

Prafulla Singh Vs. State of U.P. and ors.

Prafulla Singh Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/468806

Court : Allahabad

Decided On : Feb-05-2009

Reported in : 2009(3)AWC2310

Judge : Tarun Agarwala, J.

Appellant : Prafulla Singh

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

ORDER

Tarun Agarwala, J.

1. Heard Sri Ram Swaroop Singh, the learned Counsel for the petitioner and the learned Standing Counsel for the respondents.

2. It transpires that the petitioner purchased an agricultural plot and paid stamp duty on the basis of the rates prevailing for agricultural land. Subsequently, a notice under Section 47A/33 of the Stamp Act was issued to the petitioner to show cause why deficiency of stamp duty and penalty be not imposed upon him since in the opinion of the State, the land was liable to be assessed as residential land as it was in the proximity of an Abadi land. The prescribed authority, after considering

the objections and other evidence that was brought on record held that the petitioner was liable to pay the stamp duty on the basis of rates applicable for residential land and was not liable to pay the rate for the agricultural land. The authority further observed that the land in question, no doubt was an agricultural land and that it was in the close proximity of the Abadi land, and therefore, the rate applicable for the residential land would be payable by the petitioner. The authority, while passing the order, directed the petitioner to pay the deficiency of stamp duty alongwith penalty. The petitioner, being aggrieved by the said order, filed an appeal which was dismissed. Hence this writ petition.

3. Having heard the learned Counsel for the parties and having perused the evidence that was brought on record, the admitted fact as culled out is, that admittedly the petitioner had purchased an agricultural land for agriculture purposes. However, the land was located in the close proximity of the Abadi land. The question is, whether an agricultural land, being in the close proximity of a residential land is liable for payment of stamp duty on the basis of the rate fixed for a residential land merely because the agricultural land is in proximity of residential land?

4. In *Aniruddh Kumar and Ashwani Kumar v. Chief Controlling Revenue Authority, U.P. Allahabad and Anr.* : 2000 (3) AWC 2587, the Court held that an agricultural land remains an agricultural land on the date of purchase and could not be treated as a residential plot nor can the valuation be determined on the assumption that the land was situated in close proximity of a residential land nor the said land could be treated as a residential land.

5. In *P. Ram Reddy and Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Ors.* 1995 (2) SCC 503, the Supreme Court held that the question of future potential of the land in question cannot be the determinative factor for determination of the market value of the land for the purpose of stamp duty payable under the Stamp Act.

6. The Supreme Court held that whether in future the purchaser would use the land for residential purpose or changes the character of the land was immaterial for the payment of stamp duty on the date when the land was purchased. Similar

view was again held by the learned single Judge of this Court in Smt. Neelam Gupta v. Commissioner, Kanpur Division, Kanpur and Ors. 2007 (102) RD 147 : 2007 (5) AWC 5363.

7. In view of the aforesaid, this Court is of the opinion that the stamp duty can only be determined on the basis of the land use recorded by the State in the revenue records. The mere fact that the land is in close proximity to a residential land will not make an agricultural land into a residential land nor can the authority determine the stamp duty of an agricultural land treating the said land as a residential land.

8. In view of the aforesaid, the impugned orders cannot be sustained and are quashed. The notice issued to the petitioner under Section 47A/33 of the Stamp Act is also quashed. The writ petition is allowed.

9. In the event, if the petitioner has deposited any amount pursuant to the impugned order or pursuant to the interim order passed by this Court, the same shall be refundable by the authority within four weeks from the date of the production of a certified copy of this order.