(2009) 01 AHC CK 0199

In the Allahabad High Court

Case No : C.M.W.P. No. 4281 of 2009

Uma Kant Dixit APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : (2009) 01 AHC CK 0199

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Ashutosh Upadhyay, for the Appellant;

Final Decision : Allowed

Judgement

Prakash Krishna, J.—Since the facts are not in dispute, an opportunity was given to the learned Standing Counsel to go through the matter and the matter was posted for hearing today.

2. The facts being not much in dispute, it was considered desirable, as also jointly agreed by the learned Counsel for the parties, to dispose of the writ petition finally without calling a counter-affidavit.

3. By means of the present petition, the petitioner has sought for quashing of the impugned order dated 21.08.2008 passed by the District Magistrate/Collector, Banda and the order dated 29.12.2008 passed by the Commissioner, Chitrakoot Dham Division, Banda.

4. The proceeding giving rise to the present writ petition arises under the Stamp Act. The petitioner purchased a small piece of land measuring 13 x 10 feet from one Shyam Lal and his sister Smt.Satya Bhama. The said sale deed is dated 07.07.2004. The petitioner has paid the stamp duty amounting to Rs.9,840/- according to the market value and also as per the circle rate fixed in this behalf by the Collector. Proceeding u/s 47 A of the Stamp Act was initiated on the. premises that although in the sale deed the area of land has been shown as 13 x

10 feet, but as a matter of fact, on spot inspection it was found that the petitioner is in possession of an area of 13 x 40 feet. Additional stamp duty has been demanded according under the impugned order.

5. The learned Standing Counsel submits that on the facts as found by the department on spot inspection, the demand of additional stamp duty is perfectly justified.

6. It is not in dispute that the petitioner purchased the land having 13x 10 feet by means of sale deed dated 07.07.2004. In the sale deed same area i.e. 13 x 10 feet has been mentioned. If that is so, the demand of additional stamp duty on the basis that the petitioner is in possession of more areas unjustified. Stamp duty is payable on the instrument. In the instrument, the only area which is mentioned is 13 x 10 feet. The petitioner may be a trespasser over the area in excess of the area mentioned in the sale deed, but it does not empower the authority concerned to demand additional stamp duty on the said excess area. u/s 47A, jurisdiction has been given to the authority concerned to initiate proceeding only if the market value of any property which is subject-matter of any instrument is not correctly set forth. The subject-matter of the instrument is the land measuring 13x10 feet only. It is not the case of the department that on the said area proper stamp duty has not been paid.

7. In view of the above discussions, the two impugned orders passed by the respondents cannot be sustained.

8. The writ petition succeeds and is allowed. The impugned orders are hereby quashed with costs of Rs. 1,000/- (Rs.One Thousand only).

