(2016) 12 AHC CK 0030

In the Allahabad High Court

Case No : Writ C. No. 75192 of 2010

Smt. Somlata Tanwar APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 05-12-2016

Acts Referred:

Stamp Act, 1899 — Section 47A
Uttar Pradesh Stamp Rules, 1942 — Rule 340A (a)

Citation : (2017) 1 ADJ 403 : (2017) 2 AllWC 1625 : (2017) 135 RD 1 : (2017) 1 RJ 645

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Advocate : I.P. Singh, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Pramod Kumar Srivastava, J. - Petitioner had purchased disputed building by registered sale-deed dated 07.12.2006, the copy of which is Annexure-1 to this writ petition. On 22.01.2007 Sub-Registrar-II, Gaziabad had inspected the purchased property relating to said sale-deed and submitted his report, on basis of which Additional Commissioner Stamp, Gaziabad had submitted his report dated 25.01.2007 to respondent No.-3 ADM (Finance and Revenue) Gaziabad. In this report it was mentioned that whole of the disputed property may be used for commercial purposes, it was also reported that on ground floor (that was mentioned in impugned order as basement), there are shops and said floor is being used for commercial purposes, and first and second floor are covered that may be used for commercial purposes in future. It was also mentioned in this report that on third floor of the building there is a covered latrine, the area of which is 2.5 sq. meter. Sub-Registrar reported to respondent No.-3 that these facts were concealed in sale-deed; and considering for prospective commercial use of building and not mentioning of 2.5 sq. meter latrine and the valuation of property, he reported that there is deficiency of stamp fees of Rs.5,68,900/-. After receiving report from Sub-Registrar the respondent no.-3 ADM had issued show cause notice to petitioner.

2. Against said notice of respondent No.-3 Additional Collector (Finance and Revenue), petitioner had filed objection/explanation in which it was specifically mentioned that ground floor of the building has shops, but the first and second floor of the building is being used for residential purposes, but the incorrect report has been submitted by Sub-Registrar.

3. After hearing the respondent No.-3 had passed order dated 15.11.2007 by which it was held that basement of the building is covered paint store, and the first and second floor of the building is also covered which may be used in future for commercial purposes, and third floor has covered latrine area of 2.5 sqare meter., the valuation of which is Rs.10,500. These facts were concealed by petitioner. With these findings, respondent No.-3 had confirmed the report of Sub-Registrar and passed direction for payment of deficient stamp fees of Rs.5,68,900/- along with Rs.1,00,000/- as fine and regarding realization of this amount at the rate of 1.5% per month interests.

4. Aggrieved by this order dated 15.11.2007 of respondent No.-3, the petitioner had preferred appeal no. 252/2008-09 Smt. Somlata Tanwar v. State of UP, that was heard and dismissed by the judgment dated 22.11.2010 of respondent No.-2 Commissioner Meerut Division, Meerut. In this judgment the respondent No.-2 had confirmed the finding of respondent No.-3 and held that respondent No.-3 had rightly found that first and second floor of the building in question is being used for commercial purposes.

5. Aggrieved by the order dated 15.11.2007 of respondent No.-3 and judgment dated 22.11.2010 of respondent No.-2, present writ petition has been preferred.

6. Learned counsel for the petitioner had submitted that respondent No.-2 had incorrectly mentioned in impugned judgment that first and second floor of the covered area of building in question is being used for commercial purposes because this is not the case either of petitioner nor is mentioned in report of Sub-Registrar or in impugned order dated 15.11.2007 if respondent No.-3. He further submitted that no fact was concealed by petitioner regarding first floor of the building because in sale-deed dated 07.12.2006, it is specifically mentioned that ground floor of said building is commercial and first and second floor of said building is residential. This fact was neither denied in report of Sub-Registrar nor in order of respondent No.-2. In the impugned order dated 15.11.2007 of respondent No.-3, it is no where held that first and second floor of said building is being used for commercial purposes; and only this is mentioned in said order that in future there is possibility of these two floors may be used for commercial purposes. In their objection before respondent No.-3, petitioner had specifically pleaded that first and second floor of said building is being used for residential purposes by him. These facts were no where denied, but on the basis of probabilities of future, the impugned order has been passed by respondent No.-3. The other impugned order dated 22.11.2010 was also passed for some

reason of probabilities for future regarding first and second floor of the building in question.

7. As discussed above, it has been admitted fact that ground floor of the building is mentioned in sale-deed in question as portion being used for commercial purposes and for it proper stamp fees was paid. Therefore, there is no error in payment of stamp fees regarding the portion of ground floor being used as commercial purposes at the time of execution of sale-deed and thereafter.

8. So far, the first and second story of the building in question is concerned, it is mentioned in the sale-deed as residential property. Neither he nor Additional Commissioner Stamp, Gaziabad had reported in their report dated 25.01.2007 that first and second floor of said building was being used for commercial purposes, nor there is any evidence in that regard. Notice was issued to petitioner considering the probabilities and future potentiality of said building to be converted into commercial use.

9. In Rajesh Pandey v. State of UP (2011) 4 All LJ 433, the Apex Court had held as under:

"20. It is also well recognised that the relevant date for determining the market value of the property is the date of the sale and that stamp duty is to be charged on the market value of the land depending upon its use to which it was put at the time of the sale and not on future potentiality.

21. It may also be worthy to note that though size and location of the property are important factors in determining the market value but nonetheless mere location or size is not sufficient e.g. the land use of an agricultural land in the urban area or of residential land in the commercial area would not ipso facto change unless it is proved that its nature has undergone a change.

22. Market value has to be determined on the basis of the constructive material produced before the authorities which is completely lacking in the present case."

10. On the basis of above legal position as discussed by Hon''ble Apex Court, this finding of respondent No.-3 in its judgment dated 15.11.2007 and finding of respondent No.-2 in its judgment dated 22.11.2010 is legally baseless and erroneous that the building being used for residential purposes or non-commercial purposes may be considered for the purposes of stamp fees as property being used for commercial reasons, on basis of future potentialities.

11. In Ramesh Chand Bansal v. District Magistrate/Collector (1999) 5 SCC 62, the Apex Court has held as under:

"5. The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is a matter of common knowledge that in order to escape such duty by unfair practise, many a time undervaluation of a property or lower consideration is mentioned in a sale-deed. The imposition of stamp duty on sale-deeds is on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast on the authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, the Act empowers an authority to charge stamp duty on the instrument presented before it for registration."

12. It is apparent from perusal of record, even from perusal of impugned orders that there is no error in assessment of stamp duty and its payment at the time of execution of sale-deed in question. In said sale-deed nature of different portion of the property was specifically mentioned which was never denied by the respondents, but in spite of it on basis of speculation, hypothesis and probabilities, the impugned orders had been passed by respondent No.-3 and respondent No.-2 without any justification.

13. It is pertinent that some erroneous facts were also mentioned in impugned judgment dated 22.11.2010 of respondent No.-2 when it had mentioned that first and second floor of building in question was being used for commercial purposes. There has been no report in that regard nor any evidence was ever adduced before respondent No.-3 or 2 to show that there has been any commercial user of first and second portion of building in question. Thus, finding of fact given by respondent No.-2 is also erroneous and incorrect.

14. Section 101 and 103 of Indian Evidence Act read as under:

"101. Burden of proof.- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

"103. Burden of proof as to particular fact.- The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

15. In present case it was respondents who desired to make believe that the first and second floor of property in question was being used for commercial purposes or may be used for such purposes. The petitioner had denied any such user. Therefore, the burden of proof of said fact of future probabilities of commercial user was on respondents, who had not given any reason in support of their findings. Therefore such observation of respondents through their impugned orders are unacceptable and are altogether baseless.

16. There remains fact regarding existence of a bathroom of small area 2.5 sq. meter. It has been mentioned that said bathroom is covered one. It is not specifically mentioned that whether said tiny area of covered bathroom is temporary construction or permanent construction or it is simply surrounded and covered by temporary material. There is no evidence to show that said bathroom

was present at the time of execution of sale-deed in question. The burden of proving its existence at the time of execution of sale-deed in question was on the respondents, as legal position discussed above. But neither there is anything regarding that in report of Sub-Registrar or Additional Commissioner Stamp, nor is there in impugned orders of respondent No. 2 and 3. the stamp duty has to be levied from status of property at the time of execution of sale-deed. In absence of any averment and prove that said 2.5 sq. meter covered bathroom area was present at the time of execution of sale-deed, the assessment of cost of that construction (Rs. 12,500/-) and imposition of stamp duty by respondents is also found erroneous and unacceptable.

17. It is settled legal position that the imposition of stamp duty on sale-deeds is on the actual market value of such property and not the value described in the instrument. For determining the market value of the property is the date of the sale, and that stamp duty is to be charged on the market value of the property upon its use to which it was put at the time of the sale and not on future potentiality. The obligation is cast on the authority to properly ascertain its true value. Market value has to be determined on the basis of the positive material produced before the authorities, the evidence of which is completely lacking in the present case.

18. In view of above, the impugned orders dated 15.11.2007 passed by respondent No.-3 Additional Collector and the Judgment dated 22.11.2010 passed by respondent No.-2 Additional Commissioner are hereby set aside. Accordingly this writ petition succeeds, and is allowed.

19. The amount, if any, deposited by petitioner after passing of the impugned orders shall be refunded to him immediately, within two months, failing which it may be recovered from respondents with interest at the rate of 8% per annum from the date of deposition of said amount.

