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(2013) 09 AHC CK 0192

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 45613 of 2013

M/s. Somya Estates Private Limited — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Citation : (2013) 10 ADJ 240 : (2014) 102 ALR 174 : (2014) 2 AWC 1224 : (2013) 121 RD 780

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : D.K. Singh and A.K. Rai, for the Appellant;

Final Decision : Disposed Of

Judgement

Arun Tandon, J.—This writ petition is directed against the order passed by the District Magistrate, Gautam Buddha Nagar in Stamp Case No. 46 of 2006-07 u/s 33 /47-A of the (Indian) Stamp Act dated 5.12.2008 as well as against the order passed by the Commissioner Meerut Division, Meerut dated 1.8.2013 in Appeal No. 14 of 2012-13. The Commissioner under the order impugned has dismissed the appeal filed u/s 56 of the (Indian) Stamp Act. Two grounds have been pressed before this Court in support of the present petition:

(a) that the deed in question answers the description of transfer of lease as covered by Item 63 of the Schedule to the (Indian) Stamp Act and, therefore, stamp duty had to be quantified with reference to the consideration as disclosed in the transfer deed. Petitioner submits that the determination of the market value of the immovable properties subject-matter of deed for the purposes of quantification of the stamp duty payable was totally uncalled for.

Counsel for the petitioner with reference to the judgment of the Apex Court in the case of Residents Welfare Association, Noida Vs. State of U.P. and Others, , contended that where there is assignment of the lease hold property for enjoyment of the land and not a transfer of property by sale then it will not be

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covered by Article 23, therefore, Section 47-A would not be applicable as it applies to outright sales only. It is the case of the petitioner that the stamp duty has been calculated on the market value of the property in question which is illegal.

(b) the exemplar relied upon under the orders impugned have wrongly been taken into consideration inasmuch as spot inspection had been done behind the back of the petitioner and the exact location of the property subject-matter of exemplar had not been correctly identified.

2. I have heard Shri D.K. Singh on behalf of the petitioner and the learned Standing Counsel.

3. At the very outset, this Court may record that the proceedings taken against the petitioner u/s 33 /47-A of the (Indian) Stamp Act culminated in an order dated 5.12.2008 passed by the Collector. This order according to the petitioner was an ex parte order and, therefore, he filed an application for recall of the order before the Collector on 22.3.2013. As per the statement made before this Court this recall application is still pending before the Collector. However, the petitioner was advised to file an appeal against the order dated 5.12.2008 u/s 56 of the (Indian) Stamp Act, without awaiting the disposal of his recall application.

4. The appeal u/s 56 of the Stamp Act was filed on 4.4.2013 alongwith an application for condoning the delay in filing of the appeal of nearly 4 years. The application was rejected by the Commissioner (Appeals) vide order dated 11.4.2013. The petitioner filed Civil Misc. Writ Petition No. 32744 of 2013 which was allowed vide order dated 3.6.2013 and the appeal of the petitioner was directed to be decided on merits. The Commissioner has accordingly proceeded to decide the appeal on merits.

5. The Commissioner under the order impugned has recorded that notice of the proceedings was duly served upon to the petitioner. For the first time the notice was accepted by servant of the petitioner and on the second occasion the notice was served by affixation. It has been held that sufficient opportunity was afforded to the petitioner to have his say in the matter.

6. It has been recorded that the property subject-matter of the deed was situate in Sector 15-A Noida, the construction whereof were categorised as A Category constructions. The computation of the stamp duty payable on the deed has been done with reference to the deed of neighbouring plots namely plot No. 305-A, area 200 sq. mtrs. and plot No. 216-A which was also of the same area i.e. 200 sq. mtrs. It has been held between the plots subject-matter of the exemplars and the plot in question there was hardly any difference in the location and valuation. It has also been recorded that the exemplars had been executed on 28.8.2004 and 20.5.2004 while the deed in question was executed nearly one year thereafter to be precise on 29.4.2005.

7. So far as the plea with regard to the deed being assignment covered by Item

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No. 63 of the (Indian) Stamp Act is concerned, suffice is to record that the deed document, copy of which has been brought on record itself mentions that it is a transfer cum sale-deed. On examination of the document at length this Court finds that whatever rights were possessed by the petitioner in respect of the property in question had since been sold/transferred to the transferee. Therefore, in the facts of the case, the deed has rightly been treated to be one covered by Item No. 23 and not by Item No. 63 of the Schedule to the (Indian) Stamp Act.

8. The Apex Court itself in the case of Residents Welfare Association, Noida (supra) in paragraph 29 has explained that in case of a lease, there is a partial transfer and the right of reversion remains with the lessor. In the deed in question no such right of reversion has been retained by the transferor.

9. This Court also finds that the authorities have rightly taken into consideration the exemplars for calculating the valuation of the property involved. Before this Court also there is no challenge to the location of the plot in question being close to the plots subject-matter of exemplar, only vague and general allegations have been raised to question the location as determined without any specific particulars.

10. This Court finds no illegality in the order passed by the authorities below so as to warrant any interference under Article 226 of the Constitution of India.

11. At this stage, counsel for the petitioner contended that the penalty imposed was nearly twice the total amount of deficient amount of stamp duty. According to him the levy of penalty is excessive.

12. In the facts of the case, I am of the considered opinion that the amount of penalty be reduced by 50%. It is ordered accordingly subject however, to the condition that the petitioner deposits the deficient amount of stamp duty, the reduced amount of penalty alongwith interest within one month from today. Any amount already deposited shall be taken into consideration for the purpose.

13. In case of default in compliance with any of the directions issued above, the petitioner shall not be entitled to the benefits of this order. With the aforesaid observations, the present writ petition is disposed of.

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