(2010) 01 AHC CK 0057

In the Allahabad High Court

Smt. Arvind Kumari Yadav APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Stamp Act, 1899 — Section 47A(3), 56(1A)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 4, 7

Citation : (2010) 3 AWC 2839

Hon'ble Judges : Abhinava Upadhya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhinava Upadhya, J.—Heard Sri S.K. Anwar, learned Counsel appearing for the petitioner and learned standing counsel.

2. Present writ petition has been filed by the petitioner challenging the orders passed under Sections 47A(3) and 56(1A) of the Indian Stamp Act as applicable to the State of U.P.

3. The petitioner had purchased a piece of land being arazi khasra No. 220 khata No. 126 measuring 0.40 acre. Sale deed was executed and registered in favour of the petitioner on 19.12.2005 before Sub-Registrar, Etawah, which is filed as Annexure-1 to the writ petition. According to the petitioner, the land in question was agricultural land and the same was purchased for Rs. 4 lacs, but for the payment of stamp duty the market value of the land as disclosed by the petitioner himself was Rs. 4,40,000 on which stamp duty to the tune of Rs. 44,000 was paid and the said instrument was duly registered. Thereafter, that upon the report of the Sub-Registrar proceedings u/s 47A(3) of the Indian Stamp Act were drawn and the petitioner was served with a notice to which he replied. The Collector not being satisfied with the reply proceeded to hear the matter and passed order determining the deficiency in stamp duty in the execution of the sale deed vide its order dated 20.11.2008. Against the said order, the petitioner

preferred an appeal before the Commissioner u/s 56(1A) of the Indian Stamp Act and the Commissioner affirmed the order of the Collector and dismissed the appeal, hence this writ petition.

4. The main contention of the learned Counsel for the petitioner is that the Collector has proceeded to determine deficiency in stamp duty on the ground that after the execution of the sale deed on 19.12.2005 the petitioner himself applied for declaration of land as non-agricultural u/s 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and the Sub-Divisional Officer declared the said land as non-agricultural vide its order dated 13.3.2006. It is alleged that declaration u/s 143 was the sole reason for the Collector to give the finding that the potentiality of the land was always residential even at the time of execution of the sale deed and therefore, the petitioner has evaded the payment of stamp duty by showing it as agricultural land.

5. Learned Counsel appearing for the petitioner submits that potentiality or the market value of the land has to be seen on the date of execution of the sale deed and not future prospect of the land as has been done in the present case. According to him, on the date of execution of the sale deed the said property was agricultural land and the circle rate prevalent was taken into consideration and the stamp duty was accordingly paid.

6. On the other hand, learned standing counsel submitted that the nature of the land as recorded in the revenue record will not be the only determinative factor for considering the market value of the property. The market value of the property has to be seen in relation to the area where it is situated and how much a willing purchaser would pay and a willing seller would willingly accept at a given point of time.

7. I have considered the submission raised by the learned Counsel for the petitioner as well as learned standing counsel and have perused the orders impugned in the writ petition.

8. It is true that the market value of a land is the only relevant factor for determination of payment of stamp duty under the Act and for that it is the bounden duty of the Collector to determine it not merely on the basis of the circle rate or its entry in the revenue records, but on the same basis as is required for the purpose of payment of compensation under the land acquisition proceedings. This Court in the case of Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla, has held in no uncertain terms that for determination of the market value the only procedure required to be adopted by the Collector is that of determination of compensation under the land acquisition proceeding. In order to highlight the aforesaid proposition of law laid down in the aforesaid judgment, relevant portion of paragraph 16 of the same is quoted hereinbelow:

16. ...It is interesting to note that Rule 7 no where prescribed the basis, formula or principle for determining market value. It only prescribes procedure like notice, admission of oral or documentary evidence, calling for information or

record from any public office and inspection of property. The result is that, whether Rule 7 of Rules of 1997 applies or not market value has to be determined on the same principle on which market value in land acquisition cases is determined. Minimum market value fixed in accordance with Rules of 1997 is relevant only and only for the purposes of referring the document by Registering Officer to the Collector before registration. Even after such reference market value is to be determined not in accordance with the minimum value fixed under Rule 4 of the Rules of 1997 but in accordance with general principles of determination of market value as applicable in land acquisition cases. Simultaneously when proceedings are initiated after registration of the document u/s 47A(3) of the Act market value has to be determined in accordance with general principles applicable for the said purpose like principles of determination of market value in land acquisition cases without taking recourse to minimum market value of the property fixed in accordance with Rule 4 of the Rules, 1997.

9. I entirely agree with the aforesaid interpretation and I find that no such consideration as enumerated above is reflected from the order passed by the Collector u/s 47A(3) of the Indian Stamp Act.

10. Under these circumstances, the impugned orders are against the law laid down by this Court in the case of Ram Khelawan (supra) and, therefore, cannot be sustained and is hereby quashed. Accordingly, the order of Commissioner passed u/s 56(1A) of the Indian Stamp Act is also set aside.

11. It is further directed that the Collector will proceed to determine the market value of the property in accordance with procedure given in the judgment in the case of Ram Khelawan (supra) and pass appropriate orders thereafter.

12. It goes without saying that the market value has to be determined as on the date of execution of the sale deed. It is also made clear that any inspection that may be made, the petitioner shall be associated in the same.

13. Any amount already deposited by the petitioner pursuant to the order passed u/s 47A(3) of the Indian Stamp Act shall be subject to any further order that may be passed by the Collector in the fresh proceedings to be initiated by him as directed above.

14. Subject to aforesaid direction, the writ petition is allowed.

