(2011) 07 AHC CK 0291

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38211 of 2011

Sister Lily Mathew APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 56(1)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 142

Citation : (2011) 7 ADJ 506 : (2011) 5 AWC 5420 : (2011) 114 RD 94

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon''ble Arun Tandon, J.—Petitioner before this Court is aggrieved by the order passed by the District Magistrate, Varanasi dated 27.12.2010 in proceedings u/s 47-A as also against the order of the Commissioner, Varanasi Division, Varanasi dated 28.4.2011 passed in Appeal filed u/s 56(1-A) of the Indian Stamp Act.

2. Under the first order, the District Magistrate has recorded that he himself made an spot inspection of the purchased property and has found that the same was situate at the outskirts of the village concerned. Near the property there were existing houses both pakka and kachcha and further that the land was not fit for agricultural purposes. In the totality of the circumstances, it has been recorded that the land had the potential for residential purposes, therefore, stamp duty at residential rates has been calculated and levied alongwith penalty of Rs. 25,000/-.

3. Not being satisfied with the order so passed, the petitioner preferred an appeal. The appeal has also been dismissed after affirming the finding recorded by the Collector. However, the Commissioner proceeded to record that on the date of purchase there was no existing construction over the property purchased, therefore, the circle rate applicable in respect of residential properties has been

reduced by 30% for calculating the market value. Accordingly the demand has been revised.

4. Not being satisfied with the order so passed, the petitioner has approached this Court by means of the present petition.

5. Having heard learned counsel for the parties and having examined the records, I am of the considered opinion that pure findings of fact have been recorded by the authorities below after appreciation of evidence on record as well as after spot inspection by the Collector himself. Such findings of fact cannot be said to be perverse so as to warrant any interference under Article 226 of the Constitution of India.

6. Counsel for the petitioner has placed reliance upon the judgment in the case of Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla,

7. It may be recorded that the issue with regard to the determination of market value of transferred property for the purposes of imposition of stamp duty has engaged the attention of the Hon''ble Supreme Court of India in the case of Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others, and in paragraph 5 it has been held as follows:

...........The imposition of stamp duty on sale-deeds are on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast on authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village, from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is likely value of such property in that area. In its absence it would be very difficult for such Registering Authority assess the valuation of such instrument. It is to give such support to the Registering Authority the Rule 340-A is introduced. Under this Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area concerned. This is merely a guidelines which helps the Registering Authority to assess the true valuation of a transaction in an instrument. This gives him material to test prima facie whether description of valuation in an instrument is proper or not...................

8. It will thus be seen that the Hon''ble Supreme Court has specifically laid down that the market value of the property may vary from village to village and location to location and even may differ from the sizes of the area and other relevant factor.

9. This Court may further clarify that u/s 142 of the UPZA & LR Act, 1950, a Bhumidhar with transferable rights, subject to the provisions of this Act, has the

right to exclusive possession of all land of which he is a bhumidhar and to use it for any purpose whatsoever. This Court has, therefore, no hesitation to record that the issue as to whether a declaration has been issued or not in respect of a land covered by the UPZA & LR Act need not be a conclusive evidence for calculating the potential of the land under transfer.

10. The judgment relied upon by the counsel for the petitioner in the case of Ram Khelawan (Supra) is clearly distinguishable in the facts of the present case.

11. This Court finds no good ground to interfere with the order impugned.

12. Writ petition lacks merit and is accordingly dismissed.

13. However, in the facts of the case, the imposition of penalty appears to be excessive. The same is reduced to Rs. 5000/- only subject to the condition that the petitioner deposits the reduced amount along with other outstanding dues in terms of the order of the authorities under the Indian Stamp Act within two months from today.

In case of default, the petitioner shall not be entitled to the benefits of this order.

