(2014) 01 AHC CK 0171

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5888 of 2001

Sarvoday Babu Uddeshiya Vikas Samiti — APPELLANT

Vs

Commissioner, Kanpur Division and Others — RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Registration Act, 1908 — Section 23 29 52

Citation : (2014) 1 ADJ 415 : (2014) 103 ALR 785 : (2014) 3 AWC 2238 : (2014) 122 RD 544

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Dinesh Pathak and Rakesh Pathak, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri Dinesh Pathak, learned counsel for the petitioner and learned Standing Counsel for the respondents. It is contended that petitioner purchased an agricultural land in Gate No. 61, area 0.37 acre vide sale-deed dated 19.5.1997 but respondents proceeded u/s 47A of Indian Stamp Act, 1899 (hereinafter referred to as "Act, 1899") alleging that subsequent commercial user shows that land was purchased for commercial purposes and liable for stamp duty on the rates admissible to commercial rates though at the time of transaction, it was an agricultural land and has been purchased accordingly by paying market value of agricultural property as existed.

2. From the impugned order dated 5.8.2000, it is evident that a spot inspection report was submitted by Tehsildar, Etawah on 16.7.1999 i.e. after more than two years and position as he found at that time has been taken into consideration to determine whether the instrument discloses true market value at the time of registration.

3. The subsequent user would not justify inference that the true market value is something higher than what it was stated in the instrument and there was

deficiency of stamp duty. This question has repeatedly been considered by this Court and it has been held that potential value of land in future and future user will not justify determination of market value of property in a transaction on the date when instrument in question was executed/registered. When an instrument has disclosed consideration of property, subject of instrument, less than minimum value, Sub Registrar shall not register the instrument but refer it to the Collector for determination of market value of such property and proper duty payable thereon but where the value set forth in the instrument is more than minimum value as per Rule 340 but in view of registering authority it is less than true market value, he register the instrument and then refer it to Collector for determination of true market value. It was the position u/s 47A(1) of Act, 1899 as stood before its amendment by U.P. Act No. 38 of 2001.

4. Section 47A has undergone substantial changes vide U.P. Act No. 38 of 2001 and now after its amendment it reads as under:

47-A. Under-valuation of instrument.--(1)(a) If the market value of any property, which is the subject of any instrument, on which duty is chargeable on market value of the property as set forth in such instrument is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908, shall, notwithstanding anything contained in the said Act, immediately after presentation of such instrument, and before accepting it for registration and taking any action u/s 52 of the said Act, require the person liable to pay stamp duty u/s 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with Section 23 of the Registration Act, 1908.

(b) When the deficit stamp duty required to be paid under clause (a), is paid in respect of any instrument and the instrument is presented again for registration, the registering officer shall certify by endorsement thereon, that the deficit stamp duty has been paid in respect thereof and the name and the residence of the person paying them and register the same.

(c) Notwithstanding anything contained in any other provisions of this Act, the deficit stamp duty may be paid under clause (a) in the form of impressed stamps containing such declaration as may be prescribed.

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in clause (a) and presents the instrument again for registration, the registering officer shall, before registering the instrument refer the same to the Collector for determination of market value of the property and the proper duty payable thereon.

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard, and after holding an inquiry in such manner as may be prescribed by rules made under this Act,

determine the market value of the property which is the subject of such instrument, and the proper duty payable thereon.

(3) The Collector may, suo motu, on a reference from any Court or from the Commissioner of Stamps, or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the State Government in that behalf, within four years from the date of registration of any instrument, on which duty is chargeable on the market value of the property not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property, which is the subject of such instrument, and the duty payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in such instrument, he may determine the market value of such property and the duty payable thereon:

Provided that, with the prior permission of the State Government an action under this sub-section may be taken after a period of four years but before a period of eight years from the date of registration of the instrument on which duty is chargeable on the market value of the property.

Explanation.--The payment of deficit stamp duty by any person under any order of the registering officer under sub-section (1) shall not prevent the Collector from initiating proceedings on any instrument under sub-section (3).

(4) If on enquiry under sub-section (2) and examination under sub-section (3), the Collector finds the market value of the property-

(i) truly set forth and the instrument duly stamped, he shall certify by endorsement that it is duly stamped and return it to the person who made the reference;

(ii) not truly set forth and the instrument not duly stamped, he shall require the payment of proper duty or the amount required to make up the deficiency in the same, together with a penalty of an amount not exceeding four times the amount of the proper duty or the deficient portion thereof.

(4-A) The Collector shall also require alongwith the deficit stamp duty or penalty required to be paid under clause (ii) if sub-section (4), the payment of a simple interest at the rate of one and half per cent per mensem on the amount of deficit stamp duty calculated from the date of the execution of the instrument till the date of actual payment.

Provided that the amount of interest under this sub-section shall be recalculated if the amount of deficit stamp duty is varied on appeal or revision or by any order of a competent Court or authority.

(4-B) The amount of interest payable under sub-section (4-A) shall be added to the amount due and be also deemed for all purposes to be part of the amount required to be paid.

(4-C) Where realisation of the deficit stamp duty remained stayed by any order of any Court or authority and such order of stay is subsequently vacated, the interest referred to in subsection (4-A) shall be payable also for any period during which such order of stay remained in operation.

(4-D) Any amount paid or deposited by or recovered from, or refundable to, a person under the provision of this Act, shall first be adjusted towards the deficit stamp duty or penalty outstanding against him and the excess if any, shall then be adjusted towards the interest, if any, due from him.

(5) The instrument produced before the Collector under sub-section (2) or under sub-section (3), shall be deemed to have come before him in the performance of his functions.

(6) In case the instrument is not produced within the period specified by the Collector, he may require payment of deficit stamp duty, if any, together with penalty on the copy of the instrument in accordance with the procedure laid down in sub-sections (2) and (4).

5. Now, the change made is that if the market value of any property, which is the subject of any instrument, on which duty is chargeable, on market value of the property, as set forth in such instrument, is less than even the minimum value determined in accordance with rules made under Act, 1899, the Registering Officer shall, after presentation of instrument, but before its registration, require the presenter to pay deficit stamp duty, as computed on the basis of minimum value, determined in accordance with rules. After passing such an order, he shall return instrument to the presenter. The parties may choose to pay stamp duty, as required by Registrar, and if such duty is paid and instrument is again presented, it shall be registered by Sub Registrar. But, in case, the instrument is presented without furnishing deficit stamp duty, as per the order of Registrar, he (the Registering Officer) shall not register the instrument but before registering it, refer to Collector for determining market value of the property and proper duty payable thereon.

6. Sub-section (2) provides that Collector, after giving reasonable opportunity of hearing to parties and making such inquiry in such manner, as may be prescribed by rules, made under Act, 1899, determine market value of the property, which is the subject of such instrument and also proper duty payable thereon.

7. Sub-section (3) however, confers such power where instrument has already been registered under Sub-Section (1) that Collector, suo motu, or on a reference made by any Court or Commissioner of Stamps or Additional Commissioner of Stamps or Deputy Commissioner of Stamps or Assistant Commissioner of Stamps or any officer authorised by State Government in that behalf, within four years from the date of registration of an instrument, call for and examine the instrument for the purpose of satisfying himself as to the

correctness of market value of the property, set forth in the instrument and duty payable thereon, and if after such examination, he has reason to believe that market value of such property has not been truly set forth in such instrument, he may determine the market value of such property and duty payable thereon.

8. For determination of market value, U.P. Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as "Rules, 1997") have been framed, wherein Rule 3 lays down the facts need be set forth in an instrument, which would be relevant for determining market value. Rules 4 and 5 thereof deals with fixation of minimum rate for valuation of land, construction value of non-commercial building and minimum rate of rent of commercial building and calculation of minimum value of land, grove, garden and building. Rule 7 provides procedure for determining market value of the property.

9. The aforesaid provisions came to be considered by this Court in Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla, and the aforesaid decision has been followed in Civil Misc. Writ Petition No. 4662 of 2005 (Bhagwan Singh and others v. State of U.P. and others) decided on 18.4.2011.

10. In Rajendra Kumar Vs. State of U.P. and Others, , this Court has not upheld the order of Revenue Authorities for determining value of the property on higher rate i.e. commercial purposes observing that there is nothing to show that at the time of execution of sale-deed, the land was not used for agricultural purposes particularly when it is not mentioned that land is not recorded in the revenue record as agricultural one. The stamp duty normally paid on the basis of market value fixed by the Collector by issuing circle rate. When market value of an instrument is doubted either by registering authority or suo motu by competent authority, in that case there must be a definite proof or basis or material available on record before the authority concern for determining higher market value of the property than what is stated in the instrument. In absence of any finding that on the date of execution of sale-deed and its registration, any commercial activity was going on the land in question, or even in the vicinity, would not justify an inference that market value set forth in the instrument is under valued.

11. In Ashok Kumar Dubey Vs. State of U.P. and Others, , the Court has castigated determination of market value of property, which is subject-matter of instrument with reference to the use of land to which buyer intends to put in. Reliance was placed on M/s. Maya Food and Vanaspati Ltd. Company v. Chief Controlling Revenue Authority (Board of Revenue) Allahabad, 1990(90) RD 57, wherein it was held that in determining market value, potential of the land as on the date of sale alone could be taken into account and that potential value of the land that could be put in use in future cannot be taken into consideration.

12. When a land is an agricultural land and is not an Abadi and also not declared non-agricultural but shown in revenue record as agricultural land, in respect to such property, unless there is a clear evidence that on the date of its transfer, it

was a commercial land, on mere presumption or facts found much subsequent in point of time after the date of registration of instrument, no enhancement can be allowed.

13. In Smt. Anasuya Singh v. Commissioner, Faizabad Division, Faizabad and another, 2008(104) RD 725, this Court held that an agricultural land situate at a roadside in a semi urban area cannot be treated as commercial or residential unless that area was declared as a commercial or a residential area by the competent authorities. It was followed, in Kunj Behari v. State of U.P. and others, 2008(104) RD 750.

14. In Veer Bal Singh v. State of U.P. and others, 2009(2) ADJ 481, this Court held that on the date of execution of sale-deed, land was an agricultural land hence market value and consequential stamp duty cannot be fixed on the basis of its future potential. This is followed in Sumant Lal Tiwari Vs. State of U.P. and Others, .

15. In view of above abundant authorities, it cannot be said that the facts, as noticed by Tehsildar in 1999, can be of any assistance to determine market value of property in question and its nature when sale-deed was executed in 1997. It has not come on record that in 1997, when sale-deed was executed, land in question could be treated to be commercial in any manner. In these circumstances, the writ petition is allowed. The impugned orders dated 28.11.2000 and 5.8.2000 (Annexures 6 and 4 to the writ petition) passed by respondent No. 1 and 2 are hereby quashed.

