Manorma Tiwari Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-24-2011

Judge : Pankaj Mithal

Appeal No. : Writ - C No. 24888 of 2009

Appellant : Manorma Tiwari

Respondent : State of U.P. and Others

Advocate for Pet/Ap. : Sri. Rajeev Misra, Sri. Mishra

Judgement :

Heard Sri Rajeev Misra, learned counsel for the petitioner and Sri Nimai Das, learned Standing Counsel for the respondents.

Pleadings exchanged between the parties have also been examined.

The dispute in the present writ petition relates to deficiency in stamp duty in respect sale deed of Gata No.732 total area .5520 hectare situate in village Bardani, Pargana and Tehsil Soraon, District Allahabad.

The husband of the petitioner Sumant Lal Tiwari was one of the coowners of the aforesaid land along with his brother Chandan Lal. He purchased the half share of his brother Chandan Lal also vide sale deed dated 7.8.07. Thereafter, he transferred half of the whole of the land in favour of his wife Smt. Manorama Tiwari (petitioner) vide registered sale deed dated 1.10.07.

The aforesaid sale deed dated 1.10.07 is subject matter of the present proceedings.

Petitioner disclosed the market value of the land as an agricultural land and paid stamp duty accordingly. On the report of the Sub-Divisional Magistrate, Soraon dated 31.12.07 proceedings for determination of deficiency in stamp duty were initiated.

The Additional Collector (Civil Supplies) vide order dated 10.10.08 held the entire land to be non-agricultural in nature and determined its market value and deficiency accordingly. The aforesaid order has been upheld in revision vide order dated 16.4.09 passed by the Commissioner Allahabad Division, Allahabad.

The aforesaid two orders have been impugned in the present writ petition.

The first argument of Sri Mishra, learned counsel for the petitioner is that the land in question was recorded as an agricultural land at the time of the sale and therefore, its market value cannot be determined by treating it to be a non-agricultural land. In support he has placed reliance upon a decision of this court in the case of Veer Bal Singh vs. State of U.P. and others 2009 (2) ADJ 481.

No doubt at the relevant date the land was recorded as an agricultural land but the husband of the petitioner Sumant Lal Tiwari, who is the owner of the aforesaid Gata, had moved application on 16.8.07, much before the execution of the sale deed in question clearly stating that no agricultural activity is being conducted on the land in dispute rather on the said land a cold storage and a ice factory is under construction and therefore, the land be declared as non-agriculture in nature. The filing of the said application and its contents are not disputed by the petitioner. It is on the basis of the aforesaid application a declaration under Section 143 of the U.P. Z.A. and L.R. Act, 1950 dated 26.12.07 declaring the land to be non-agricultural in nature was issued. In view of the above the authorities have treated the land to be non-agricultural and have determined the market value accordingly. Once it is admitted to the petitioner that agricultural activities have been stopped on the said land prior to the purchase of the land and construction of a cold storage and a ice factory had started, it does not lie in her mouth to turn around and to allege the said land continues to be agricultural in nature.

It may be important to note that Section 142(1) of the U.P. Z.A. and L.R. Act, 1950 permits the owner of the agricultural land to use it for any purpose whatsoever and the use of agricultural land is not confined to agricultural activity only. This is irrespective of declaration under Section 143 of the U.P. Z.A. and L.R. Act, 1950. In other words even if the agricultural land has not been declared to be non-agricultural in nature it can be used for other purposes as well.

In such a situation, the relevant thing for the purpose of determining the market value is to ascertain the use of the land to which it was being put at the time of the sale. Admittedly, in the present case at the time of the sale deed dated 1.10.07 in view of the application of the petitioner's husband, the land was not under agricultural activity at all.

Thus, I am of the view, that the authorities below have not committed any error in treating the said land to be non-agricultural as on therelevant date of the execution of the sale deed.

The decision in the case of Veer Bal Singh (Supra) relied upon by the petitioner only holds that the evidence on record is not sufficient to hold the land in question as non-agricultural land when it is recorded as agricultural land and there is no declaration under Section 143 of the U.P.Z.A. and L.R. Act, 1950. However, the aforesaid decision is not a precedent on the point as to what would be the nature or characteristic of a land for determining its market value when despite being recorded as agricultural land, it is actually put to a different use or non-agricultural use which is permitted under Section 142 of the U.P. Z.A. and L.R. Act,1950.

In view of above, the aforesaid authority is distinguishable and is not applicable to the facts and circumstances of the present case where the land is admittedly found to be in use for non-agricultural activity for constructing of a coldstorage and ice plant.

The second argument of learned counsel for the petitioner is that there is no independent evidence to establish that the land in question was non-agricultural in nature at the time of the sale deed. The authorities were not supposed to have relied upon the report of the Sub-Divisional Magistrate as it was the basis for initiation of the proceedings. The argument may appear to be attractive but is not sound. In a case where the facts are admitted that the agricultural activity had been stopped on the land and a cold storage/ice plant is under construction on the said land, no further evidence to prove the same is required. Thus, even if the aforesaid report is ignored and is not relied as a piece of evidence the admitted facts are sufficient enough to enable the authorities to determine the deficiency in stamp duty by treating the land to be nonagricultural in nature.

Lastly it has been submitted that the satisfaction with regard to deficiency in stamp duty has to be recorded by the Stamp Collector and no such satisfaction appears to be on record.

In this regard, it may be noted that under the Indian Stamp Act, 1899 the Collector is the ultimate authority for determining the deficiency in stamp duty. The definition of the 'Collector' contained in Section 2(9) of the Act includes the Deputy Commissioner and any Officer to whom such powers of the Collector under the Act have been delegated by notification in the official gazette by the State Government.

The term "Collector" refers to Collector of the District appointed under the Land Revenue Act. In the districts of Oudh region Dy. Commissioner is the officer equivalent to the Collector. Sri Nimai Das, learned Standing Counsel has pointed out that apart from Collectors/Dy. Commissioners, Commissioner of Stamps, U.P., Addl. Commissioner of Stamps, Dy. Commissioner of Stamps and the Asst. Commissioner of Stamps as well as Sub-Divisional Officers and Asst. Collectors have also been assigned the powers of the 'Collector' vide notifications dated 7.2.79 and 16.11.1990. Therefore, S.D.M. also acts as a 'Collector' and the satisfaction recorded by the S.D.M. amounts to the satisfaction of the Collector moreover when the order determining the deficiency in stamp duty has been passed by the Additional Collector it cannot be said that there is no satisfaction recorded by the Collector. The aforesaid order passed by the Additional Collector is actually an order passed on behalf of the Collector.

Thus, this point also has no force.

In view of the aforesaid facts and circumstances, the writ petition lacks merits and is dismissed.