

(2011) 04 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32178 of 1996

Santosh Kumar

APPELLANT

Vs

Additional District Magistrate (Finance and Revenue), Bijnor
and Others

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Registration Act, 1908 — Section 47A
Stamp Act, 1899 — Section 33, 40, 47A
Stamp Rules — Rule 340

Citation : (2011) 9 ADJ 79 : AIR 2012 All 15 : (2012) 3 AWC 2334

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard Shri K.M. Garg, learned counsel for the petitioner and the learned standing counsel appearing for the State -respondents.

2. The writ petition is directed against the order dated 22.7.1994 (Annexure 14 to the writ petition) passed by the Sub-Divisional Officer, Nagina, District Bijnor and dated 3.7.1996 (Annexure 15 to the writ petition) passed by the Chief Controlling Revenue Authority, U.P., Allahabad whereby the valuation of the property of the petitioner has been assessed to Rs. 8 Lacs and determining deficiency of stamp duty to the tune of Rs. 29,877.50 p.

3. It is contended that the petitioner had purchased a building having an area 1777 square metres vide sale deed dated 31.12.1987 and the stamp was paid as per market value determined under Rule 340 of the Stamp Rules. The market value was determined to the tune of Rs. 4,48,500/- whereupon the stamp duty was paid. However, the document was referred u/s 47-A of the Registration Act to the Collector for assessment of correct market value. The Sub Registrar after registration observed that the petitioner has not paid the stamp on the correct market value.

4. It appears that a show-cause notice was issued to petitioner on 26.10.1998 pursuant to some complaint made by Shri A.K. Sharma. The Sub Divisional Officer referred to the report of tehsildar dated 11.9.1987 wherein he had assessed market value of the property to the tune of Rs. 8,92,000/-. The Sub-Divisional Officer submitted his report to the Additional District Magistrate (Finance and Revenue), Bijnor whereupon proceeding was initiated u/s 47-A/33/40(b) of the Stamp Act and after issuance of notice on 21.11.1988, which was contested by the petitioner vide objection dated 8.5.1989, the Sub Divisional Officer passed the order dated 22.7.1994 determining deficiency of stamp duty to the tune of Rs. 29,877/ 50 p. This order was upheld by the revisional authority vide the order dated 3.7.1996.

5. It is evident from the record that respondents in order to determine the market value of the property, relied upon the only factor that the building is situated at the main road near the Railway Station, Roadways, Head Post Office, Hospital and Intermediate College and, therefore, its market value cannot be assessed less than Rs. 8 Lacs but regarding this finding, assessing authority has not considered and referred to any factor on the basis of which the said value has been assessed.

6. On the contrary, the petitioner has stated that building was rented to five tenants for which eviction proceedings were initiated on the ground that the building is in dilapidated condition and the orders were passed by the competent authority accepting this contention, but the eviction of the tenant had not taken place. Moreover, once the market value of the property was determined and calculated taking into consideration the rate prescribed under Rule 340 of the Stamp Rules merely on the basis of the location the appellate authority have erred in law by saying that the property cannot be less than Rs. 8 Lacs. In fact, no other aspect has been considered by the Collector, as is evident from page 67 of the writ petition.

7. The market value of the property depends on several factors. It would be difficult to give any exhaustive description of list of such factors, but the real fact is that mere location of a property by itself may not yeild such result, as a property with lesser locationary advantage may yeild. For example, if property is occupied by tenant or is under the control of person having some criminal background, even if it is based on one of the best location in the city, may not be of such market value as one may not find willing to buy such property. The market value is directly concerned about the avalibility of free and voluntary buyer on such price. A price on paper does not mean a market value, though it may be valued in the account book.

8. The authority concerned have completely erred in law and in fact, both by mere refering the location of the building and without considering any other factor, which add or reduces its value.

9. It appears that the authorities have proceeded with objective that there

statutory obligation is to fix as high price as they can irrespective of the fact whether for such price they themselves may not be inclined to purchase such land or property in dispute. The approach of the revisional authorities in the matter of determination of market value time and again have been found lacking application of mind and influenced by irrelevant consideration. The authorities normally trying to avoid to consider such aspect, which may bring down the price, as attempt is to raise demand of stamp duty as much as possible as if this is the only requirement of law and is expected from them. That is not so. The authority should not forget that the purpose of registration and as also that stamp duty is not to rob off common people and their hard earned money. The State cannot act like a dacoit or a snatcher. It cannot be attributed an objective to discourage transaction of immovable property or making statutory charges for such transaction confiscatory.

10. The Court is really disturbed in finding out the approach and the manner in which the authorities in this case have proceeded to determine market value particularly when the petitioner brought to their notice that the house is in delapidated condition, earning a meagre sum of Rs. 7,296 p.a. towards rental value, owned and occupied by several tenants and one, who purchase it, will have to purchase certain litigations with the existing tenants. Even the revisional authority has committed similar error. It has referred to the contentions raised by the petitioner about occupancy of the property in dispute by tenants and its delapidated condition, but has not considered its impact on the market value of the property in question and has simply proceeded on conjectures and surmises ignoring the above reducing factor.

11. It has said that in the objection dated 16.11.1987 the petitioner has not said any thing about the condition of the building in question, but this argument ignores the impugned order passed by Sub-Divisional Officer in which he himself has referred to the petitioner's complaint that the building is in very bad condition, as is evident from the very first paragraph of the order dated 22.7.1994 (at page 63 of the paper book) where he has said that It shows that the revisional authority has also misread the document and even the facts, which find mention in the order of the Sub-Divisional Officer. It has ignored by saying that such fact was not mentioned in petitioner's reply dated 16.11.1987 ignoring his subsequent objection wherein this fact was stated specifically and was noticed in the order dated 22.7.1994 of Sub-Divisional Officer.

12. In the result, the writ petition is allowed. Impugned orders dated 22.7.1994 (Annexure 14 to the writ petition) passed by the Sub Divisional Officer, Nagina, District Bijnor and dated 3.7.1996 (Annexure 15 to the writ petition) passed by the Chief Controlling Revenue Authority, U.P., Allahabad are set aside. The petitioner shall be entitled to cost, which I quantify to Rs. 20,000/- (Rupees Twenty Thousand only). However, this order shall not preclude the respondents from proceeding afresh in accordance with law.