(2011) 04 AHC CK 0086

In the Allahabad High Court

Case No : C.M.W.P. No. 31181 of 2010

Syed Mohd. Ariz APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Stamp Act, 1899 — Section 27
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (2011) 5 ADJ 274 : (2011) 4 AWC 4154 : (2011) 113 RD 303

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—By means of the present writ petition, the Petitioner is challenging the order dated 12.5.2010 passed by the Commissioner, Allahabad Division, Allahabad in an appeal filed by the Petitioner against the orders of the Additional District Magistrate (Finance & Revenue), Kaushambi dated 30.12.2009 and 19.3.2010.

2. Vide order dated 30.12.2010, the Additional District Magistrate (Finance & Revenue), Kaushambi has raised the demand towards deficient stamp duty at Rs. 3,31,000/-, registration fee at Rs. 1020/-and also levied the penalty at Rs. 5 lacs. The Petitioner moved a recalling application, which has been rejected by the order dated 19.3.2010.

3. By the sale-deed dated 11.11.2009, the Petitioner had purchased agricultural land as per recital made therein. A Stamp Case No. 122 of 2009 has been registered on the basis of inquiry report dated 3.12.2009 of Sub-Registrar, Chayal wherein it has been reported that the property in dispute is situated 50 meters away from the road on which a house was built while in the sale-deed only agricultural land has been shown. Photograph of the house has also been annexed. The property has been valued at the circle rate applicable to the residential land at Rs. 49,50,000/-, the construction area has been estimated at Rs. 18,70,000/- and a demand of deficient stamp duty at Rs. 3,31,000/- has

been raised. A sum of Rs. 5,00,000/- has also been imposed towards penalty. The Petitioner filed a recalling application, which has been rejected vide order dated 19.3.2010. Against both the orders, the Petitioner filed an appeal, which has been dismissed by the impugned order.

4. Heard Sri H.N. Singh, learned Counsel for the Petitioner and Sri Nimai Das, learned Standing Counsel.

5. Learned Counsel for the Petitioner submitted that the construction over the land has been made after the purchase of the land. He submitted that an ex-parte order has been passed without giving opportunity of hearing. In the revenue record, the land is recorded as an agricultural land and No. declaration has been made u/s 143 of the U.P. Zamindari Abolition & Land Reforms Act. The entire land has been treated as residential land while construction was found only in a portion of the land. He submitted that the order of the Additional District Magistrate (Finance & Revenue), Kaushambi is based on ex-parte report of the Sub-Registrar, Chayal. Therefore, both the orders, namely, the Additional District Magistrate (Finance & Revenue), Kaushambi and revisional order are liable to be set aside and the matter may be remanded back to the Additional District Magistrate (Finance & Revenue), Kaushambi to decide the matter afresh after giving opportunity of hearing. In support of the contention he relied upon a decision of this Court in the case of Ram Kkelawan alias Bachcha v. State of U.P. and Ors..

6. Sri Nimai Das, learned Standing Counsel submitted that an inspection was made within 21 days from the date of sale-deed. In paragraph-5 of the recalling application, the applicant has admitted the construction over the land. The only allegation is that the construction was made after the execution of the sale-deed. In paragraph-2 of the grounds of appeal also, it has been stated that the Appellant had purchased the plot and after purchasing it he built the house over the disputed land. The photograph referred in the order has not been disputed in the grounds of appeal. No. evidence has been adduced before the Additional District Magistrate (Finance & Revenue), Kaushambi along with recalling application as well as in appeal to establish that the construction was made after the execution of the sale-deed. He submitted that it is not possible to construct a building within 21 days from the execution of sale-deed. The Petitioner has given the wrong facts against the provisions of Section 27 of the Indian Stamp Act. In paragraphs of the writ petition also, the construction of the pillars and other construction have been admitted and, therefore, the Petitioner, since, has falsely described the nature of the property, the demand has rightly been raised and the penalty has also been levied. The present case should not be remanded back to the Additional District Magistrate (Finance & Revenue), Kaushambi as No. evidence has been adduced before the appellate authority or before this Court to substantiate the claim that the construction was made after the execution of the sale-deed.

7. Having heard learned Counsel for the parties, I have perused the impugned

orders and other documents.

8. In paragraph-2 of the grounds of appeal which is Annexure-8 to the writ petition, and in paragraph-8 of the writ petition, the Petitioner has categorically admitted the construction of the house. The question for consideration is that whether the construction was in existence at the 1. 2005 (98) RD 511 (HC).

time of execution of the sale-deed or has been constructed after the execution of sale-deed. The sale-deed was executed on 11.11.2009 and the spot inspection was made on 3.12.2009 after 21 days. The facts mentioned in the report have not been disputed. The photograph, referred in the order of the Additional District Magistrate (Finance & Revenue), Kaushambi, has not been disputed in the grounds of appeal or even in the writ petition. No. evidence has been adduced before the appellate authority to substantiate the claim that the construction was made after the execution of the sale-deed. More so, the construction of the building was not possible within 21 days. Therefore, it is apparent that the Petitioner has falsely given the description of the property in the sale-deed to evade the stamp duty. The decision cited by the learned Counsel for the Petitioner is not applicable in the present case. In the present case, on inspection, it was found that there was a built house. The construction of the house is not in dispute. In the circumstance, No. interference is called for so far as the demand towards deficient stamp duty is concerned. However, on the facts and circumstances, the levy of penalty at Rs. 5 lacs appears to be excessive. It is reduced to 50% of the deficient stamp duty.

9. In the result, the writ petition is allowed in part. The demand towards deficient stamp duty is upheld and the penalty is reduced to 50% of the deficient stamp duty.

