(2007) 10 AHC CK 0088

In the Allahabad High Court

Case No : Writ Petition No. 5156 (M/B) of 2004

Kishore Chandra Agarwal APPELLANT

Vs

State of U.P.and others RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (2007) 10 AHC CK 0088

Hon'ble Judges : U.K.Dhaon, J and S.N.Shukla, J

Final Decision : Partly Allowed

Judgement

U.K. Dhaon, J.—Heard Sri N.K. Seth, learned Counsel for the petitioner and Sri V.S. Tripathi, learned Additional Chief Standing Counsel for the opposite parties.

2. The petitioner has approached this Court against the impugned notice dated 22.9.2004 issued by the Additional District Magistrate (Finance & Revenue), Lucknow and the rate list dated 16.6.2004 issued by the District Magistrate, Lucknow, under the provisions of U.P. Stamp (Valuation of Property) Rules, 1977.

3. The brief facts of the case are that Sri Putti Lal and others were the recorded Bhumidhar of agricultural land of Khasra No.448 measuring 2 Bigha, 14 Biswa and 15 Biswansi situated at Village Anaura, Pargana, Tehsil and District Lucknow. The petitioner, being interested in farming approached Sri Putti Lal and others, who agreed to sell the aforesaid Khasra No.448 for a total sale consideration of Rs. 16,35,100/. The petitioner has further alleged that as per the rate list issued by the Collector, Lucknow, for the purposes of stamp duty, the rate of agricultural land in the semi urban area has been fixed as Rs. 14.00 Lakh per hectare and in case such land is situated on the main road, the value for the purposes of stamp duty has been fixed as Rs. 24.00 Lakh per hectare. The petitioner has alleged that he got the sale deed typed on the stamp paper worth Rs. 1,67,100/ and before presenting the deed of sale for registration before the SubRegistrar, the petitioner in order to avoid any harassment subsequent to the registration of the sale deed moved an application dated 21.8.2004 before the Additional District

Magistrate (Finance & Revenue), Lucknow, requesting that after inspection of the spot, the value of the land in question may be determined so that the petitioner may get the sale deed registered in his favour, but no orders on his application was passed and he was verbally informed by the Office of the Additional District Magistrate (Finance & Revenue), Lucknow as well as the office of the SubRegistrarII, Lucknow that the petitioner may file an affidavit with regard to the land use of the said land and get the sale deed executed on the requisite stamp paper. The petitioner, thereafter on 15.9.2004 submitted an affidavit to the SubRegistrarII, Lucknow stating interalia that the land, which the petitioner is purchasing, is agricultural land and it is being used for agricultural purposes and the petitioner is purchasing the same for agricultural purposes. The sale deed was presented on 15.9.2004 before the SubRegistrarII, Lucknow for its registration, but the sale deed was not registered. The petitioner has further alleged that the SubRegistrarII, Lucknow in a most arbitrary and illegal manner valued/assessed the said property for Rs. 4,17,60,000/ although the fair market value is not more than Rs. 16,35,100/, which is the sale consideration and he is prepared to sell the said plot of land even on l/5th of the value as fixed by the SubRegistrarII, Lucknow. The petitioner has further alleged that the notice dated 22.9.2004 purported to be under section 47A/''33 of the Indian Stamp Act, 1899 (hereinafter referred to as Act) read with Rule 350 was issued to him to show cause why the land should not be valued for Rs. 4,17,60,000/ and why the deficit stamp duty, penalty may not be levied upon him.

4. The learned Counsel for the petitioner submitted that the petitioner has purchased the agricultural land, which is also recorded as agricultural land in the revenue records through sale deed dated 15.9.2004 and has paid the stamp duty at the highest circle rate of Rs. 24.00 Lakh per hectare as fixed by the District Magistrate, Lucknow and in a most arbitrary and illegal manner by the impugned notice dated 22.9.2004 under section 47A/33 of the Indian Stamp Act read with Rule 350, the petitioner has been directed to show cause why it should not be valued for Rs. 4,17,60,000. He further submitted that the land is situated in semi urban area for which the maximum circle rate fixed by the Collector, Lucknow is Rs. 14.00 Lakh per hectare for the purposes of stamp duty and as the land of the petitioner is situated on Lucknow Faizabad Road, the stamp duty at the rate of Rs. 24.00 Lakh per hectare was paid by the petitioner and the impugned notice is nothing else but mere harassment to a law abiding citizen. He further submitted that the SubRegistrarII Lucknow, in a most arbitrary and illegal manner and without any basis, has valued/assessed the property for Rs. 4,17,60,000/ and in his report dated 15.4.2005 pointed out deficit stamp duty of Rs. 40,08,900/, although, the petitioner is using the land for the agricultural purposes and to that effect an affidavit was also submitted by the petitioner on 15.9.2004. He further submitted that the land of the petitioner is also outside the municipal limit of Lucknow and also outside the purview of Master Plan of 2001 and the opposite parties are illegally treating the land under the sale deed in question as commercial land. Sri Seth has also apprised us that the Collector, Lucknow and

the authorities of the Lucknow Development Authority are paying compensation to the land owners of the acquired land under the provisions of the Land Acquisition Act for Gomti Nagar Extension Scheme at the rate of Rs.23/ per Sq.Ft. which comes to Rs. 24,75,780/ per hectare and the land in question is far away from the Gomti Nagar Extension Scheme.

5. The learned Counsel for the petitioner has relied upon the decisions in the cases of Aniruddha Kuniar and another v. Chief Controlling Revenue Authority, U.P. Allahabad and another 2000 (91) RD 566 Hajari Lal Sahu v. State of U.P. and others, 2004 (96) RD 368 and Rani Seivak and another v. State of U.P. through Addl. Collector/Addl. District Magistrate (Protocol), Varanasi and another 2007 (102) RD 511

6. The learned Additional Chief Standing Counsel appearing on behalf of the opposite parties submitted that the land of the petitioner is situated at Lucknow Faizabad Road and as per the rate list dated 16.6.2004 the petitioner is liable to pay stamp duty at the circle rate of Rs. 6000/ per Sq. Mtr. He further submitted that the land which is situated on main LucknowFaizabad Road even beyond Chinhat Crossing up to the border of Lucknow district on both the sides of the road shall be treated as commercial land and the stamp duty is payable at the circle rate of Rs. 6000/ per Sq. Mtr. He further submitted that on both the sides of Lucknow Faizabad Road the commercial and institutional activities are going on and as such the SubRegistrar has rightly assessed the property and there is deficiency of stamp duty of Rs. 40,08,900/. and there is no illegality in the proceedings which are pending before the Collector, Lucknow under the provisions of the Stamp Act. He further submitted that the circle rates fixed by the Collector through rate list dated 16.6.2004 are just and proper.

7. We have considered the submissions made by the learned Counsel for the parties and gone through the record.

8. It is admitted case of the parties that Khasra Plot No. 448 measuring 2 Bigha, 14 Biswa and 15 Biswansi (0.814 hectare) is situated at Village Anaura Pargana, Tehsil and District Lucknow which is at a distance of about 4 kms. towards Barabanki from Chinhat Circle and the said land is recorded as agricultural land and is also used for agricultural purpose. It is also admitted case of the parties that Khasra No. 448 is situated outside the limit of Nagar Nigam, Lucknow and there is no commercial activities either on the said land or in the surrounding of the said land.

Section 47A of the Indian Stamp Act, 1899, is as under :

"Undervaluation of the instrumentIf the market value of any property which is the subject of any instrument, on which duty is chargeable on the market value of the property as set forth in such instrument, is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908 shall, notwithstanding anything contamed in the said Act, immediately after presentation of such instrument and before accepting it for registration and taking any action under section 52 of the said Act, require the person liable to pay stamp duty under section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with section 23 of the Registration Act, 1908.

9. The petitioner has alleged that Sri Putti Lal and others were the recorded Bhumidhar of agricultural land of Khasra No. 448 measuring 2 Bigha, 14 Biswa and 15 Biswansi situated at Village Anaura, Pargana, Tehsil and District Lucknow. The petitioner, being interested in farming approached Sri Putti Lal and others, who agreed to sell the aforesaid Khasra No. 448 for a total sale consideration of Rs. 16,35,100/. The rate list dated 16.6.2004, a copy of which has been annexed as Annexure No. 4 to the writ petition was issued and circulated by the Collector, Lucknow, under the provisions of U.P. Stamp (Valuation of Property) Rules, 1997 (hereinafter referred as Rules of 1997).

10. Under Rules of 1997 the urban area, semi urban area, country side area and industrial development area have been defined under Rule 2 of the Rules. Rules 2 (c), 2 (e), 2 (h) and 2 (k) are as follows:

2(c) ''Countryside area'' means an area other than urban area or semiurban area;

2(e) ''Industrial development area'' means an area as defined under Clause (d) of section 2 of the Uttar Pradesh Industrial Area Development Act, 1976 (U.P. Act No. 6 of 1976);

2(h)Semiurban area means an area

(i) other than the urban area declared as development area under section 3 of the Uttar Pradesh Urban Planning and Development Act, 1973 ;

(ii) other than the urban area to which Avas Evam Vikas Parishad Adhiniyam, 1965 is applicable;

(iii) of two kilometers width of revenue villages peripheral to an urban area not covered by Clause (i) or Clause

(ii);

(iv) falling under a transitional area as denied under the United Provinces Municipalities Act, 1916;

2(K) ''Urban area'' means an area:

(i) comprised in metropolitan area or a municipal area as defined in the Uttar Pradesh Municipal Corporations Act, 1959; or

(ii) comprised in a smaller urban area as defined in the United Provinces Municipalities Act, 1916, or

(iii) comprised in a cantonment as defined under section 3 of the Cantonments Act, 1924; or

(iv) demarcated for industrial, commercial and residential purposes by the concerned Industrial Development Authority under Clause (c) of subsection (2) of section 6 of the Uttar Pradesh Industrial Area Development Act, 1976.

11. Admittedly, the rates for the purposes of the stamp duty were revised by the District Magistrate, Lucknow, on 16.6.2004. The rate for the purposes of stamp duty for agricultural/residential/ commercial situated in the semi urban area of Lucknow is as under:

12. As per the rate list issued by the Collector, Lucknow, for the purposes of stamp duty, the rate of agricultural land in the semi urban area has been fixed as Rs. 11.00/14.00 Lakh per hectare and in case such land is situated on the main road, the value for the purposes of stamp duty has been fixed as Rs. 24.00 Lakh per hectare. The petitioner has alleged that he got the sale deed typed on the stamp paper worth Rs. 1,67,100/ and before presenting the deed of sale for registration before the SubRegistrar, the petitioner in order to avoid any harassment subsequent to the registration of the sale deed moved an application dated 21.8.2004 before the Additional District Magistrate (Finance & Revenue), Lucknow, with a request that after inspection of the spot, the value of the land in question may be determined so that the petitioner may get the sale deed registered in his favour, but no orders on his application was passed and he was verbally informed by the Office of the Additional District Magistrate (Finance & Revenue), Lucknow as well as the office of the SubRegistrarII, Lucknow that the petitioner may file an affidavit with regard to the land use of the property and get the sale deed executed on the requisite stamp paper. The petitioner, thereafter on 15.9.2004 submitted an affidavit to the SubRegistrarII, Lucknow stating interalia that the land, which the petitioner is purchasing, is recorded as agricultural land and it is being used for agricultural purposes and the petitioner is purchasing the same for agricultural purposes.

13. The sale deed was presented on 15.9.2004 before the SubRegistrarII, Lucknow for its registration, but the sale deed was not registered. The SubRegistrarII, Lucknow valued/assessed the said property for Rs. 4,17,60,000/ although according to the petitioner the fair market value is not more than Rs. 16,35,100/, which is the sale consideration. It is admitted case of the parties that Khasra Plot No. 448 which situates outside the limit of the Nagar Nigam, Lucknow, is recorded as agricultural land in the revenue record. The Tehsildar, Nagar Nigam, Lucknow has also informed the petitioner through letter dated 5.10.2004 that Khasra Plot No. 448 of Village Anaura, Pargana, Tehsil and District Lucknow is outside the municipal limit of the Nagar Nigam, Lucknow. The Joint Town Planner, U.P., Lucknow on the request made by the petitioner vide his letter dated 7.10.2004, a copy of which has been annexed as Annexure 14 to the writ petition, has also informed the petitioner that Khasra Plot No. 448 is outside the Nagar Nigam, Lucknow and is also not within the purview of the Master Plan

2001 of District Lucknow. The petitioner has also annexed a copy of the sale deed in respect to Khasra No. 447 of Village Anaura, Pargana, Tehsil and District Lucknow, a copy of which has been annexed as Annexure 16 to the writ petition. The said sale deed was executed on 8.7.2003 and through the said sale deed an area of 0.784 hectare was sold for total sale consideration of Rs. 10,00,000/ on which the stamp duty of Rs. 1,21,600/ was paid at the rate of about Rs. 5,00,000/ per hectare, the plot which the petitioner has purchased is Khasra No. 448 of the same Village Anaura which is adjacent to Khasra No. 447 and the petitioner has paid the stamp duty at the rate of Rs. 24.00 Lakh per hectare. The sale deed of the petitioner was registered on the basis of the interim order passed by this Court.

14. In the instant case, the land under the sale deed in question is an agricultural land and the petitioner has paid the Stamp duty according to the highest circle rate fixed by the Collector through rate list dated 16.6.2004 for the agricultural land in the semi urban area.

15. The sale deed in respect to Khasra No. 447 was executed on 8.7.2003 and the stamp duty which was charged by the opposite parties was at the rate of about Rs. 5,00,000/ per hectare. By the impugned notice the opposite parties have assessed/valued the land in question for Rs. 4,17,60,000/. The petitioner has also stated in the writ petition that he is ready to sell the plot on l/5th of the value as fixed by the SubRegistrarII, which offer the opposite parties have not accepted. In the counter affidavit, the SubRegistrarII has stated that he has no authority or power to purchase the said land even on l/5th value as fixed by the SubRegistrar, Lucknow.

16. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice, which the quasijudicial authorities ore bound to observe. An arbitrary action is ultra virus.

17. We are of the view that the opposite parties are not justified in demanding the stamp duty on the agricultural land at the rate of Rs. 6000/ per Sq. Mtr, which is the rate for the commercial land. The District Magistrate cannot fix unreasonable market value of the land for the purpose of stamp duty and the registration.

18. For the disposal of the instant writ petition some of the provisions of Income tax Act, 1961 are also relevant as the transferor is also liable to pay tax on capital gain. Sections 48 and 50C of the Income Tax Act, 1961, which are relevant are as under:

"Section 48 : The income chargeable under the head "Capital gain" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto.

Section 50C of the Income Tax Act is also relevant for the disposal of the instant writ petition, which is as under:

(1) "Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereinafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of subsection (1), where

(a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under subsection (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed by the stamp valuation authority under subsection (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, Court or the High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of subsections (2), (3) (4), (5) and (6) of section 16A, clause (i) of subsection (1) and subsection (6) and (7) of section 23A, subsection (5) of section 24, section 34AA, section 35 and section 37 of the WealthTax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under subsection (1) of section 16A of that Act.

ExplanationFor the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the WealthTax Act, 1957 (27 of 1957).

(3) Subject to the provisions contained in subsection (2) where the value ascertained under sub section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in subsection (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]"

19. As per the above provisions of the Income Tax Act, if the fair market value of a particular property/land is not more than Rs. 1,00,000/ and the District Magistrate for the purposes of the stamp duty and registration fixes the value at Rs. 5,00,000/the transferor who executes the shall be liable to pay capital gain tax on the value as assessed by the stamp valuation authority i.e. Rs. 5,00,000/.

20. In the instant transaction, the sale consideration is Rs. 16,35,100/ although,

the market value for the purposes of stamp duty at the rate of Rs. 24,00,000/ per hectare comes to Rs. 16,70,400/. The Income Tax Authorities for the purposes of capital gain will assess the transferor for Rs. 16,70,400/, although, the transferor has received only Rs. 16,35,100/ as evident from the sale deed. By the impugned notice issued by the opposite parties, the opposite parties have valued the property for Rs. 4,17,60,000/ and has assessed the deficit stamp duty of Rs. 40,08,900/. Even the amount of deficit stamp duty is more than double the fair market value/sale consideration of the property. As an exorbitant value of the property has been fixed by the registering authority the petitioner has mentioned in his writ petition that he is prepared to sell the property even on l/5th of the value as fixed by the SubRegistrarII, Lucknow, which offer the opposite parties have not accepted. It clearly goes to show that in an arbitrary and illegal manner, the opposite parties have valued the property under the sale deed in question and are demanding the deficit stamp duty of Rs. 40,08,900/.

21. If we will accept the value, as assessed/valued by the Stamp Valuation Authority, the transferor who has received a consideration of Rs. 16,35,100/ shall be liable to pay capital gain tax under the provisions of sections 48 and 50C of the Income Tax Act on the value as assessed by the Stamp Valuation Authority i.e. Rs. 4,17,60,000/.

22. In the case of Prakashwati v. Chief Controlling Revenue Authority Board of Revenue, Allahabad, 1996 (87) RD 419 (SC) Hon''ble the Apex Court has 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 said decision, valuation has to be determined on constructive ''materials, which could be made available before the authorities concerned.

23. The rate list dated 16.6.2004 also provides that the valuation of the agricultural land situate on the main road for the purpose of stamp duty and registration from Chinhat circle up to the border of Lucknow district has been fixed at the rate of Rs. 24,00,000/ per hectare and the petitioner has paid the stamp duty at the rate of Rs. 24,00,000/ per hectare. The agricultural land situate on the roadside of a highway in semiurban area or countryside area cannot be treated as commercial or residential unless that area is declared as commercial or residential in the Master Plan prepared by the State Government. Admittedly, Khasra No. 448 is recorded, as agricultural land and it cannot be treated to be a residential plot or commercial plot until there is a declaration under section 143 of the U.P. Zamindari Abolition and Land Reforms Act.

24. We have been informed by the learned Counsel for the petitioner that the Collector/District Magistrate, Lucknow and the authorities of the Lucknow Development Authority are paying compensation to the land owners of the acquired land under provisions of the Land Acquisition Act for Gomti Nagar Extension Scheme at the rate of Rs. 237 per Sq. Ft. which comes to Rs. 24,75,780/ per hectare. The Gomti Nagar Extension Scheme is for residential

and commercial purposes. The land, which is covered by the sale deed in question, is far away from Gomti Nagar, Lucknow. The Sub Registrar has valued/ assessed the property in a most arbitrary and illegal manner.

25. Every wide power, the exercise of which has far reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions, which touch the common man, have to be tested on the touchstone of fairness and justice. An arbitrary action is ultra vires.

26. While revising the rates for the purposes of stamp duty and registration under the provisions U.P. Stamp (Valuation of Property) Rules, 1997, the authorities must remember at what rate they are acquiring the property under the provisions of the Land Acquisition Act and at what rate they are intending to sell to the public at large. Artificial increase of the rates of residential, commercial and agricultural is not in the interest of general public at large. The Collector, Lucknow, who has acquired the land for Lucknow Development Authority for Gomti Nagar Extension Scheme has paid the compensation to the land owner at the rate of Rs. 237 per Sq. Ft. and for sale after development they have valued the same land for residential purposes about Rs. 400/ per Sq.Ft. and for commercial purposes about Rs. 600/ per Sq.Ft. in a most arbitrary and illegal manner. The artificial increase of the price of such land is not in the interest of public at large. While fixing the rates of the agricultural, residential and commercial land for the purposes of stamp duty under the provisions of the U.P. Stamp (Valuation of Property) Rules, 1997, the provisions of sections 48 and 50C of the Income Tax Act should also be kept in mind.

27. The Collector/District Magistrate, Lucknow under the provisions of the U.P. Stamp (Valuation of Property) Rules, 1997 has no jurisdiction to say that the stamp duty in respect of the agricultural land situate in semiurban area or country side area shall be charged treating the land as commercial. The Collector/ District Magistrate, Lucknow while issuing the rate list under the provisions of Rule, 1997 has no authority to declare the agricultural land as residential or commercial for the purposes of realisation of stamp duty as the authority to declare a particular area of the district as residential or commercial vests with the State Government while preparing the Master Plan of the City.

28. The impugned notice issued by the Additional District Magistrate (Finance and Revenue), Lucknow is legally not sustainable as the petitioner has paid the stamp duty at the rate of Rs. 24.00 Lakh per hectare, which is the rate fixed by the Collector/District Magistrate, Lucknow for the agricultural land from Chinhat Crossing to the border of Lucknow on LucknowFaizabad Road.

29. In the result, the writ petition succeeds and is hereby partly allowed. The

impugned notice dated 22.9.2004 issued by the Additional District Magistrate (Finance and Revenue), Lucknow, a copy of which has been contained in Annexure11 to the writ petition is hereby quashed.

30. The parties shall bear their own costs.

