Wasim Adil Khan and anr. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jul-18-2002

Reported in : 2002(4)AWC2649

Judge : Sudhir Narain and ;O.P. Srivastava, JJ.

Acts : Uttar Pradesh Stamp Rules, 1942 - Rules 340, 340A and 341

Appeal No. : C.M.W.P. No. 15102 of 1995

Appellant : Wasim Adil Khan and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : C.K. Rai, S.C.

Advocate for Pet/Ap. : Rakesh Pandey and ;R.K. Garg, Advs.

Judgement :

Sudhir Narain and O.P. Srivastava, JJ.

1. The petitioners have sought for a writ of certiorari quashing the order dated 19.1.1993 passed by the Collector fixing circle rate in regard to village Modha, district Firozabad.

2. We have heard Sri Rakesh Pandey, learned counsel for the petitioners, and Sri C. K. Rai, learned standing counsel for the respondents.

3. The petitioners purchased plot No. 207, area 13-2-7 of irrigated land in village Modha. The Registrar while determining the value of the land for the purpose of determining the stamp duty payable by a purchaser takes into account the circle rate fixed by the Collector. The Collector has fixed the circle rate by the impugned order dated 19.1.1993.

4. The learned counsel for the petitioners raised two-fold arguments. Firstly, he contended that the Collector is to fix circle rate after expiry of two years as provided under Clause (1) of Rule 340A and the second contention is that the Collector has fixed the circle rate arbitrarily without following the guidelines provided under U. P. Stamp Rules, 1942.

5. Chapter XV of U. P. Stamp Rules, 1942, provides for determining the market value of certain instruments. Rule 340A provides that everyCollector shall biennially supply to the District Registrar and such other officers as the State Government may specify, a copy of the statement showing classification of soil, circle rate and the average price of land appertaining to each such classification situate in every pargana, corporation or local body of his district. It is under this provision, the Collector specifies circle rale of the property either in urban area or in rural area. The Rule itself does not specifically slate as to what are the guidelines for the Collector while determining the circle rate. Rule 340 provides that in the case of an instrument of conveyance, exchange, gift, settlement, award or trust relating to immovable property chargeable with an ad valorem duty on the market value of the property, particulars prescribed under the rule are to be followed. Rule 341 provides that for the purpose of payment of stamp duly, the minimum market value of immovable property forming the subject of an instrument of conveyance, exchange, gift, settlement, award or trust referred to in Section 47A(1) of the Act. shall be deemed to be not less than that as arrived on the basis of the multiples given in the said rule. The Collector is to follow the guidelines mentioned in those rules. Rule 341 lays down the basis of multiples in regard to agricultural and non-agricultural land. Rule 341 reads as under :

'341. For the purposes of payment of stamp duty, the minimum market value of immovable property forming the subject of an instrument of conveyance, exchange, gift, settlement, award or trust, referred to in Section 47A (1) of the Act, shall be deemed to be not less than that as arrived on the basis of the multiples given below :

(i) Whether the subject is land :

(a) in the case of bhumidhari-300 times the land revenue ;

(b) in case of Sirdari land-400 times the land revenue ;

(c) where the land is not assessed to revenue but net profits have arisen from it during the three years immediately preceding the date of the instrument, 25 times the annual average of such profits ;

(d) whether the land is not assessed to revenue and no profits have arisen from it during the three years immediately preceding the date of the instrument, 400 limes the assumed annual rent ;

(e) where the land is non-agricultural and , issituate within thelimits of any localbody referred to in Clause (c) of Sub-rule(1) of Rule 340-equalto the value workedout on the basis of theaverage price persquare metre,prevailing in thelocality on the date ofthe instrument.

(ii) Where the subject is grove or garden :

(a) If assessed to revenue the value of the land shall be worked out in the manner laid down in Rule 341 (i) (a) and the value of the trees standing thereon shall be worked out according to the average price of the trees of the same size, and age prevailing in the locality on the date of the instrument ;

(b) If not assessed to revenue or is exempted from it. the value thereof shall be determined at 20 times the annual rent plus and premium or20 times of the annualaverage of incomewhich has arisenduring the three yearsimmediately precedingthe date of instrumentand the value of thetrees thereon shall bedetermined inaccordance with Rule341 (ii) (a).

(iii) Where the subject is building :

(a) where the building is assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants-25 times the actual or assessed annual rental value, whichever is higher as the case may be ;

(b) where the building is not assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants-25 times the actual or assumed annual rental value, whichever is higher as the case may be.'

6. While fixing the circle rate, the duty of the Collector is onerous. The circle rate fixed by him is taken into account by the Registrar for fixation of the stamp duty payable by a person who wants to get a deed registered. The Collector must obtain necessary material for determining the circle rate and thereafter should fix the circle rate taking into consideration the relevant material and the guidelines prescribed under Rules 340 and 341 of the Stamp Rules. Respondents have not filed any counter-affidavit inspite of the time being granted to show as to on what basis the circle rate was fixed by the Collector.

7. Learned standing counsel placed reliance upon the decision Ramesh Chand Bansal and Ors. v. District Magistrate/ Collector, Ghaziabad and Ors.. 1999 (3) AWC 2431 (SC) : 1999 ALJ 1547. wherein it was held that Rule 340A does not restrict the power of the Collector to give rate differently for two years. The rate fixed by the Collector, however, is not final but is prima facie determination of rate of an area concerned only to give guidance to the registering authority to test prima Jade whether the instrument has properly described the value of the property. The circle rate under the rule is neither final for the authority nor to one subjected to pay the stamp duty. The question herein is as to what should be the guidelines for the Collector while fixing the circle rate. In our view, the guidelines prescribed under Rules 340 and 341 should be taken into consideration by the Collector while fixing the circle rate.

8. The next submission of the learned counsel for the petitioners is that the circle rate should be fixed after expiry of two years as provided under Clause (a) of Rule 340A. The petitioners have annexed the copy of the circle rate dated 30th November. 1990 and the circle rate dated 19.1.1993. It is after two years. Secondly, there is no provision under the said rule that the Collector cannot fix

circle rate even before expiry of two years. The Collector, on certain occasion, if it deems necessary, can fix circle rate even before expiry on two years.

9. The petitioners can, however, submit objection before the District Collector, respondent No. 3 in regard to circle rate fixed by him. On such representation being made, he shall determine the circle rate afresh after obtaining necessary reports in the matter from the authorities concerned and determine the circle rate.

10. In case the petitioners submit representation within three weeks from today, the bank guarantee given by the petitioners shall not be released till the representation is decided.

11. The writ petition is disposed of accordingly.