

Court No. - 17

Case :- WRIT - C No. - 1002334 of 2006

Petitioner :- Sumaiya Vihar Sahkari Awas Samiti Limited Thru Secy. And Anr.

Respondent :- State Of U.P. Thru Secy. Revenue And 4 Ors.
Objection Filed

Counsel for Petitioner :- Ramesh Chandra

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Ramesh Chandra, learned counsel for the petitioners as well as learned Standing Counsel for the respondents.

2. The petitioner in the present writ petition is aggrieved by the proceedings initiated by the Prescribed Authority under the provisions of Section 47A of the Indian Stamp Act, 1899 (*hereinafter referred to as "the Act, 1899"*), thereby according to him plot purchased by the petitioner has been wrongly held to be residential plot rather than agricultural plot which has been demonstrated in the instrument registered by the petitioner and has accordingly prayed for setting the order dated 06.04.2005, passed by the Prescribed Authority as well as order dated 08.03.2006, passed by the Appellate Authority in exercise of power under Section 56 of the Act, 1899.

3. It has been submitted by learned counsel for the petitioners that they had purchased part of land of Khasra No. 54, situated in Village - Bhaptamau, Ward - Haiderganj, Pargana, Tehsil and District - Lucknow through registered sale deed dated 03.03.2003. The said sale deed was executed indicating that said land was agricultural land and stamp duty payable and applicable for the agricultural land was paid at the time of execution of sale deed. An inspection was carried out and report submitted by the Tehsildar on 12.03.2005. On the basis of said inspection report notices were issued to the petitioner under Section 47A of the Act, 1899. The petitioner appeared before the Prescribed Authority and filed his objections stating that the said land is agricultural in nature and stamp duty was accordingly paid by him. Before the Prescribed Authority it was also stated in the inspection report that seven mango trees were standing on the said land which have not been indicated by the petitioner and held that said trees are valued at Rs.35000/- (@ Rs.5000/- per tree). The Prescribed Authority did not accept the

objections filed by the petitioner and relied upon the inspection report dated 12.03.2005. The Prescribed Authority was of the view that said land was residential in nature and was valued at the rate of Rs.8,00,000/- per acre and consequently directed the petitioner to pay additional stamp duty amounting to Rs.1,11,400/- alongwith penalty of Rs.2,228/- and also interest @ 1.5% per month.

4. The petitioner being aggrieved by the of the Prescribed Authority dated 06.04.2005, preferred an appeal before the Commissioner, Lucknow Division, Lucknow. The Appellate Authority affirmed the findings recorded by the Prescribed Authority, stating that there was adequate material before the Prescribed Authority for arriving at a finding that the plot in question was residential rather than agricultural. The Appellate Authority further affirmed the finding that there were seven mango trees standing on the said land which were valued at Rs.35000/- and the petitioner has not disclosed the same in the instrument which has been registered with the respondents and accordingly held that there is no infirmity in the order of Prescribed Authority and rejected the appeal.

5. Learned counsel for the petitioner while assailing both the impugned orders has submitted that there was no material before the Prescribed Authority to arrive at the conclusion that said plot was not agricultural but residential. He has submitted that the report submitted by the Tehsildar on 12.03.2005 nowhere indicates that the said land is residential and there was no finding in his report and accordingly even notice issued under Section 47A of the Act, 1899 was infirm. He submits that authorities should have scrutinized the material available on record to conclude that petitioner had wrongly declared nature of land and has undervalued the same and paid deficient stamp duty and only when such a satisfaction is arrived at, notice under Section 47A of Act, 1899 should have been issued. Perusal of order of Prescribed Authority would indicate that the Tehsildar in his report had never stated that said land was residential in nature and the Prescribed Authority merely assumed that in case it is not agricultural then it has to be residential and accordingly proceeded to hold that the said land is residential in nature and required the petitioner to deposit deficient stamp duty.

6. Learned counsel for the petitioner fairly submits that he does not dispute the finding of fact arrived at by both the authorities below with regard to existence of seven mango trees standing on the said land which valued at Rs.35000/-. Accordingly, the finding of both the authorities below with regard to existence of mango trees on the said land remains undisputed and no

interference is made in the said finding by this Court.

7. Learned Standing Counsel on the other hand has opposed the writ petition by submitting that the Prescribed Authority has proceeded in the said matter after obtaining report from Tehsildar. He submits that the said land was about one Km. away from the residential area and consequently supported the impugned orders.

8. Heard learned counsel for the parties and perused the record.

9. Dispute in the present case pertains to nature of land purchased by the petitioner existing on Khasra No. 54, situated in Village - Bhaptamau, Ward - Haiderganj, Pargana, Tehsil and District - Lucknow through sale deed dated 03.03.2003. Present proceedings have commenced on the basis of report submitted by the Tehsildar on 12.03.2005.

10. This Court has perused the report of Tehsildar. In the said report he has stated that he had made inspection of the plot. In the report only two facts have been narrated by the Tehsildar, the first fact is regarding existence of seven mango trees 12-13 years old and consequently he has stated that said land is within one kilometers from the residential area. No other finding has been recorded in the said inspection report.

11. From the aforesaid inspection report it cannot be ascertained that said land was not agricultural but residential.

12. The Prescribed Authority has held the said land to be residential solely relying upon the report dated 21.02.2005, submitted by the Tehsildar. There is no material to indicate that nature of the said land is residential. It is the Prescribed Authority who has only stated that because no finding in this regard has been recorded or narrated by the Tehsildar in his spot inspection report then it is held that the said land is residential. Such a finding is clearly perverse not based on any material and hence same is arbitrary and deserves to be set aside.

13. The Appellate Authority has also only reiterated the facts considered by the Prescribed Authority. In the entire impugned order dated 08.03.2006, the Appellate Authority has not considered a single issue raised by the petitioner in his appeal. The authority while deciding the appeal is duty bound to consider the grounds raised in the appeal and give his reasons for not accepting or accepting the said grounds. In the present case the Appellate Authority has merely reiterated the findings recorded by the Prescribed Authority without considering any of the grounds raised by the petitioner in his appeal. It clearly

demonstrates that the Appellate Authority has not applied his mind to the issues raised by the petitioner, consequently said order is also arbitrary and consequently deserves to be set aside.

14. In the light of above, this Court is of the considered view that there was no material before the Prescribed Authority for holding that said land is residential and consequently findings recorded by him are perverse and hence orders dated 06.04.2005, passed by the Prescribed Authority as well as order dated 08.03.2006, passed by the Appellate Authority are hereby set aside.

15. The writ petition stands **allowed**.

16. It is made clear that this Court has not interfered with the fact regarding seven mango trees standing on the said land. Considering that this Court has allowed the writ petition, any amount deposited by the petitioner in pursuance to the order of Prescribed Authority, the Authority is directed to remit back such amount to the petitioner within two months, after adding the value of trees in terms of order passed by the Prescribed Authority.

Order Date :- 22.11.2023

A. Verma

(Alok Mathur, J.)