(2014) 07 AHC CK 0323

In the Allahabad High Court

Case No : Misc. Single No.-794 of 2013

Ritesh Kumar APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Constitution of India, 1950 — Article 243-Q
Evidence Act, 1872 — Section 35
Stamp Act, 1899 — Section 27, 33, 75
Uttar Pradesh Land Revenue Act, 1901 — Section 44

Citation : (2014) 106 ALR 180 : (2014) 124 RD 489

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Pritish Kumar, Advocate for the Appellant

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Pritish Kumar, for the petitioners and Standing Counsel for the respondents.

2. The writ petition has been filed against the orders of Collector dated 26.05.2010, imposing deficiency of stamp duty and penalty etc. on sale deed dated 09.03.2006 of the petitioners and Commissioner dated 30.08.2012, dismissing, appeal of the petitioners, against aforesaid order.

3. The petitioners purchased plot 129 (area 0.50 acre) (out of its total area 0.286 hectare) situated in village Amar Nagar, pargana Biswan, district Sitapur, from its owner Smt. Rama Devi through registered sale deed dated 09.03.2006. According to the provisions of Section 27 of Indian Stamp Act, 1899 (hereinafter referred to as the Act) read with Rule-6 of U.P. Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as the Rules), plot number, area, land revenue, quality of soil, valuation of the land at the rate of Circle Rate fixed by the Collector, for the locality, and the fact that the transferred land situated by the side of main road Biswan to Jahagira and at a distance of two K.M. from the

municipal limit of Nagar Palika Parishad, Biswan, Sitapur and situated in "semi-urban area" were mentioned. Agreed sale consideration was disclosed to Rs. 2,00,000/- but valuation of Rs. 3,38,000/- was determined for payment of stamp duty, calculated at the rate prescribed in Circle Rate for agricultural land situated on roadside in "semi-urban area" in the locality of Amar Nagar, and stamp duty was paid accordingly.

4. Sunder Lal Tiwari made a complaint regarding evasion of stamp duty on the sale deed dated 09.03.2006, on which a report was called for. Sub-Divisional Officer allegedly conducted an inquiry and submitted his report dated 02.09.2008, stating therein that transferred land ought to have been valued at the rate of residential plot in "urban area" and its valuation was Rs. 76,95,000/-. Apart from it, there were 200 eucalyptus trees of five years old of value of Rs. 3,00,000/-, a tin shed in the area of 400 meters of value of Rs. 28,000/- and some plinth level construction and boundary wall along with iron gate of value of Rs. 1,50,000/-. On this report, the Collector initiated proceedings (registered as Case No. 19) u/s 47-A/33 of the Act and issued show cause notice to the petitioners.

5. The petitioners submitted their separate reply dated 04.03.2010 and 18.03.2010 to the show cause notice and stated that at the time of sale deed, transferred land was vacant agricultural land. Thereafter, the petitioners planted 100 eucalyptus trees, on the boundary of the purchased land, which were hardly 6 months old. Tin shed, boundaries, iron gate and plinth level constructions were raised by them after purchase of the land. The petitioners also filed an application for issue of commission for spot inspection to verify the age of the trees. The Collector by his order dated 26.05.2010 held that according the inspection report, transferred land situated within municipal limit of Nagar Palika Parishad, Biswan. In inspection report 200 eucalyptus trees of five years old, a tin shed in the area of 400 meter and plinth level construction, boundary wall and iron gate were found. On the basis of the report, he assessed market value of the transferred land as Rs. 84,25,000/- and imposed stamp duty of Rs. 6,74,000/- and penalty of Rs. 6,74,000/- and interest etc. total Rs. 11,61,885/- The petitioners filed an appeal (registered as Appeal No. 138 of 2009-2010) from the aforesaid order, which was dismissed by order of Commissioner, dated 30.08.2012. Hence this writ petition has been filed.

6. There is serious dispute regarding existence of 200 eucalyptus trees of five years old, a tin shed in the area of 400 meter and plinth level construction, boundary wall and iron gate on the transferred land at the time of sale deed. According to the petitioners at the time of sale deed, the land in dispute was vacant agricultural land and trees were planted and constructions were raised by them later on. Apart from the report of Sub-Divisional Officer dated 02.09.2008, there was no other material to support the findings of the Collector in this respect. The Collector, even, did not examine the khasra entries of the relevant time to determine as to whether trees and constructions etc. were existing on

the spot on the date of sale deed nor examined lekhpal posted at the relevant time in the village. Ex parte report of Sub-Divisional Officer dated 02.09.2008 is not admissible in evidence as held by this Court in Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla, In this case, apart from the report dated 02.09.2009, there is no other material on record. Thus the findings is based upon no evidence.

7. Similarly, it is also disputed that the land in dispute was situated within municipal limit of Nagar Palika Parishad, Biswan. By the order dated 20.11.2013, this Court directed the state authorities to file an affidavit, specifically stating as to whether, the transferred land situated within municipal limit of Nagar Palika Parishad, Biswan and to produce Circle Rate of the land in dispute. Thereafter, again on 10.12.2013, 17.01.2014 and 03.02.2014 time was granted but required affidavit was not filed. The petitioners filed a Supplementary Affidavit on 04.04.2014, annexing a copy of Circle Rate fixed by the Collector during 2004-2006, showing that village Amar Nagar was shown in it at outside the limit of Nagar Palika Parishad, Biswan as "semi-urban area". He also filed Circle Rate as revised by order dated 31.07.2013, in which again village Amar Nagar was shown at outside the limit of Nagar Palika Parishad, Biswan as "semi-urban area" in Part-2 and in Proforma-4-kha attached to Part-2, plot 129 was shown as situated on roadside of Jahagira road. This Supplementary Affidavit has not been controverted. Thus the petitioners have correctly disclosed the location of the land in the sale deed dated 09.03.2006 and report of Sub-Divisional Officer and findings of the Collector that transferred land was situated within municipal limit of Nagar Palika Parishad, Biswan is incorrect.

8. The petitioner also attached copy of khasra of the year 1419 F (corresponding to 2012), which shows 100 eucalyptus trees, which support the case of the petitioners and not the report in which 200 eucalyptus trees were reported. So far as the constructions of boundary wall, iron gate and plinth are concerned, admittedly out of total area of 0.286 hectare of plot 129, an area 0.50 acre was transferred. It appears more probable that after purchase, the petitioners might have raised boundary wall etc. in order to separate his portion as stated by them. In the absence of khasra entries or any evidence in this respect, findings that the constructions of boundary wall etc. were in existence on the sale deed dated 09.03.2006 is merely conjectures and surmises and is not supported by any evidence on record.

9. In exercise of powers, u/s 27, 47-A and 75 of the Act, the Rules have been framed by State of U.P. According to the provisions of Rule 4, the Collector used to prescribe minimum valuation for the purposes of stamp duty, commonly known as ''Circle Rate'', in consultation with Valuation Committee constituted for that purpose. Circle Rate is fixed by the Collector in discharge of statutory duty under the Act and Rules and is admissible in evidence u/s 35 of the Evidence Act, 1872. Supreme Court in State of Haryana and Others Vs. Manoj Kumar, held that in order to ensure that there is no evasion of stamp duty, circle rates are fixed

from time to time and the notification is issued to that effect. The issuance of the said notification has become imperative to arrest the tendency of evading the payment of actual stamp duty. It is a matter of common knowledge that usually the circle rate or the Collector rate is lower than the prevalent actual market rate but to ensure registration of sale deeds at least at the circle rates or the Collector rates such notifications are issued from time to time by the appellants.

Thus Entries made in Circle Rate is binding upon the Collector and he cannot be permitted to overlook it, only on the basis of subsequent report.

10. Under Rule 2 of the Rule the phrases "urban area", "semi-urban area" and "countryside area" have been defined. Under Rule 2 (k) (ii) which is relevant for this case "urban area" means an area comprised in a smaller urban area as defined in the United Provinces Municipality Act, 1916. u/s 2(23-A) of United Provinces Municipality Act, 1916, "smaller urban area" means an area notified as such under clause (2) of Article 243-Q of the Constitution, under which a notification was required to be issued by the Hon''ble Governor of the State. The respondents failed to produce any notification under Article 243-Q, including the land in dispute under "smaller urban area". On the other hand Circle Rate as produced by the petitioners clearly proves that the transferred land was situated in "semi-urban area". A Division Bench of this Court in Kishore Chandra Agrawal Vs. State of U.P., 2008 (104) RD 235 (DB) held that the Collector has no jurisdiction to charge stamp duty in respect of agricultural land situate in ''semi-urban area'' or ''countryside area'' treating it as commercial land in ''urban area''. Under the provisions of the Act and the Rules, the Collector has no authority to declare the agricultural land as residential or commercial land for the purposes of realization of stamp duty.

11. In the present case, stamp duty has been assessed more than three times of sale consideration. Actual sale consideration, as mentioned in the sale deed was Rs. 2,00,000/-. By the impugned order, the valuation has been fixed to Rs. 84,25,000/-. State of U.P. may not be ready to purchase the land in dispute even for 1/10th of it. Exercise of power in such a manner has been deprecated by Division Bench saying that public functionaries should be duty conscious rather than the power charged. If in future the land in dispute is acquired for public purpose, it will be impossible for state to give compensation at the rate so fixed.

12. Supreme Court in State of Rajasthan and Others Vs. Khandaka Jain Jewellers, State of U.P. and Others Vs. Ambrish Tandon and Another, and Addl. Distt. Sub-Registrar Siliguri Vs. Pawan Kumar Verma and Others, held that market value of the property subject matter of instrument, has to be given at the time of execution of the document. As such nature of the land as well as improvements made in it has to be determined on the date of sale deed. Subsequent report, showing nature of the land and improvements made in it are irrelevant. As stated above, in this case, apart from the ex parte report dated 02.09.2008, there is no material to say that valuation as set forth in the sale deed was incorrect.

13. So far as the nature of the land on the date of sale deed is concerned, land in dispute was recorded as agricultural land in revenue record. Khasra is being prepared by Revenue Department in exercise of statutory duty. Paragraphs-A-55 to A-73 of U.P. Land Record Manual give detail procedure for preparation of khasra. Paragraph-A-59, partial of ''rabi'' season has to be completed up to 30th April. Under Paragraphs-A-72 and A-73, the land use is required to be mentioned. In discharge of official duty, if lekhpal reported the land being an agricultural land and no constructions and trees were reported, it will not be open to the Collector to say that land was used for residential purposes, without there being any contrary evidence on record.

14. Supreme Court in Shri Chandrika Singh and others Vs. Raja Vishwanath Pratap Singh and another, , held that the question as to whether a particular land is "land" u/s 2(14) to which the provisions of the Act are applicable would require determination of the question whether the land is held or occupied for purposes connected with agriculture, horticulture or animal husbandry and that is a matter which has to be determined either in accordance with the provisions of Sections 143 and 144 and if such a determination has not been made and such a question arises or is raised in a suit before a court, the procedure laid down in Section 331-A must be followed by the court. This would be so even in a case where a building exists on the land and the land is claimed to be appurtenant to the building because in such a case it will be necessary to determine the extent of the land that is appurtenant to the building, i.e. whether the entire land or only a part of it is so appurtenant to the building and for that reason is not held or occupied for purposes connected with agriculture, horticulture or animal husbandry. In view of entry in the Khatauni for the year 1377 F (Ex. A-1) which must be presumed to be correct in view of Section 44 of the U.P. Land Revenue Act, 1901, the said land was held by the respondents as Bhumidari. The question whether the suit land is or is not held for purposes connected with agriculture arises in the suit filed by the respondents. There is no declaration in relation to land in dispute u/s 143 of the Act. It was, therefore, not open to the Civil Judge to decide, on its own, the question whether the said land was held or occupied for purposes connected with agriculture, horticulture or animal husbandry and after holding that it is not so held refuse to follow the procedure laid down in Section 331-A on the ground that the said provision has no application to the land in dispute.

15. Issue as to whether in absence of any declaration u/s 143 of U.P. Act No. 1 of 1951, the land recorded as agricultural land in the revenue record can be treated as non-agricultural land for the purposes of stamp duty, came for consideration before this Court in Smt. Neelam Gupta Vs. Commissioner, 2007 (102) RD 147. This Court held that only on the basis of report of Additional Collector, the land recorded in the revenue record as agricultural land cannot be treated as non-agricultural land. This judgment has been consistently followed by this Court in Veer Bal Singh Vs. State of U.P., 2009 (109) RD 124, Smt. Kusum Lata Jaisawal Vs. State of U.P., 2010 (109) RD 414, Ashish Kumar Vs. State of U.P., 2010 (28)

LCD 945, Misc. Single No. 1793 of 2008, Suresh Kumar Vs. Commissioner and others, decided on 24.04.2013. Even in Kishore Chandra Jaiswal''s case (supra) Division Bench held that in exercise of powers under the Act, the Collector has no jurisdiction to held an agricultural land as non-agricultural land.

16. Supreme Court in Distt. Registrar and Collector, Hyderabad and Another Vs. Canara Bank Etc., and Dr. Chiranji Lal (D) by LRs. Vs. Hari Das (D) by LRs., relying upon the judgment of Privy Council in AIR 1925 83 (Privy Council) held that it clear that the provisions of the Stamp Act cannot be held to have been framed solely for the protection of revenue and for the purpose of being enforced solely at the instance of the revenue officials. Power to impound a document and to recover duty with or without penalty thereon has to be construed strictly and would be sustained only when falling within the four corners and letter of the law.

17. In view of the aforesaid discussions, the writ petition succeeds and is allowed. The orders of Collector dated 26.05.2010 and Commissioner dated 30.08.2012, are set aside. The Collector is directed to refund the excess amount deposited by the petitioners within a period of two months.