(2011) 04 AHC CK 0236

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 67423 of 2010

Vimlendu Prakash APPELLANT

Vs

State of U.P.and others RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Stamp Act, 1899 — Section 33, 47A

Citation : (2011) 04 AHC CK 0236

Hon'ble Judges : Pankaj Mithal, J

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—By means of the present writ petition the petitioner has challenged the order dated 22.12.2008 passed by the Additional Collector (Finance and Revenue), Allahabad and the appellate order dated 18.10.2010 passed by the Commissioner, Allahabad Division, Allahabad in proceedings under section 33/47A of the Indian Stamp Act, 1899. ;

A part of the Khata No. 716/3 Village Manda, District Allahabad was sold, vide saledeed dated 12.5.2006. On the saledeed stamp duty as per the agricultural rate prescribed was paid. The authorities by the impugned orders have determined the marketvalue by applying the commercial rate.

2. Assailing the above orders, the submission of the learned Counsel for the petitioner is that the land in dispute on the relevant date was recorded as agricultural land. It was got declared as nonagricultural land in nature, vide notification dated 23.12.2006. The subsequent nature of the land would not be relevant for determining the marketvalue and it was not appropriate for the authorities to have determined the deficiency by taking the purpose for which the land was purchased.

3. Learned Standing Counsel on the basis of the stand taken in the counteraffidavit has submitted that the land was purchased for the purposes of establishing a godown of Indian Oil Corporation Limited. This fact is also reflected

by the letter of the Indian Oil dated 23.3.2006. Therefore, for all practical purpose the land was of commercial nature and as such the authorities have not committed any error in determining its marketvalue accordingly.

4. The report of the Tehsildar dated 1.12.2006 accepts that the land on the relevant date was of agricultural nature. It states that the said land has been purchased with the object of establishing godown for storing gas cylinders and, therefore, the land had no longer remained agricultural in nature.

5. It is not in dispute that the land was declared to be nonagricultural in nature only, vide notification dated 23.12.2006. Therefore, on the relevant date it was an agricultural land.

6. In view of the above, the future use of the land or the object of establishing a godown over it or even a fact that after sale the land was being used for the purposes of storing gas cylinders would not be sufficient to hold that it was nonagricultural in nature.

7. In several decisions of this Court, including one in Ashok Kumar Pandey v. State of U.P. and others, 2008 (105) RD 514 it has been clearly ruled that the future use of hind cannot be considered for determining the marketvalue. It has further been laid down so long the land is recorded as agricultural land the rates prescribed for agricultural land would be applicable.

8. In view of the aforesaid legal position, I am of the opinion that the authorities fell in error in determining the marketvalue of the land in question as a commercial land in place of agriculture.

9. Accordingly, a writ of certiorari is issued quashing the impugned orders dated 22.12.2008 and 18.10.2010. Any amount deposited by the petitioner pursuant to the impugned orders is liable to be refunded.

10. The writ petition is allowed.

