(2005) 02 AHC CK 0222

In the Allahabad High Court

Case No : C.M.W.P. No. 17545 of 2001

Surabhi Hospital (P.) Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 15-02-2005

Acts Referred:

Stamp Act, 1899 — Section 47A
Stamp Act, 1899 — Section 47A
Stamp Act, 1899 — Section 47A

Citation : (2005) 2 AWC 1536 : (2005) 98 RD 423 : (2005) 1 RD 423

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : A.K. Roy, for the Appellant; R.K. Awasthi, S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—This writ petition has been directed against the impugned order passed by Chief Controlling Revenue Authority, Board of Revenue, Allahabad, dated 21.3.2001. By the aforesaid order, the respondent No. 2 has rejected the Stamp Revision of the petitioner holding that there is stamp deficiency of Rs. 3.81.920 and he has also imposed penalty of Rs. 1,080 which is over and above the deficient amount.

2. The facts of the case in brief are that the petitioner-Surabhi Hospital Pvt. Ltd. purchased residential plot No. 14 in Block T of Sector 12, New Okhla Industrial Development Authority (for short "NOIDA") having an area of 162 sq. metre through a registered transfer deed dated 26.9.1998. The petitioner paid stamp duty according to prevailing circle rates on a consideration of Rs. 4 lacs. The plot of land was purchased from Sri Raja Ram and Smt. Suman Verma as per terms and conditions of original lease deed dated. 1.6.1998 after obtaining necessary permission for transfer on 24.9.1998 from NOIDA. Permission accorded by NOIDA is contained in Annexure-1 to the supplementary-affidavit. Subject of Transfer of Memorandum is "Transfer Permission in respect of Residential Plot

T-14, Sector-12, NOIDA complex". Condition 13 of the aforesaid permission provides that "the transferee shall put the property in the use exclusively for residential purpose and not use for any other purpose". This permission was granted by NOIDA.

3. A notice dated 22.3.1999 was issued by respondent No. 3 stating that the plot in question was purchased for commercial purpose and accordingly the petitioner was directed to show cause as to why a sum of Rs. 3,81,920 be not recovered from it. The petitioner filed objection stating that the plot was purchased for residential purpose and the hospital has purchased the land for residential purpose of its employees. Addl. District Magistrate (Finance), Gautam Budh Nagar in the impugned order has stated that the plot has been purchased in the name of the hospital and as such it can only be used for commercial purpose. This finding of the respondent No. 3 is purely based on assumption. From the record, it is apparent that the plot has been purchased for residential purposes. According to terms and conditions of original lease deed as well as according to condition No. 13 of the Transfer Memorandum, as stated above, it is clearly established that the plot was purchased for residential purpose. From the above documents, it is also apparent that in case the petitioner uses the plot in question for commercial purpose, transfer is liable to be cancelled or the petitioner is liable to pay stamp duty on commercial plot. u/s 47A of the Stamps Act, the authority cannot impose stamp duty for future use. Even otherwise, the petitioner has categorically stated that the aforesaid plot is for residential purpose.

4. Standing counsel contended that the petitioner, for the first time, has stated before this Court that the plot has been purchased for residential purpose. This argument is fallacious as a bare perusal of the impugned order reveals that the case of the petitioner before the courts below all along been that the plot in question is for residential purpose. The petitioner has paid the stamp duty as per circle rates for residential purpose for which the same had been purchased. The revisional court has not given any reason but only concluded that transferred land would be used for commercial purposes since the same has been purchased in the name of the hospital and the petitioner has not given any solid proof of its use for residential Purposes.

5. From the record of the case it is crystal clear that the plot will be used only and only for residential use and if the petitioner violates the purpose of user the transfer is liable to be cancelled or it would be liable to pay stamp duty for commercial use.

6. For the reasons stated above the writ petition is allowed. The impugned orders dated 14.6.1999 passed by respondent No. 3 and dated 1.3.2001 passed by respondent No. 2 are quashed. The amount of Rs. 2 lacs deposited by the petitioner in compliance of interim Order dated 9.5.2001 be refunded to the Petitioner within a month from the date of production of a certified copy of this order. No order as to costs.

