(2008) 12 AHC CK 0026

In the Allahabad High Court

Smt. Rekha Devi — APPELLANT

Vs

Chief Controlling Revenue Authority U.P./Commissioner Stamp U.P. and Another — RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0026

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Heard Counsel for the parties.

2. By means of the order dated 12.12.2008, it is provided that in case instructions are not made available to the Chief Standing Counsel, Collector, Pratapgarh will appear in person on 18.12.2008 to assist the Court.

3. It is submitted by the Counsel for the petitioner that on 10.3.2006, the petitioner purchased 1/4th portion of plot No. 164-Ka of Village Shivset, Pargana Shivgarh, Tahsil Raniganj, District Pratapgarh from one Nizamuddin and the sale deed thereof was registered before the Sub-Registrar on the circle rate of the station and valuation of property as prevailed on the said date. After completion of all formalities, the petitioner applied for mutation on 22.4.2006. Thereafter, on 28.6.2006, the Indian Oil Corporation published an advertisement in Dainik Jagaran inviting applications for allotment of dealership of retail outlet. Petitioner submitted her application for allotment on 26.7.2006. On 24.8.2006, the petitioner was interviewed and was found suitable. On 24.10.2006, the Indian Oil Corporation issued Letter of Intent requiring the petitioner to complete the formalities including change of use of the proposed land. Then on 5.5.2007, the petitioner moved an application before the Collector, Pratapgarh seeking permission for change of use of the aforesaid land for the purpose of Abadi/other than agriculture. On 3.7.2007, the Deputy Collector granted permission to the

petitioner for change of land of plot No. 165-Ka acquired by the petitioner. The petitioner was served with a show-cause notice issued by the Collector, to which the petitioner tendered her reply. By means of the order dated 7.8.2008, the Collector Pratapgarh without entering into the genuineness of bona fide of the petitioner passed the order imposing deficiency of stamp duty and penalty against the petitioner in a most arbitrary and illegal manner on surmises and conjectures. The petitioner filed Revision and the Revisional Authority by means of the order dated 12.11.2008 rejected the revision and upheld the order passed by the Collector, Pratapgarh.

4. Counsel for the petitioner submits that the Deputy Collector itself had granted conversion of land use and levy of stamp duty at the time of registration of transaction cannot legally be imposed on the basis of possible/presumed future use of the article (land) under registration. Moreover, the State Government had issued a Government Order dated 16th August, 1999 directing that the value of the plots of land is not to be determined on the basis of the potential value of the land but according to the rates applicable on the date of execution of the sale deed.

5. Counsel for the petitioner contends that ignoring the above statutory provisions and Government Order, the Deputy Commissioner, Stamps in an arbitrary manner held the sale deed to be undervalued. Against the said order, revision was preferred by the petitioner but the Revisional Authority also rejected the revision vide order dated 12.11.2008 without considering the legal pleas raised by the petitioner.

6. State Counsel submits that the order dated 7.8.2008 and 12.11.2008 are perfectly justified and there is no infirmity. He also submits that the petitioner has not produced any evidence regarding agriculture activities over the land in question.

7. In the case of Prakashwati v. Chief Controlling Revenue Authority, Board of Revenue 1996 AWC 1331, the Apex Court had held that situation of a property in an area close to a decent colony not by itself would make it part thereof and should not be a factor for approach of the authority in determining the market value. According to the said decision, valuation has to be determined on constructive materials which could be made available before the authorities concerned.

8. In Aniruddha Kumar and Ashwini Kumar Vs. Chief Controlling Revenue Authority, Uttar Pradesh, Allahabad and another, and Smt. Anasuya Singh v. Commissioner, Faizabad Division 2008(26) LCD 588, on which reliance has been placed by the petitioner, this Court has referred the aforesaid Prakashwati''s case [supra] and observed as under:

In the present case, the market value is to be determined on the basis of the value that would satisfy the vendor. Thus, 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. The principle that has been laid down in P. Ram Reddy (supra) can be attracted for the purpose of determining the market value only to the extent of potential as on the date of transfer and not beyond. Thus, the market value has to be determined according to the factors, which includes the situation of the land, the amenities available in and around and various other factors, including the close proximity of the residential area as well as any transfer made immediately before the transfer or after the transfer in close proximity if such documents are produced in respect of the area that similarly situated land by either of the parties.

9. In Rakesh Chandra Mittal''s case[supra] a Division Bench of this Court held:

It is well settled that market value of the property has to be determined with reference to the date on which the document is executed. Market value as such keeps on varying and changing. Any subsequent improvement or change in the nature or user of the land, which may result into enhancement of the market value of the property on the date of execution of the document that is to be considered for the purpose of determination of property stamp duty payable on the instrument.

10. Apart from the above decisions, recently a Full Bench of this Court in the case of Shri Ramesh Chandra Srivastava, Kanpur v. State of U.P. and Ors. 2007 UPTC 335 held that the market value of the property has to be determined with reference to the date on which the document is executed.

11. The valuation cannot be determined straightway on such an assumption that the land is situated in close proximity of ''''abadi'' area or on the presumption that the land is to be used for a purpose other than the agriculture. As averred above, the Full Bench of this Court has clearly held on the basis of the various provisions of the Stamp Act, that the market value is to be determined with reference to the date on which the document was executed and that any subsequent change in the nature or use of the land which may result in the enhancement of the market value of the property was not to be taken into account.

12. Thus, the legal position which emerges out from the aforesaid cases is that the market value of the land cannot be determined with reference to the use of the land to which buyer intends to put it. The market value is what a general buyer may offer and what the officer may reasonably expect. In determining the market value, the potential of the land as on the date of sale alone can be taken into account and not what potential it may have in the distant future. Any subsequent improvement or change in the nature or user of the land, which may

result into enhancement of the market value of the property, is not to be taken into account and it is only the value of the property on the date of execution of the document that is to be considered for the purpose of determination of proper stamp duty payable on the instrument.

13. In addition to above legal proposition, it may be pointed out that the State Government has issued a Government Order dated 16.9.1999 to all the Divisional Commissioners, District Magistrates and Additional District Magistrates (Finance & Revenue), providing therein that while determining the valuation of the property under 1997 Rules, neither the future potential or use of the property nor the status of the purchaser (Organization, Society, Company etc.) will not be taken into consideration.

14. Having considered the submissions made by the learned Counsel for the parties and the materials placed before this Court, it appears that the authority had proceeded to determine the value on the presumption that though the land is agricultural land but it has not been purchased for the said purpose. The said presumption does not appear to be sound and reasonable.

15. Accordingly, the writ petition is allowed with Rs. 10,000/- as costs and the impugned orders dated 7.8.2008 and 12.11.2008 are hereby set-aside. Respondents shall act accordingly. The costs shall be paid by the erring officers within a period of two months, who have not responded to the orders passed by this Court. In case, the same is not paid by the erring officers within the aforesaid period, the State Government is directed to deposit the same and he may recover the costs from the erring officers.

