(2010) 05 AHC CK 0068

In the Allahabad High Court

Case No : C.M.W.P. No. 1414 of 2010

Smt. Kiran Lata and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:
Stamp Act, 1899 — Section 47A, 56

Citation : (2011) 112 RD 68

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Heard Sri Anil Kumar Aditya, learned Counsel for the Petitioner and learned Standing Counsel.

2. Pleadings of the parties have also been perused. The sale deed/document No. 44 dated 19.8.2009 is the subject matter in dispute for the purposes of determining deficiency in stamp duty.

3. On presentation of aforesaid sale deed for registration the Sub Registrar made a reference for determination of true market value of the property involved for the purposes of levying stamp duty. Accordingly, proceedings u/s 47-A of the Stamp Act were drawn which came to be registered as Case No. 323 of 2009-10. After making spot inspection on 10.9.2009 the impugned order dated 26.9.2009 was passed by the Additional Collector (Finance and Revenue), Allahabad determining the market value of the property under transfer to be Rs. 2,33,95,000/- as against the market value of Rs. 8,00,000/- shown in the sale deed. Accordingly, deficiency in the stamp duty has been determined and a penalty of Rs. 20,000/- has been imposed. The deficiency has been directed to be made good with 1.5% interest per month.

4. Petitioner''s appeal u/s 56 of the Act has been dismissed in stereo type manner by the Chief Controlling Revenue Authority, Board of Revenue, Allahabad

vide order dated 13.11.2009.

5. The above orders dated 13.11.2009 and 26.9.2009 have been impugned in this petition.

6. The submissions of learned Counsel for the Petitioner are that pursuant to the notice issued he had filed objection stating that the market value set out in the instrument is correct and that the prevailing market value in the area is not more than what has been shown in the instrument. The circle rate notified for the area is merely a guideline which is excessive. The land under transfer is barren. The inspection report dated 10.9.2009 states that on enquiry made on the spot the market value of the land appears to be Rs. 30,000/- to Rs. 40,000/- per Bigha but no sale deed even of the said rate is available.

7. A perusal of the impugned orders reveals that the authorities have not dealt with any of the objections raised by the Petitioner and there is no finding that the particulars set out in the sale deed are not sufficient to determine the market value of the land under transfer. The authorities have only referred to the inspection report dated 10.9.2009 but has not even cared to record a finding that the market value suggested in the inspection report is not correct and that it ought to be on the higher side. In fact, apart from the circle rate notified for the area, no material was before the authority to determine the market value. The adoption of circle rate without application of mind vitiates the entire order. No reason has been assigned for relying blindly upon the circle rate when the same was disputed and said to be on the higher side. The burden to prove that the market value set out in the instrument is not correct or is lower is upon the revenue who asserts the same. The said burden has not been discharged by the Respondents.

8. In view of the aforesaid the impugned orders are bad not only for want of non consideration of the objections of the Petitioner but also for the reason that there is no positive evidence to establish the value determined. The orders impugned therefore cannot be sustained in law.

9. In this view of the matter, the impugned orders dated 13.11.2009 (Annexure - 8) passed by Respondent No. 2, the Chief Controlling Revenue Authority, Board of Revenue, Allahabad and 26.9.2009 (Annexure - 6) passed by Respondent No. 3, the Additional Collector (Finance and Revenue), U.P., Allahabad are quashed and the matter is remanded to the Additional Collector (Finance and Revenue), U.P., Allahabad for re-determining the market value of the property in question for calculating the deficiency in stamp duty, if any, in the light of the observations made above, as expeditiously as possible preferably within a period of three months from today.

10. The writ petition is allowed, accordingly.

