

Court No. - 17

Case :- WRIT - C No. - 3857 of 2023

Petitioner :- Kartar Singh And Another

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Revenue,
Govt. Of U.P. Civil Sectt. U.P. Lko. And 2 Others

Counsel for Petitioner :- Sanjay Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Sanjay Kumar Singh, learned counsel for the petitioners as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has challenged the order dated 23.09.2021, passed by the Deputy Commissioner (Stamp), Sitapur Circle, Lucknow Division, Lucknow under Section 56(1-A) of the Indian Stamp Act, 1899 (*hereinafter referred to as "the Act, 1899"*), whereby he has rejected the appeal preferred against the order of Prescribed Authority dated 19.08.2020.

3. It is submitted by learned counsel for the petitioner that petitioner had purchased total 0.462 hectares of land of Gata No. 983, 984, 928, 994, situated in Village - Islamabad, District - Lakhimpur Kheri from one Gaganjyoti Singh who was recorded tenure holder of the said land. The sale deed was registered on 24.06.2015, subsequently, it seems that inspection was done by the authorities of the said land where it was noticed that the said land was residential rather than agricultural, consequently, notice under Section 47A of the Act, 1899 was issued to the petitioner on 09.07.2019. The petitioner received the said notice and raised objections to the said notice before the Prescribed Authority stating that the said notice was illegal and arbitrary as same has been issued beyond the prescribed period of four years from the execution of sale deed as provided under Section 47A(3) of the Act, 1899.

4. The Prescribed Authority without considering the objections raised by the petitioner rejected his objections and ordered deficiency in stamp duty payable by the petitioner treating the land to be residential and directing the petitioner to pay deficit stamp duty of Rs.4,35,030/- and penalty of Rs.2,500/-

5. The petitioner preferred an appeal before the Commissioner.

Before the Appellate Authority the petitioner has raised objections to the validity of notice dated 09.07.2019, but his contentions were rejected stating that some time was consumed by the authorities after receipt of inspection report and consequently, the notice was issued, but did not considered the fact that such a notice cannot be issued beyond the period of four years.

6. It is submitted by learned counsel for the petitioner that notice dated 09.07.2019, was itself illegal and arbitrary as having been issued by the Prescribed Authority after four years and entire proceedings subsequent to the notice are liable to be quashed. In support of his submissions, he has relied upon the judgment of Full Bench of this Court in the case of **Girjesh Kumar Srivastava and Another Vs. State of U.P. and Others, 1998 (1) AWC 403 (FB)** as well as on the case of **Smt. Meena Khanna Vs. State of U.P. and Others, 2005 (3) AWC 2296**. In the case of **Smt. Meena Khanna (supra)** learned Single Judge has relied upon the Full Bench judgment of this case rendered in the case of **Girjesh Kumar Srivastava and Another (supra)**. It is submitted that period of limitation of four years would commence from the date of execution of the instrument till issuance of notice under Section 47A of the Act, 1899.

7. Learned Standing Counsel on the other hand has opposed the writ petition and supported the impugned order, but he could not dispute the facts of the present case.

8. Heard learned counsel for the petitioner and perused the record.

9. From the aforesaid undisputed facts, it is clear that sale deed with regard to Gata Nos. 983, 984, 928, 994, situated in Village - Islamabad, District - Lakhimpur Kheri, was registered on 24.06.2015, subsequently some inspection was conducted and notice was issued on 09.07.2019. From the bare perusal of aforesaid dates, it is evident that notice was issued beyond the period of four years from the date of execution of sale deed. According to Section 47A(3), it is mandated that notice be issued within the period of four years. It is further noticed that there was no provision for condonation of delay in issuance of such notice. The notice which is issued beyond the period of four years is illegal and arbitrary and therefore no proceedings under Section 47A of the Act, 1899 can continue pursuant to such notice. In this regard the Full Bench of this Court in the case of **Girjesh Kumar Srivastava and Another (supra)** has observed as under :-

"15. Our answers to the questions referred are as follows :-

(1) While exercising power under sub-section (4) of Section 47A, the Collector can determine the market value of the property and the duty payable on the instrument as a result of such determination but he has no power to impose penalty.

(2) The period of limitation of four years in sub-section (4) of Section 47A applies to the action which may be initiated by the Collector and not to a reference from any Court or other authorities enumerated in the sub-section."

10. In the light of aforesaid judgments it is beyond doubt that prescription provided under Section 47A(3) of the Act, 1899 is mandatory and issuance of such a notice confers jurisdiction upon the authority to take action and proceed under Section 47A of the Act, 1899. In case notice is not issued within the period prescribed, then the authority would lose his jurisdiction to proceed and make fresh assessment as per provision provided under Section 47A of the Act, 1899. The District Magistrate issued notice beyond the period of four years and thus had no jurisdiction to pass any order for re-assessment of stamp duty and accordingly, the impugned orders are illegal and arbitrary and liable to be quashed.

11. In view of above, the impugned orders dated 23.09.2021, passed by the Deputy Commissioner (Stamp), Sitapur Circle, Lucknow Division, Lucknow the order dated 19.08.2020 passed by the Prescribed Authority are hereby quashed.

12. The writ petition is accordingly **allowed**.

13. Any amount deposited by the petitioner shall be refunded to him expeditiously, say within a period of six weeks from the date of production of certified copy of this order.

Order Date :- 13.10.2023

A. Verma

(Alok Mathur, J.)