**(2008) 01 AHC CK 0046**

**In the Allahabad High Court**

Smt. Omwati APPELLANT

Vs

Commissioner, Meerut Division and Others RESPONDENT

**Date of Decision :** 18-01-2008

**Acts Referred:**

**Citation :** (2008) 2 AWC 1179 : (2008) 104 RD 386

**Hon'ble Judges :** Vineet Saran, J

**Bench :** Single Bench

**Final Decision :** Allowed

# Judgement

Vineet Saran, J.—The petitioner purchased a residential plot of land measuring 100 sq. yards (83.61 sq. meters) vide sale deed dated 17.4.2003. The said transaction was for a sale consideration of Rs. 84,000 and the requisite stamp duty of Rs. 8,400 as required under the law, was paid by the petitioner. On a complaint having been filed by some person, the Sub-Registrar inspected the property on 12.2.2004 and submitted a report to the effect that a two storied house with a basement was constructed on the said plot and assessed the valuation of the construction as well as the land to be Rs. 9,02,000 and a deficiency of stamp duty of Rs. 81,800 was reported.

2. On the basis of the said report, the petitioner was issued a'' show cause notice. In her reply she categorically stated that the construction was made subsequent to the purchase of the plot, regarding which she had adduced certain evidence. However, by an order dated 17.10.2005 passed by the Additional Collector, deficiency of stamp duty of Rs. 81,800 was assessed and the petitioner was directed to deposit the same. Aggrieved by the said order the petitioner filed an appeal before the Commissioner, Meerut Division, Meerut, who dismissed the appeal by his order dated 22.6.2006. Challenging the said orders this writ petition has been filed.

3. I have heard Sri Siddharth, learned Counsel for the petitioner and the learned standing counsel for the respondents. Pleadings have been exchanged. With

consent of the learned Counsel for the parties, this writ petition is being disposed of at the admission stage.

4. From a perusal of the inspection report dated 12.2.2004 it is clear that there is no finding recorded by the Sub-Registrar to the effect that the building was in existence prior to the date of sale deed. On the contrary, the petitioner has taken a specific case before the authorities below that the construction was made after the sale deed was executed. In support thereof the petitioner had submitted the plan of the architect prepared after the sale deed and also produced her bank pass book to show that withdrawal to the extent of about Rs. 4 lacs had been made by her after the sale deed had been executed, which amount was utilized for the construction on the plot. She also filed her affidavit, as well as that of the contractor, in support of her case that the constructions were made after the sale deed was executed. However, the authorities below have relied on the report of the Sub-Registrar and held that there was deficiency in payment of stamp duty, without even recording any specific finding that the constructions were made prior to the execution of the sale deed. The petitioner has also categorically stated that after the constructions had been made, an electricity connection had been taken months after execution of the sale deed, which has not been denied by the respondents in the counter-affidavit.

5. It is not the case of the respondents that the land in question was undervalued. An inspection was got done after ten months of the execution of the sale deed. It is also not the case of the respondents that the constructions found on the date of inspection could not have been made within the period which was after the execution of the sale deed and till the date of the inspection. For imposing liability for payment of additional stamp duty, it would be the duty of the respondents to categorically show that there was some concealment made by the petitioner at the time of execution of the sale deed. On mere presumption that constructions existing after nearly a year, must have been existing at the time of execution of the sale deed, stamp duty cannot be imposed after valuing the constructions, without giving a categorical and specific finding that at the time of execution of the sale deed, such constructions had existed. It is settled law that market value, for the purpose of determining the stamp duty, has to be determined with reference to the date on which the document is executed and not on the basis of any improvements made on it thereafter. The Sub-Registrar or the authorities concerned should have verified the same prior to registration of the sale deed or immediately thereafter, but imposing liability for payment of additional stamp duty on the basis of a report submitted after nearly an year of the execution of the sale deed during which period admittedly such constructions could have been made, would not be justified. As such, the orders impugned in this writ petition are based on no sufficient evidence to show that there is any concealment of any material fact on the part of the petitioner or that the petitioner had purchased the plot with constructions.

6. Accordingly, this writ petition stands allowed. The order dated 17.10.2005.

 

passed by the Additional Collector and the order dated 22.6.2006, passed by the Commissioner, Meerut Division, Meerut, are quashed. In case if the petitioner has already deposited any amount in pursuance to the interim order passed by this Court, the same shall be refunded to her within a period of two months from the date of production of a certified copy of this order before the respondent No. 2. In case if the amount is refunded within the said period, the petitioner would not be entitled to any interest. However, in case of default in refunding the amount to the petitioner within the aforesaid period of two months, the petitioner shall be entitled to interest at the rate of 12% per annum from the date of default till the date of actual payment.

 