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Court : Allahabad

Decided On : Jan-07-2014

Judge : The Honourable Mr. Sudhir Agarwal

Appeal No. : Writ C No. 450 of 2014

Judgement :

1. As requested and agreed by learned counsel for the parties, I proceed to hear and decide this matter finally at this stage under the Rules of the Court.
2. The only argument raised in this petition is that the authorities below have determined market value by enhancing it by just 25% without giving any reason while determining as to why 25% of circle rate has been enhanced in order to determine the market value of property in question.
3. The instrument No. 3684 was executed and registered on 13.08.2010 in respect of house No. C.C.-1/016, total area 252.42 sq. meter (measured area 67.07 sq. meter), situate at Avantika Colony, Hadbast, Vilalge Mehroli, Tehsil and District Ghaziabad. The proceedings under Section 47-A(iv) of Indian Stamp Act, 1899 (hereinafter referred to as the "Act") were initiated pursuant to a spot inspection made by Additional District Magistrate, Finance and Revenue, Ghaziabad and his report dated 20.10.2010, stating that value set forth in the instrument appears to be less than the minimum residential circle rate prescribed by Collector and, therefore, proceeding for determining market value should be initiated. A notice dated 03.11.2010 was issued to petitioners, they submitted objection dated

12.01.2011 stating that stamp duty has been paid according to market rate/circle rate and on the spot it is only a plain land and no construction existed, therefore, proceedings are liable to be dropped. The same officer, namely, Sri Sarvajeet Ram, who submitted inspection report dated 20.10.2010 and at whose instance the proceedings were initiated took upon himself to consider the matter finally under section 47-A(4) and passed order dated 23.02.2011. It held that there should be an increase of 25% to the circle rate prescribed at the relevant point of time and according thereto the market value of property comes to Rs. 68,47,060/-, whereupon stamp duty payable is Rs. 4,79,300/- and since only Rs. 3,91,000/- has been paid, therefore, there was a deficiency of stamp of Rs. 88,300/-.

4. It is contended that on the one hand Assistant Collector suggested that stamp duty was to be paid according to prescribed circle rate/market value of commercial land but while passing the impugned order he has increased value by 25% of circle rate for which no reason has been assigned at all. On this ground the petitioners challenged order of Additional Collector in Appeal No. 56 of 2012-13 but the learned Additional Commissioner without considering on this aspect of the matter that there is no basis of enhancement of value, has dismissed appeal. It is said that both the orders impugned in this writ petition are patently illegal and show a total non-application of mind on the part of respondents.

5. It goes without saying that proceedings under Section 47-A(4) can be initiated only when there exists a ground that correct market value has not been set forth in the instrument. The Collector first of all has to determine true market value on the date when instrument was executed and only then he can determine, whether there is any deficiency of stamp or not. This determination of market value does not depend on the fancy, imagination and conjectures of Collector or any other competent authority.

6. It is rightly contended that under the provisions of Act, 1899 stamp duty is payable on the market value of property in transaction of sale deed. It is also true that market value does not mean circle rate itself but it is only a guiding factor. The Collector has to determine market value taking into account various factors. In the case in hand the Additional Collector has simply referred to circle rate and in a

mechanical way, passed impugned order enhancing even circle rate by 25%.

7. The question, as to what would be a market value came to be considered by a Division Bench of this Court in Kaka Singh Vs. Additional Collector and District Magistrate (F and R), AIR 1986 All. 107 and it held:

"We are inclined to think that the object of the Amending Act being to avoid large scale evasion of stamp duty, it is not meant to be applied in a matter of fact fashion and in a haphazard way. Market value itself as we already mentioned, is a changing factor and will depend on various circumstances and matters relevant to the consideration. No exactitude is in the nature of things possible. In working the Act, great caution should be taken in order that it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion."

8. With regard to procedure for determining market value and the relevant provisions the situation was slightly different upto 1997 but thereafter the legislature has made certain attempt to lay down guidelines also for Revenue to determine market value.

9. Under Section 47-A of the Act the obligation is on Collector to find out correct market value of property which is alleged to have not been mentioned in the instrument. For the purpose of determining market value no machinery as such is provided in statutory provisions. However, a procedure has now been provided vide U.P. Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as the "1997 Rules") in accordance where to the Collector would determine market value. Rule 7 thereof reads as under:

"7. Procedure on receipt of a reference or when suo motu action is proposed under Section 47-A.--(1) On receipt of a reference or where action is proposed to be taken suo motu under Section 47-A, the Collector shall issue notice to parties to the instrument to show cause within thirty days of the receipt of such notice as to why the market value of the property set forth in the instrument and the duty

payable thereon be not determined by him.

(2) The Collector may admit oral or documentary evidence, if any, produced by the parties to the instrument and call for and examine the original instrument to satisfy himself as to the correctness of the market value of the subject-matter of the instrument and for determining the duty payable thereon.

(3) The Collector may:

(a) call for any information or record from any public office, officer or authority under the government or local authority;

(b) examine and record the statement of any public officer or authority under the Government or local authority;

(c) inspect the property after due notice to the parties to the instrument.

(4) After considering the representation of the parties, if any, and examining the records and other evidence, the Collector shall determine the market value of the subject matter of the instrument and the duty payable thereon.

(5) If, as a result of such inquiry, the market value is found to be fully and truly set forth and the instrument duly stamped according to such value, it shall be returned to the person who made the reference with a certificate to that effect. A copy of such certificate shall also be sent to the Registering officer concerned.

(6) If as a result of such inquiry, the market value is found to be undervalued and not duly stamped, necessary action shall be taken in respect of it according to relevant provisions of the Act."

10. The term "market value" has not been defined under the Act. However there are some precedents laying down certain guidelines as to how and what manner a market value would be determined. The consensus opinion is that the market value of any property is the price which the property would fetch or would have fetched if sold in the open market, if sold by a willing seller, unaffected by the special need of a particular purchaser. It is interesting to note that the Act provides first for determination of minimum value of the property and further says that if the

market value of the property set forth in the instrument is less than the minimum value determined under the Act, in such case before registering the instrument the registering authority shall refer the instrument to Collector for determination of market value of the property and the proper duty payable thereon and when the Collector determines market value of the property thereafter the parties shall proceed accordingly. Therefore, a market value of the property in all cases cannot be said to be higher than the alleged minimum value determined under the rules by the concerned authority, inasmuch as, it is only a kind of guideline provided to the authorities for the purpose of considering as to whether the proper stamp duty is being paid by setting forth true market value of the property in question in the instrument. The entire object of legislature in the various provisions of the Act is to require the parties concerned to set forth correct market value of the property at which the transaction has taken place so that appropriate duty in accordance with the Act is paid by them. The various provisions with respect to minimum value etc. are only in aid and assistance of the authorities to find out the true amount of consideration on which the parties have entered into transaction so that the correct duty is collected therefrom.

11. The minimum value determined by the authorities under Rule 4 or 5 of 1997 Rules is only indicative of the fact that if the value set forth in the sale deed is less than such minimum value then Registering Officer before registering the instrument shall make a reference to the Collector and get the market value determined therefrom. It is not necessary that when such a reference is made, necessarily and in all cases, the value set forth in the instrument would not be a market value of the property in question. The Collector being under an obligation to determine market value under Section 47-A(3) of the Act read with Rule 7 of 1997 Rules thereafter would make inquiry in accordance with procedure prescribed thereunder and find out the correct market value which may be the same which is stated in the instrument or may be higher or lesser as the case may be. But there is no rule of thumb that it will always be higher than the value determined by the competent authority under Rule 4 or 5 of 1997 Rules. After considering 1997 Rules this Court in Ram Khelawan Vs. State of U.P. and another, 2005(98) RD 511 has also taken the same view and has said:

"15. It is quite possible that even in the first instance the instrument/deed may show the valuation of the property to be less than the minimum value determined in accordance with Rules of 1997 (popularly known as circle rate) still purchaser or seller may not be required to pay more stamp duty. The only purpose of the minimum market value fixed and circulated under Rule 4 of the Rules of 1997 is that in case on the face of it the market value of the property set-forth in the sale deed is less than minimum market value fixed under the said Rules than Registering Officer cannot register the deed and it will have to refer the same to the Collector unless on being asked by him to make good the deficiency in stamp duty, parties to the sale deed make good the requisite deficiency. In case deficiency is not made good then matter will have to be referred by Registering Officer to the Collector. However, thereafter it is quite possible that Collector may hold that even though market value of the property set-forth in the deed is less than minimum market value fixed under the Rules of 1997 still the market value set forth in the sale deed is correct and proper stamp has been paid. It is quite clear from section 47-A(4)(i) and Rule 7(5)."

12. Rule 7 of 1997 Rules while providing for determination of market value nowhere refers to either minimum value fixed under Rule 4 or 5 of 1997 Rules or provides that the market value shall be determined by the Collector which must be in all cases higher than the value set forth in the instrument by the parties concerned. The question as to how and what manner market value would have to be determined by the Collector has been discussed in detail and various aspects have been considered by this Court in Ram Khelawan (Supra) with which I entirely agree and, therefore, is of the view that the Collector is under a statutory obligation before holding that an instrument does not set forth correct market value, to determine as to what is the market value of the property in question. This is what has been said in Hajari Lal Sahu Vs. State of U.P. and others, 2004 (96) RD 368 and Aniruddha Kumar and another Vs. C.C.R.A., U.P. and another, 2000(91) 566 with which also this Court is in entire agreement.

13. A perusal of Rule 7 would show that it does not talk of the circle rate so as to constitute a conclusive evidence of correct market value. In fact under Rule 7 there is no reference of circle rate at all. At the best it may be an indicator but not

the sole basis so as to conclude on the question of market value. This Court also having considered the above aspects and 1997 Rules in Civil Misc. Writ Petition No. 1637 of 2005, Anil Kumar and another Vs. State of U.P. and others, decided on 22.02.2008 observed as under:

"The Collector however has to examine all relevant aspects in the matter and thereafter to find out what is the correct market value of the property in question. He cannot proceed merely by saying that since the land is adjacent to Abadi, therefore, it must be valued at the rate of residential land and duty must be charged accordingly."

14. It is thus clear that circle rate by itself does not provide a true market value of the property, which is subject matter of instrument. It is only a guiding factor. In the present case interestingly the proceedings were initiated on the assumption that stamp duty has not been paid according to prevailing circle rate/market value treating the market value at par with circle rate but when the impugned order has been passed instead of confining to circle rate the Additional Collector has gone to increase value by 25% further to the prescribed circle rate and in doing so he has not given any reason whatsoever as to why he has treated that the true market value would be 25% more than the prescribed circle rate. Proceedings in question show a complete non-application of mind on the part of authorities. Such proceedings are nothing but amounts to a sheer harassment to public at large and in particular the person who actually suffer due to such whimsical order passed by authorities. A serious statutory duty has been cast upon respondents but instead of doing justice with their statutory requirement, in a totally indiscreet, left or right manner, the authorities are passing unmindful, arbitrary orders, whereby not only large public is being harassed but it also results in burdening the Courts though such litigation otherwise could have been avoided. The suggestion made by learned counsel for the petitioners that entire proceedings have been conducted for reasons other than bona fide, also does not appear to be wholly unfounded.

15. Even learned Standing Counsel despite his best efforts could not find any reason why Additional Collector determined market value by enhancing 25% of the circle rate. He failed to find out any justification or relevant consideration prevailed

with the authorities concerned is doing so.

16. In the circumstances, the impugned orders cannot sustain. The writ petition is allowed. The impugned orders dated 23.02.2011 and 17.10.2013 are hereby quashed. The petitioners shall be entitled to costs which I quantify to Rs. 10,000/-.

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