(2006) 02 AHC CK 0161

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36498 of 2003

Narendra Singh, Ashok Kumar Paswal and Anil Prakesh Juneza APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:
Stamp Act, 1899 — Section 33, 37, 47A

Citation : (2006) 9 ADJ 202 : AIR 2006 All 164 : (2006) 3 AWC 2151 : (2006) 100 RD 473 : (2006) 1 RD 473 : (2006) 1 UPLBEC 832

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Sunil Kumar Srivastava and Vishnu Priya, for the Appellant;

Final Decision : Allowed

Judgement

Vineet Saran, J.—The petitioners purchased a plot of land measuring 614.55 Square metres situate at Delhi-Saharanpur road in district Saharanpur for a consideration of Rs. 4,00,000/- only, on which the requisite stamp duty of Rs. 81,500/- was paid at the market value assessed at Rs, 8,15,800/-, which was on the basis of the circle rate fixed by the Collector for residential area. Thereafter the petitioners had also got sanctioned a map from Saharanpur Development Authority for construction of residential house on the said plot. Subsequently on 28.9.2002, the Respondent No. 3 issued notices to the petitioners u/s 37/47A/33 of the Indian Stamp Act, to which the petitioners filed their objections. By order dated 13.3.2003, the Respondent No. 3 Additional Collector (Finance & Revenue), Saharanpur rejected the objections of the petitioners and held that the value of the property should be assessed at the circle rate fixed for commercial area, which was at Rs. 5,000/- per sq. metre and on such basis assessed the value of the plot to be Rs. 30,73,000/,- on which stamp duty of Rs. 3,07,300/- was assessed to be payable. After deducting the stamp duty of Rs. 81,500/-already, paid by the petitioners, the deficiency of the stamp duty payable by the petitioners was held be Rs. 2,25,800/-. On the said amount, a further sum of Rs. 1,00,000/- was directed to be paid as penalty. Such direction regarding penalty was given only in the operative portion of the order and nothing regarding the same had been mentioned in the body of the order and as such the same was done without discussing as to how the said amount of-penalty was arrived at, Challenging the said order, the petitioners filed an appeal before the Commissioner, Saharanpur Division, Saharanpur which has been dismissed by the Respondent No. 2 vide order dated 20.6.2003.

2. Aggrieved by the aforesaid orders dated 13.3.2002 passed by ''Respondent No. 3 and 20.6.2003 passed by Respondent No. 2 the petitioners have filed this writ petition.

3. I have heard learned Counsel for the parties and perused the record. Counter and rejoinder affidavits have been exchanged between the parties and with consent of the learned Counsel for the parties this writ petition is being disposed of at the admission stage itself.

4. The orders impugned in this writ petition have been passed merely on the ground that the plot of land purchased by the petitioners has the potential of being used for commercial purpose. It is not the case of the respondents that the said plot falls within the area declared as commercial area by the respondents or the Saharanpur Development Authority or that the same is being actually used for commercial purpose. On the contrary, tae Development Authority had sanctioned the plan for the said plot, which was for evidential purposes. The authorities below have merely observed that since the land is situated on the main highway and could be used for commercial purpose, hence the circle rate for commercial plot should he applied for assessing the market value of the property in question.

5. The aforesaid reasons for increasing the value of the property in question do not appear to tx justified. What is to be seen is the value of the land at the time of its purchase and not the potentiality of the land or projected value of the land. No doubt, the land may have the potential of being used for commercial purposes in future, but in case if the person purchases a plot of land in a residential area for residential purposes (for which the sanctioned plan has also been passed by the Development Authority), the value of the same has to be assessed as of a residential plot and not as a commercial or industrial plot for which purpose it may be used in future. The stamp duty charged is on the value of transaction for sale and not for the value, which might be increased in future because of the development of the area. Here it is not the case of the respondents that the petitioners have actually paid higher amount for purchase of the said plot. Merely on surmises that the said land may be used for; commercial purposes, the value of the transaction has been enhanced and deficiency of stamp duty has been assessed, on which penalty has also been directed to be paid. In the absence of any proof of the petitioner having paid a higher amount than that shown in the sale deed or that as per the circle rate for residential plot, the respondents are not justified in charging more stamp duty

than that what has already been paid. The impugned orders having been passed merely on the projected value of the plot oh the basis that it has potential for being used for commercial purposes, is not justified and is liable to be set aside.

6. Accordingly, for the aforesaid reasons, this writ petition stands allowed and the impugned orders dated 20.6.2003 and 13.3.2003 passed by Respondent Nos. 2 and 3 respectively are hereby quashed. It is further provided that any amount which has been deposited in pursuance of the aforesaid orders shall be refunded to the petitioners forthwith.