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(2014) 09 AHC CK 0251

In the Allahabad High Court

Case No : Case: Writ-C No. 18747 of 2012

Osia Builders Pvt. Ltd. APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Citation : (2014) 11 ADJ 210 : (2015) 2 ALJ 520 : (2014) 107 ALR 814 : (2014) 125 RD 486

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Anupam Kulshrestha, Advocate for the Appellant

Final Decision : Partly Allowed

Judgement

Manoj Kumar Gupta, J.—Heard counsel for the petitioner and learned standing counsel appearing on behalf of the State respondents. Pleadings have been exchanged between the parties and with their consent, this writ petition is being decided finally at the admission stage itself as per Rules of the Court.

2. The petitioner, by means of an instrument executed on 25.9.2009 by one Smt. Omi Manchanda W/o Late Ved Prakash Manchanda, purchased lease hold rights in property bearing no. 17 Navyug Market, Ghaziabad and ownership rights in the constructions existing over the same. It was registered at Wahi no. 1 Zild no. 3623 at pages 195-335 at serial/document no. 5904 and was returned to the petitioner after registration by Sub Registrar-II Ghaziabad. The consideration was Rs. 1,00,00,000/-. However, for the purpose of payment of stamp duty, the petitioner assessed the market value of the property at Rs. 2,32,50,000/-and paid a sum of Rs. 16,30,000/-as stamp duty. The area of the land, which is subject matter of instrument, is 167.17 sq. meter having total covered area of all floors measuring 516.512 sq. meter (basement 105.09 sq. meter, ground floor 105.9 sq. meter, 1st floor 133.776 sq. meter, 2nd floor 133.776 sq. meter and Mumti 37.16 sq. meter). According to the petitioner, the constructions on the basement, ground floor and first floor are commercial, while second floor and

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Mumti are residential. Accordingly, stamp duty was paid by calculating the rental value of basement, ground floor and first floor constructions at commercial rates and second floor and Mumti at the residential rates fixed by the Collector.

3. It appears that after registration of the instrument, an inspection was made by Additional District Magistrate (Finance & Revenue), Ghaziabad on 18.12.2009, on basis of which proceedings u/s 47-A of the Indian Stamp Act, 1889 were registered. A show cause notice dated 18.1.2010 was issued to the petitioner. In response thereto, the petitioner filed objections stating that the building is more than 35 years old and it has been rightly valued. It was further stated that the stamp duty was paid as per the prevailing circle rate. However, A.D.M. (Finance & Revenue), Ghaziabad by order dated 29.5.2010 imposed a sum of Rs. 10,46,450/-as deficiency of stamp duty and Rs. 2,00,000/-as penalty together with interest @ 1.5% per month from the date of execution of instrument, till the date of payment. Aggrieved thereby, the petitioner filed appeal before the Chief Controlling Revenue Authority and deposited a sum of Rs. 16,05,892/-in appeal. By order dated 7.12.2011, the respondent no. 2 has dismissed the appeal and hence, the present writ petition.

4. A perusal of the order of A.D.M. (Finance & Revenue), Ghaziabad dated 29.5.2010 reveals that basic facts between the parties are not in dispute. The area of land, as also covered area on each floor, is admitted to the parties. The only dispute between them is regarding nature of constructions on the second floor and Mumti. According to the petitioner, the same is residential in nature, as duly shown in the sanctioned map of the Ghaziabad Development Authority, Ghaziabad dated 12.7.1972. On the contrary, the A.D.M. (F.&R.) has treated the entire property to be commercial and consequently, even second floor and Mumti were assessed at commercial rates. It is noticeable that the petitioner had calculated the market value of the land at the rate of Rs. 55,000/-per sq. meter as per the prescribed circle rate; rental value of commercial constructions on the basement, ground floor and first floor at the rate of Rs. 225/-per sq. meter per month less the depreciation and the constructions of second floor and Mumti at the rate of Rs. 7000/-per sq. meter. The A.D.M. (F.&R.) applied the same rates i.e. Rs. 55000/-per sq. meter for the land, but uniformly applied rate of Rs. 225/-per sq. meter per month, for the entire constructions. This resulted in the difference in calculation made by the petitioner and the authorities. The Chief Controlling Revenue Authority had merely reproduced the calculation made by A.D.M. (Finance & Revenue) Ghaziabad and had rejected the appeal. He had further observed that because the entire area is commercial, therefore, residential rates cannot be applied to part of the building.

5. Learned counsel for the petitioner contended that the impugned orders have been passed on mere assumptions. There is no material on record to indicate that the second floor and Mumti are commercial constructions or have any commercial value, so as to attract the commercial rates. It is further submitted that even the inspection report does not mention that the second floor and

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Mumti are commercial constructions. He further submits that the alleged inspection report based on inspection made before initiation of the proceedings, is ex-parte and could not be made basis for passing the impugned orders. He further submits that after the reference proceedings have been drawn, the valuation of the property is to be made by applying the principles, which are attracted for valuation of a property under the provisions of Land Acquisition Act, as held by this Court in the case of Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla, However, no such exercise has been undertaken by the respondents and as such, the calculation of market value applying circle rates, is not sustainable in law.

6. On the other hand, learned standing counsel has placed reliance on a Full Bench judgment of this Court in the stamp reference in the case of Ramesh Chandra Srivastava Vs. State of U.P. and Others,

7. I have considered the submissions made by learned counsel for the parties and perused the record.

8. A perusal of the impugned orders indicates that the only material before the respondents is the alleged inspection report by A.D.M. (Finance & Revenue) himself dated 18.12.2009. A perusal of the aforesaid report indicates that the inspecting officer found the property situated on 30 feet wide road in a developed commercial area. It is noted in the report that on enquiry made from the local people, they informed that the market value of the property is much higher than what is stated in the instrument. Accordingly, he made recommendation for drawing the proceedings under the Stamp Act for determining the market value of the property. The aforesaid report does not mention about the nature of constructions on each floor. There is not even a whisper in the said report that the constructions on the second floor and the Mumti are of commercial nature. On the other hand, sanctioned Plan by Ghaziabad Development Authority, Ghaziabad dated 12.7.1972 indicates that basement and ground floor are commercial, first floor is meant for office use and the second floor and Mumti are residential constructions. It has been held by this Court in the case of Ram Khelawan (supra) that inspection report submitted prior to initiation of the proceedings u/s 47-A is not a substantive piece of evidence at the post reference stage, on which determination of market value of the property can be made. It is held that for the said purpose, an inspection has to be carried out, as per requirement of Rule 7 of the U.P. Stamp (Valuation of Property) Rules, 1997 by the Collector or authority hearing the case, after due notice to the parities to the instrument. In this regard, relevant observations are as under:

"It has been found in several cases like the present one that the entire basis of determination of market value for the purpose of stamp duty is ex-parte of Tehsildar or other officer. Ex-parte inspection report may be relevant for initiating the proceedings u/s 47-A of Stamp Act. However, for deciding the case no reliance can be placed upon the said report. After initiation of the case inspection is to be made by the Collector or authority hearing the case after due notice to

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the parties to the instrument as provided under Rule 7 (3) (c) of the Rules of 1997. Moreover, in the inspection report distance of the property from other residential or commercial properties and road must be shown and wherever possible sketch map must also be annexed alongwith the report so that correct valuation may be ascertained with reasonable certainty."

9. Thus, I find that first, there is nothing in the inspection report of the A.D.M. (Finance & Revenue) dated 18.12.2009 to indicate that second floor and Mumti are also commercial constructions and second, such report could not be relied upon at the post reference stage. In case, the aforesaid report is ignored, then there was no other material before the respondents, on the basis of which it can be held that the constructions on the second floor and Mumti are commercial constructions.

10. It has been further held in the case of Ram Khelawan (supra) that circle rates fixed by the Collector, on basis of which the market value has been calculated under the impugned orders, looses its significance after proceedings are drawn u/s 47-A of the Stamp Act. It was held that the minimum market value fixed under Rule 4 of the Rules of 1997 is relevant only for determining whether the market value of the property as disclosed in the instrument, is even less than the minimum value determined in accordance with the rules and thus, facilitates the authority in making reference under the Act. However, once the proceedings are drawn, the minimum value fixed by the Collector looses its significance and the market value of the property is to be determined by applying general principles evolved for the said purpose, like in land acquisition cases. The relevant observations made in this regard are as under:

"However, if deed has been registered then action may be taken only u/s 47-A(3) of the Stamp Act. Rule 7 of the Rules of 1997 prescribes the procedure for determining market value of the subject-matter of the instrument. This Rule nowhere refers to the minimum value of the property fixed in accordance with rule 4 of the said Rules. Sub-section (2) of section 47-A of Stamp Act obliges the Collector for the purpose of determining of the market value of the property which is the subject of instrument presented for registration after holding inquiry in such manner as may be prescribed by Rules made under the said Act. This clearly refers to Rule 7 of Rules of 1997. However, sub-section 3 of the said section only says that Collector may examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property, which is subject of such instrument. Manner of examination has not been mentioned and the said sub-section (3) also does not refer to any Rules. However, Rule 7 makes itself applicable to both situations; pre-registration inquiry as well as post registration examination regarding market value of the property. It is interesting to note that Rule 7 no where prescribes the basis, formula or principle for determining market value. It only prescribes procedure like notice, admission or oral or documentary evidence, calling for information or record from any public office and inspection of property. The result is that,

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whether Rule 7 of Rules of 1997 applies or not market value has to be determined on the same principle on which market value in land acquisition cases is determined. Minimum market value fixed in accordance with Rules of 1997 is relevant only and only for the purposes of referring the document by Registering Officer to the Collector before registration. Even after such reference market value is to be determined not in accordance with the minimum value fixed under Rule 4 of the Rules of 1997 but in accordance with general principles of determination of market value as applicable in land acquisition cases. Simultaneously when proceedings are initiated after registration of the document u/s 47-A(3) of the Act market value has to be determined in accordance with general principles applicable for the said purpose like principles of determination of market value in land acquisition cases without taking recourse to minimum market value of the property fixed in accordance with Rule 4 of the Rules of 1997."

11. In the present case, a perusal of the impugned orders goes to show that no effort has been made by the authorities to bring on record any evidence to indicate the correct market value of the property. They have mechanically applied the circle rates, which, as held above, was not of much relevance at the post reference stage.

12. It is noticeable that when the petitioner pressed the plea that the construction on the second floor and Mumti are residential constructions, the same was brushed aside by observing that the entire area is commercial in nature and would thus attract commercial rates. Such assumptive approach of the respondents was deprecated by the Apex Court in the case of Prakashwati (Smt) Vs. Chief Controlling Revenue Authority, Board of Revenue, U.P. at Allahabad and Others, by holding as under:-

"We have carefully examined the orders of the first respondent, Noticeably the house is built on a very small area i.e. 68.84 sq. yards only in a town which is not a metropolis. Presumably the smallness of the area would not suggest the same by itself to be a costly property or be situated in a prestigious or posh locality, where the upper classes would rub shoulders to acquire it. Secondly, its being situated in an area which is close to Samrat Vikram Colony, said to be a decent locality, where people of high income group reside, does not by itself make it a part thereof. We are doubtful whether the said factum of closeness by itself would cast any reflection on the price of property in question. Seemingly, influenced by the factor of the close proximity of Samrat Vikram Colony, the Assistant Commissioner, Stamps, for one does not know how, determined the monthly rental value of the property at Rs. 1500/-per mensem and worked out the price of the house on that basis. Despite that the Tehsildar at a subsequent stage reported that the annual rental value of the house was Rs. 1200/-per annum, whereas for house tax purpose it was recorded as Rs. 840/-per annum. the first respondent ignoring the same worked out the monthly rental of the property at Rs. 830/-per mensem and its value at Rs. 2.5 lacs, ostensibly on the

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basis that the average cost of construction of building in the year 1992 was about Rs. 400/-per sq. years, inclusive of the land cost. This figure too was arrived at, one knows not from where without determining the age of the building, the quality of construction and citing appropriate instances. The approach of the authorities, to say the least, was highly vain, casual and unsatisfactory and dehors any constructive material on the basis of which one could have said that the decision arrived at by the first respondent was fair and reasonable. We cannot approve of such an assumptive posture of the respondent in treating the appellant as an evader."

13. As regards the law cited by learned standing counsel in the case of Ramesh Chandra Srivastava (supra), the same is not applicable to the facts of the instant case. Therein, the question for consideration before the Larger Bench was whether the stamp duty is chargeable on the basis of market value of property conveyed by instrument or the amount mentioned in the decree of the civil court. It was held that the amount mentioned in the decree is wholly immaterial and it is the market value of the property conveyed by instrument on which stamp duty is leviable. Thus, the relevant date for determining the market value is the date of execution of sale deed by the Court. However, no such question arises for consideration in the instant case.

14. In view of the discussion made above, the impugned orders dated 29.5.2010 passed by respondent no. 3 and the order of Chief Controlling Revenue Authority dated 7.12.2011 are hereby quashed. However, it shall be open to the respondents to pass fresh orders, after taking into consideration the observations made herein above. In such case, full opportunity shall be granted to the petitioner to supplement his pleadings and to lead evidence.

15. Writ petition is allowed to the extent indicated above.

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