

Court No. - 17

Case :- WRIT - C No. - 1000119 of 2013

Petitioner :- M/S Bihariji Realtor P Ltd. Thru Its Director
Stamp

Respondent :- State Of U.P. Thru Collector Unnao And Others

Counsel for Petitioner :- Merajuddin Ahmad Warsi, B.N.
Srivastava, Rajesh Chandra Dixit, Sanjai Srivastava, Satish Kr.
Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Satish Kumar Srivastava, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioner has challenged the order dated 24.09.2010, passed by the Prescribed Authority/Additional District Magistrate (Finance & Revenue), Unnao, under Section 47-A of the Indian Stamp Act, 1899 thereby held that the petitioner has undervalued the property at the time of registration of the said instrument and has further imposed penalty upon the petitioner. The petitioner has also assailed order dated 05.09.2012, passed by the Commissioner, Lucknow Division, Lucknow thereby rejecting the appeal filed by the petitioner against the order of Prescribed Authority.

3. It has been submitted by learned counsel for the petitioner that petitioner got a sale deed executed on 22.03.2010 from one Saghir Ahmad by which he had purchased land measuring 0.523 hectares situated at revenue village - Unnao for consideration of Rs.16,55,000/- and paid stamp duty of Rs.1,60,000/- on the valuation of Rs.22,48,900/-. The sale deed was duly registered by the Sub Registrar and after five months a notice was served under Section 47-A of the Act, 1899 on 17.08.2010 to the petitioner regarding undervaluation of the instrument. The petitioner appeared before the Prescribed Authority and filed his objections stating that nature of land was agricultural while it was wrongly shown as residential in the inspection report on the basis of which notice was issued.

4. The Prescribed Authority by means of impugned order dated 24.09.2010 rejected the objections of the petitioner and relying solely upon the spot inspection report conducted by Naib Tehsildar and held that the said land was situated in close

proximity to the Kanpur-Lucknow Highway and also was close to Unnao-Shuklaganj Development Authority area and all around the said land residential plots have been carved out and consequently nature of said land is residential and not agricultural.

5. Assailing the aforesaid order the petitioner filed an appeal before the Commissioner, Lucknow Division, Lucknow. The Commissioner also after considering entire facts affirmed the findings recorded by the Prescribed Authority. The appellate authority also relied upon the spot inspection report.

6. It has been vehemently submitted by learned counsel for the petitioner that entire proceedings have been concluded relying upon the spot inspection report under Section 47-A of the Act, 1899 conducted by the Naib Tehsildar who has submitted his report on 17.08.2010. The petitioner had put in appearance before the Prescribed Authority and objected to the report submitted by the Naib Tehsildar and also prayed that fresh inspection be conducted. It is stated that according to order of the Prescribed Authority he had conducted spot inspection of the said plot but submits that the said inspection was in violation of Section 7(3)(c) of the Rules, 1997 and the said report should not have been relied upon by the Prescribed Authority while rejecting the objections of the petitioner.

7. It is submitted that provisions of Section 7(3)(c) are mandatory. After giving notice to the petitioner the said spot inspection should have been conducted in the presence of the petitioner. Neither the petitioner was served any notice nor spot inspection was conducted. The impugned orders having been passed on the basis of spot inspection report are illegal and arbitrary. Counsel for the petitioner has further submitted in the rejoinder affidavit that he has categorically stated in para 9 that the said spot inspection was conducted in gross violation of statutory provisions.

8. Learned Standing Counsel on the other hand has opposed the writ petition by submitting that petitioner was afforded adequate opportunity of hearing and the spot inspection was conducted by the Prescribed Authority himself before recording finding that nature of said land was residential.

9. Heard learned counsel for the parties and perused the record.

10. Main grievance raised by the petitioner is with regard to the nature of said plot which has been held by the Prescribed Authority to be residential rather than agricultural and consequently the stamp duty paid by the petitioner is not

adequate. In order to determine the nature of plot specific provisions have been provided under Rules, 1997 which provides that spot inspection should be conducted in the presence of the parties to determine nature of the land.

11. In the present case spot inspection was conducted by the Prescribed Authority but neither notice was given nor petitioner was asked to remain present on the spot at the time of spot inspection. It has been held by this Court that provisions of Section 7(3)(c) was mandatory in nature and where ever inspection report on the basis of notice has been issued are questioned by an individual then provisions of Section 7(3)(c) shall be complied with.

12. A Full Bench of this Court in the case of **Smt. Pushpa Sareen Vs. State of U.P. and others, 2015 (2) ESC 819 (All) (FB)** has held that the power of Collector to determine the market value either on a reference under Sub-section (1) or (2) of Section 47-A or acting suo motu under sub-section (4) was to determine the correct market value of the property. The market value of the property has to be determined with reference to the use to which the land is capable reasonably of being put to immediately or in the proximate future. The Collector would be within jurisdiction in referring to exemplars which have a bearing on the true market value of property which is required to be assessed. The Full Bench considered the following questions in the said judgment:-

"(1) Whether the registering officer can refer a document even if he does not find that the market value of the property as set forth in the instrument is less than even the market value determined in accordance with the rules made under this Act;

(2) Whether the Collector Stamps has power to fix the valuation of a plot on the assumption that the same is likely to be used for commercial purposes, and whether the presumed future prospective use of the land can be a criterion for valuation by the Collector;

(3) What should be the norms for fixing the valuation of a free-hold land viz-a-vis lease land;

(4) Whether the Collector can demand stamp duty under Section 47-A of the Stamp Act without a finding of fact that the market value as stated in the document is less than that which was actually agreed upon between the parties;

(5) Whether the orders passed by the Chief Controlling Revenue Authority can be reviewed if it is shown that the known norms of valuation have not been followed in the case."

13. The Full Bench in **Smt. Pushpa Sareen (supra)** while

answering Question No.2 has held that power and jurisdiction of the Collector under Section 47-A of the Act is to determine the actual market value of the property. The Collector in making that determination is not bound either by the value as described in the instrument or for that matter, the value as discernible on the basis of the Rules. It has been further held that the market value of the property has to be determined with reference to the use to which the land is capable reasonably of being put to immediately or in the proximate future. The possibility of the land becoming available in the immediate or near future for better use and enjoyment reflects upon the potentiality of the land. Paragraphs 26, 27 and 28 of the said judgement which are relevant, are extracted herein below:-

"26.The true test for determination by the Collector is the market value of the property on the date of the instrument because, under the provisions of the Act, every instrument is required to be stamped before or at the time of execution. In making that determination, the Collector has to be mindful of the fact that the market value of the property may vary from location to location and is dependent upon a large number of circumstances having a bearing on the comparative advantages or disadvantages of the land as well as the use to which the land can be put on the date of the execution of the instrument.

27. Undoubtedly, the Collector is not permitted to launch upon a speculative inquiry about the prospective use to which a land may be put to use at an uncertain future date. The market value of the property has to be determined with reference to the use to which the land is capable reasonably of being put to immediately or in the proximate future. The possibility of the land becoming available in the immediate or near future for better use and enjoyment reflects upon the potentiality of the land. This potential has to be assessed with reference to the date of the execution of the instrument. In other words, the power of the Collector cannot be unduly circumscribed by ruling out the potential to which the land can be advantageously deployed at the time of the execution of the instrument or a period reasonably proximate thereto. Again the use to which land in the area had been put is a material consideration. If the land surrounding the property in question has been put to commercial use, it would be improper to hold that this is a circumstance which should not weigh with the Collector as a factor which influences the market value of the land.

28. The fact that the land was put to a particular use, say for instance a commercial purpose at a later point in time, may not be a relevant criterion for deciding the value for the purpose of stamp duty, as held by the Supreme Court in State of U.P. and

others Vs. Ambrish Tandon and another, (2012) 5 SCC 566. This is because the nature of the user is relateable to the date of purchase which is relevant for the purpose of computing the stamp duty. Where, however, the potential of the land can be assessed on the date of the execution of the instrument itself, that is clearly a circumstance which is relevant and germane to the determination of the true market value. At the same time, the exercise before the Collector has to be based on adequate material and cannot be a matter of hypothesis or surmise. The Collector must have material on the record to the effect that there has been a change of use or other contemporaneous sale deeds in respect of the adjacent areas that would have a bearing on the market value of the property which is under consideration. The Collector, therefore, would be within jurisdiction in referring to exemplars or comparable sale instances which have a bearing on the true market value of the property which is required to be assessed. If the sale instances are comparable, they would also reflect the potentiality of the land which would be taken into consideration in a price agreed upon between a vendor and a purchaser."

14. It is also noteworthy that while determining the market value of a property the revenue authorities shall take into consideration the note of spot inspection and report of Tehsildar as being objective material before coming to a conclusion regarding market value of a property. The valuation of a property shall not be determined on the basis of future prospects or mere presumption. In the present case there is no compliance of mandatory provision of Section 7(3)(c) of the U.P. Stamp Act, and no spot inspection has been conducted after giving notice to the petitioner and hence the assessment made by the revenue authorities is illegal and arbitrary.

15. In the light of above, this Court is of the considered view that present proceedings have been held in violation of Section 7(3)(c). The impugned orders dated 24.09.2010, passed by the Prescribed Authority/Additional District Magistrate (Finance & Revenue), Unnao as well as order dated 05.09.2012, passed by the Commissioner, Lucknow Division, Lucknow are hereby set aside.

16. The present matter is remanded back to the Prescribed Authority to pass fresh order after complying with the provisions of Section 7(3)(c). Considering that substantial time has lapsed, the Prescribed Authority is directed to conclude the proceedings expeditiously, say within a period of two months from the date of production of certified copy of this order.

17. The amount, if any, deposited by the petitioner before the Prescribed Authority, same shall be adjusted in the said order

which may be passed in the remand proceedings.

18. The writ petition stands **allowed**.

Order Date :- 31.10.2023

A. Verma

(Alok Mathur, J.)