(2008) 08 AHC CK 0198

In the Allahabad High Court

Case No : Writ Petition No. 6168 (M/S) of 2005

Jingle Bell Nursery School Society, Faizabad — APPELLANT

Vs

Chief Controlling Revenue Authority and others — RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:
Stamp Act, 1899 — Section 47

Citation : (2008) 08 AHC CK 0198

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Learned Counsel for the parties.

2. It is submitted by the Counsel for the petitioner that the petitioner''s Society purchased an agricultural plot No. 30 consisting of 1 bigha 18 biswa 13 dhur in village Khojanpur, outside the circle of Nagarpalika Faizabad from Narendra Bahadur Singh and Dhirendra Pratap Singh, for a sale consideration of Rs. 43,000/ and sale deed was executed by them on 12.4.1988. After lapse of about ten years, a show cause notice purporting to be under section 47A/33 of the Act was issued by the Additional District Magistrate, Faizabad requiring, the petitioner to show cause on 18.6.1998 against the deficiency in the payment of stamp duty on the above sale deed. The petitioner submitted a reply stating therein that proceedings contemplated to be initiated under section 47A are barred by limitation. It was also stated that stamp is required to be paid on the basis of the nature of the land purchased and not on the future potential and as such notice is Mabte to be recalled.

3. Counsel for the petitioner submits that the authorities did not proceed after filing of the objection but all of a sudden on 16.12.2002, a notice was issued by Deputy Commissioner Stamps, Faizabad Division requiring the petitioner to show cause against the alleged deficiency. Again the petitioner reiterated that the proceedings initiated against him are time barred in view of subsection (5) of section 33 of the Act which provides that no action under subsection (4) and

subsection (5) shall be taken after a period of 4 years from the date of execution of the instruments. Further, the proviso stipulates that with the prior permission of the State Government the action under the above provision can be taken after a period of 4 years but before a period of 8 years from the date of execution of the instrument. Moreover, the State Government had issued a Government Order dated 16th August, 1999 directing that the value of the plots of land is not to be determined on the basis of the potential value of the land but according to the rates applicable on the date of execution of the sale deed.

4. Counsel for the petitioner contends that ignoring the above statutory provisions and Government Order, the Deputy Commissioner, Stamps in an arbitrary manner held the sale deed to be undervalued and assessed a deficiency of Rs. 25,415 in stamp duty. Against the said order, appeal was preferred by the petitioner but the Appellate Authority also dismissed the appeal vide order dated 19.10.2005 without considering the legal pleas raised by the petitioner.

5. State Counsel submits that the order dated 12.10.2004 and 19.10.2005 are perfectly justified and there is no infirmity. He also submits that the petitioner has not produced any evidence regarding agriculture activities over the land in question. As regard the initiation of proceedings, it has been submitted by him that the inspections was conducted in October, 1990 and on 7.1.1991 certified copy of the sale deed in question was forwarded by SubRegistrar, Faizabad to the Court of Addl. District Magistrate (F & R), Faizabad thus the proceedings are not time barred as alleged by the petitioner.

6. In the case of Prakashwati v. Chief Controlling Revenue Authority, Board of Revenue, 1996 (87) RD 419 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.

7. In Anirudha Kumar and Ashwini Kumar v. Chief Controlling Revenue Authority 2000 (91) RD 566 and Smt. Anasuya Singh v. Commissioner, Faizabad Division, 2008 (104) RD 725 (LB). 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 Ready (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."

8. In Rakesh Chandra Mittal''s case (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 thS date of execution of the document that is to be considered for the purpose of determination of property stamp duty payable on the instrument."

9. 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, 2006 (101) RD 806 held that the market value of the property has to be determined with reference to the date on which the document is executed.

10. 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.

11. 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.

12. In addition to above legal proposition, it may be pointed out that the State Government has issued a Government Order dated 16.9.1999 to all the

Divisional Commissioners, District Magistrates and Additional District Magistrates (Finance & 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 16.9.1999 reads as under:

13. 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. As stated above the sale deed was executed on 12.4.1988 and the first notice purported to be under section 47A/33 of the Act was issued on 18.6.1998 i.e. after ten years. There is no explanation as to why the authorities remained idle for quite a considerable long time. Furthermore, the pleas raised by the petitioner regarding the proceedings to be time barred have not been dealt with by the Courts below.

14. Accordingly, the writ petition is allowed and the impugned order dated 12.10.2004 of Deputy Commissioner, Stamps and the order dated 19.10.2005 passed by the Additional Commissioner, Faizabad Division, Faizabad are hereby set aside. Respondents shall act accordingly.