(2011) 03 AHC CK 0161

In the Allahabad High Court

Case No : Writ C No. 12752 of 2011

Smt. Neelam Tripathi APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 47A, 56

Citation : (2011) 03 AHC CK 0161

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard learned Counsel for the Petitioner and learned Standing Counsel for the State-Respondents.

2. In proceedings u/s 47-A of the Indian Stamp Act, the Assistant Commissioner (Stamp), Basti vide order dated 27th September, 2010 has found that there was short payment of stamp duty on the sale-deed by the Petitioner. Accordingly, an order has been passed requiring the Petitioner to deposit a sum of Rs. 1,63,100/- plus penalty of Rs. 730/- along with interest at the rate of 1.5% per month on the said amount, the total being Rs. 2,33,000/-. Not being satisfied with the order so passed by the Assistant Commissioner, the Petitioner filed an appeal before the Commissioner, Basti Division, Basti u/s 56 of the Indian Stamp Act being appeal No. 782 of 2010. The Deputy Commissioner (Stamp) has dismissed the appeal vide order dated 9th December, 2010. Hence the present writ petition.

3. Learned Counsel for the Petitioner contends that both the authorities have misdirected themselves in holding that the stamp duty was payable at residential rates qua the property under transfer, having regard to the potential of the land. Learned Counsel for the Petitioner with reference to the judgment of this Court in the case of Ashok Kumar Dubey Vs. State of U.P. and Others, submits that future potential of the land cannot be looked into for determining its market value.

Therefore, the orders impugend are illegal.

4. Learned Standing Counsel in reply points out that from the order of the appellate authority, it is apparently clear that the Petitioner herself made an application before the Assistant Commissioner (Stamp) on 27th September, 2010, categorically stating that she is ready and willing to deposit the deficiency of the stamp duty provided the penalty is waived. After taking into consideration all aspect of the matter, the impugend order has been passed. He further clarifies that in respect of other portion of same plot, other purchasers, namely, Smt. Gita Pandey and others had paid the stamp duty at the residential rates.

5. I have considered the submissions made by the learned Counsel for the parties and have examined the records of the present writ petition.

6. From the orders impugned it is apparently clear that there was a wrong recital about the exact location of the plot in the sale-deed. The land was situate at a distance of only 81 metres from the main road i.e. Basti-Jhansi Marg. Further there were residential area all around plot in question. The other purchasers of part of same plot namely, Smt. Gita Pandey had paid stamp duty at the sale transaction at residential rates. Lastly, it has been recorded that the plot was in the shape of Gaddha completely unfit for agricultural purposes.

7. In the totality of the circumstances, as noticed herein above, both the authorities have rightly come to the conclusion that the property had the potential for residential use and they have correctly determined the stamp duty payable. Findings recorded by the authoritis are based on appreciation of evidence, which cannot be said to be perverse or based on no evidence, so as to warrant any interference by this Court under Article 226 of the Constitution of India.

8. So far as the judgment relied upon by the learned Counsel for the Petitioner in the case of Ashok Kumar Pandey (Supra) is concerned, there can be no quarrel that future potential is not to be seen. The Hon''ble Supreme Court of India has time and again held that for the purpose, the stamp duty and current market value of the land would be the determining factor. It is on the aforesaid legal principle that the impugend orders have been passed. There is no illegality or infirmity in the order passed by the authorities.

9. Learned Counsel for the Petitioner could not dispute that application was made before the first authority itself for payment of entire short fall in payment of stamp duty provided the penalty was waived.

10. The present writ petition is accordingly dismissed.

