(2013) 10 AHC CK 0147

In the Allahabad High Court

Case No : C.M.W.P. No. 3127 of 2003

Meenal Sahakar Avas Samiti Ltd. APPELLANT

Vs

Commissioner RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2014) 106 ALR 30 : (2014) 124 RD 370

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Pradeep Kumar Singh Baghel, J.—The petitioner has preferred this writ petition aggrieved by the order of the respondent No. 3 whereby he has rejected the objection of the petitioner and has directed the petitioner to pay the stamp duty in terms of the said order. The revision of the petitioner has also been rejected by the learned Commissioner u/s 26 of the Indian Stamp Act. Briefly stated the facts of the case are that the petitioner purchased the agricultural land on 16.12.1994 being plot Nos. 440 and 449 area 12 biswa from one Rishi Pal Singh for consideration amount of Rs. 1,30,000/-. On 31.12.1994 the Sub-Registrar submitted a false and incorrect report to the Collector, upon the report the Collector initiated proceedings under sections 33 and 47 of the Indian Stamp Act. A notice was issued to the petitioner u/s 47-A of the Indian Stamp Act. By the said order without considering petitioner''s reply Rs. 1,05,000/- was imposed as deficiency of stamp duty. The petitioner moved an application for recall/review of the order on 10/11 September, 1998. The said application was rejected. The respondent No. 3 vide order dated 23.12.1998 has rejected the review application of the petitioner.

Feeling aggrieved by the order of the respondent No. 3 dated 4.9.1998 and 23.12.1998 the petitioner preferred a revision No. 571 before the respondent No. 1. The said revision came to be dismissed by the impugned order.

2. I have heard Sri A.K. Sharma, learned Counsel for the petitioner and learned Standing Counsel.

3. Learned Counsel for the petitioner submits that the petitioner purchased the agricultural land and his liable to pay the stamp duty on the basis of the nature of the land which was at the time of execution of the sale and stamp duty cannot be imposed on the potentiality of the land or its future use. He further urged that the no spot inspection was made and ex-parte order without any material has been passed. He has placed reliance on the judgment of this Court passed in the case of Gaurav Khanna v. State of U.P. and another (Writ C No. 24518 of 2006) decided on 1.7.2013; Smt. Sushila Verma Vs. State of Uttar Pradesh, Commissioner/C.C.R.A. and Collector, and the judgment of this Court passed in the case of Aniruddha Kumar and another v. Chief Controlling Revenue Authority, U.P. Allahabad and another (Writ No. 7557 of 1996). : 2000 RD 566

4. Learned Standing Counsel submits that the petitioner had not filed any evidence before the respondent No. 3 to establish that the land was agricultural land. He further submits that the land situate within the Municipal limit therefore the stamp duty imposed is correct and no interference is called for.

5. I have considered the respective submissions of learned Counsel for the parties and perused the record.

6. From the record it appears that no spot inspection was carried put and the respondent No. 3 as well as the Revisional Court has refused to accept the submission of the petitioner with regard to nature of the land on the ground that no document has been filed.

7. Further learned Counsel for the petitioner submits that no declaration in respect of land was made u/s 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950. In the absence of the order under the said provisions it will be presumed that the land is agricultural land. However, the petitioner who had filed a xerox copy of the khasra before the learned Commissioner was not accepted. The order dated 4.9.1998 is ex-parte. Petitioner had filed reply to show cause. The respondent No. 3 has not adverted to the plea raised by the petitioner. Similarly learned Commissioner has failed to consider the grounds of appeal and written submissions filed by the petitioner. A copy of written submission is on the record as Annexure- 9 to the writ petition.

8. This Court in long line of judgment has taken a constant view that stamp duty would be payable on the basis of the nature of the land at the time of execution of the sale-deed and it cannot be on the basis of future potential of the land. In view of the said facts both the orders need to be set aside.

9. The matter is remitted to the respondent No. 3/Additional Collector (F&R), Agra to pass a fresh order after spot inspection and giving opportunity to the petitioner. The petitioner may file all his documentary evidence before the respondent No. 3 on the very first date.

10. With the consent of the learned Counsel for the petitioner 2nd December, 2013 is being fixed for submission of documentary evidence by the petitioner before the respondent No. 3. In case the petitioner fails to file his documentary evidence on the said date the respondent No. 3 shall proceed ex parte.

11. With the aforesaid observations and order, writ petition is finally disposed of.

No orders as to costs.

It is made clear that any observations made in this judgment shall be without prejudice to the contention and the cause of the petitioner and the respondents.

