(2011) 04 AHC CK 0444

In the Allahabad High Court

Case No : Writ C No. 15744 of 2002

Hindustan Lever Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:
Stamp Act, 1899 — Section 33, 47A, 47A(2)

Citation : (2011) 04 AHC CK 0444

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the Petitioner and learned standing counsel for the Respondents.

2. This writ petition arises out of proceedings u/s 47-A of Stamp Act for determination of proper stamp duty payable on the sale deed dated 24.06.1996 and determination of deficiency in stamp duty thereupon if any. Through the said sale deed Petitioner purchased the immovable property consisting of 2 bighas 4 biswas pukhta land market value of which was shown to be Rs. 8,70,000/- however stamp duty of Rs. 5,29,325/- was paid on the market value at the time of execution of sale deed. Sub- registrar, Ghaziabad before whom the sale deed was presented for registration initiated/recommended to initiate the proceedings before registration of the deed through report dated 01.07.1996. The matter was registered as Case No. 746 of 1999-2000 u/s 33/47-A(2) of Stamp Act, State v. Hindustan Liver Ltd. on the file of A.D.M., Finance and Revenue, Ghaziabad. The case was decided on 31.01.2001. It was determined that there was deficiency of Rs. 33,52,035/- in stamp duty. Penalty of Rs. 7965/- was also imposed (Total Rs. 33.60 lacs). Against the said order, Petitioner filed revision in the form of Revision No. 18 (Stamp-M) of 2000-2001. CCRA/ Board of Revenue, Meerut Camp, Meerut dismissed the revision on 13.03.2002, hence this writ petition.

3. The order passed by the Board of Revenue is quite sketchy, not giving any independent reason.

4. The Petitioner purchaser contended before the A.D.M. that through the sale deed only open land had been purchased and at the time of purchase no constructions were there over the purchased land and due to inadvertence in the sale deed on Page-2, Lines 11 and 12, it had been mentioned that constructions of permanent nature were there. The A.D.M. directed the Tehsildar to make inspection, which was accordingly done and report was submitted. The land is situate in Village Kerehera. In the report of Tehsildar which had been called for by the A.D.M. it was mentioned that there were no constructions. However the A.D.M. rejected the same on the ground that the inspection by the Tehsildar had been made after about one year. Through this the A.D.M. inferred that constructions had been demolished.

5. There is an interesting sentence in the judgment of the A.D.M. to the effect that the stamp duty payable on a document depends upon the admitted facts mentioned in the deed itself. If this observation is taken as correct then 99% of stamp cases will have to be decided against the State and in favour of parties to the document/sale deed.

6. When the proceedings were initiated, the only dispute was regarding valuation of the constructions. However, from the fact that constructions were mentioned in the sale deed, the A.D.M. in the impugned order inferred that commercial rates as mentioned in the circle rates would be applied and constructions would be deemed to have existed on 60% of the entire land and the valuation would be done on the basis of valuation of constructions made by Public Works Department.

7. In the wake of recent agitations against acquisition of land. one wishes that the government may voluntarily offer to adopt the same formula while determining compensation of the acquired land. If it is done. almost the entire resentment would vanish.

8. It is mentioned in the order of A.D.M. that the sold area 2 bighas 4 biswas pukhta comes to 5566 square meters. Accordingly, rate of Rs. 3200/- per square meter which was rate for commercial land at the relevant time in the circle rates was applied and valuation of the land was determined to be Rs. 1,78,11,200/-. The cost of constructions was determined @ Rs. 2682/- per square meter and that was multiplied by 3340 which was two third of the sold area, which came to Rs. 89,57,880/- (Total market value determined as Rs. 2,67,69,080/-).

9. Findings of the A.D.M. are pure conjectures and not based upon any evidence. The A.D.M. has not kept in mind the difference between land having commercial potential and land having industrial potential. Absolutely no reason has been given to hold that the entire land of more than 5000 square meters was having commercial potential. It has not been mentioned that on the land just adjoining to the land in dispute, what sort of constructions were there and the adjoining

land was put to what use at the time of sale. In normal course, the most expensive land is commercial land, thereafter comes residential land, then industrial land and lastly agricultural land.

10. However the stand of the Petitioner that there was no construction at the time of execution of the sale deed was also not believable as in the sale deed itself construction was mentioned. Still by no stretch of imagination construction could be of Rs. 89 lacs and odd otherwise it would not have been demolished. The findings with regard to extent and cost of construction are again purely conjectural.

11. In Ram Khelawan v. State of U.P. 2005 R.D. (98) I have held that while deciding the case u/s 33/47A of Stamp Act regarding deficiency in stamp duty, market value will have to be determined on the same principle on which it is determined under Land Acquisition Act. It has further been held in the said authority that the circle rate are relevant only for initiating the proceedings but no reliance can be placed thereupon while deciding the matter finally.

12. Accordingly, both the impugned orders are set aside and matter is remanded to the A.D.M., Finance and Revenue, Ghaziabad to decide the case again in the light of observations made above. The amount deposited under interim order dated 13.04.2002 passed in this writ petition shall remain in deposit until the matter is finally decided by the A.D.M. Finance and Revenue, Ghaziabad. Petitioner is directed to appear before the A.D.M. on 17.05.2011 who shall make all efforts to decide the matter finally within three months.

13. Writ petition is allowed accordingly.

