

(2012) 07 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19334 of 1998

Sudama

APPELLANT

Vs

Chief Controlling Revenue Authority U.P. Allahabad and
Others

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Stamp Act, 1899 — Section 56

Citation : (2012) 10 ADJ 523 : (2013) 4 AWC 3571

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : P.K. Mishra, for the Appellant;

Final Decision : Allowed

Judgement

Hon'ble B. Amit Sthalekar, J.—This writ petition has been filed by the petitioner challenging the orders dated 27.3.1997 passed by the respondent No. 1 and the review order dated 12.10.1995 passed by the A.D.M. (Finance and Revenue) Mahrajganj the order dated 27.5.1995 and recovery certificate 20.5.1998. The facts of the case, in brief, are that the petitioner is the purchaser of the land in question from one Sri Jhagaru. The sale-deed was executed on 31.8.1994, portions of two plots were purchased out of plot Nos. 1187 and 0.02 decimal and certain portion of plot No. 1334, total area measuring 0.17 decimal. When the matter came for enquiry before the respondent No. 2, A.D.M. (Finance and Revenue), Mahrajganj a report from the Naib Tahsildar was called for. The Naib Tahsildar submitted his report on 29.4.1994 stating the land to be agricultural land. However, the respondent No. 2 has proceeded to assess the deficiency of stamp on the basis of the report of the Naib Tahsildar, in which the value of the land is stated to be at least Rs. 60 per sq. ft. and total value of the land Rs. 4,23,370/- and deficiency stamp calculated at Rs. 52,875/-. Aggrieved by the order of the respondent No. 2, the petitioner filed Review Application, which was rejected by the order dated 12.10.1995. Thereafter, the petitioner filed a

Revision u/s 56 of the Indian Stamp Act, 1899 before the Chief Controlling Revenue Authority but the revision has also been rejected by the order dated 27.3.1997.

2. I have heard Sri P. K. Misra, learned counsel for the petitioner and learned standing counsel appearing for the respondents.

3. From a perusal of the order of respondent No. 2, it is seen that respondent No. 2 has relied upon the report of the Naib Tahsildar dated 29.4.1994. It is clearly mentioned that the land is the agricultural land and that there is also a hand pump for purposes of irrigation. However, it is also stated that plot No. 1334 is only 20 meter distant from the nearest residential area and the plot No. 1187 is 225 meters distant from the residential area. It is also mentioned that in the north of the plot No. 1187 there is chakroad. It is also stated that on the plot in question there are mango trees and one jackfruit tree. Next to the plot is the railway line but it is very far from the main road. It is also stated that the plot No. 1334 is close to the Gorakhpur PWD road. Taking these facts into consideration the respondent No. 2 has inferred that since the plot in question is close to the residential constructions, therefore, value of the land should be calculated at Rs. 60 per sq. ft. and, therefore, he calculated the value of the land at Rs. 4,23,370/- and has calculated the deficiency of stamp duty at Rs. 51,026/-.

4. In the review order dated 12.10.1995 also the same grounds have been taken and the review application has been rejected by the respondent No. 1. The Chief Controlling Revenue Authority in his order dated 27.3.1997 has also concurred with the findings recorded by the A.D.M. (Finance and Revenue), Maharajganj and has held the deficiency of stamp duty to be Rs. 51026/-.

5. Submission of Sri P.K. Misra is that the Tahsildar in his own report has held the nature of the land to be agricultural land and his report has been accepted by respondent No. 2 and, therefore, for purposes of calculation of stamp duty it is nature of the land, which has to be seen as on the date of the sale-deed and not the use for which the land is capable of being put at a future date.

6. Learned standing counsel sought to justify the impugned orders by referring to the averments made in the counter-affidavit wherein it has been stated that the land in question is situated near the Anand Nagar railway station and also situated on the Gorakhpur main road and, therefore, deficiency of stamp duty has been rightly calculated by the respondent No. 2. The legal position in this regard is that stamp duty has to be calculated on the basis of the nature of the land on the date of the sale-deed and not the use for which the land is capable of being put to in future.

7. In the case in Rakesh Chandra Mittal and Others Vs. State of U.P. and Another, , a Division Bench of this Court held as follows:

10. There is no finding returned by the respondent No. 1 that the oil extracting plant was in existence on the land at the time of execution of the sale-deed. The

finding of the existence of the oil extracting plant is based on inspection by the Tehsildar which was done after more than three and half years of the execution of the sale-deed. Even the petitioner stated in his objection that he has installed the machine after about three years of purchase of the land. It is well-settled that the market value of the property has to be determined with reference to the date on which the document is on varying and changing. Any subsequent improvement or change in the nature or the 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.

11. In the absence any evidence on record or any finding in the impugned order to the effect that the oil extracting machine was in existence on the land at the time of execution of the instrument, the respondent No. 1 was not justified in valuing that part of the land in applying commercial rates. The entire land has to be valued treating it to be an agricultural land.

12. In view of the above finding of the respondent No. 1 with regard to the market value of part of the property treating to be an agricultural land, it is clear that if the entire area is treated as agricultural land then the market value of the property has been correctly shown in the instrument and proper stamp duty has been paid thereof.

8. In the case in Smt. Sushila Verma v. State of U.P. and others, 2006(1) ADJ 245, this Court held as follows:

4.....The value of the land is to be considered as on the date of the transaction and not on the presumption that it may, in future, be used for residential or any other purposes, and on such presumption, charge stamp duty after assessing the value of the land, as if it was for residential purpose. It has not been found by the authorities that the land in question, when purchase, was not agricultural land. In such a situation, the assessment of the price of the land for the purpose of payment of stamp duty, treating it to be residential plot and charging the stamp duty on the basis of circle rate fixed by the Collector, Allahabad, is totally unreasonable and liable to be set aside.

5. Learned standing counsel has however stated that as per Article 23 of Schedule 1B of the Indian Stamp Act, 1899 as amended by the State of U.P., stamp duty is to be charged on either the sale price or the market value of the land, whichever is higher. The sale price of the land in question as declared by the petitioner is Rs. 1,65,000/-, on which, stamp duty has already been paid. The market value of the land in question has not been considered by the authorities below, except for applying the principle of circle rate for residential plots, which is not tenable for reasons mentioned above, as the land, when purchased, was agricultural land. As such, the impugned orders dated 5.8.2002 and 9.9.2002 are liable to be set aside and are thus quashed.

9. In another case in *Nar Singh Das Agrawal v. Chief Controlling Revenue Authority, Board of Revenue, Allahabad and others*, 2006(8) ADJ 584, this Court has held that merely because residential house is adjacent to road, will not lead to a presumption that it is a commercial accommodation. Para 3 of the said judgment reads as follows:

3. Alongwith report of Tehsildar map was also annexed showing that on three sides of the house in dispute there were residential houses. Merely because house was situated at Malgodown road, it could not be inferred that it was commercial. Houses also require roads. The mere fact that a house is adjacent to a road does not convert it into a commercial accommodation. There is no finding that on the road in question, i.e., Malgodown road there were shops adjacent to the house in dispute.

10. In the facts of the case, there is no dispute between the parties and in fact even the respondent No. 2 has accepted the report of the Naib Tahsildar in which the land in question is stated to be agricultural land and irrigation pump is situated on it. Merely because the land in dispute i.e. plot No. 1334 is 20 meters distant from the residential area and plot No. 1187 is more than 225 meters distant from the nearest residential area will not convert the land from agricultural to residential or commercial. Respondent No. 2 has also not taken into consideration the sale-deed of any of the adjacent plots to determine the value of the land and has simply accepted the report of the Naib Tahsildar that the value of the land should be about Rs. 60/- per sq. ft. Deficiency of stamp duty cannot be calculated on such a hypothetical presumption.

11. In the totality of the facts of the case and the settled legal position, the impugned order dated 27.3.1997 and the review order dated 12.10.1995 and the order dated 27.5.1995 passed by the A.D.M. (Finance and Revenue) Mahrajanj as well as the recovery certificate 20.5.1998 deserve to be quashed and are accordingly quashed. The writ petition is allowed. The matter is remitted back to the respondent No. 2 to examine the matter afresh in the light of the observations made above and the legal position settled by the Court. This excise shall be carried out within a period of four months from the date a certified copy of this order is received by respondent No. 2.