(2011) 04 AHC CK 0103

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42707 of 2009

Rajesh Pandey — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Stamp Act, 1899 — Section 27, 47A
Stamp Rules — Rule 3, 7

Citation : (2011) 4 ADJ 801 : (2012) 1 AWC 503 : (2011) 8 RCR(Civil) 1419 : (2011) 113 RD 490

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Petitioner by means of the sale-deed dated 19.7.2008 purchased unfinished 4th floor of the building situate over Plot No. 7/190 Swaroop Nagar, Kanpur. He paid stamp duty on the market value disclosed and the sale-deed was registered.

2. Subsequently, on the basis of the report sent alongwith letter dated 10.11.2006 proceedings for determination of the market value and the deficiency in payment stamp duty were initiated. The Collector, Kanpur vide order dated 18.5.2009 determined the market value of the 4th floor portion by treating it to be a commercial property and accordingly deficiency in stamp duty was directed to be paid/realised. A penalty of equal amount of the deficiency in stamp duty was also imposed.

3. The aforesaid order was challenged by the Petitioner by filing an Appeal No. 83 of 2008-09. The appeal was dismissed but the penalty imposed was reduced to half vide order dated 30.7.2009.

4. The Petitioner has challenged both the above orders by means of the present writ petition.

5. I have heard Sri Pradeep Kumar, learned Counsel for the Petitioner and Sri Nimai Das, learned Standing Counsel for the Respondents. They agree for the final disposal of the writ petition on merits at the admission stage itself on the basis of the affidavits already exchanged.

6. The first submission of Sri Pradeep, learned Counsel for the Petitioner is that the 4th floor portion of the building which the Petitioner has purchased is a residential portion and therefore, the authorities fell in error in determining its market value by treating it to be a commercial property.

7. On the other hand, the submission of learned Standing Counsel is that in the sale-deed itself the Petitioner accepts that the building is commercial-cum-residential and in view of the fact that the first three floors are being used for commercial purpose, a logical inference can be drawn that the 4th floor is also for commercial purposes.

8. Section 27 of the Indian Stamp Act specifically provides that the facts and circumstances affecting the changeability of any instrument with duty, shall fully and truly be set forth in the instrument. Uttar Pradesh (Valuation of Property) Rules 1997, which have been framed under the aforesaid Act in Rule 3 also provides that in respect of instruments relating to immovable property, the particulars concerning cnargeabillity of stamp duty as mentioned in the Rule must be fully and truly stated in addition to the market value of the property.

9. The sale deed in question dated 19.7.08 executed by the builders is Annexure-2 to the writ petition. It discloses the sale consideration to be Rs. 20,00,000/- and at the same time market value to be Rs. 32,02000/-. The property has been fully and completely described. It states that under the sale deed the 4th floor of the building which is in the shape of unfinished structure with undivided share in the land in the proportion of 62.71 square meters only is being transferred. The covered area is only 185.8 square meters. The sale-deed clearly states that the nature of the building is commercial-cum-residential. The recital of the sale deed further in unequivocal terms contains that the 4th floor which is unfinished structure is being transferred for residential purposes for a sale consideration of Rs. 20,00,000/- only and the Petitioner is entitled to get the structure completed and finished at his own cost.

10. Petitioner has brought on record the permission granted by the Kanpur Development Authority to the builders to construct a building on the aforesaid land. The said permission is dated 24.5.2004 and is Annexure-1 to the writ petition. The said permission clearly mentions the usage of land to be ''residential''.

11. The aforesaid two documents establish beyond doubt that the land use of the land on which the building stand is residential and that the building had been constructed both for commercial and residential purposes but without specifying the part which is to be used for commercial purposes and which portion for residential purpose.

12. The spot inspection report of the Assistant Director General, Registration dated 3.9.2008 which is the basis for initiation of proceedings under the Indian Stamp Act records that at the time of the inspection a security employee of M/s V.L.C.C. Security was present and he had informed that in the said building a training center for training Air Hostages is being run. On his statement alone the report recommended for determination of the market value by treating the property in question as commercial in nature.

13. It may be important to note that the Officer, who made the inspection has not himself found any commercial activity being carried out in any portion much less the 4th floor portion. He has not inspected any portion or the 4th floor of the building. The employee on whose statement or information the report was submitted had not said that the 4th floor portion of the building was also being used as a training centre for Air Hostages.

14. Petitioner had filed objections on 17.3.2009 strongly objecting to the aforesaid inspection report on the ground that it is based on hearsay and not upon actual inspection. The structure on the 4th floor has been purchased by him for residential purposes which is being constructed as per the sanctioned map but remains incomplete. It is not a commercial premises.

15. The Collector simply in view of the aforesaid inspection report dated 3.9.2008 treated the property in question as commercial and accordingly determined its market value and the deficiency in stamp duty. No other document has been discussed and referred to by him in the order. None of the contentions advanced on behalf of the Petitioner and stated in affidavit in support of the objections have been dealt with. In this view of the matter, the aforesaid order is not only unreasoned but also suffers from the vice of non-consideration of the material on record.

16. The appellate authority has also simply dittoed the order of the Collector and in affirming the same has stated that the Petitioner has failed to produce any evidence to show that the 4th floor portion is of residential nature.

17. Reasoning adopted by the appellate authority and even by the Collector in passing the impugned order does not stand to reason. The Petitioner''s sale deed was before the authorities. The permission granted by the Kanpur Development Authority was also on record. The objections of the Petitioner were supported by his affidavit. The affidavit was not controverted. No specific material was otherwise available on record to prove that 4th floor was also being used for commercial purposes. There is no finding by any of the two authorities that the recitals contained in the sale deed are incorrect or not true or that it does not contain the true and correct particulars sufficient to enable determination of market value as are required to be set forth in accordance with the provisions of Rule 3 of the Rules and Section 27 of the Act.

18. In the above situation when the recitals in the sale-deed clearly states that the building is commercial-cum-residential in nature and that the 4th floor in

question is for residential use only, the burden of prove that it is being used for commercial purposes or is of commercial nature is upon the Respondents who alleges and seeks to determine its market value according to commercial rate. Generally, market value given in the instrument is to be taken correct unless proved otherwise or circumstances suggest to the contrary.

19. The Respondents have miserably failed to discharge the above burden. The inspection report dated 3.9.2008 relied upon in this connection is of no avail. First, the report is a hearsay report. It is not based upon actual inspection. No inspection of the 4th floor was done. Secondly, it is well settled vide Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla, that the report recommending for the initiation of proceedings u/s 47-A of the Indian Stamp Act is relevant only for initiating the proceedings and no reliance can be placed upon it in determining the market value as it is not a piece of evidence.

20. Accordingly, the aforesaid inspection report is simply a waste paper in so far as the question of determination of the market value of the property is concerned. Moreover, the said inspection is not made in accordance with the procedure prescribed under Rule 7 of the Rules as no notice to the Petitioner as contemplated in the said Rule was given or is said to have been given. It is an ex parte report against which not even the objections of the Petitioner were considered and decided.

21. It is also well recognized that the relevant date for determining the market value of the property is the date of the sale and that stamp duty is to be charged on the market value of the land depending upon its use to which it was put at the time of the sale and not on future potentiality. Therefore, the character of the land becomes vital for determining the market value. The character of the land in the present case as per the permission of the Kanpur Development Authority is residential though the building constructed over it happens to be both for commercial as well as residential use. It has also been repeatedly laid down that the rates prescribed by the Collector under the Act commonly known as ''circle rates'' are merely guidelines for determining the market value by the Sub-registrar and would not have any binding effect once the sale deed is registered and the matter is referred for determining the market value. On such reference, the market value is to be determined by applying the general principles applicable for determining the market value for the purposes of payment of compensation under Land Acquisition Act. It may be another thing that in the absence of any cogent evidence for determining the market value, the authorities may fall back and take the aid of the circle rates and apply the same as a base for determining the prevalent market value. No such criteria has been followed and applied by the authorities in determining the market value of the property in question which has been determined simply by applying the circle rate of the commercial property in the area.

22. It may also be worthy to note that though size and location of the property are important factors in determining the market value but nonetheless mere

location or size is not sufficient e.g. the land use of an agricultural land in the urban area or of residential land in the commercial area would not ipso facto change unless it is proved that its nature has undergone a change.

23. Market value has to be determined on the basis of the constructive material produced before the authorities which is completely lacking in the present case.

24. Thus, for the reasons discussed above, I am of the opinion that the impugned orders are unsustainable in law. Accordingly, I direct for the issuance of writ of certiorari quashing the impugned order dated 18.5.2009 passed by the Collector, Kanpur in Stamp Case No. 69 of 2008 Sarkar v. Rajesh Pandey and the appellate order dated 3.7.09 passed by the Commissioner exercising authority of Chief Controlling Revenue Authority in Appeal No. 83 of 2008-09.

25. In view of the decision of this Court reported in the case of Hari Chand v. State of U.P. and Ors. 2011 (3) ADJ 670, the Respondents are simultaneously directed to refund any amount deposited by the Petitioner pursuant to the impugned order with simple interest @ 8% from the date of the deposit till its refund.

26. Writ Petition is allowed as above with no order as to costs.