(2006) 11 AHC CK 0247

In the Allahabad High Court

Smt. Neelam Gupta APPELLANT

Vs

Commissioner, Kanpur Division, Assistant Commissioner (Stampt) and State of Uttar Pradesh RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:
Stamp Act, 1899 — Section 33, 47A

Citation : (2007) 1 ADJ 289 : (2007) 5 AWC 5363 : (2007) 1 AWC 991

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Sri Rajendra Prasad Tiwari, learned Counsel for the petitioner, and learned Standing Counsel for the opposite parties.

2. The petitioner has, by means of this writ petition, assailed the impugned order dated 21.1.2003 passed by the Assistant Commissioner (Stamps), Etawah (respondent No. 2) and the subsequent impugned order dated 1.5.2003 passed by the Commissioner, Kanpur Division, Kanpur (respondent No. 1) u/s 47A of the Indian Stamp Act, 1899 (hereinafter referred to as the Act) dismissing the appeal of the petitioner.

3. It emerges from the record that the petitioner had purchased 1/18th share of Plot No. 924 situate in Village Kaista Tehsil Jaswant Nagar, District Etawah from one Sri Shiv Prasad alias Shiv Pratap alias Punnoo S/o Sri Shiv Charan Lal, R/o Village Qaista, Town & Tehsil Jaswant Nagar, District Etawah for Rs. 32,000/- on 15.7.2002 and a stamp duty of Rs. 42,000/- was paid at the current circle rate of District Etawah.

4. The petitioner''s case, in brief, is that the land in dispute purchased by her is an agricultural land and crops are being sown thereon as and when required. The land was never used for commercial or residential purposes as it is quite away from the Abadi of the town of Jaswant Nagar, District Etawah.

5. A notice u/s 47A and 33 of the Act is alleged to have been issued against the petitioner by the Assistant Commissioner (Stamp), Etawah on 31.12.2002 indicating therein that the petitioner had evaded stamp duty while purchasing the agricultural plot in dispute as the same is alleged to have been purchased for residential or other purposes. According to the Assistant Commissioner (respondent No. 2) the plot was not being used for agricultural purposes.

6. The petitioner filed objection to the aforesaid notice. However, the Assistant Commissioner vide his order dated 21.1.2003 imposed Rs. 1,30,000/- as penalty upon the petitioner for deficient stamp duty, interest etc. and thereafter recovery order was also issued against the petitioner in pursuance thereof.

7. The petitioner challenged this order before the Commissioner, Kanpur Division. Kanpur who has also formed the same opinion as was formed by the Assistant Commissioner (Stamp), Etawah. Both the authorities have placed reliance upon the report of the Tehsildar that the land in dispute is situate at Etawah-Agra Road and in future this could be used for commercial or residential purposes. Both the authorities did not find favour with the assertions made by the petitioner that the plot/land was being used for the agricultural purposes. The petitioner has in support of his assertions placed relevant copies of revenue records, i.e., Khasra and Khataunis to demonstrate that the land was covered by melon, wheat crop and musk-melon etc. and was irrigated by the old well situate on the plot.

8. The Commissioner (respondent No. 1) although has referred to the entries recorded in the Khasra, but has given weightage to the Tehsildar''s report dated 22.10.2002. It has been observed in the order of the learned Commissioner that if the Khasra entries would have been placed before the Assistant Commissioner, this point could have been appreciated or considered by the Assistant Commissioner. The learned Commissioner has drawn an inference that the land could have been used as a kitchen garden.

9. The learned Standing Counsel has vehemently opposed the contents of the writ petition. Placing reliance upon a decision of this Court rendered in Aniruddha Kumar and Ashwini Kumar Vs. Chief Controlling Revenue Authority, Uttar Pradesh, Allahabad and another, he contends that the impugned orders passed by the learned Assistant Commissioner (Stamp) and the Commissioner are just, legal and proper. As per the learned Standing Counsel, both the aforesaid authorities formed concurrent opinion and passed the impugned orders after being convinced that there was sufficient documentary evidence to assess the stamp duty and impose penalty against the petitioner.

10. It is evident from the relevant extracts of revenue records, i.e., Khasra and Khataunis that the plot in dispute was defined as agricultural land and the same was being used for agricultural purposes. As per Khasra entries, at the relevant time melon and wheat crop was sown on the plot. Existence of a well and a temple also proves this fact that the land was not part of residential building nor was used as a kitchen garden as indicated by the Commissioner. The petitioner

had put forth all these submissions before the Assistant Commissioner but could not unfortunately find his favour. Similarly the Commissioner also did not appreciate the revenue entries properly.

11. The Commissioner ought to have appreciated the Khasra entries himself and should not have relied upon the report of the Tehsildar and the order of the Assistant Commissioner. The appellate authority is expected to make his own assessment of the entire material and evidence available on record and should not be guided from the decision taken by subordinate authorities or assessing authority under the Act.

12. It is evident from a perusal of entire record that the petitioner has purchased only 1/18th share of the total holding of Plot No. 924 aforesaid. It is also borne out from the record that the petitioner was not confronted with the Tehsildar''s report.

13. This Court while appreciating the provisions of Section 33 and 47A of the Act along with Rules 340 and 350 of the Rules framed under the Act has held that the valuation of a property has to be determined on the basis of convincing material/documents which could be made available before the authority concerned at the time of taking decision. The present status of the land is to be seen and the presumption that the plot has a potential in future like becoming a commercial or residential area is not relevant in the present case. What kind of plot was purchased was an agricultural land having a standing crop thereon and not a commercial or residential land/property. The revenue records also reveal that the land/plot was agricultural in nature and not a residential or commercial one. The petitioner''s case is squarely covered by the decision rendered in Aniruddha Kumar and Ashwini Kumar (supra) wherein (paragraph 14) it has been held:

...even though some fraction of an agricultural land has been purchased, still then on the date or purchase it remains agricultural land and, therefore, it cannot be treated to be a residential plot and the valuation cannot be determined straightway on such an assumption that the land is situated in close proximity or residential plot and that the land has to be treated as residential plot and the valuation is to be determined on the basis of building potential....

14. The Court relying on the Hon''ble Supreme Court decision rendered in P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, further (paragraph 19) held:

The question of future potential cannot be a factor for determining the market value of such a land for the purpose of stamp duty payable under the Stamp Act The vendee pays the price that satisfies the vendor and, therefore, it is the utility of the land as on the date of transfer by the vendor and as such, if the land was an agricultural land, it has to be treated as such and the valuation has to be done accordingly. Whether in future the purchaser puts the land into residential use or changes the character is immaterial for the purpose of payment of stamp duty.

15. In view of the above discussion, the writ petition is allowed. The impugned orders dated 21.1.2003 and 1.5.2003 passed by the Assistant Commissioner (Stamp), Etawah and the Commissioner, Kanpur Division, Kanpur respectively are quashed. The matter is remanded back to the Assistant Commissioner (Stamp) to determine the market value of the property/land as agricultural land. The said authority shall also take into account the entries recorded in Khasra and Khatauni of the relevant year when the sale deed was executed. The parties would be at liberty to represent their respective cases and lead evidence before the Assistant Commissioner (Stamp). The material already on record may also be taken into account by the Assistant Commissioner (Stamp). The amount already deposited by the petitioner shall either be adjusted or refunded to him in accordance with law. The determination shall be made expeditiously within three months from the date of presentation a certified copy of this order before the authority concerned.