(2009) 09 AHC CK 0052

In the Allahabad High Court

Smt. Kusum Lata Jaiswal APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Citation : (2010) 2 AWC 1720(1) : (2010) 2 CivCC 424

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri Vishnu Pratap Singh, the learned Counsel for the petitioner and the learned standing counsel for the respondents.

2. The property in question was jointly owned by Sri Arvind Kumar Jaiswal, the husband of the petitioner and Sri Yogendra Pratap Jaiswal, the brother of the husband of the petitioner and was being used for residential purposes as there existed a room, garage and a verandah. Sri Yogendra Pratap Jaiswal sold his portion to the petitioner by means of a sale deed dated 24.2.1994 as per prescribed residential rates, as applicable as per the circle rates fixed by the authority. It is alleged that the entire house including the open area was being used for residential purposes at the time when the sale deed was executed and that no part thereof was being used for commercial purposes. It transpires that the Sub-Registrar submitted a report alleging that since the land was adjacent to a National Highway, the land had a potential value for being used for commercial purposes and therefore, commercial rates should be made applicable and recommended initiation of proceedings u/s 33/47A of the Indian Stamp Act. Based on the said report, proceedings were initiated against the petitioner for imposition of deficiency of stamp duty. It further transpires that the Tehsildar submitted a report indicating that 3/4th area in question was being used for residential purposes as there existed a house and that on this portion residential rates should be made applicable and on 1/4th area of the land commercial rates should be made applicable inasmuch as the petitioner is installing a weighbridge.

3. The Additional District Magistrate (F and R) agreed with the report of the Tehsildar and calculated the value of the land, calculating 3/4th of the land on residential rates and 1/4th portion of the land on commercial rates and, upon calculation, imposed a deficiency of stamp duty amounting to Rs. 1,52,424. The petitioner, being aggrieved, filed a revision which was dismissed. The petitioner, therefore, has filed the present writ petition.

4. The learned Counsel for the petitioner submitted that admittedly the land in question was earmarked as a residential area and residential rates were applicable. The petitioner had purchased the land from her brother-in-law since it was earlier owned jointly by her husband and her brother-in-law. The learned Counsel for the petitioner submitted that two rates cannot be made applicable on different portions of the land and that the land in question cannot be divided, one portion for residential purposes and another portion for commercial purposes, and that, in any case, the portion, which the petitioner had purchased, was residential at the time when it was purchased and, merely because at some point of time in future, the open land could be utilised for another purpose would not allow the authorities to impose stamp duty at commercial rates on the ground that the land had a potential value for commercial purposes.

5. Having heard the learned Counsel for the petitioner and the learned standing counsel, this Court is of the opinion that the impugned orders passed by the authorities below cannot be sustained. Admittedly, the rates applicable in the area where the land, was located was residential. There existed a house and, as per the Tehsildar''s report, 3/4th of the area was being used for residential purposes and 1/4th area was an open piece of land abutting the house. The market value of the land could not be determined with reference to the use of the land to which the buyer intends to put in use in future. The authorities are required to determine the value of the land on the date on which the sale was made and cannot consider the potential value of the land which it could be put in use in future. This view of mine is fortified in a catena of cases, namely in Ashok Kumar Dubey Vs. State of U.P. and Others, wherein the Court has referred to various judgments which are all applicable to the present facts and the circumstances of the case. The Court is of the opinion, that while determining the market value, the potential of the land as on date of the sale alone could be taken into account in determining the market value and that the potential value of the land that could be put in use in future could not be taken into consideration. Further, the land which is treated as a residential land by the authorities would not be treated to be a commercial land unless that land is declared as a commercial land by the authorities. Further, the authorities could not impose two kind of rates for the same land. The Court finds that in the present case 3/4th portion has been determined as per rates applicable for residential land and 1/4th portion has been determined on commercial basis. This cannot be done. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The writ petition is allowed.

6. This Court finds that by an interim order dated 10.9.1996, the petitioner has deposited a sum of Rs. 50,000. Since the petition has been allowed and the impugned order has been quashed, the authorities are directed to refund the amount of Rs. 50,000 within four weeks from the date of the presentation of the certified copy of this order.

