(2010) 07 AHC CK 0044

In the Allahabad High Court

Case No : Writ C. No. 34565 of 2003

Sanjiv Kumar Rastogi — APPELLANT

Vs

Addl. Commissioner/Chief Controlling Revenue Authority and Another — RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Stamp Act, 1899 — Section 47A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (2010) 07 AHC CK 0044

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Misra, J.—Heard Sri K.S. Ojha learned Counsel for the Petitioner and learned Standing Counsel for the Respondents. Counter and rejoinder affidavits have been exchanged between the parties.

2. The Petitioner claims to have purchased an area of 0.136 hectare agricultural land in Village Mawana Kalan, Pargana Hastinapur, Tehsil Mawana, District Meerut by sale deed dated 15.10.1997 for sale consideration of Rs. 36,000. For the purpose of paying the stamp duty the value of the property was fixed at Rs. 41,000 and therefore a total of Rs. 4350 was paid in accordance with the market value of Rs. 6 lakh per hectare fixed by the District Magistrate for agricultural land.

3. The Petitioner is aggrieved by the order dated 30.5.2001 (annexure 3 to the writ petition) passed by the Sub Divisional Magistrate, Mawana, District Meerut as well as by the appellate order dated 18.11.2002 (annexure 4 to the writ petition) passed by the Additional Commissioner/Chief Controlling Revenue Authority, Meerut and the order dated 3.6.2003 (annexure 5 to the writ petition) whereby the review application filed by the Petitioner before the Respondent No. 1 has been rejected.

4. Learned Standing Counsel while referring to the counter affidavit has submitted that clearly the land in question was described within the urban area and Nagar Palika limits and hence for the purpose of payment of stamp duty the value of Rs. 500 per square yard for residential area fixed by the District Magistrate was chargeable. He further states that the land in question is situated half km. from the main road and its area is 680 square metres which is clearly for the purpose of residential use.

5. Having considered the submission of learned Counsel for the parties and perused the records the Tehsildar had made a report on 20.6.1998 on a query made by the Petitioner that the land in question is outside the Nagar Palika limits. The Tehsildar had also submitted a report before the Respondent No. 2 on 12.4.2001 by stating that this land was used for agricultural purpose till two years back and at present the land is lying vacant and the circle rate applicable is Rs. 6 lakh per hectare.

6. In the order passed by the Respondent No. 2 u/s 47 A of the Stamp Act a finding has been recorded that the land in question was earlier being used for agricultural purpose and is entered in the revenue records as agricultural land. He has also found that the land in question is situated near the Kishanpur Birana road and is lying vacant but it is likely to be used for residential purpose and therefore the stamp duty to be charged is to be according to the circle rate of Rs. 500 per square metre and hence the Petitioner is liable to pay Rs. 30,700 as stamp duty whereas he has only paid Rs. 4350 as stamp duty.

7. The first appellate authority has confirmed the findings recorded by the Respondent No. 2 and has rejected the review application of the Petitioner on the same ground by further holding that the future use of the land in question is likely to be residential and therefore when no agricultural activity is going on it has to be charged at Rs. 500 per square metre.

8. Learned Counsel for the Petitioner has placed reliance upon a decision of this Court in the case of Veer Bal Singh v. State of U.P. and Ors. 2009 (108) RD 124 and has relied upon paragraph 9 to state that unless there is a declaration u/s 143 of the U.P. Z.A. & L.R. Act an agricultural land cannot be treated as non agricultural. He states that admittedly there is no declaration u/s 143 of the U.P.Z.A. & L.R. Act with respect to the land in question and therefore it could not be treated as non agricultural land.

9. He has further relied upon paragraph 16 to 19 of the said judgment to state that the Respondent No. 2 could not determine the deficiency in stamp duty on the date of execution of the sale deed without any material on record and also he could not determine the deficiency by recording that the future utility of the land was for residential purpose and therefore it has to be treated as non agricultural.

10. The submission of learned Counsel for the Petitioner appears to have substance inasmuch as there is no cogent evidence referred to in the impugned orders to enable the authorities to charge stamp duty of the land in question as

non agricultural land. There is also no evidence on record to indicate that on the date when the land in question was purchased by the Petitioner it was non agricultural. In fact report of the Tehsildar in the year 2001 has clearly stated that two years back i.e. in the year 1999 the land was being used for agricultural purpose. Admittedly the portion purchased by the Petitioner is half portion of the plot in question and there is no construction existing over the land in question. Consequently the Respondents have committed an error in determining the deficiency of stamp duty on the future utility of the land which was earlier admittedly used as agricultural land. The impugned orders have been passed without any basis and even on the reports available on record the land in question was agricultural in the year 1997 when it was purchased by the Petitioner.

11. The impugned orders being based on no material or evidence are arbitrary and liable to be set aside. The impugned order dated 30.5.2001, 18.11.2002 and 3.6.2003 passed by the Respondent Nos. 1 and 2 are hereby set aside. The writ petition is allowed. No order is passed as to costs.

