
(2012) 07 AHC CK 0260

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7592 of 1999

M/s. Har Charan Lal Ice and Cold Storage Private Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Stamp Act, 1899 — Section 52

Citation : (2012) 7 ADJ 537 : (2013) 1 ALJ 97 : (2013) 2 AWC 1731

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Anupam Kulshrestha, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble B. Amit Sthalekar, J.—By means of this writ petition, the petitioner is challenging the order dated 14.10.1993 passed by the Assistant Commissioner of Stamps, Mathura and the order dated 15.5.1998 passed by the Chief Controlling Revenue Authority, U.P. Allahabad. The case of the petitioner is that he purchased Plots being Plot No. 1269 (area.01 acre); 1270 (area 0.71 acre); 1271 (area.06 acre); 1278 (area 0.79 acre) and 1279 (area 1.40 acre) total area 2.19 acres of Mauja Sherpur, Tehsil Sahabad District Mathura (now District Hathras) by means of a registered sale-deed executed on 5.10.1988 which was registered on 4.3.1989 for a consideration of Rs. 30,000/- from one Har Charan Lal son of Bankey Lal. A stamp fee of Rs. 4,125/- was also paid assessing the market value of the plots in dispute to be Rs. 33,000/- as per circle rate fixed by the Collector.

2. A reference was made u/s 47-A(2) of the Indian Stamp Act, 1899 on 3.1.1992 on the ground that the plot in question is being used as cold-storage and since, it has been put to commercial use, hence, its value has to be determined on the basis of its commercial use. Accordingly, a notice was issued by the respondent No. 2 to the petitioner on 7.7.1992 and a report was also called from the Tehsildar.

3. The petitioner filed his objections on 27.3.1993 and alleging therein that on the date of execution of the sale-deed, the land in question was being used for agricultural purposes and was outside the Town Area Limits and its market value was assessed as Rs. 30,000/-.

4. The contention of the petitioner further is that even the Tehsildar in his report dated 25.12.1992 had specifically mentioned that the circle rate at the relevant point of time was Rs. 13,500/- to 15,000/- per acre and therefore, the market value of the land came to about Rs. 30,750/- and it is on this value the stamp duty should be calculated.

5. The further case of the petitioner is that in the proceedings before the Assistant Commissioner, Stamps, he has filed a copy of the sale-deed dated 21.5.1988 in respect of Plot Nos. 579, 576, 586, 587 and 594, total area 0.98 acres, for which a consideration of Rs. 10,000/- was paid and sale-deed was executed on 31.5.1988 transferring the Plot Nos. 587, 591, 592, 593 and 594, total area 1.21 acres for a consideration of Rs. 15,000/- But these documents or the consideration paid for these sale-deeds were not taken into consideration by the Assistant Commissioner, Stamps while passing the impugned order dated 14.10.1993. It is submitted that the Assistant Commissioner, Stamps by the impugned order dated 14.10.1993 has assessed the market value of the land to be Rs. 2,19,000/- and has assessed the deficiency of the stamp fee at Rs. 23,250/-.

6. Being aggrieved by the order dated 14.10.1993, the petitioner preferred a revision u/s 52 of the Indian Stamp Act, 1899 being Revision No. 1044 of 1993/94. However, the Chief Controlling Revenue Authority, U.P., Allahabad without applying his mind to the facts of the case has dittoed the order of the Assistant Commissioner, Stamps and has rejected the revision by means of the impugned order dated 15.5.1998.

7. I have heard Sri Anupam Kulshreshtha, learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents. The order is being dictated in open Court.

8. The learned counsel for the petitioner has submitted that even the Tehsildar in his report dated 25.12.1992 has assessed the value of the land in dispute to be Rs. 30,750/- but this fact has not been taken into consideration by the Assistant Commissioner, Stamps. His further submission is that the market value of the land has to be determined on the date of the sale-deed and not some other day, i.e., either on the date, the information of the sale-deed comes to the knowledge of the Assistant Commissioner, Stamps or on the date when the Tehsildar submitted his inspection report i.e., 25.12.1992.

9. It is also submitted that the petitioner had also by way of evidence submitted the sale-deeds of several plots for which a consideration of Rs. 10,000/- has been paid but these documents have not even been referred by the Assistant Commissioner, Stamps in his impugned order dated 14.10.1993. His further

submission is that the order of the Assistant Commissioner, Stamps is absolutely illegal inasmuch as it determines the market value of the land to be commercial merely, on the ground that at the time of his inspection on 11.10.1993, he had found that the land was situated next to the road and that on the plot in dispute, there was a cold-storage functioning.

10. The learned counsel for the petitioner has further assailed the order of the Chief Controlling Revenue Authority, U.P., Allahabad, respondent No. 2 on the ground that the respondent No. 2 has simply dittoed the order of the Assistant Commissioner, Stamps and without referring to the evidentiary material filed by the petitioner before the Assistant Commissioner, Stamps and therefore, the said order is without application of mind.

11. From a perusal of the impugned order dated 14.10.1993, it will be seen that the Assistant Commissioner, Stamps, Mathura has, in his impugned order not even referred to the date of the sale-deed or the date on which the sale-deed of the plot in question was registered but has only mentioned that at the time of spot-inspection conducted on 11.10.1993, he found that the plot in dispute was situated next to the main road and that a cold-storage was functioning on the said plot and therefore, the plot in dispute was being used for commercial purposes and that its value was not less than Rs. 1,00,000/- per acre. By what scheme of calculation this figure of Rs. 1,00,000/- per acre has been arrived at, has not been mentioned by the Assistant Commissioner, Stamps in his impugned order. He has not even recorded any finding as to what was the nature or status of the land on the date of the sale-deed which is stated to have been executed on 5.10.1988. The impugned order dated 14.10.1993 also does not refer to the report of the Tehsildar dated 25.12.1992 wherein the Tehsildar has himself determined the value of the land in dispute to be about Rs. 30,750/-.

12. The revisional authority, respondent No. 2 also has simply dittoed the order of the Assistant Commissioner, Stamps and held that the value of the land is not less than Rs. 1,00,000/- per acre without referring to any material as to where and how this figure of Rs. 1,00,000/- has been calculated or arrived at. The revisional authority also has not referred to the report of the Tehsildar of 25.12.1992 nor has even referred to the status of the land as on the date of the sale-deed i.e. 5.10.1988.

13. The law well-settled is that the value of the land has to be determined on the date of the sale-deed for which the competent authority may take into consideration, the nature of the land and the value of the adjoining plots based upon the sale-deed of the adjoining plots and in any case, stamp duty cannot be determined on the basis of the land on any date other than the date of the sale-deed.

14. In the case in Rakesh Chandra Mittal and Others Vs. State of U.P. and Another, , a Division Bench of this Court held as follows:

10. There is no finding returned by the respondent No. 1 that the oil extracting

plant was in existence on the land at the time of execution of the sale-deed. The finding of the existence of the oil extracting plant is based on inspection by the Tehsildar which was done after more than three and half years of the execution of the sale-deed. Even the petitioner stated in his objection that he has installed the machine after about three years of purchase of the land. It is well-settled that the market value of the property has to be determined with reference to the date on which the document is on varying and changing. Any subsequent improvement or change in the nature or the 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.

11. In the absence any evidence on record or any finding in the impugned order to the effect that the oil extracting machine was in existence on the land at the time of execution of the instrument, the respondent No. 1 was not justified in valuing that part of the land in applying commercial rates. The entire land has to be valued treating it to be an agricultural land.

12. In view of the above finding of the respondent No. 1 with regard to the market value of part of the property treating to be an agricultural land, it is clear that if the entire area is treated as agricultural land then the market value of the property has been correctly shown in the instrument and proper stamp duty has been paid thereof.

15. In the case in Smt. Sushila Verma v. State of U.P. and others, 2006(1) ADJ 245, this Court held as follows:

4.....The value of the land is to be considered as on the date of the transaction and not on the presumption that it may, in future, be used for residential or any other purposes, and on such presumption, charge stamp duty after assessing the value of the land, as if it was for residential purpose. It has not been found by the authorities that the land in question, when purchase, was not agricultural land. In such a situation, the assessment of the price of the land for the purpose of payment of stamp duty, treating it to be residential plot and charging the stamp duty on the basis of circle rate fixed by the Collector, Allahabad, is totally unreasonable and liable to be set aside.

5. Learned standing counsel has however stated that as per Article 23 of Schedule 1B of the Indian Stamp Act, 1899 as amended by the State of U.P., stamp duty is to be charged on either the sale price or the market value of the land, whichever is higher. The sale price of the land in question as declared by the petitioner is Rs. 1,65,000/-, on which, stamp duty has already been paid. The market value of the land in question has not been considered by the authorities below, except for applying the principle of circle rate for residential plots, which is not tenable for reasons mentioned above, as the land, when purchased, was agricultural land. As such, the impugned orders dated 5.8.2002

and 9.9.2002 are liable to be set aside and are thus quashed.

16. In another case in *Nar Singh Das Agrawal v. Chief Controlling Revenue Authority, Board of Revenue, Allahabad and others*, 2006(8) ADJ 584, this Court has held that merely because residential house is adjacent to road, will not lead to a presumption that it is a commercial accommodation. Para 3 of the said judgment reads as follows:

3. Alongwith report of Tehsildar map was also annexed showing that on three sides of the house in dispute there were residential houses. Merely because house was situated at Malgodown road, it could not be inferred that it was commercial. Houses also require roads. The mere fact that a house is adjacent to a road does not convert it into a commercial accommodation. There is no finding that on the road in question, i.e., Malgodown road there were shops adjacent to the house in dispute.

17. In para 7 of the writ petition, the petitioner has categorically stated that he had filed a certified copy of the sale-deed of plot Nos. 579, 576, 586, 587 and 594, total area 0.98 acre to show that the consideration paid for the same and the use as per the sale-deed dated 5.10.1988 and also certified copies of the sale-deeds of plot Nos. 587, 591, 592, 593 and 594, total area 1.21 acres for a consideration of Rs. 15,000/- as per sale-deed dated 31.5.1988 but these documents which form the evidentiary material has not been taken into consideration by the Assistant Commissioner, Stamps. The averments made in para 7 of the writ petition have not been categorically denied in the counter-affidavit filed on behalf of the State and all that has been stated is that:

that the contents of paragraph No. 5 of the writ petition are not admitted. It is submitted that the sale-deed was registered on 4.3.1989 and the petitioner had obtained permission for the change of the user of the land. Therefore, it is established that the land in dispute had the potential of commercial purposes. The declaration was given by the Settlement Officer Consolidation on 1.4.1989 with regard to the user of the land for Abadi purposes and the sale-deed was registered on 4.3.1989. Therefore, the petitioner had purchased the land for commercial purposes keeping in view the potential of the land for the same. The petitioner had not paid the stamp duty on the market value of the land.

18. A categorical submission must be met with a categorical admission or categorical denial or categorical explanation and cannot be answered with suppositions and propositions; or ifs and buts. Thus, on a conspectus of the entire facts, it is therefore, clear that the impugned orders dated 14.10.1993 and 15.5.1998 are absolutely illegal and arbitrary and cannot survive. Accordingly, the writ petition is allowed and the impugned orders dated 14.10.1993 and 15.5.1998 are quashed. However, it will be open to the respondents to re-examine the issue after taking all evidentiary material into consideration on the basis of the market value as of land as on 5.10.1988 which is undisputedly, on the date of the sale-deed of the land in dispute and thereafter proceed to pass

fresh order if there is any stamp deficiency.