

Court No. - 17

Case :- WRIT - C No. - 9077 of 2023

Petitioner :- Shoba Jashnani

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue U.P.
Lko. And 2 Others

Counsel for Petitioner :- Agendra Sinha

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Agendra Singh, learned counsel for petitioner as well as learned Standing Counsel for respondents.
2. By means of present writ petition, the petitioner has challenged the order dated 21.03.2022 passed by Assistant Stamp Commissioner under Section 47-A of India Stamps Act, 1899 as well as order dated 18.07.2023 passed by Deputy Commissioner (Stamp) under Section 56(1-A) of the Indian Stamp Act, 1899.
3. It has been submitted by learned counsel for petitioner that property situated at 9/24, Rana Pratap Marg, Lucknow wherein a gift deed was registered and the said property has been gifted by Smt. Saroj Jasnani to Smt. Shobha Jasnani by means of a registered deed executed on 21.12.2020. It is stated that on the said property there is a residential structure existing on which stamp duty of Rs. 10,45,110/- was paid and additionally an amount of Rs. 150730/- was paid as registration charges.
4. The said property was inspected by the Dy. Commissioner (Stamp) from which he was of the view that the property has been undervalued and consequently less stamp duty has been paid by the petitioner and consequently a notice under Section 47-A of Indian Stamp Act, 1899 was issued to the petitioner. The petitioner had put in appearance before the prescribed authority and submitted that the structure existing on the said land has been properly valued. It was further stated that the said structure had a RBC roof rather than RCC roof and consequently there was infirmity in the notice.
5. A further request was made by the petitioner for compliance of provision contained in Rule 7(3)(c) of Uttar Pradesh Stamp (Valuation of Property) Rules, 1997. On the application of the petitioner, another spot inspection was made after giving due notice to the petitioner. The said report was submitted on 18.08.2021 where the representative of the petitioner was present and in the said report it was reported that the said

structure has a RCC roof.

6. On the basis of the findings recorded in the said inspection report dated 18.08.2021 conducted in the presence of the petitioner, the Assistant Commissioner Stamp/Collector Stamp, Lucknow concluded that the said building has been undervalued and consequently directed the petitioner to pay deficiency of stamp duty i.e. Rs. 97580/- as stamp duty and Rs. 13940/- as registration charges apart from penalty of Rs. 2000/-. The petitioner aggrieved by the order of the prescribed authority preferred an appeal before the Dy. Commissioner Stamps.

7. In the appeal proceeding before Dy. Commissioner Stamps, it was submitted that the order passed by the prescribed authority is infirm, arbitrary and requires interference. The appellate authority rejected the appeal holding that the spot inspection was conducted in presence of the petitioner on 18.08.2021 where it was determined that the said construction has a RBC roof and even the provisions of Rule 7(3)(c) of Rules of 1997 were complied with and there was no error in the order passed by the prescribed authority and consequently rejected the said appeal.

8. Before this Court, the only ground taken by the petitioner that the spot inspection report dated 18.08.2021 is illegal and arbitrary and in fact the said building has only RBC roof and there was no inadequacy in the valuation of the property at the time of registration and also correct amount of stamp duty was paid looking into the valuation of the building and accordingly the matter requires interference. It was further submitted that in support of his contention the petitioner has filed a certificate of architect on 26.04.2023 before the appellate authority indicating that the building has a RBC roof but neither was evidence taken into account by the appellate authority and relying upon the spot inspection report dated 18.08.2021, both the authorities below have committed serious illegality and accordingly both the orders deserve interference.

9. Learned Standing Counsel on the other hand has opposed the writ petition. He submits that before both the authorities below, the petitioner has been given full opportunity of hearing and on the request of petitioner an spot inspection was conducted on 18.08.2021 in compliance of the provisions containing in Rule 7(3)(c) of Rules of 1997. The said inspection was conducted in the presence of the petitioner and duly accepted by the petitioner inasmuch as no objection to the said report was filed. Both the authorities have relied upon the said spot inspection report and it cannot be said that they have committed any illegality in passing the impugned order inasmuch they have

adhered to the findings recorded in the said inspection report.

10. He submits that a perusal of the memo of the appeal would also indicate that the petitioner was not aggrieved by either the spot inspection report dated 18.08.2021 nor did he file any objection to the said report and consequently it cannot be said that the appellate authority has committed any illegality in rejecting the appeal filed by the petitioner.

11. I have heard learned counsel for parties and perused the record.

12. It is noticed that present dispute pertains to execution of the gift deed with regard to the property situated at 9/24, Rana Pratap Marg, Lucknow. By means of the said gift deed, the property has been gifted by by Smt. Saroj Jasnani to Smt. Shobha Jasnani. The said deed was executed on 21.12.2020. The petitioner was duly issued a notice. He had made a request that a spot inspection be conducted as the notice did not depict correct facts occurring in the notice and consequently a spot inspection was conducted on 18.08.2021. In the said spot inspection report dated 18.08.2021, it was determined that the said structure has a RCC roof and RBC pillars. The said report was submitted by the Assistant Inspector General Registration.

13. It is further noticed that the representative of the petitioner was duly present on the spot when the said inspection was conducted. Accordingly, this Court finds that provisions of Rule 7(3)(c) of Rules of 1997 was fully complied with. Apart from the above, the petitioner was not aggrieved by the spot inspection report inasmuch as no objection of the said report was filed before the prescribed authority. The prescribed authority concurring with the spot inspection report passed an order holding that the said structure has a RCC roof and consequently was undervalued and proceeded to decide the case and directed the petitioner to deposit the deficiency in the stamp duty as well as registration charges thereon and also imposed a penalty of Rs. 2000/-.

14. Before the appellate authority, the only ground contended by the petitioner that the said building has in fact the RBC roof rather than RCC roof. The appellate authority also considered the arguments of the petitioner and noticed that spot inspection was conducted on 18.08.2021 in presence of petitioner where it was brought forth that the said disputed structure has a RCC roof. Apart from that there was no evidence or material filed by the petitioner to indicate that the said construction had RBC roof and proceeded to confirm the findings recorded by the prescribed authority and consequently rejected the appeal.

15. Before this Court also the petitioner has only filed a report of Architect dated 26.04.2022. The said report, it seems has been obtained subsequently and also that it was never filed before the prescribed authority.

16. While exercising its power under Article 226 of the Constitution of India, this Court has limited jurisdiction which is limited to the examination of the orders passed by the authority below to see that after considering the evidence available on record and after exercising the jurisdiction vested in them. the authorities have passed the order in just and fair manner after affording due opportunity of hearing. The judicial review is limited to the decision making process and that the decision itself. In this regard, this court has also looked into the spot inspection report conducted in presence of the petitioner and is satisfied that the findings recorded in the spot inspection report has been duly considered by both the authorities below where it has come on record that the said building has a RCC roof. It is further noticed that the said architect report cannot be relied upon as it is a cryptic report without any elaboration with regard to the structure. There is no mention as to how the disputed structure was inspected so as to conclude that the same has RBC roof. The architect report did not disclose as to whether he was the original architect who designed the building or inspected the same during its construction. In absence of any such fact, it is difficult to believe that from visual inspection it can be determined whether a roof is RBC or RCC. On the contrary, the inspection report dated 18.08.2021, prepared in presence of the petitioner stated that the structure has RCC roof. This report has never been doubted by the petitioner himself before the authority below, and consequently reliance of the said report by the authorities below cannot be held to be illegal or arbitrary.

17. From the aforesaid, it cannot be said that both the authorities below had erred in relying upon the report of the spot inspection conducted in presence of the petitioner. The writ petition being devoid of merits and is accordingly **dismissed**.

(Alok Mathur, J.)

Order Date :- 17.10.2023/Ravi/