(2012) 05 AHC CK 0220

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44887 of 2010

Paritosh Varshney APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:
State Financial Corporations Act, 1951 — Section 29

Citation : (2012) 8 ADJ 77 : (2012) 6 AWC 6250 : (2013) 2 RCR(Civil) 818

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : R.P. Mishra, for the Appellant; Nimai Das, Sanjay Goswami and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Pankaj Mithal, J.—Heard Sri R.P. Mishra, learned counsel for the petitioner and Sri Nimai Das, learned Standing Counsel for the respondents.

Counsel for the parties agree for final disposal of writ petition at the admission stage on the basis of the pleadings exchanged. Petitioner in an auction sale conducted by the Haryana State Industrial Development Corporation Ltd. (For short Corporation) purchased plot Nos. 2028/2 and 2025/1 of Khasra No. 815 situate in Kasba Kole, District Aligarh, now described as house No. 48-D Ward No. 8, Uday Singh Jain Road, Aligarh vide sale-deed dated 12.1.2006 for a sale consideration of Rs. 5,00,000/-. The petitioner on the aforesaid sale consideration paid stamp duty of Rs. 50,000/-and the sale-deed was registered.

After registration of the sale-deed proceedings for reassessing its market value and for determining the deficiency in stamp duty, if any were initiated u/s 47A of the Indian Stamp Act, 1899 (hereinafter referred to as the Act).

2. The Additional Collector (Finance & Revenue) vide order dated 9.5.2006 assessed the market value of the aforesaid property at Rs. 23,60,468/- and accordingly held that there is deficiency of Rs. 2,31,050/- in the payment of

stamp duty and after correction vide order dated 22.5.2006 it was held to be Rs. 1,86,050/-. The aforesaid order has been affirmed in appeal by the Commissioner of the Division vide order dated 15.12.2009. Both the aforesaid orders have been impugned in the present writ petition.

3. The submission of learned counsel for the petitioner is that as the petitioner has purchased the property in auction the market value of the same has to be the sale consideration. Its market value is not liable to be assessed by applying the circle rates notified by the Collector.

4. In reply the submission of learned Standing Counsel is that the sale consideration at which the property has been sold is not relevant and its market value has to be determined in accordance with the rules framed under the Act on the basis of the minimum circle rate notified by the Collector under Rule 4 of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997.

5. The above property earlier belonged to M/s Sandeep Papers Ltd., who had taken a loan from the Corporation but defaulted in its payment. Accordingly, possession of the aforesaid property which was mortgaged with the Corporation was taken over u/s 29 of the State Financial Corporation Act, 1951 and was put to auction.

6. The sale-deed in question is Annexure-1 to the counter-affidavit. It states that Haryana State Development Corporation Ltd. is making the sale of the above property in favour of the petitioner. The recitals in the above sale-deed establishes beyond any doubt that the sale was made by the Corporation in favour of the petitioner after a public auction though the word ''public'' has not been used.

7. The provisions of Section 47A of the Act are applicable in respect of the instruments which are required to be registered and on which stamp duty is chargeable on the market value of the property concerned. It provides that where the market value of the property as set out in the instrument is less than even the minimum value determined in accordance with the Rules made under the Act, the Registering Authority may return the instrument for representation after removing the defect and in case it is represented without correcting the value, the Registering Officer is obliged to refer the same to the Collector for determination of the market value of the property and the proper stamp duty payable thereof.

8. It is for the above purpose that the Uttar Pradesh Stamp (Valuation of Property) Rules 1997 provides for fixation of minimum rate for valuation of land and building and for the calculation of the market value according to the rates notified. This is implicit from the language of Section 47A(1)(a) of the Act. The registration of an instrument cannot be below the minimum market value as determined in accordance with Rule 4/5 of the Rules. However where an instrument is registered and the Collector on examination has reason to believe that the market value of the property has not been truly set forth in the

instrument, he may on reference from Court or from specified authority under the Act or suo motu proceed to redetermine the market value of such property and the duty payable thereof as contemplated u/s 47A(3) of the Act.

9. In view of above scheme of the Act, procedure prescribed under the Rules or the rate notified by the Collector under the Rules are both applicable for assessment of minimum market value for the purpose of registration of the instrument by the Sub-Registrar and not where the instrument has already been registered and action u/s 47A(3) of the Act is taken by the Collector.

10. The minimum rates notified by the Collector under Rule 4 of the Rules are commonly known as circle rates in U.P. Their lordships of the Supreme Court in Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others, , have laid down that the circle rates notified by the Collector only acts as a guideline and are not final and conclusive. It is always open to the registering authority as well as to the person seeking registration of an instrument to prove that the rates so prescribed or contrary to the actual market value of the property prevailing at the relevant time.

11. The Apex Court in Prakashwati v. C.C.R.A., 1996 AWC 1331 (SC), held that the approach of the authorities in assessing the market value of the property for the payment of stamp duty de hors any constructive material is not fair and reasonable.

12. A Single Judge of this Court in Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla, , reiterated that the circle rates notified by the Collector under the Rules only act as a guideline and cannot be a determination force for assessing the market value when the instrument has been registered. On the registration of the instrument determination of the market value has to be in accordance with the general principles and the circle rates are confined to assess the market value prior to registration of the instrument.

13. In view of above discussion it is settled that once an instrument has been registered, its market value cannot be assessed by applying the circle rates notified by the Collector under Rule 4 or the procedure prescribed under Rule 5 of the Rules and that the market value has to be determined by applying the general principles and that too on the basis of constructive material on record.

Market value" has not been defined under the Act, therefore, it has assigned the meaning which is understood by ordinary man in common parlance. Market value as such is the value of the property which it can fetch at the relevant time in the open market depending upon the market forces of demand of supply.

14. In the instant case the property was put to auction. It has been sold in open market, therefore, the price which it has fetched in the open market is naturally its market value. The instrument of sale has been executed on the market value so fetched by the property and stamp duty has been paid accordingly.

It is the Collector, who is alleging that he has reason to believe that the market value of the property has not been set forth truly in the instrument. Therefore, the burden of proof that it is not the correct market value or that it is higher is upon him. The Collector as such was under obligation to bring on record substantive and constructive material to prove that the market value disclosed in the instrument of sale is on the lower side or that the sale was a distress sale as it may involve some litigation. No such material or evidence is available on record. In the absence of such material, neither the Collector has any reason to believe that the market value mentioned in the instrument is not true nor he has any basis to prove any higher market value.

15. Learned Standing Counsel has relied upon a decision of mine in the case of M/s Saya Traders v. State of U.P., 2010(9) ADJ 105. In the said case the Court refused to accept the reserved price of the property fixed by the Court for its sale on the ground that reserved price and the market price are not synonymous but are two different terms. Reserved price is the price at which the public auction starts whereas the market price is the one on which the highest bid above the reserved price is accepted and therefore, there is no hurdle for the Collector to determine the market value of the property u/s 47A(3) of the Act and in refusing to accept the reserve price as the market value. In the said case the reserved price was fixed by the Court on or before 30.8.2000 and the instrument was executed on 30.4.2004. Therefore, also the Court declined to accept the minimum reserve price as the market value and directed for its determination as on the date of execution of the deed. The said case is not of any help to the respondents as in the present case the controversy is not regarding reserve price to be accepted as the market value but with regard to the market value of the property that it fetched in open the market which naturally appears to be over the above the minimum price which may have been fixed for the auction though not on record. Apart from the above, the State Government itself had issued a notification u/s 9 of the Act on 1st July, 2004 that any conveyance deed executed by the U.P.F.C. (U.P. State Finance Corporation) for the sale of a property on the price the property fetches in public auction would be treated as the market value for the purposes of payment of stamp duty. In other words, State of U.P. also acknowledges the sale price of a property which it fetches in open market through public sale to be its market value.

There appears to be no distinction between sale made by U.P.F.C. and any other such statutory authorities. Thus even though technically the above notification may no be applicable to the sale made by the Haryana State Industrial Corporation Ltd. nonetheless the analogy on which the said notification has been issued would be applicable.

In view of the aforesaid facts and circumstances, I am of the view that the market value which the property had fetched in auction is a true and fair market value of the property at the relevant date for the purposes of realizing stamp duty. The Collector is not justified in applying the circle rate/procedure prescribed under the Rules for determining its market value.

In view of above facts and circumstances of the case, the impugned orders dated 15.12.2009 and 22.5.2006 are quashed. A writ of certiorari is accordingly issued.

Petition allowed. No order as to costs.

