(2013) 01 AHC CK 0488

In the Allahabad High Court

Case No : C.M.W.P. No. 69184 of 2006

Satya Prakash Verma — APPELLANT

Vs

Commissioner,Agra Division — RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2014) 106 ALR 200 : (2014) 124 RD 480

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the petitioner and learned Standing Counsel for the respondents. In a commercial area petitioner purchased 69.7 sq. metre land on 29.7.2005. In the sale-deed sale consideration was shown to be Rs. 1.5 lakh. However, stamp duty was paid of Rs. 4,18,000/- and odd as according to the circle rate the market value of the land was Rs. 6000/- per sq. metre. A.D.M. (Finance and Revenue) inspected the property in dispute on 19.1.2006 and found that on the front there was a wall having a shutter accordingly he concluded that the purchased property was a constructed shop. However, the case of the petitioner was that it was not a shop there was no roof, only in order to protect the valuable plot from encroachment a high wall in the nature of boundary wall had been constructed and shutter had been placed thereupon. The sale-deed was impounded and case was registered as case No. 17 of 2006-07 State v. Satya Prakash Verma, D.M. Firozabad through order dated 20.6.2006 held that there was stamp deficiency of Rs. 167300/- and equal amount was imposed as penalty with 1.5% per month interest. Against the order passed by the D.M. petitioner filed revision which was numbered as Revision No. 199 of 2006, Commissioner, Agra Division, Agra dismissed the revision on 9.11.2006, hence, this writ petition.

2. The D.M. in his order dated 20.6.2006 has neither mentioned the date of the sale-deed nor the area which was purchased by the petitioner nor the rate which

was applied by him nor the market value which according to him was the proper market value. Such orders are not expected to be passed by the D.Ms. who are responsible officers. The order was passed by Smt. Sanyukta Samaddar who was D.M. Firozabad at that time.

3. In fact the D.M. virtually as well as actually followed the report of A.D.M. (Finance and Revenue) Firozabad dated 19.1.2006 which is Annexure 2 to the writ petition. It is actually the inspection report of the A.D.M. which is the order. D.M. rather lowered her dignity by following the dictate of lower officer (A.D.M.)

4. In the report Annexure 2 it is mentioned that the circle rate is Rs. 6000/- per sq. metre, hence, the market value of the plot comes to Rs. 418500/-. On this market value stamp duty had already taken paid by the petitioner. Thereafter, the A.D.M. did some thing wonderful . He multiplied the area in sq. metre (69.75) by 80 and, thereafter, by 300 meaning thereby that presumptive rent of Rs. 80/- per sq. metre per month multiplied by 25 years (300 months) was determined. This came to Rs. 1674000/-which was held to be the market value of the shop and thereafter cost of the land i.e. Rs. 418500/- was added thereto hence total valuation came to Rs. 20,92,500/-. This was utterly unreasonable, rather absurd approach. When market value is determined on the basis of presumptive rent/income of a building, value of land cannot be added to it. Without land no building can exist. Walls and roof do not a building make. When circle rate is fixed it takes into account the potentiality of the area; commercial, residential, industrial or agricultural. Petitioner paid the stamp duty on the circle rate fixed by the Collector for commercial purpose.

5. After determining the market value of the land according to the circle rate only and only cost of construction of the shop if any could be added thereto. When two principles of determining market value can be applied one of determining the value of land and adding valuation of super structure, after suitable deduction depending upon the age of the construction and the other of determining presumptive rental value and multiplying that by suitable number of years then the principle/formula application of which gives lesser value shall be adopted in Stamp Deficiency matter. The reason is that that fiscal statute is to be construed strictly and if two views are possible then the one in favour of assessee is to be adopted.

Accordingly, matter required remand. However, on the suggestion of the Court learned Counsel for the petitioner has agreed that out of the amount of Rs. 1,67,400/- which the petitioner has already deposited under interim order he is ready to pay Rs. 67,400/- as deficiency if any. In my opinion under no circumstances more than this amount can be determined as deficiency in Stamp duty if any on the sale-deed in question. (Market value of super structure can not be more than Rs. 6,74,000/-). Accordingly, writ petition is allowed both the impugned order are set aside and it is held that there was by maximum a deficiency of Rs. 67,400/-. The petitioner shall be returned Rs. 1,00,000/- within two months from date of production of certified copy of this order failing which since after two months till actual payment interest @ Rs. 1.5% per month shall be payable.