(2005) 04 AHC CK 0211

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 39319 of 2003

Obedullah Ali — APPELLANT

Vs

State of U.P. and Additional District Magistrate (Finance and Revenue)/Collector — RESPONDENT

Date of Decision : 19-04-2005

Acts Referred:

Stamp Act, 1899 — Section 33, 47A
Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 — Rule 4

Citation : (2005) 3 AWC 2191 : (2005) 99 RD 71 : (2005) 2 RD 71

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Syed Wajid Ali, for the Appellant;

Final Decision : Allowed

Judgement

S.U. Khan, J.—The sale deed which has been impounded through impugned order was executed on 13.12.02 through which an area of .29 acres (1174.79 sq. m.) was purchased by the petitioner. In the sale deed market value of the land was shown to be Rs. 95000/- (at the rate of Rs. 8,00,000/- per hectare) and requisite stamp was affixed.. At the time of the sale land was entered as agricultural and in the revenue record. Through impugned orders it has been held that the land has got abadi potential, as the area of the land is small hence it must be valued at Rs. 1500/- per sq. meter. In the relevant circle rate as determined and circulated in accordance with Rule 4 of U.P. Stamp (Valuation of Property) Rules, 1997 copy of which is Annexure 6 to the writ petition under Column No. 3 the rate of agricultural land situate in the area in question situate on the road was shown to be Rs. 8,00,000/- per hectare. In Annexure 6 under column 8 rate of agricultural land situate in the area in question if it was a piece of land (Bhukhand) and it was situate near abadi was shown to be Rs. 1500/- per sq. m. Through impugned orders market value of the land in dispute has been determined under column 8 item no. 10 as Rs. 1500/- per sq. m. In the said Annexure 6 through which market value of land of Nagar Palika in question has been determined, it is provided that the agricultural land will be valued on per hectare basis under Columns 3 to 6 and on per sq. m. basis under columns 7 to 10. Columns 7 to 10 deal with piece of land (Bhukhand). There is no indication in the said Annexure/ rate list as to when agricultural land is to be treated as Bhukhand. Learned standing counsel is also unable to explain the difference.

2. The case was registered on the report of the Sub Registrar as Case No. 3/26/03 u/s 47A/33 Stamps Act State v. Obedullah on the file of District Magistrate, Maharajganj. District Magistrate, Maharajganj decided the matter on 29.5.03. In the said order District Magistrate observed that land in dispute was situate in ward No. 8 Fattumal Tola and was surrounded on all sides by abadi. It was further held that land in dispute was purchased for residential/commercial purpose. Reliance was placed upon inspection report of A.D.M. Ultimately District Magistrate valued the land at the rate of Rs. 1500/- per square meter and determined the stamp deficiency to the tune of Rs. 1,33,440/- and Rs. 310/- as deficiency in registration fee penalty of Rs. 1,33,440/- was also imposed. Interest of Rs. 1.5% per month was also directed to be paid. Against the said order petitioner filed Appeal No. 6/36/M/03 before Commissioner, Gorakhpur Division, Gorakhpur. The appellate court allowed the appeal in part through judgment dated 30.7.03. The appellate court reduced the penalty to Rs. 66,720/- Through this writ petition the aforesaid order of Collector and Commissioner have been challenged.

3. In Ram Khilawan v. State Writ petition No. 36661 of 2004 decided on 4.3.2005 I have held that after initiation of case u/s 47A of the Act reliance cannot be placed upon circle rate/ market value as determined and circulated under U.P. Stamps (Valuation of Property) Rules, 1997 and in such situation valuation of property is to be determined on the same principles which are applicable for determination of market value in land acquisition cases. In the said authority I have also held that ex-parte inspection report cannot be relied upon. In the instant case also report of the A.D.M. was ex-parte.

4. In the impugned orders no basis for determining the market value apart from circle rate has been given. Accordingly writ petition is allowed. Both the impugned orders are set aside and the matter is remanded to D.M. Maharajganj to decide the matter within three months from the date of production of certified copy of this order. District Magistrate/Collector, Maharajganj shall decide the case afresh after fresh inspection with due notice to the petitioner and on the basis of law laid down in the aforesaid judgment of Ram Khilawan. Petitioner may file such evidence, which he considers necessary.

5. Writ petition is accordingly allowed.