(2013) 02 AHC CK 0121

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 55984 of 2006

State of U.P. APPELLANT

Vs

Brijendra Kumar Gupta and Others RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:
Stamp Act, 1899 — Section 33

Citation : (2013) 3 ADJ 202 : (2013) 4 AWC 4018

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Vijendra Singh and S.C, for the Appellant; M.K. Gupta, Pankaj Agrawal and P.K. Jain, for the Respondent

Judgement

S.U. Khan, J.—Heard learned standing counsel for the petitioner State and Shri P.K. Jain, learned Senior Counsel for the respondents. Through registered sale-deed dated 12.7.1999 presented for registration on 13.8.1999 respondents purchased a cinema building. Total area of the land including the constructed portion was 1904.64 Sq. Meter. Sale consideration was shown to be Rs. 89,25,000/- however, stamp duty was paid on the market value of Rs. 1,02,00,000/-. At the relevant time the rate of commercial land as shown in the circle rate circulated by the Collector was Rs. 10,000/- per sq. meter. In the sale-deed the value of machinery and fitting etc was shown to be Rs. 2,65,000/-. Sub Registrar (II), Meerut impounded the document before registering the same and sent the same to Collector, Meerut along with report dated 16.8.1999. According to the said report total value of the land was Rs. 1,90,46,400/-. Thereafter an amount of Rs. 85,70,880/- was determined as market value of the construction. The said figure was arrived at by multiplying presumptive monthly rent at the rate of Rs. 15/- per sq. meter by 25 years. Adding the value of machinery etc as Rs. 2,65,000/- to the above two figures the total market value was determined to be Rs. 2,78,82,280/-. Payable stamp duty was determined to be Rs. 27,88,300/- (at the rate of 10%). After deducting the stamp duty of Rs. 4,25,000/- paid on the sale-deed recovery of Rs. 2,36,23,000/- was recommended.

2. In the sale-deed copy of which is Annexure-1 to the writ petition it is mentioned that earlier agreement for sale had been executed on 2.2.1999 on which stamp duty of Rs. 5,95,275/- had been paid hence remaining amount of Rs. 4,25,000/- from the total requisite stamp duty of Rs. 10,20,275/- was being paid. The Registrar in his report dated 16.8.1999 mentioned that regarding agreement documents were not available with him.

3. On the basis of report of Registrar a case in the form of Case No.-V-101 of 2001-02 u/s 47-A and 33 Stamp Act State v. Bijendra Kumar Gupta was registered on the file of Additional District Magistrate, Finance & Revenue, Meerut. A.D.M., Finance & Revenue decided the matter on 3.9.2004. The A.D.M. fully agreed with the report of the Sub-Registrar holding that payable stamp duty was Rs. 27,83,300/- and after deducting the entire stamp duty of Rs. 10,20,275/- paid on the sale-deed and agreement for sale, deficiency of Rs. 17,68,025/- was determined and an equal amount was also directed to be paid as penalty (total Rs. 35,36,050/-). The case was decided on 3.9.2004.

4. Against the said order respondents filed Stamp Appeal No. 8 (M) of 2003-04 - Bijendra Kumar Gupta and others v. State of U.P., before C.C.R.A./Board of Revenue Allahabad. The C.C.R.A. completely allowed the appeal through judgment and order dated 7.3.2005 holding that more than required stamp duty had been paid. Board of Revenue placed reliance upon some circular/G.O. of 22.5.1999 providing that in order to give impetus to cinema business the rate shown in circle rate for the industrial purpose should be applied. Such Government Orders cannot control the Act or the Rule framed thereunder unless suitable amendment is made in the Act or the Rule. Nature of property cannot be changed. Premises where films are shot may be industry but picture hall where film is exhibited is not an industry. It is a commercial place.

5. Accordingly, judgment and order passed by the C.C.R.A. cannot be sustained.

6. However, the judgment and order passed by the A.D.M. also cannot be sustained. First of all there was absolutely no occasion to impose any penalty. Secondly there was absolutely no occasion to determine the value of the entire land at the commercial rate and then add the value arrived at by determining 25 years rent at the presumptive rental value per sq. meter. If market value of a building is to be determined on the basis of income/ rental value/presumptive rental value then it is an absurdity to add the cost of the land thereto. Super structure cannot be let out or can be of any use without the land over which it is constructed.

7. In my opinion market value of the land was rightly determined to be Rs. 1,90,46,000/- by the Additional District Magistrate. Rs. 2,65,000/- shown as market value of the machinery and fittings etc will have to be added to that. The resultant figure will be Rs. 1,93,11,000/-.

8. The cinema hall was constructed in 1965. Accordingly, the depreciated value of cost of construction cannot be more than Rs. 7 lacs. In this manner, the total valuation comes to Rs, 2 crores. Payable stamp duty is Rs. 20 lacs. After deducting Rs. 10 lac the deficiency comes to Rs. 9,79,725/- (Rs. 9,80,000/- in round figure). Let this amount be deposited by the respondents within three months and thereupon the sale-deed shall at once be registered and returned to the respondents. However, if it is not deposited within three months then 2% per month interest shall be payable thereupon since after three months till actual deposit,

9. Both the impugned orders are modified accordingly.

10. Writ petition is disposed of. Office is directed to supply a copy of this order free of cost to Shri S.P. Mishra, learned standing counsel.

