(2005) 10 AHC CK 0100

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11782 of 2003

Sarvahitkarini Sahkari Awas Samiti Ltd APPELLANT

Vs

State of U.P RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:
Stamp Act, 1899 — Article 23

Citation : (2005) 10 AHC CK 0100

Hon'ble Judges : Vineet Saran, J

Final Decision : Allowed

Judgement

1. The petitioner, which is a housing society, purchased certain agricultural land measuring about 4343.4 Sq. meters. According to the petitioner, the said land was purchased for Rs.2,66,700/. The stamp duty was not paid by the petitioner because, according to the petitioner, the housing societies were exempted from payment of stamp duty as per certain Government orders. However, the petitioner is not pressing for exemption under the said Government orders and is prepared to pay the stamp duty on the value of the sale transaction. The Additional Collector, under Section 47A of the Indian Stamp Act, passed an order dated 3071999 assessing the value of the land measuring 4343.4 Sq. meters to be Rs.17,37,360/ calculating the same at the rate of Rs. 400/ per Sq. meter which was the circle rate fixed by the Collector for the residential plots in the area. The revision filed by the petitioner against the said order dated 3071999 was also dismissed by the Commissioner, Allahabad Division, Allahabad on 682002. Aggrieved by the said orders 3071999 and 682002 passed by the Additional Collector (Finance and Revenue), Allahabad and the Commissioner, Allahabad Division, Allahabad respectively, this writ petition has been filed.

2. I have heard the learned counsel for the parties and perused the record.

3. The contention of the learned counsel for the petitioner is that the land, when purchased, was not being used for residential purposes but was an agricultural land and thus the circle rate, meant for the land being used for residential

purposes, would not be applicable.

4. On a perusal of the impugned orders, it is clear that the authorities have treated the land in question to be one for residential purposes on the presumption that the same had been purchased by a housing society and they would use the same for residential purpose after carving out a residential colony. Such presumption of the authorities is not tenable in law. The value of the land is to be considered as on the date of the transaction and not on the presumption that it may, in future, be used for residential or any other purposes, and on such presumption, charge stamp duty after assessing the value of the land, as if it was for residential purpose. It is not the case of the authorities that the land in question, when purchased, was not agricultural land. In such a situation, the assessment of the price of the land for the purpose of payment of stamp duty, treating it to be residential plot and charging the stamp duty on the basis of circle rate fixed by the Collector, Allahabad is totally unreasonable and liable to be set aside.

5. Learned Standing Counsel has however stated that as per Article 23 of Schedule 1B of the Indian Stamp Act, 1899 as amended by the State of U. P., stamp duty is to be charged on either the sale price or the market value of the land, whichever is higher. The sale price of the land in question as declared by the petitioner society is Rs.2,66,700/ on which, according to the petitioner, stamp duty should have been charged. The market value of the land in question has not been considered by the authorities below, except for applying the principle of circle rate for residential plots, which is not tenable for reasons mentioned above, as the land, when purchased, was agricultural land. As such, the impugned orders dated 3071999 and 682002 are liable to be set aside and are thus quashed.

6. The matter is remanded back to the Additional Collector (Finance and Revenue), Allahabad for redetermination of the stamp duty payable by the petitioner either on the sale consideration (as contended by the petitioner) or after assessing the market value of the land as on the date of transaction, without treating the same to be for residential purpose, as according to the petitioner the land when purchased was nothing but agricultural land, and was also registered to be so in the revenue records. The Additional Collector may pass appropriate orders in accordance with law, expeditiously. Before passing of any order, the Additional Collector, shall give opportunity of hearing to the petitioner and also consider the relevant Government Orders and the case law which may be produced by the petitioner before the Additional Collector.

7. Accordingly this writ petition stands allowed. The impugned orders are quashed. The matter may be considered and decided afresh by the Additional Collector in the light of the observation made hereinabove. Costs easy.

