

Court No. - 17

Case :- WRIT - C No. - 9432 of 2023

Petitioner :- Omar Iqbal Abbasi And 2 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Prein. Secy. Revenue Lko. And 3 Others

Counsel for Petitioner :- Rishi Kumar Khare, Prashant Srivastava, Sudhir Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard learned counsel for petitioner as well as learned Standing Counsel for respondents.
2. By means of present writ petition, the petitioner has assailed the validity of order dated 13.10.2022 passed by prescribed authority under Section 47-A of India Stamps Act, 1899 as well as appellate order dated 10.08.2023 passed by Commissioner, Lucknow Division, Lucknow thereby rejecting the appeal preferred by the petitioner.
3. It has been submitted by learned counsel for petitioner that petitioner has purchased five agricultural plots of Gata No. 286 ka 0.809 hect., 286 Ja area 0.809 hect., 286 Kha area 1.619 hect., 286 Ga area 0.809 hect. and 286 Gha area 1.619 hect. total area 5.665 hect. situated at Village Lodhaura, Pargana - Aurangabad, Tehsil - Misrikh, district Sitapur by sale deed which was registered on 09.06.2021.
4. Subsequently, certain inspections were got ordered and it was found that the stamp duty paid by the petitioner on the said sale deed have been paid after undervalue the property and consequently notice under Section 47-A of Indian Stamps Act, 1899 was issued to the petitioner. The petitioner appeared before the prescribed authority and filed his objections. He specifically prayed that spot inspection be conducted as per provisions of Rule 7(3) (c) of U.P. Stamp (Valuation of Property) Rules, 1997 after ascertaining the correct ground reality and fact and assessment should be done. He further stated that there is no infirmity in the valuation of land as per the sale deed and consequently prayed for setting aside the notice under Section 47-A of the Act of 1989. On the request of petitioner, the prescribed authority ordered a fresh spot inspection which was done by the S.D.M who submitted his report on 23.06.2022 and the prescribed authority has accepted the said inspection report and rejected the objection of the petitioner and directed him to pay the deficiency of the

stamp duty and registration charges amounting to Rs. 1760555/- which included penalty of Rs. 2 lakh.

5. The petitioner had assailed the said order by filing an appeal under Section 56 of the Indian Stamp Act, 1899 which has also been rejected by means of order dated 10.08.2023.

6. Learned counsel for petitioner has submitted that once the petitioner had moved an application under Rule 7(3) (c) of U.P. Stamp (Valuation of Property) Rules, 1997 for conducting the spot inspection then the same should be done after giving notice to the petitioner and also in his presence. It is stated that no notice was given to the petitioner and consequently the said inspection was ex-parte. Even the order of the prescribed authority though refers that an application was made by the petitioner as per the provisions of Rule 7(3) (c) of U.P. Stamp (Valuation of Property) Rules, 1997 and spot inspection was also conducted by the S.D.M. but there is no mention as to whether any notice was given or the petitioner was present on the spot when the inspection was conducted. The petitioner has filed only spot inspection report dated 23.06.2022 by means of supplementary affidavit.

7. Learned counsel for petitioner has vehemently urged that both the orders are illegal and arbitrary inasmuch as the mandatory provisions containing in Rule 7(3) (c) of U.P. Stamp (Valuation of Property) Rules, 1997 had not been followed. He submits that once the inspection report on the basis of which the notice has been issued is questioned by the noticee then it is incumbent upon the authority concerned to make a spot inspection after giving due notice to the parties and only thereafter proceed in the said matter.

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

9. Where it is found that an instrument is undervalued, the procedure has been set forth under Section 47-A of the Act for assessing the correct stamp duty on the instrument. Section 47-A of the Act reads as under:-

"47-A. Under-valuation of the instrument.--- "(1) (a) If the market value of any property which is the subject of any instrument, on which duty is chargeable on the market value of the property as set forth in such instrument, is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908 shall, notwithstanding anything contained in the said Act, immediately after presentation of

such instrument and before accepting it for registration and taking any action under section 52 of the said Act, require the person liable to pay stamp duty under section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with section 23 of the Registration Act, 1908.

(b) When the deficit stamp duty required to be paid under clause (a), is paid in respect of any instrument and the instrument is presented again for registration, the registering officer shall certify by endorsement thereon, that the deficit stamp duty has been paid in respect thereof and the name and the residence of the person paying them and register the same.

(c) Notwithstanding anything contained in any other provisions of this Act, the deficit stamp duty may be paid under clause (a) in the form of impressed stamps containing such declaration as may be prescribed.

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in clause (a) and presents the instrument again for registration, the registering officer shall, before registering the instrument, refer the same to the Collector, for determination of the market value of the property and the proper duty payable thereon."

(2) On receipt of a reference under sub-section (1) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject of such instrument and the proper duty payable thereon.

(3) The Collector may, suo motu, or on a reference from any court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorized by the State Government in that behalf, within four years from the date of registration of any instrument on which duty is chargeable on the market value of the property not already referred to him under sub-section (1) call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject for of such instrument, and the duty payable thereon and if after such examination he has reason to believe that market value of such property has not been truly set forth in such instrument he may determine the market value of such property and the duty payable thereon:

*Provided that, with the prior permission of the State Government, an action under this sub-section may be taken after a period of four years but before a period of eight years from the date of registration of the instrument on which duty is chargeable on the market value of the property.
....."*

10. From the reading of Section 47-A of the Act, it is evident that what has to be seen is the market value of the property and, if it is found that value of the property mentioned in the instrument is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer is empowered to impound the instrument when it is presented for registration and require the person liable to pay stamp duty with deficit stamp duty as computed on the basis of the minimum value determined in accordance with the rules and return the instrument for presenting again for registration.

11. The Collector (Stamp) is empowered to determine the correct stamp duty on receipt of reference or by suo motu. If on inquiry and examination, the Collector finds that the market value of the property has not been truly set forth and the instrument is not properly stamped, he is empowered to order for payment of proper duty and also for making the deficiency good together with a penalty on an amount not exceeding four times the amount of deficit duty besides statutory interest 1.8% per month.

12. The State Government in exercise of powers under Sections 27, 47-A and 75 of the Act has framed Rules, 1997. Rule 3 of the aforesaid Rules prescribes the facts to be set forth in an instrument relating to immovable property chargeable with an ad valorem duty.

13. Under Rule 4 of the Rules, 1997, the Collector is empowered to fix minimum rate for value of land, construction value of non-commercial building and minimum rate of rent of commercial building. This minimum value is to be fixed biennially after taking into consideration the facts as mentioned in the Rules.

14. Rule 5 of the Rules, 1997 provides for calculation of minimum value of land, grove, garden and building for the purposes of payment of the stamp duty as may be prescribed under the said Rule.

15. 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 judgement:-

"(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."

16. The Full Bench in **Smt. Pushpa Sareen Vs. State of U.P., 2015 SCC Online All 2935** 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."

17. 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.

18. A perusal of the said inspection report also does not indicate the presence of the petitioner or that any notice was given to him to be present during the said spot inspection. This Court in number of cases held that provisions of Rule 7(3) (c) of U.P. Stamp (Valuation of Property) Rules, 1997 are mandatory in nature and before ordering such an inspection adequate notice should have been given to the petitioner and the said inspection should have been conducted in his presence. Accordingly, impugned orders are illegal, arbitrary cannot be sustained and deserve to be set aside.

19. Accordingly, order dated 13.10.2022 passed by prescribed authority under Section 47-A of India Stamps Act, 1889 as well as appellate order dated 10.08.2023 passed by Commissioner, Lucknow Division, Lucknow are hereby set aside.

20. The matter is remitted to the District Magistrate, Sitapur to proceed afresh in the matter after complying with the provisions contained in Section 7(3)(c) of the Rules and pass an appropriate order expeditiously, say, within a period of two months from the date a certified copy of this order is produced before him.

21. Learned counsel for petitioner undertakes that petitioner shall cooperate in the proceedings and also will be available on the convenient date fixed by the District Magistrate for spot inspection.

22. With the above observations and directions, the writ petition

is **allowed**.

(Alok Mathur, J.)

Order Date :- 8.11.2023

Ravi/