

Court No. - 17

Case :- WRIT - C No. - 1003570 of 2007

Petitioner :- Sanjeev Pratap Singh

Respondent :- Ayukt Lucknow Division Lko.And Ors.

Counsel for Petitioner :- V.K.Pandey

Counsel for Respondent :- C.S.C

Hon'ble Manish Mathur,J.

1. Heard Mr. V. K. Pandey, learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.

2. Petition has been filed challenging order dated 31.12.2003 passed by Prescribed Authority under section 47-A of Indian Stamp Act 1899 (hereinafter referred to as the Act of 1899) whereby deficiency of stamp duty has been indicated in the instrument of transfer. Also under challenge is the revisional order dated 08.11.2005 rejecting petitioner's revision as well as order dated 15.06.2006 whereby recall has also been dismissed.

3. It has been submitted that by means of single sale deed, petitioner had purchased two separate properties; one situated in Gram Bashgarhi and the other in Kumhdaura. So far as the property situate in village Kumhdaura is concerned, learned counsel for petitioner has raised objections only with regard to imposition of stamp duty of Rs.9000/- on the basis of trees existing on the plot whereas challenge has been raised with regard to other property being declared residential in nature.

4. It has been submitted that so far as property situate in village Kumhdaura is concerned, trees situate thereupon had grown naturally and would therefore not come within the transfer of property so as to impose any stamp duty thereupon. With regard to property situate in village Bashgarhi, it has been submitted that there is no basis for the Prescribed Authority to have considered the said property as residential when it was clearly recorded as agricultural in the Revenue Records which were produced before the Revisional Authority as well. It is submitted that the said property has been treated to be residential only on the basis that it is within 100 meters of the National Highway and is also in close proximity to the town area. It is submitted that close proximity to a developed area by itself does not change the nature of a property under transfer.

5. He has placed reliance on judgments rendered in the case of ***Smt. Prakashwati versus Chief Controlling Revenue Authority, Board of Revenue***; (1996) 4 Supreme Court Cases

657 and the judgment rendered by this Court in the case of **Smt. Anasuya Singh versus Commissioner, Faizabad Division Faizabad & Another**; 2008(104) RD 725 as well as in the case of **Abdul Rasheed versus Ayukt, Lucknow Division, Lucknow**; Writ Petition No.558 (M/S) of 2006.

6. Learned State counsel on the basis of counter affidavit has refuted submissions advanced by learned counsel for petitioner with the submission that the orders have been passed according to the situation of land as well as placing reliance on the spot inspection reports which clearly substantiated the fact that the property situate in village Kumhdaura was transferred alongwith the trees situate thereupon and the factor as to whether they are naturally growing or planted are immaterial. It is submitted that the property situate in other village was adjacent to Kanpur Allahabad Highway and is also situated near the town area of Lalganj with the area of land being 0.104 1/4 Hectare i.e. 1043 square meters and was clearly of residential use.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, particularly, impugned orders, it is evident that proceedings were initiated in pursuance of spot inspection reports dated 21.05.1999 and 31.12.1999 whereafter spot inspection was also undertaken on 31.01.2003 which forms the basis of the impugned orders passed by Prescribed Authority. So far as valuation of stamp duty with regard to trees situate on the plot in the Village Kumhdaura is concerned, in the considered opinion of this Court, the same being based on spot inspection raises a factual dispute which is not required to be adjudicated upon in writ jurisdiction.

8. However so long as the property situate in village Bashgarhi is concerned, it is evident from the order of the Prescribed Authority that the same has been taken to be residential in nature only on the basis that it is situate within 100 meters of the National Highway and is also in close proximity to the town area. However no reasoning, notification, order or statutory provision has been indicated in the impugned whereby the location of such a property can be treated to be residential. The order does not indicate any exemplars or even nature of properties abutting the property in question.

9. The revisional order as well while noticing the fact that petitioner had submitted copies of relevant khasras to substantiate that the property was agricultural in nature, however does not discuss the same at all and has virtually followed the reasoning passed by the Prescribed Authority.

10. Hon'ble the Supreme Court in the case of **Prakashwati** (supra) has clearly enunciated the law that the nature of property under instrument of transfer cannot be adjudged only on the basis of its close proximity to a developed area and that the nature of property concerned is to be adjudicated upon as per its use as on the date of execution of instrument of transfer and not on its future possibilities. The relevant portion of judgment is as follows:

"4. We have carefully examined the orders of the first respondent. Noticeably the house is built on a very small area i.e. 68.84 sq. yards only in a town which is not a metropolis. Presumably the smallness of the area would not suggest the same by itself to be a costly property or be situated in a prestigious or posh locality, where the upper classes would rub shoulders to acquire it. Secondly, its being situated in an area which is close to Samrat Vikram Colony, said to be a decent locality, where people of high income group reside, does not by itself make it a part thereof. We are doubtful whether the said factum of closeness by itself would cast any reflection on the price of the property in question. Seemingly, influenced by the factor of the close proximity of Samrat Vikram Colony, the Assistant Commissioner, Stamps, for one does not know how, determined the monthly rental value of the property at Rs 1500 per mensem and worked out the price of the house on that basis. Despite that the Tehsildar at a subsequent stage reported that the annual rental value of the house was Rs 1200 per annum, whereas for house tax purpose it was recorded as Rs 840 per annum. The first respondent ignoring the same worked out the monthly rental of the property at Rs 830 per mensem and its value at Rs 2.5 lakhs, ostensibly on the basis that the average cost of construction of building in the year 1992 was about Rs 400 per sq. yard, inclusive of the land cost. This figure too was arrived at, one knows not from where, without determining the age of the building, the quality of construction and citing appropriate instances. The approach of the authorities, to say the least, was highly vain, casual and unsatisfactory and dehors any constructive material on the basis of which one could have said that the decision arrived at by the first respondent was fair and reasonable. We cannot approve of such an assumptive posture of the respondent in treating the appellant as an evader. We must, therefore, upset the impugned order of the first respondent and the proceedings for the supposed deficient payment of stamp duty, but confining the end result to the facts and circumstances of the instant case, when the valuation fixed is at least not below the minimum prescribed under Section 341 of the Stamp Rules."

11. The same reasoning has been followed by Coordinate Benches of this Court in the cases of **Smt. Anasuya Singh** (supra) as well as **Abdul Rasheed** (supra).

12. In view of aforesaid, it is evident that orders impugned have been passed ignoring law propounded. Therefore the impugned order dated 31.12.2003 passed by the Prescribed Authority in Case No.15/2002-2003 under Section 47-A of the Act as well as the revisional order dated 08.11.2005 passed in Revision No.205/2003-2004 is set aside only with regard to the property

situate in village Bashgarhi.

13. It has been submitted that in pursuance of impugned orders, petitioner had deposited relevant deficiency. In view of aforesaid, it is directed that the excess amount of stamp duty deposited by petitioner in pursuance of the impugned orders only so far as it relates to property situate in village Bashgarhi shall be refunded to petitioner forthwith.

14. Resultantly, petitions succeeds and is **allowed partly** to the aforesaid extent. Parties to bear their own costs.

Order Date :- 3.5.2024

Subodh/-