
(2005) 12 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32595 of 2003

Naushad Ahmad and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-12-2005

Acts Referred:

Stamp Act, 1899 — Section 33, 47A, 56(1A)

Citation : AIR 2006 All 107 : (2006) 2 RCR(Civil) 711 : (2006) 1 RD 331

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : J.K. Khanna, H.N. Sharma, I.P. Srivastava and S.K. Srivastava, for the Appellant; B.K. Tripathi, for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—An agricultural piece of land, measuring 0.858 hectares, from Khasra No. 445, situate in village Dara Ali, District Saharanpur was purchased by the petitioners jointly for a sum of Rs. 6.5 lacs. The sale deed was executed on 18.11.2002, on which the requisite stamp duty of Rs. 65,000/- had been paid. Thereafter a complaint was made by one Mohd. Ali, Advocate on which the Sub-Registrar inspected the spot and submitted his report dated 27.12.2002. In the said report the Sub-Registrar stated that the land in question was registered as an agricultural land in the revenue records; that no construction had been made on the said land; that on one side of the land, a colony in the name of Rashid Garden was being developed; and that on the other side of the land in question, the land was being used for agricultural purposes. It had also been mentioned in the said report that the said land could be used for carving out plots for residential purposes. However, it was also reported that there was no road near the said land or leading to the land in question. However, still the Sub Registrar recommended that the plot in question ought to be valued at the circle rate of Rs. 600/- per square meter, according to which the value of the plot comes to Rs. 51,48,000/- and, therefore, there was a deficiency of stamp duty of Rs.

4,49,000/-. Thereafter, relying on the said report of the Sub Registrar, the Additional Collector, Respondent No. 2, passed an order on 24.2.2003 (under Sections 33/47A of the Indian Stamp Act), holding that the sale deed was under valued and the proper valuation of the plot ought to have been Rs. 51,48,000/- and thus the petitioners were liable to pay the deficiency in stamp duty of Rs. 4,49,000/-, alongwith penalty and interest. Aggrieved by the said order, the petitioners filed an appeal u/s 56(1-A) of the Act, which has been dismissed by the Commissioner, Saharanpur Division, Saharanpur, Respondent No. 1, vide his order dated 20.6.2003. Challenging the aforesaid orders, the petitioners have filed the present writ petition.

2. I have heard S/Sri I.P. Srivastava and S.K. Srivastava for the petitioners, as well as learned Standing counsel for the respondents. Counter and rejoinder affidavits have been exchanged and with the consent of the learned counsel for the parties, this writ petition is being disposed of at the admission stage itself.

3. The orders impugned in this writ petition have been passed solely on the basis of the report of the Sub Registrar. In the said report itself it has been stated that the land is registered in the revenue records as agricultural land and is not being used for any other purpose. Merely because a residential colony is proposed in the neighbourhood, the same would not mean that this land is also for residential purpose. It is not disputed that the land on the other sides of the plot in question is being used for agricultural purposes. Admittedly, there is no road leading to the plot in question. Even then the Sub Registrar has recommended and the Respondent Nos. 2 and 3 have held, that the land in question would be residential land and the circle rate for such land, as applicable to residential areas, would be applicable; and thus held that the land ought to be valued at Rs. 600/- per square meter.

4. The aforesaid reason does not appear to be justified. What is to be seen is the value of the land at the time of its purchase and not the potential of the land or the projected value of the land. No doubt a land may have the potential to be converted into industrial or residential use but in case an agricultural land has been purchased, which is being used for such purpose only, the value of the same has to be assessed as agricultural land and not as a residential or industrial plot, for which purpose it may be or can be used in future. The stamp duty is charged on the value of the transaction for sale and not on the value of such land which might be increased in future because of the development in the area. In case if the land is developed and residential plots are carved out, then when such transactions take place, the stamp duty may be charged treating the value of land for residential purpose. Here, it is not the case of the respondents that the petitioners have actually paid a higher amount for purchase of the said plot. Merely on surmises, that such land can be used for residential plots, value of the transaction has been enhanced. In the absence of any proof of the sale having taken place for a higher amount than shown in the sale deed, the respondents are not justified in charging more stamp duty than that which has been paid on

the transaction of sale of the plot in question. The impugned orders having been passed merely on the basis of the report of the Sub Registrar, which only shows the projected value of the plot in question, deserve to be set aside and are, accordingly, quashed.

5. The writ petition stands allowed. However, there shall be no order as to cost.