(2013) 01 AHC CK 0281

In the Allahabad High Court

Case No : Writ C No. 2714 of 2006

State of U.P. — APPELLANT

Vs

Viswambhar Singh and Others — RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:
Stamp Act, 1899 — Section 47A(1)

Citation : (2013) 01 AHC CK 0281

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

Final Decision : Disposed Of

Judgement

Sibghat Ullah Khan, J.

Heard learned standing counsel for the petitioner State and learned counsel for the respondents.

Normally in stamp deficiency matters sellers/purchasers file writ petitions, however, this writ petition has been filed by the State.

Respondents purchased 1588.62 (or 1658.58) sq. meter land through sale deed which was presented for registration on 6.2.2003. The purchased property contained a Cinema Hall situate on Ambala Road, Saharanpur. The sale consideration shown in the sale deed was Rs.35/ lac and stamp duty of Rs.3.5 lac was paid. The Sub Registrar where the sale deed was presented for registration was of the opinion that it was insufficiently stamped hence he referred the original sale deed to the Collector Stamp under Section 47A(1) of Stamp Act. The matter was registered as case no.316/531 of 200203 on the file of Deputy Commissioner Stamp, Saharanpur. Objections were filed by the respondents contending that they had paid Stamp duty in accordance with the circle rate and the construction was about 100 years old. A committee of three officers was appointed. Each member gave separate report regarding valuation. Copies of reports are Annexure 4, 5 and 6 to the writ petition. Deputy Commissioner Stamp decided the matter on 19.2.2004 holding that the market value was

Rs.3,22,25,000/. Through order dated 19.2.2004 Rs.2872500/ was determined as deficiency in stamp duty. Rs.5,60,000 and odd as 13 months interest. Rs.1,67,000/ and odd as penalty total amount Rs.36,00000/

The three officers who had been appointed to inspect the property had given different valuations. Through Annexure 4 and 5 valuation was determined to be Rs.1 crore if the property was used as cinema hall otherwise Rs.2 crore if it was used for commercial purposes. However, the third officer i.e. Deputy Registrar in his report Annexure 6 had mentioned the valuation to be 3,23,17,266/. Against the order dated 19.2.2004 respondents filed revision being stamp revision case no.4 of 2004 2005. C.C.R.A/Board of Revenue, Allahabad allowed the revision in part through order dated 17.2.2005. The revisional court held that an area of 500 sq. meters which abutted Ambala road should be valued @ of Rs.5720/ per sq. meter and remaining area of 1150.58 sq. meter @ Rs.3575 per sq. meter as per circle rate fixed by the Collector for non commercial purposes as it was situate on only 12 feet wide road. Thus market value of the land came to Rs.6970322. The ''ruined and dilapidated structure'' was valued at Rs.794668/ (total valuation Rs.7764990). Ultimately it was held that proper stamp duty payable was Rs.776499. Rs. 3,50,000/ stamp duty had already been paid on the sale deed. Accordingly, respondents were directed to pay Rs.426499 more as deficiency in stamp duty.

The Deputy Commissioner Stamp in its order dated 19.2.2004 had held that the building was about 60 years old, however, it held that in view of rule 5 of Stamp Rules of 1997 no depreciation was permissible in the building. Accordingly, it calculated the market value of the construction to be Rs.48,00000/ according to the rate fixed by the D.M. for the new construction. This view was utterly erroneous in law. In Ram Khilawan Vs. State of U.P. 2005 R.D.(98) page 511 I have held that Rules of 1997 are meant only to initiate the proceedings, however, while deciding the case matter has to be decided on the basis of the same principles which are applied while deciding the market value for the purposes of compensation under land acquisition Act. In any case determining market value of old super structure treating that to be recently made is preposterous.

The Deputy Commissioner further held that in accordance with the rate fixed by D.M. for Commercial building of Ambala Road which was Rs.40 per sq. meter per month total valuation came to Rs.2621520/ (25 years presumptive rent). On this basis the valuation of 48 lac which had been determined on the basis of current rate of construction was further enhanced to Rs.8621520/ and thereafter Rs.23603294/ was added to it as valuation of land. If the total valuation on the basis of rent had been determined then it was an absurdity to add the value of land thereto. When market value is determined on the basis of presumptive rental value then it is for land as well as building.

In this regard reference may be made to a judgment given by me on 10.1.2013 in WritC no.69184 of 2006 Satya Prakash Verma Vs. Commissioner Agra Division Agra & others holding as follows:

In the report Annexure 2 it is mentioned that the circle rate is Rs. 6000/ per sq. meter, hence, the market value of the plot comes to Rs.418500/. On this market value stamp duty had already taken paid by the petitioner. Thereafter, the A.D.M. did some thing wonderfull. He multiplied the area in sq. meter (69.75) by 80 and, thereafter, by 300 meaning thereby that presumptive rent of Rs.80/ per sq. meter per month multiplied by 25 years (300 months) was determined. This came to 1674000/ which was held to be the market value of the shop and thereafter cost of the land i.e. Rs.418500/ was added thereto hence total valuation came to Rs.20,92,500/. This was utterly unreasonable, rather absurd approach. When market value is determined on the basis of presumptive rent/ income of a building, value of land cannot be added to it. Without land no building can exist. Walls and roof do not a building make. When circle rate is fixed it takes into account the potentiality of the area; commercial, residential, industrial or agricultural. Petitioner paid the stamp duty on the circle rate fixed by the Collector for commercial purpose.

After determining the market value of the land according to the circle rate only and only cost of construction of the shop if any could be added thereto.

When two principles of determining market value can be applied one of determining the value of land and adding valuation of super structure, after suitable deduction depending upon the age of the construction and the other of determining presumptive rental value and multiplying that by suitable number of years then the principle/formula application of which gives lesser value shall be adopted in Stamp Deficiency matter. The reason is that that fiscal statute is to be construed strictly and if two views are possible then the one in favour of assessee is to be adopted.

Accordingly, order passed by Deputy Commissioner Stamp being utterly illegal could not be sustained. However, in my opinion C.C.R.A. was also not justified in valuing 1150.58 sq. meter land at non commercial rates i.e. Rs.3575 per sq. meter. It held that even though the property was situate on Ambala road but on one side of the property there was only 12 feet wide road hence the portion on the 12 feet wide road could not be as valuable as the portion on Ambala road. In case there had not been any other road on any side of the property in dispute except Ambala road then the whole property (which is only about 1650 sq. meter in area) would have been deemed to be on Ambala road. Obviously, existence of additional road of 12 feet width could not reduce the valuation of the property or any part thereof.

Accordingly, it is held that for arriving at correct valuation of the property in dispute the entire area must be multiplied by Rs.5720/ which comes to about Rs.94,95,000/ adding the market value of super structure as determined by C.C.R.A. i.e. Rs.7,94,668/, thereto the total comes to about Rs.1,02,90,000/ requiring stamp duty of Rs.10,29,000/. After deducting Rs.3.5 lac paid as stamp duty on the sale deed initially the additional amount which is required to be paid by the respondents is Rs.6.79 lacs.

I also do not find any error in the order passed by the C.C.R.A. refusing to charge any interest or impose any penalty.

It is stated that as the condition of stay granted by C.C.R.A. respondents deposited about Rs.15/lac. Accordingly, it is directed that after deducting the amount of Rs.6.79 lacs therefrom remaining amount must immediately be returned to the petitioners (in no case beyond 2 months from the date of production of certified copy of this order). It is further directed that the sale deed shall be registered forthwith. Writ petition is accordingly, disposed of.