(2008) 04 AHC CK 0144

In the Allahabad High Court

Case No : Writ Petition Nos. 1415, 1416 (MS) of 2005, 1484 and 1485 of 2008

ITC Ltd APPELLANT

Vs

State of U. P RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:

Citation : (2008) 04 AHC CK 0144

Hon'ble Judges : RAJIV SHARMA, J

Final Decision : Allowed

Judgement

1. Heard Mr. Jayant Bhushan, Senior Advocate, assisted by Mr. Yashwant Verma, appearing for the petitioner and Mr. Devendra Upadhyaya, learned Chief Standing Counsel, for the State.

2. The question involved in all these writ petitions is whether the stamp duty is payable on the property as it stands on the date of execution of deed or demand for additional stamp duty can be created on the presumption of future or intended change of use to which the property may be put to by the vendee.

3. As the parties in all three writ petitions are same and the common question of law is involved, the same are being decided by a common judgment.

WRIT PETITION NO. 1415 OF 2005(MS)

WRIT PETITION NO. 1416 OF 2005(MS)

4. Brief facts of the case in the above writ petitions are to the effect that on 1742004, the petitioner purchased the agriculture land situate over Khasra No. 2377, 2378, 2379 and 2380 situate in village Kathaura, Pargana Jagdishpur, District Sultanpur from one Abdul Qadir. In respect of Khasra No. 2377, 2378 and 2379, the sale consideration was Rs. 12,49,600/ and Rs. 4,72,500 in respect of Khasra No. 2380 and the stamp duty was paid accordingly. Deputy Registrar (Stamps), Musafirkhana, Sultanpur, drew up a note dated 2562004 addressed to the Inspector General, Stamps, Sultanpur stating therein that even though the

land in question was classified as agricultural but because the petitioner was planning to engage the land in question for the business of sale of foodgrains etc. stamp duty should be levied treating the land to be the commercial one. He, accordingly, opined that the stamp duty leviable on the instrument should be Rs. 9,29,600 and Rs. 8,23,200/respectively and not Rs. 1,00,000/ and Rs. 63,500/ as affixed by the petitioner. On the

basis of the said report, a case was registered and the District Magistrate issued notice to the petitioner to show cause why the stamp duty be not levied treating the value of the property to be Rs. 1,16,19,950/and Rs. 1,02,89,160/ respectively.

SUBMISSIONS

5. Learned Counsel for the petitioner has submitted that the notice dated 2972004 was assailed by the petitioner in writ petition No. 4515 (MB) of 2004 and 4514 (MB) of 2004 before this Court inter alia on the grounds that there was no justification of exercising power under Section 47A of the Act by the opposite party No. 1 and that the procedure as envisaged under Rule 7 of the Rules of 1997 was not followed before issuing the notice. A Division Bench of this Court disposed of both the writ petitions on 5102004 with the following directions :

"The writ petition is finally disposed of with a direction to the petitioner to submit the reply before the Collector within two weeks from today. It will be open for the petitioner to raise both legal and factual grounds in the reply to the show cause notice. The Collector, after affording opportunity to the petitioner to lead evidence, will assess the value of the property as provided under Rule 7 sub clause 4 of the Rules of 1997 for payment of the Stamp duty, if any ignoring the valuation which is mentioned in the impugned show cause notice and thereafter pass the order in accordance with law."

6. It is contended by the writ petitioner that the impugned order dated 2332005 passed by the District Magistrate is non est and per se bad in the eyes of law as the same has been passed without considering the reply/objection raised by the petitioner and the reasoning given by the authority concerned that the petitioner is liable to pay additional stamp duty as the land is close to an industrial area and is likely to be put to use other than agricultural is wholly erroneous. Learned Counsel for the petitioner has pointed out that the land in question was not the part of any industrial area nor was it being put to an industrial or commercial use either on the date of execution of the sale deed or even presently. Further, no notification issued under the U.P. Industrial Area Act has been brought on record by the respondents to establish that the land falls within the industrial area.

7. Sri Bhushan, next contended that the reasoning of the District Magistrate that the land is close to an industrial area and that it is likely to be put to use other than agricultural is wholly erroneous and unsustainable. Moreover, the demand of additional stamp duty is arbitrary as the settled law is that the market value cannot be adjudged on the basis of circle rates circulated by the District

Magistrate.

8. Lastly, it was submitted that while passing the impugned order dated 2332005, the District Magistrate has applied the circular dated 1662004 which was not even has seen the light of the day when the document was registered i.e., on 1442004 and as such it cannot and should not have been applied.

9. Learned Standing Counsel has filed counter affidavit in the aforesaid writ petition and has made an attempt to justify the orders passed by the authorities concerned. He reiterated that the property in question, though was recorded as agricultural land, but was not purchased for agricultural purposes and as a matter of fact, the same is to be used for commercial purposes and as such, the Stamp Duty was determined on that basis. He further submitted that opportunity was afforded to the petitioner but instead of filing reply, he preferred the writ petition. According to him, there is no illegality in the impugned order, requiring the petitioner to make good the deficiency of stamp duty.

WRIT PETITION NO. 1484 (MS) 2008

10. ITC Limited, a company registered under the provisions of the Companies Act purchased 5.428 acres of agriculture land situate at village Haripur Tehsil and District Gonda through a registered sale deed dated 18122006. The total sale consideration of the property was Rs. 1,19,37,860/. As per the circle rate notified by the District Magistrate, the value of the land was stated to be Rs. 2,50,000/ per acre. Since the sale consideration in the sale deed was much more than the minimum prescribed by the District Magistrate, the stamp duty was paid on the basis of the sale consideration, which came to Rupees (sic) paid a sum of Rs. 11,94,200/ as a stamp duty. Subsequently, a report dated 1012007 was submitted by the Sub Registrar to Addl. District (Finance and Revenue) mentioning therein that the land in question had been purchased by a Company, and is likely to be used for the consideration

of a commercial establishment (Mall) or for a non agricultural purpose, therefore, the property should be treated as commercial property. On the basis of the said report, a notice dated 2152007 was served upon the petitioner requiring the petitioner to furnish stamp duty of Rs. 58,95,600/ to which reply was submitted by the petitioner on 1962007.

11. Ultimately, the Additional District Magistrate (Finance and Revenue) passed the order dated 2922008 in exercise of powers conferred under Section 33 of the Act of 1899 requiring the petitioner to pay a sum of Rs. 58,95,600 as deficit stamp duty together with a penally of Rs. 5. 00 lacs and interest at the rate of 1.5% per month w.e.f. 3012008 till the date of payment.

12. It is contended by the petitioner's Counsel that the sale deed in question was executed on 18122006 and on the said date and even prior thereto, the land was duly recorded in the revenue record as agricultural land and therefore, the impugned order insofar as it levies duty based upon a future or

intended use of the premises in question is a levy without authority of law and thus violative of the rights of the petitioner guaranteed under Articles 14 and 19(1)(g) of the Constitution. Merely, because the land has been purchased by a company does not entitle the respondents to assume jurisdiction under Section 47A and subject the deed to a higher rate of stamp duty.

13. Learned Counsel for the petitioner has further submitted that the action of the respondent is also contrary to the Government Order dated 1681999 wherein it has been provided that the future use of a property and/or the status of the purchaser (i.e. any organization, society or company etc.) would not be a ground of for creating demand for payment of additional stamp duty.

14. It has been vehemently argued that the stamp duty is a tax and it can obviously be imposed only under authority of law. It is a well known principle in all fiscal legislations that in a taxing Act one has to merely (sic) at what is clearly said. There is no presumption as to tax. Therefore, levy of duty on an incorrect assumption of jurisdiction is clearly a levy without authority of law.

15. Clarifying the position, the petitioner submitted that the petitioner obtained necessary declaration under Section 143 of the U. P. Zamindari Abolition and Land Reforms Act by the petitioner, much later to the execution of the sale deed and the orders of conversion of use of the land as contemplated under the aforesaid section was made only on 752007 by the competent authority whereas sale deed was executed on 18122006.

WRIT PETITION NO. 1485 (MS) 2008

SUBMISSIONS :

16. ITC Limited, a company registered under the provisions of the Companies Act purchased land over plot Nos. 447,448, 450, 455, 456 and 456Kha measuring approximately 2.54 acres. As the sale consideration was more than the value of the property as per the circle rate, stamp duty was paid on the total sale consideration. When the sale deed was presented for registration, it was impounded and subsequently, the Sub Registration submitted a report for initiation of proceedings under Section 47A of the Act. Ultimately, the order dated 2922008 has been passed by the opposite party No. 2 in purported exercise of powers under Section 33 of Indian Stamp Act requiring the petitioner to pay a sum of Rs. 29,59,000/ as deficit stamp duty together with a penalty of Rs. 3.00 lacs and interest at the rate of 1.5% per month w.ef. 3012008.

17. It has been submitted that the land purchased under the sale deed dated 3012008 has continued to remain as agricultural land. The Khasra and Khatauni records of this land conclusively establish the fact that the sale deed in question pertains to an agricultural land and the petitioner has not made any application under Section 143 of the U. P. Zamindari Abolition and Land Reforms Act for conversion into nonagricultural use.

18. It has been vehemently argued by the Counsel for the petitioner that the

impugned order is wholly arbitrary and has been made in clear violation of the fundamental rights of the petitioner, inasmuch as both the assumption of jurisdiction as well as the impugned order held the petitioner liable to pay deficit stamp duty on the ground of intended use to which the land was likely to be put to. These assumptions and theory of 'immediate commercial potential' is without jurisdiction and arbitrary. Further, it is settled that the value of the property comprised in a deed must be judged in accordance with the existing use; intended or future change of the nature of the land can

never be taken as a yardstick for the purpose of adjudging the stamp duty payable thereon.

19. It has lastly been urged that the respondents could have assumed jurisdiction under Section 47A or Section 33 of the Act only if they found that the market value of the property had been undervalued. However, it was not their case that the agricultural land had been undervalued, and therefore, it is clear that the said respondents assumed jurisdiction by arbitrarily deciding a jurisdictional fact incorrectly.

LEGAL ASPECT and CONCLUSIONS

20. While referring the citations, namely, (2007) 8 SCC 514 : (AIR 2008 SC 166 Hariom Agarwal v. Prakash Malviya, AIR 1962 SC 110, State of Bihar v. M/s. Karam Chand Thapar and Brothers Ltd., 1971 (1) SCC 545 Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao and others, AIR 1978 Gujarat 1 The Chief Controlling Revenue Authority v. The Nutan Mills Ltd., AIR 2007 Kerala 127 : (2007 (6) ALJ (NOC) 1111 Chamiyappa Mannadiar and another v. Danavan and others, AIR 2005 Alld. 234 : (2005 All LJ 2346) Som Dutt Builders v. State of Uttar Pradesh and others, (2007) UPTC 335 : (2007 (1) ALJ 90) Shri Ramesh Chandra Srivastava v. State of U. P. and others, learned Counsel for the petitioner has heavily relied upon the proposition of law enunciated in (2004) 3 UPLBEC 2434 : (2004 All LJ 2802) Rakesh Chandra Mittal and others v. Additional District Magistrate; (2000 (3) AWC 2587 Aniruddha Kumar and Ashwini Kumar v. Chief Controlling Revenue Authority and State of Rajasthan and others v. M/s Khandaka Jain Jewellers, and on the strength of the aforesaid decisions, it has been contended by the petitioner's Counsel that the market value of the property has to be determined with references to the date on which the document is executed. Market value as such keeps on varying and changing. Any subsequent improvement or change in the nature or user of the land, which may result into enhancement of the market value of the property, is not to be taken into account and it is only the value of the property on the date of execution of the document that is to be considered for the purpose of determination of proper stamp duty payable on the instrument. Therefore, the end land has to be valued treating it to be an agricultural land and not on the assumption of its future use.

21. Sri D. K. Upadhyay, Chief Standing Counsel, while justifying the orders

passed by the District Magistrate, has not disputed the legal proposition laid down in various cases, which have been referred by the learned counsel for the petitioner.

22. In the case of Prakashwati v. Chief Controlling Revenue Authority, Board of Revenue; 1996 AWC 1331, the Apex Court had held that situation of a property in an area close to a decent colony not by itself would make it part thereof and should not be a factor for approach of the authority in determining the market value. According to the said decision, valuation has to be determined on constructive materials which could be made available before the authorities concerned.

23. In Anirudha Kumar and Ashwini Kumar Versus Chief Controlling Revenue Authority (2000 (3) A.W.C. 2587), on which reliance has been placed by the petitioner, this Court has referred the aforesaid Prakashwati's case (supra) and observed as under :

"In the present case, the market value is to be determined on the basis of the value that would satisfy the vendor. Thus, the question of future potential cannot be a factor for determining the market value of such a land for the purpose of stamp duty payable under the Stamp Act. The vendee pays the price that satisfies the vendor and, therefore, it is the utility of the land as on the date of transfer by the vendor and as such, if the land was an agricultural land, it has to be treated as such and the valuation has to be done accordingly. Whether in future the purchaser puts the land into residential use or changes the character is immaterial for the purpose of payment of stamp duty. The principle that has been laid down in P. Ram Reddy : (1995 AIR SCW 871) (supra) can be attracted for the purpose of determining the market value only to the extent of potential as on the date of transfer and not beyond. Thus, the market value has to be determined according to the factors, which includes the situation of the land, the amenities available in and around and various other factors, including the close proximity of the residential area as well as any transfer made immediately before the transfer or after the transfer in close proximity if such documents are produced in respect of the area that similarly, situated land by either of the parties."

24. To strengthen his arguments, learned Counsel for the petitioner has also placed reliance on Shakumbari Sugar and Allied Industries Ltd. v. State of U. P. and others (2007(5) ADJ 602 : (2007 (4) ALJ 98). In this case petitioner purchased agricultural land by means of a saledeed dated 22794. Since the land was agricultural in nature, the petitioner paid the stamp duty in accordance with the circle rate issued by the District Magistrate. On 1321995, a notice under Section 47A read with Section 33(4) of the Stamp Act was issued to show cause, as to why the deficiency of stamp duty should not be levied. In the notice, it was alleged that the petitioner had purchased the land for industrial purposes and as such the stamp duty on the property is to be paid on the basis of market value of the land for industrial purpose. This Court placing reliance on various citations

has held that the market value of the property is to be determined with reference to the date of which the document is executed.

25. In Rakesh Chandra Mittal's case : (2004 All LJ 2802) (supra) a Division Bench of this Court held :

"It is well settled that market value of the property has to be determined with reference to the date on which the document is executed. Market value as such keeps on varying and changing. Any subsequent improvement or change in the nature or user of the land, which may result into enhancement of the market value of the property on the date of execution of the document that is to be considered for the purpose of determination of property stamp duty payable on the instrument."

26. Apart from the above decisions, recently a Full Bench of this Court in the case of Shri Ramesh Chandra Srivastava, Kanpur v. State of U. P. and others; 2007 UPTC 335 : (2007 (1) ALJ 90) held that the market value of the property has to be determined with reference to the date on which the document is executed.

27. At this juncture, it would be useful to add that this Court in the case of Sarva Hitkarini Sahkari Avas Samiti Ltd. Allahabad v. State of U. P. and others; (2007 (103) RD 19 : (2007 (4) ALJ (NOC) 643) has observed that the rules framed for determining market value under the Stamp Act and circle rates circulated under said rules are relevant only for initiation of proceedings under Section 47A of Stamp Act. However, after initiation of the case the said rule becomes irrelevant and while deciding the case market value shall be determined on the basis of general principles for determining market value which are applicable to the land acquisition matters. Moreover, future use of the property is not decisive.

28. It would be relevant to add that the Collector/District Magistrate under the provisions of the U. P. Stamp (Valuation of Property) Rules, 1997 is not empowered to declare the agricultural land as 'abadi' land or land to be used for commercial purposes for realization of stamp duty as this power vests to a different authority under Section 143 of the U. P. Zamindari Abolition and Land Reforms Act.

29. In the above cases, as observed by the Collector, admittedly, the land was an agricultural land and was being used for agriculture purposes and therefore, it cannot be treated to be a residential or commercial plot. The valuation cannot be determined straightway on such an assumption that the land is situated in close proximity of 'abadi' area or on the presumption that the land is to be used for a purpose other than the agriculture. As averred above, the Full Bench of this Court has clearly held on the basis of the various provisions of the Stamp Act, that the market value is to be determined with reference to the date on which the document was executed and that any subsequent change in the nature or use of the land which may result in the enhancement of the market value of the property was not to be taken into account.

30. Thus, the legal position which emerges out from the aforesaid cases is that the market value of the land cannot be determined with reference to the use of the land to which buyer intends to put it. The market value is what a general buyer may offer and what the officer may reasonably expect. In determining the market value, the potential of the land as on the date of sale alone can be taken into account and not what potential it may have in the distant future. Any subsequent improvement or change in the nature or user of the land, which may result into enhancement of the market value of the property, is not to be taken into account and it is only the value of the property on the date of execution of the document that is to be considered for the purpose of determination of proper stamp duty payable on the instrument.

31. In addition to above legal proposition, it may be pointed out that the State Government has issued a Government Order dated 1691999 to all the Divisional Commissioners, District Magistrates and Additional District Magistrates (Finance and Revenue), providing therein that while determining the valuation of the property under 1997 Rules, neither the future potential or use of the property nor the status of the purchaser (Organization, Society, Company etc.) will not be taken into consideration. The relevant clause of the Government Order dated 1691999 reads as under :

(Vernacular matter omitted........Ed.)

32. Having considered the submissions made by the learned Counsel for the parties and the materials placed before this Court, it appears that the authority had proceeded to determine the value on the presumption that though the land is agricultural land but it has not been purchased for the said purpose. The said presumption does not appear to be sound and reasonable.

33. Accordingly, the writ petitions are allowed and the impugned order dated 2332005 passed by the Collector, Sultanpur, the order dated 2922008 passed by the Additional District Magistrate, Gonda in Stamp Case No. 206/20072008 are hereby quashed. Respondents shall act accordingly.

Petition allowed.

