(2011) 03 AHC CK 0308

In the Allahabad High Court

Case No : Writ C. No. 56999 of 2010

Kaushalya Nandan and Another		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 47A, 56

Citation : (2011) 03 AHC CK 0308

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Heard Sri Rajendra Prasad Tiwari, learned Counsel for the Petitioners and learned standing Counsel. Pleadings have also been perused. Counsel for the parties agree for the final disposal of the writ petition at the admission stage.

2. In respect to the sale deed dated 4.4.2005 proceedings u/s 47A of the Indian Stamp Act were initiated against the Petitioners. Against the determination of the market value and the deficiency in court fees Petitioners after exhausting the alternative remedy of appeal had filed Writ Petition No. 7992 of 2007. The said writ petition was allowed vide judgment and order dated 4.4.2008 and the orders of the authorities below were quashed with the direction to redecide the matter afresh in accordance with law and after considering the relevant documents on record.

3. Pursuant to the above order of the High Court, Additional Collector (Finance and Revenue), Chitrakoot vide order dated 30.7.2010 re-decided the matter and found that there is deficiency in payment of stamp duty by Rs. 4,93,400/-. Accordingly, he directed for its payment with penalty of Rs. 1,00,000/- and interest @ 1.5% per month.

4. Petitioners have directly challenged the aforesaid order by means of this writ petition though they have an alternative remedy of filing an appeal or a revision u/s 56 of the Act.

5. Learned Counsel for the Petitioners submits that as the Additional Collector in calculating the market value of the land involved in the sale deed, has included the value of the weighbridge and the Hot Mix Plant which existed on it though both the items were not part of the sale deed, the Petitioners have rightly invoked the writ jurisdiction directly.

6. The existence of the weighbridge and Hot Mix Plant over the land in question is not disputed. The dispute it about their ownership. According to the Petitioners both the above items were not owned by the vendor and as such could not be part of the sale deed. This aspect of the matter is a question of fact in respect whereof findings of the lower authority have to be examined and if necessary fresh findings have to be recorded by the appellate authority. However, it is not prudent to examine it in exercise of writ jurisdiction more particularly when the appellate/revisional authority has not expressed its opinion on it.

7. In view of the aforesaid facts and circumstances, I am not inclined to interfere in the matter in exercise of Article 226 of the Constitution of India. Writ Petition as such is dismissed on the ground of availability of alternative statutory remedy. Petitioners may file an appeal or revision as may be advised challenging the order dated 30.7.2010 and in case such an appeal or revision is filed within three weeks from today, the appellate/revisional authority shall consider the same in accordance with law as expeditiously as possible preferably within a period of three months from the date of its filing without taking objection qua the limitation in filing the appeal/revision.