

Court No. - 17

Case :- WRIT - C No. - 1002878 of 2009

Petitioner :- Rajendra

Respondent :- Additional Commissioner Lucknow

Counsel for Petitioner :- R.B.Srivastava, Arvind

Yadav, Poonam Saroj, S.S. Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Arvind Yadav, learned counsel for petitioner as well as learned Standing Counsel for respondents.

2. By means of present writ petition, the petitioner has challenged the order dated 06.02.2008 passed by District Magistrate, Raebareli under Section 47-A/33 of Indian Stamp Act as well as order date 05.03.2009 passed by Additional Commissioner, Lucknow Division, Lucknow rejecting the appeal of the petitioner against the order of District Magistrate.

3. It has been submitted by learned counsel for petitioner that petitioner purchased total area 0.488 hectare of Khasra No. 357 situated at Village Matrauli, Pargana - Salon, Tehsil Unchahar, District Raebareli from one Sri Shiv Baran. The said sale deed was registered on 09.07.2004. Subsequent to the registration of the said sale deed a report was submitted by the Dy. Registrar which was based on a spot inspection conducted by him, according to which he had submitted that in the said sale deed, it was wrongly stated that the said land is agricultural while as per spot inspection report there is residential activity being carried out adjacent to the said plot and certain shops are even existing adjacent to the said plot on the main road and consequently stamp duty as per residential rate was sought to be paid by the petitioner and consequently a notice was given to him.

4. The petitioner appeared before the District Magistrate and filed his objection and further moved an application under Rule 7(3)(c) of Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 for conducting a spot inspection in presence of the petitioner. On the request made by the petitioner, the spot inspection was conducted on 08.12.2006 by the Tehsildar, Unchahar in presence of the petitioner. In the said report submitted by the Tehsildar, it has been recorded that plot No. 357 purchased by the petitioner falls on the Allahabad-Lucknow Highway and adjacent to the main road certain shops are existing and two plots in the vicinity have also been sold

treating the said land to be residential but categorically gave a finding that plot purchased by the petitioner is landlocked and does not any exit or entry and that agricultural activities were being carried out on the said land on the date of inspection.

5. The District Magistrate only took into account the fact that the said plot was existing on the Allahabad-Lucknow Highway and the residential activities are being conducted in close proximity and did not rely on the spot inspection report submitted by the Tehsildar stating that the said report has been filed only with a view to protect the petitioner and he disbelieved the version that there is no entry or exit to the said plot and accordingly held that the said land was residential and not agricultural.

6. The petitioner being aggrieved by the order of the prescribed authority dated 06.02.2008 preferred an appeal before the Additional Commissioner (Judicial), Lucknow. The Additional Commissioner (Judicial), Lucknow while hearing the appeal affirmed the findings recorded by the District Magistrate and also did not agree to the spot inspection report submitted by the Tehsildar and confirmed the order of the prescribed authority treating the said land to be residential.

7. Learned counsel for petitioner while assailing both the aforesaid orders has submitted that the Tehsildar in his report dated 08.12.2006 has categorically mentioned that there is no entry on the said plot and on the date of inspection agricultural activities were being carried out. He further submits that even in the previous spot inspection conducted by the Dy. Registrar, it was mentioned that the agricultural activities were being conducted on the said plot. He further submits that once there is a consistent concurrent finding recorded by the two spot inspection reports that the agricultural activities were being conducted on the said land, both the authorities coming to a conclusion that the said land would be categorised as residential, is clearly perverse, arbitrary and contrary to the report.

8. He further submits that there was no material either before the District Magistrate or before the appellate authority to disbelieve the spot inspection report dated 08.12.2006 of the Tehsildar where he stated that there is no entry or exit to the said land.

9. It is in the aforesaid circumstances, he submitted that in the fact of the present case, there is no infirmity in the report of the Tehsildar stating that the said land cannot be used for residential purposes and accordingly both the authorities have committed

grave error of law in fact in returning a finding that the said land can be correctly categorised as residential and accordingly settled the liability on the petitioner to pay stamp duty accordingly.

10. Learned Standing Counsel on the other hand has opposed the writ petition and has supported both the impugned orders. He submits that two plots in close proximity to the said land have already been sold treating them to be residential and consequently there is no infirmity in the orders passed by the District Magistrate as well as appellate authority treating the said land to be residential.

11. I have heard learned counsel for parties and perused the record.

12. It is noticed that under Section 47-A of Indian Stamp Act the authorities are liable to charge stamp duty with regard to the nature of the plot or land which is being sold. In the present case, there is consistent finding in two spot inspection reports that agricultural activities were conducted on the said plot. Even the spot inspection report submitted by the Tehsildar as per provisions of Rule 7(3)(c) of Rules of 1997, it is clear that the said land has been sold to be agricultural land and there is categorical finding that the said land is not suitable for being used for residential purposes. The said report has been distinguished by both the authorities stating that it is not possible that there is no entry or exit to the said land. This aspect even the question of fact and could have been suitably determined by District Magistrate by personally visiting the said spot but merely stating that it is not possible that there is no entry or exit merely on the basis of summary and hypothesis and conjectures cannot be sustained and there is no reason for both the authorities to distinguish the report of the Tehsildar and treat the said land to be residential. On the date of sale as well as even subsequently when the second spot inspection was conducted, agricultural activities were being carried out.

13. In light of the above, this court is of the considered view that both the authorities have erred in appreciating the spot inspection report submitted by the Tehsildar and accordingly the findings recorded are erroneous and consequently there is no reason not to rely upon the report of the Tehsildar dated 08.12.2006.

14. In view of the aforesaid, the writ petition is allowed. Both the orders dated 06.02.2008 passed by the District Magistrate, Raebareli and order dated 05.03.2009 passed by Additional Commissioner are set aside. The land should be treated to be

agricultural. The money, if any, deposited by the petitioner in pursuance of the impugned orders shall be refunded to the him expeditiously, say, within a period of one month from the date a certified copy of this order is produced before the competent authority.

(Alok Mathur, J.)

Order Date :- 10.10.2023

Ravi/