

Court No. - 17

Case :- WRIT - C No. - 1001519 of 2007

Petitioner :- Jhabbu Lal

Respondent :- The State Of U.P.Through The Principal Secy.
Revenue Lko.

Counsel for Petitioner :- Ravi Shanker Singh

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

Order on **Civil Misc. (Substitution) Application No. 5 of 2023**

alongwith **Civil Misc. (Delay Condonation) Application No. 3 of 2023**

and **Civil Misc. (Abatement) Application No. 4 of 2023**

1. Sri Kirti Veer Singh, Advocate has filed vakalatnama on behalf of proposed petitioners - applicants, same is taken on record.

2. It is submitted by learned counsel for the applicants that sole petitioner died on 21.08.2018, and present application is filed seeking substitution of his legal heirs and representatives. It is submitted that substitution application has been filed with some delay, which is bonafide and unintentional.

3. Perused the applications.

4. Cause shown for delay in filing the substitution application is deemed to be sufficient. Delay condonation application is allowed. Accordingly, delay in filing substitution application is hereby condoned.

5. Substitution application is also allowed. Learned counsel for the applicants is directed to carry out necessary incorporation in the memo of writ petition during course of the day.

6. Abatement, if any is set aside.

Order on **Writ Petition**

1. By means of present writ petition the petitioner has challenged the order dated 30.06.2004, passed by the Additional Collector, District - Pratapgarh under Section 47A of the Indian Stamp Act, 1899, thereby holding that the petitioner has

undervalued the property which was purchased by him on 01.12.2003 and accordingly he has directed the petitioner to pay an amount of Rs.1,17,840/- towards deficiency of stamp and Rs.2220/- towards penal charges and interest at the rate of 1.5% per month. Petitioner has also challenged the order dated 12.02.2007, passed by the Commissioner, Lucknow Division, Lucknow under Section 56 of the Act, 1899, wherein he has rejected the revision preferred by the petitioner, against the order of Prescribed Authority.

2. It has been submitted by learned counsel for the newly impleaded petitioners that Jhabbu Lal (petitioner now deceased) had purchased half of plot no. 464 measuring 0.187 hectares by means of sale deed executed on 01.12.2003. It is submitted that on 16.09.2004, a spot inspection was conducted on the said property where it was found that commercial activities are being carried out and 'atta chakki' alongwith workshop and shop are existing on the said plot and that petitioner has deliberately undervalued the said property on which notices were issued to petitioner under Section 47A of the Act, 1899.

3. It is next submitted that father of petitioners Jhabbu Lal put in appearance before the Prescribed Authority and filed his objections. The Prescribed Authority rejected the same holding that the commercial activities were being carried out on the said land and infact 'atta chakki' and rice dehusking machine were installed on the said premises and held that the said land was being used for commercial purposes while stamp duty has been paid treating it to be 'agricultural' and accordingly objections were rejected and Jhabbu Lal was directed to pay deficiency in stamp duty as well as penalty was imposed upon him.

4. Jhabbu Lal preferred revision before the Commissioner, Lucknow Division, Lucknow assailing the order passed by the Prescribed Authority. Before the Revisional Authority it was stated that order of Prescribed Authority was illegal and arbitrary and contention that there was no machine installed in the said premises and it was further stated that agricultural activities were carried out on the said land. He further stated that no spot inspection was carried out and without complying with the provisions of Section 7(3)C of the Act, 1899, order was passed by the Prescribed Authority.

5. Considering the objections filed by Jhabbu Lal, the revisional authority directed the Sub Divisional Magistrate to carry out fresh spot inspection, and on the said direction the Tehsildar inspected the said plot. The Spot inspection report was submitted on 16.09.2004. In the said report it was indicated that commercial activities were found on the said premises and also

that 'atta chakki' and rice dehusking machine was found installed, and therefore it was reported that the said premise was used for commercial activities and the said facts were corroborated by the villagers whose signatures were also obtained on the inspection report and said inspection was carried out in the presence of Jhabbu Lal (deceased petitioner).

6. In the aforesaid circumstances, the revisional authority also concurred with the findings recorded by the Prescribed Authority and held that the said plot was of commercial nature rather than agricultural as shown by the petitioner while registering the instrument dated 01.12.2003. In the aforesaid facts the Revisional Authority rejected the revision preferred by the petitioner up held the order passed by Prescribed Authority.

7. Petitioners before this Court has assailed both the aforesaid orders and it is submitted that there are no finding of fact recorded by the authorities and it is reiterated that agricultural activities were being carried out on the said plot.

8. Learned Standing Counsel on the other hand has opposed the writ petition and supported the impugned orders. He submits that there was sufficient evidence and material available on record to record a finding that commercial activities were being carried out on the said land and concurrent findings of fact have been recorded by both the authorities below.

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

10. It is noticed that present dispute pertains to purchase of half portion of plot no. 464 measuring 0.187 hectares situated at Gram Panchayat - Karmajeet Patti, Block - Bihar, Tehsil - Kunda, District - Pratapgarh, by means of sale deed executed on 01.12.2003. On the said plot it was found that shop measuring 25x75 feet was existing and Kirana store existed on the said plot. Inside the said plot 'atta chakki' and rice dehusking machine, oil mill was also found. Considering the objections raised by the petitioner that no spot inspection was done and there was no compliance of provisions of Section 7(3)C of the Act, 1899, a spot inspection was ordered by the Sub Divisional Magistrate and Tehsildar carried out spot inspection.

11. It is stated that the authorities carried out spot inspection and submitted report on 16.09.2004. In the said report it was clearly stated that the disputed plot is adjacent to the main road on which one kirana shop as well as atta chakki and rice dehusking machine was found. From the said inspection report is clear that commercial activities were carried out in the said plot. The Revisional Authority relying upon the said inspection

report dated 16.09.2004, confirmed the findings of fact recorded by the Prescribed Authority. On the other hand petitioner did not adduce any evidence to show that there was any infirmity with the impugned orders or the spot inspection report. He did not file any khasra or khatauni indicating that agricultural activities were carried out on the said plot. It was further found that a brick kiln was existing within 100 meters of the disputed plot. There is no other material available on record to demonstrate that agricultural activities were being carried out on the said land.

12. In the light of above, this Court is of the considered view that there is no infirmity with the order passed by the Prescribed Authority or Revisional Authority and the impugned orders were based on relevant and cogent evidence adduced before the authorities below in the form of spot inspection, statutory provisions under Section 7(3)c of the Rules, 1997 were fully complied with. No other point has been urged by the petitioner.

13. In the light of above, this Court does not find any merit in the writ petition and same is **dismissed**.

Order Date :- 21.11.2023

A. Verma

(Alok Mathur, J.)