(2014) 09 AHC CK 0269

In the Allahabad High Court

Case No : Writ-C No. 3128 of 2006

Vinod Kumar Gupta APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 2 ALJ 104 : (2015) 108 ALR 105 : (2014) 125 RD 596

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : S.K. Chaturvedi, Advocate for the Appellant

Judgement

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Surya Prakash Kesarwani, J.—Heard Sri S.K. Chaturvedi, learned Counsel for the petitioner and Sri Nimai Das, learned Standing Counsel for the respondents. On 18th January, 2006, this Court granted six weeks time to the respondents to file counter-affidavit. However, no counter-affidavit has been filed so far despite lapse of about eight years.

2. Under the circumstances, this writ petition is being heard finally.

3. Briefly stated the facts of the present case are that vide registered sale-deed dated 15th March, 2004, the petitioner purchased share of another co-sharerer Rajesh Kumar Gupta of Khasra plot No. 434 of Village Chaursi pargana, Urai, district Jalaun.

4. As per copy of Khasra, for fasli years from 1399 to fasli year 1410 filed as Annexure 6 to the writ petition. Khasra plot No. 434 area 0.510 hectare is a cultivated plot and different crops have been shown in the Khasra of different years. In 1410 fasli Khasra, crop shown is "Alsi", which is relevant in view of the fact that sale-deed in question was executed on 15th March, 2004. The report of Sub-Registrar dated 17th March, 2004 is an ex parte report, which has been filed

as Annexure 3, in which, vended property is mentioned as "Khet" i.e. agricultural land. However, he mentioned that it is situated about 50 meters away from N.H. 25 and adjoining the agricultural land on the west side, there are two houses. On the basis of the report of Sub-Registrar, ADM (F/R), Jalaun held vide impugned order dated 21.12.2004 that vended property is residential one as it has potential for use as residential plot and accordingly determined the valuation at Rs. 6,80,000/- and demanded the deficiency of stamp duty of Rs. 60,600/- Registration fee Rs. 3520/- and also imposed penalty of Rs. 60,600/-.

5. Aggrieved with this order, the petitioner filed appeal No. 9 of 2005 before the Additional Commissioner Jhansi. In paragraph 8 of the memorandum of appeal (Annexure-9), the petitioner spefically stated that the Khasra plot in question No. 434 area, 1.26 acre is a big plot, which is jointly owned by him and his family members and by the sale-deed in question, the petitioner has purchased share of the co-sharer Sri Rajesh Kumar Gupta, who is his relative. This fact has not been disputed by the respondent before Divisional Commissioner. However, Divisional Commissioner passed the impugned order dated 25th October, 2005 merely on the ground that the vended property has potential for residential use and area is so small that it has certainly been sold for residential purpose and not for agricultural purpose.

6. Learned Counsel for the petitioner submits that the impugned order has been passed by the Divisional Commissioner upholding the order passed by the ADM (F/R) despite undisputed fact that Khasra plot No. 434 is a big plot of which the petitioner and his family members are co-sharer and by the instructions in question, the petitioner has purchased merely share of another co-sharer, who is his relative. As per Khasra for last 10 years and the Khasra of the relevant period, the plot in question is shown to be an agricultural land, on which, agricultural operations were being carried out. He, therefore, submits that the impugned appellate order is based on surmises and presumption and not on any evidence on record. The impugned order is based on irrelevant consideration.

7. Learned Standing Counsel submits that the report of Sub-Registrar clearly indicates that the vended property had the potential for residential use and as such, the market value was lawfully determined by the ADM (F/R). Deficiency in stamp duty has been correctly upheld by the Appellate Authority. He submits that findings recorded by the authorities are finding of fact and therefore no interference is required in writ jurisdiction under Article 226 of the Constitution of India.

8. I have carefully considered the submission of the learned Counsel for the parties.

9. Copies of Khasra of plot No. 434 for fasli year 1399 to fasli year 1410 clearly indicates that the said plot was being used for agricultural purposes. From the very beginning, the petitioner clearly stated that he is a co-sharer of plot No. 434 and he has purchased the share of another co-sharer Sri Rajesh Kumar Gupta by

the sale-deed in question. It has also not been disputed by the respondents that petitioner is co-sharer.

10. It was specifically mentioned in ground No. 8 of the memorandum of appeal before Commissioner, Jhansi Division Jhansi that it is big plot which is owned by family members of the petitioner and the petitioner is a co-sharer and has purchased a share of another co-sharer i.e. vendor who is his relative, but the Divisional Commissioner has completely ignored this important aspect of the matter and recorded a perverse finding based on purely surmises and presumption that since area of vended property is 0.21 acre and as such it has not been sold for agricultural purpose. On this assumption he held that vended property has potential for residential use and on this basis the demand of deficiency of stamp duty and imposition of penalty has been upheld.

11. I find that in view of the undisputed facts as noted above, the petitioner has established that the vended property was an agricultural land as on the date of execution of the sale-deed of which he was a co-sharer and he has purchased the share of another co-sharer i.e. vendor who is his relative.

12. Under the facts and circumstances of the case, the findings recorded by the authorities in the impugned order are perverse. The findings recorded by the authority are based on no evidence and without consideration to the relevant material and evidence on record.

13. Therefore, the impugned orders cannot be sustained and are hereby set aside. In result, the writ petition succeeds and is hereby allowed. The impugned order dated 25th October, 2005 passed by the Commissioner, Jhansi Division Jhansi in Appeal No. 9/04-05 and the order dated 21st December, 2004 passed by the ADM (F/R), Jalaun at Orai in Stamp Case No. 6/04-05 are hereby set aside. Any amount deposited in excess, shall be refunded to the petitioner within a month alongwith simple interest @ 8%.

