(2010) 05 AHC CK 0307

In the Allahabad High Court

Smt. Kaushilya Dwivedi and Another — APPELLANT

Vs

Commissioner, Lucknow Division and Others — RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Stamp Act, 1899 — Section 33, 56
Stamp Act, 1899 — Section 33, 56
Stamp Act, 1899 — Section 33, 56

Citation : (2010) 05 AHC CK 0307

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ritu Raj Awasthi, J.—Heard Mr. V.P. Nag, learned Counsel for the petitioner as well as leaned standing counsel and perused the records.

2. This writ petition has been filed challenging the order dated 25.11.2005 passed u/s 33/47A of the Stamp Act, by the Additional Collector (Administration), Lucknow in the case of State v. Smt. Kaushilya Dwivedi and Ors. and the order dated 10.05.2007 passed in Appeal No. 520 of 2005-06 u/s 56 of the Indian Stamp Act.

3. As per impugned order, on the report of Sub-Registrar, Sadar, Lucknow, the proceedings, for deficiency of stamp duty in the execution of sale deed relating to plot No. 1142 Ka and 1142 Kha measuring 10 biswan situated at village Jagat Kheda, Majra-Kalli Paschim, Pargana-Bijnore, Tehsil & District-Lucknow, were initiated and it was ordered that deficiency of court fee of Rs. 1,14,940/- alongwith penalty of equivalent amount i.e. Rs. 1,14,940/- totalling Rs. 2,29,880/- be paid.

4. Learned Counsel for the petitioner submits that against the said order he had preferred an appeal which was registered as Appeal No. 520 of 2005-06 before the Commissioner, Lucknow Division, Lucknow. However, the same has been

rejected without considering the grounds to the appeal and the material facts on record by the impugned order dated 10.05.2007. The learned Commissioner has merely reduced the penalty amount to half i.e. Rs. 57,470/- and directed the recovery of Rs. 1,72,410/- towards deficiency in stamp duty & penalty.

5. Learned Counsel for the petitioner vehemently submitted that at the time of execution of sale deed the land in question was recorded as agricultural land in the revenue records. In this regard he has relied upon Annexure No. RA-1 to the rejoinder affidavit, which is Form No. CH-41 of the land in question showing it to be recorded as agricultural land.

6. The submission of the learned Counsel for the petitioner is that the value of the stamp duty to be paid for execution of sale deed is to be determined on the basis of the nature of the land and it cannot be determined on the presumption or future potentiality of the land. It is further submitted that the opposite party No. 2 has wrongly relied upon the report of the Sub-Registrar wherein it was mentioned on the basis of presumption that since the land in question is not under agricultural use, therefore, it shall be presumed to be residential land. The Naib Tehsildar had submitted ex-parte inspection report which should not have been considered at all.

7. Learned standing counsel on the basis of counter affidavit has submitted that although the land purchased by the petitioner was recorded as agricultural land in the revenue records but the actual use was not agricultural which has been proved during the proceedings before the opposite party No. 2 in the case initiated u/s 33/47A of the Stamp Act in which impugned order dated 25.11.2005 was passed. It is further submitted that the dispute of alleged deficiency in court fee had come to light on the report dated 28.09.2005 of Nayab Tehshildar who had made spot inspection as such the order under challenge imposing the deficiency of stamp duty as well as penalty was just and proper.

8. Learned Counsel for the petitioner in support of his argument has relied upon various judgments pronounced by this Court on the point that the agricultural land cannot be treated as residential land unless a declaration u/s 143 of the U.P.Z.A. & L.R. Act is made. The authorities on the basis of presumption or future potentiality of the land cannot calculate the stamp duty for the purpose of execution of sale deed. The judgments relied upon by the learned Counsel for the petitioner are as under:

(I) Anil Kumar and Anr. v. State of U.P. and Ors. reported in 2009 (108) RD 413.

(II) Smt. Kusum Lata Jaiswal v. State of U.P. Through collector Bareilly and Ors. reported in 2010 (109) RD 414.

(III) Asif Ali v. State of U.P. through Secretary (Revenue) Lucknow and Ors. reported in 2010 (109) RD 537.

9. In the case of Ram Khelawan alias Bachcha Vs. State of U.P. and Prashant Shukla, , it has been held that for deciding the amount of stamp duty no reliance

can be placed upon the ex parte report of the Tehsildar. The proceeding u/s 47A of the Stamp Act may be initiated on the said report, however, while deciding the stamp duty the inspection is to be made by the Collector or authority hearing the case after due notice to the parties to the instrument under Rule 7(3)(c) of the Rules, 1997, the relevant paragraph is quoted below:

25. It has been found in several cases like the present one that the entire basis of determination of market value for the purpose of stamp duty is ex-parte report of Tehsildar or other officer. Ex-parte inspection report may be relevant for initiating the proceedings u/s 47-A of Stamp Act. However, for deciding the case no reliance can be placed upon the said report. After initiation of the case inspection is to be made by the Collector or authority hearing the case after due notice to the parties to the instrument as provided under Rule-7(3)(c) of the Rules of 1997. Moreover, in the inspection report distance of the property from other residential or commercial properties and road must be shown and wherever possible sketch map must also be annexed alongwith the report so that correct valuation may be ascertained with reasoned certainty.

10. In the case of Prafulla Singh Vs. State of U.P. and Others, this Court has held that mere fact that land is in close proximity to a residential land will not make an agricultural land into a residential land nor can the authority determine the stamp duty of an agriculture land treating the said land as a residential land.

11. The Division Bench of this Court in the case of Kishore Chand Agrawal v. State of U.P. and Ors. 2008 (104) RD 235 has held that the agriculture land cannot be treated to be a residential plot or commercial plot until there is a declaration u/s 143 of U.P.Z.A. & L.R. Act.

12. In the case of Smt. Anusuya Singh v. Commissioner, Faizabad Division, Faizabad and Anr. 2008 (26) LCD 588 this Court has held that the Collector/ District Magistrate is not empowered to declare an agriculture land as Abadi or land for commercial purposes unless there is a declaration to this effect u/s 143 of the U.P.Z.A. & L.R. Act. The mere report of the Tehsildar would not make the land as Abadi land for the purposes of Stamp Act.

13. I have considered the various submissions made by the petitioner''s counsel and the learned Standing Counsel. From the perusal of the impugned order dated 25.11.2005 it is very much clear that the Opposite Party No. 2 while deciding the proceedings u/s 47A of the Stamp Act has taken into consideration the report dated 28.09.2005 submitted by the Nayab Tehsildar, and the documents submitted along with the said report and on that basis had come to the conclusion that there was deficiency in the stamp duty in the registration of sale deed of the land in question and the petitioner is, therefore, liable to pay the same alongwith penalty.

14. The Uttar Pradesh Stamp Valuation of Property Rules, 1997 particularly Rule 7 provides the procedure on receipt of a reference or when suo motu action is proposed u/s 47A of the Stamp Act. The Rule 7(2)(c) provides that the Collector

may inspect the property after due notice to parties to the instrument. The complete reading of the aforesaid rule clearly indicates that while deciding the proceedings u/s 47A of the Stamp Act the Collector or its authority are required to make an inspection after due notice to the parties to the instrument. The proceeding u/s 47A of the Stamp Act shall not be decided merely placing reliance on the ex parte report of the Tehsildar or any authority for that purpose. In the present case the Nayab Tehsildar''s report dated 28.09.2005 does not disclose as to whether any notice was given to the petitioner before inspection of the land in question by the Nayab Tehsildar. Rather it clearly shows that it was an exparte report. Hence the order dated 25.11.2005 was passed in violation of Rule 7(2)(c) of the U.P. Stamp Valuation of Property Rule, 1997.

15. Further, Section 143 of the U.P.Z.A. & L.R. Act clearly provides that where a Bhumidhar uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultary farming, the Assistant Collector Incharge of the Sub-Division may, suo motu or on an application, after making such enquiry as may be prescribed, make a declaration to that effect. Unless a declaration u/s 143 is made the agriculture land will continue to be governed by the provisions of U.P.Z.A. & L.R. Act and it cannot be presumed to be residential or commercial. The Opposite Party No. 2 has come to the conclusion that the land in question is residential on the basis of Nayab Tehsildar report which does not seems to be proper and correct.

16. In view of the aforesaid discussions, the writ petition is accordingly allowed and the order dated 25.11.2005 passed by O.P. No. 2 contained as Annexure No. 1 and the order dated 10.05.2007 passed by the Opposite Party No. 1, Commissioner, Lucknow Division, Lucknow in Appeal No. 520/2005-06 contained as Annexure No. 2 to the writ petition are set aside. The amount deposited by the petitioner pursuant to the interim order dated 10.05.2007 passed by the Commissioner, Lucknow Division, Lucknow in Appeal No. 520/2005-06 shall be remitted back to the petitioner within a period of one month from the date the application is made in this regard. No order as to costs.