(2008) 09 AHC CK 0048

In the Allahabad High Court

Ram Iqbal Singh (D) by L.Rs. and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:
Stamp Act, 1899 — Section 56

Citation : (2008) 4 AWC 3716 : (2008) 105 RD 519

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bharati Sapru, J.—Heard learned Counsel for the petitioner and Shri S.K. Malhotra, learned standing Counsel for the respondent State.

2. This writ petition has been filed by the petitioner being aggrieved by the order passed by the authorities in proceedings u/s 47A of the (Indian) Stamp Act. The impugned orders are dated 25.9.2004 and 28.2.2006.

3. The facts of the case are that the petitioner purchased plot No. 541 area .012 hectare situated in village Khujji, Tahsil Kerakat, District Jaunpur by means of sale deed dated 1.7.2003. It is the contention of the petitioner that on the date of purchase and registration of the sale deed, the land was recorded in the revenue records as agricultural land. A copy of the khasra has been appended as Annexure-2 to the writ petition.

4. Proceedings were initiated against the petitioner on the basis of a complaint made by a person alleging that the petitioner had short paid the stamp duty. The petitioner had paid @ Rs. 1,10,000 per decimal, whereas he ought to have paid 4.50 lakhs per decimal.

5. The Sub-Registrar, Kerakat vide report dated 14.7.2003 reported the deficiency in stamp duty.

6. The petitioner had filed an objection on 26.2.2004 against the report dated

14.7.2003. The Tahsildar of Kerakat gave a report on 29.6.2004 by which he reported that the land in question was agricultural land but was situated right next to the main road. The respondent No. 3, the Assistant Collector passed an order dated 25.9.2004 by which he proposed deficiency of Rs. 2,92,960 + 10,000 was imposed as penalty along with additional duty of Rs. 600 totalling to Rs. 3,03,560 to be recovered at 1.5% interest per month.

7. Being aggrieved by the order dated 25.9.2004, the petitioner filed an appeal u/s 56(1A) of the (Indian) Stamp Act before the Commissioner, Varanasi, who allowed the armed partly and reduced the amount to a total of Rs. 2,84,077 to be recovered at the rate of 1.5% interest per month.

8. Learned Counsel for the petitioner has argued that both the orders are wholly arbitrary and illegal because they have imposed the additional Stamp Duty on the basis of commercial rates, whereas the land at the time of purchase was recorded as agricultural land and in view of the provisions of Section 143 of the U.P.Z.A. and L.R. Act, it would remain as agricultural land unless a declaration was issued to the effect that the user of the land has been changed by showing the notification u/s 143 of the U.P.Z.A. and L.R. Act.

9. Learned Counsel for the petitioner argued that even otherwise, the land had been purchased as per the rate fixed by the Collector, which are appended as Annexure-III which indicates that the agricultural land, which was adjacent to the road, within 15 meters of the road would be sold at the rate of Rs. 1,10,000 per hectare.

10. Learned Counsel for the petitioner has referred the report of the Tahsildar, who gave a report on 29.6.2004 along with the map, showing the land to be within 12 k.m. of the road. Thus, learned Counsel for the petitioner has argued that the rates as fixed by the Collector had been applied at the time of the purchase of the said plot and the petitioner had not indulged in any escapement in the payment of stamp duty and was not liable to pay any additional stamp duty.

11. In support of his contention, learned Counsel for the petitioner has relied on decisions of this Court in Ram Khelawan alias Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla, and in the case of Smt. Sushila Verma Vs. State of Uttar Pradesh, Commissioner/C.C.R.A. and Collector, and in both these decisions, the Court has held that the stamp duty is to be paid on the nature of the land at. the time of purchase and not on its future or potential use. In the impugned orders, the authorities below have both fixed the additional stamp duty wrongly and arbitrarily, on the basis of future and potential use.

12. Learned standing Counsel has drawn the attention of the Court in paragraphs 4 and 6 of the counter-affidavit, wherein the State has taken a view that the land is adjacent to the road, which has potential commercial Value.

13. Having heard learned Counsel on both the sides and having perused the

entire material on record, as well as the orders, I am of the opinion that, the orders passed by the authorities below are not justified in view of the previous decisions of this Court including the decision given by Hon''ble Justice Sudhir Agarwal in Anil Kumar Vs. State of U.P., wherein his Lordship has reviewed the case law on this point and has come to the conclusion that the Collector is under obligation to determine the market value u/s 47A(3) of the Act read with Rule 7 of 1997 Stamp Rules and thereafter would make an enquiry in accordance with the procedure prescribed thereunder to find-out the correct market value. He has further held that the future potential of the land for use either for residential purposes or for commercial purposes, would not form the sole determinative factor for determining the market value and the Collector has to examine all the relevant aspects.

14. Thus, in view of the earlier decisions of this Court, the impugned orders cannot stand and are not justified and are hereby set aside.

15. The matter is remanded to the Collector for fresh determination in accordance with the provisions of law as set out u/s 47A of the (Indian) Stamp Act and in accordance with Rule 7 of the U.P. Stamp (Valuation of Property) Rules, 1997. The matter on remand shall be heard and decided by the authorities within a period of three months from the date a certified copy of this order is being placed before it. For a period of three months, or till decision whichever is earlier, no recovery shall be made from the petitioner. The amount deposited by the petitioner under orders of this Court shall be released to the petitioner forthwith.

16. The writ petition is allowed. There will be no order as to costs.

