/, while the petitioner has paid the stamp duty on the sale consideration which is Rs. 25 lakhs and is more than that of the circle rate. The learned Chief Standing Counsel Sri. J. P. Joshi pointed out page 52 annexed with the writ petition, wherein it has been provided that on Khasra number of the land situated on the side of national highway, there shall be 20 per cent additional circle rate. The same Khasra number 91 finds place at page 55 of the writ petition. Therefore, even applying this 20 per cent addition to Rs. 10,58,665/, which comes to Rs. 2,11,733/ and added to Rs. 10,58,665/, it comes to Rs. 13 lakhs approximately, which is less than that of Rs. 25 lakhs, which is the sale consideration on which the stamp duty has been paid by the petitioner. Therefore, the stamp duty was paid as per the provisions contained under article 23 of Schedule IB appended to the Stamp Act. The revenue authorities below have wrongly applied the rate contrary to the circle rate determined under the rules having the statutory force of law as well as enhanced the stamp duty on the basis of the fact that a hotel was being constructed after the purchase of the land and, therefore, the purpose of the purchase of the land was construction of the hotel and, therefore, multiplied the market value by one and half times, which is contrary to the provisions of article 23 of Schedule IB appended to the Stamp Act, which in very clear terms provides the value of the consideration of such conveyance as set forth therein or the market value of the immovable property which is subject matter of the conveyance. The subject matter of the conveyance was the open land. It does not contemplate the stamp duty to be paid on the nature of future use of the property. Thus, the judgments of the Courts below cannot be sustained in the eye of law and are liable to be set aside. Since the petitioner has paid the stamp duty on the sale consideration which is more than that of the market value and is perfectly right according to article 23 of Schedule IB appended to the Stamp Act, no further stamp duty can be charged.

10. For the reasons recorded above, the writ petition is allowed. Impugned orders are hereby quashed. Respondents are directed to refund the security amount deposited by the petitioner. There shall be no order as to costs.

