

Court No. - 19

Case :- WRIT - C No. - 1001858 of 2000

Petitioner :- Nizamuddin And Others

Respondent :- State Of U.P.Through Collector Gonda And Others

Counsel for Petitioner :- S.K.Mehrotra

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Present petition has been preferred for quashing of the impugned order dated 31.08.1998 passed under Section 47 A of the Stamp Act, 1899 (hereinafter referred to as, the Act, 1899) by the Parganan Adhikari Sadar/Collector of Stamps, Gonda and the order dated 01.12.1998 whereby the recall application preferred by the petitioners for recalling the order dated 31.08.1998 was rejected as well as revisional order dated 10.04.2000 passed by the respondent no. 3-Mukhya Niyantrak Rajasva Pradhikari, Rajasva Parishad, Allahabad.

2. Learned Counsel for the petitioners has submitted that the petitioners had purchased a land area 0.47 acre of plot no. 1678 situated in Village Gird Gonda Gramin, Pargana Tehsil and District Gonda by a registered sale deed dated 14.03.1995 after paying the stamp duty as the land which was an agricultural holding recorded in the revenue records.

3. It is further submitted that after about 2 years of registration of sale deed, a report dated 13.09.1997 was submitted by the Naib Tehsildar showing deficiency in the stamp duty as the land was purchased for use of residential purposes in future. In pursuance thereof, a reference was made to the respondent no. 3 under Section 47 A of the Act, 1899 and the proceedings were initiated against the petitioner.

4. It is further submitted that the respondent no. 3 has decided the matter ex-parte by mentioning in the impugned order that matter was fixed on 26.08.1998 and on that date no one had appeared on behalf of the petitioners and a inspection was made by the respondent no. 3 i.e. Mukhya Niyantrak Rajasva Pradhikari, Rajasva Parishad, Allahabad himself on 31.08.1998 and it was found that the land which was purchased by the petitioners is situated near the bypass and on the two ends of plot in question a foundation was found laid a house was built respectively. According to him it shows that the said land was

purchased by the petitioners for the residential purposes and not for agricultural purposes and directed for paying the deficiency in the stamp duty alongwith penalty.

5. Against the said ex-parte order, a revision was preferred by the petitioners under Section 56 of the Act, 1899 which was also rejected by the revisional Court mainly on the ground that in the inspection, respondent no. 3 during the proceedings under Section 47 A of the Act, 1899 and he reached the same conclusion as did the Tehsildar in his inspection report dated 13.03.1997 i.e. the foundation in one side of the land and a house on the other side of the land is sufficient to prove that land was purchased by the petitioners for the residential purposes in future.

6. It is further submitted that the land which has been purchased by the petitioners is admittedly vacant and no construction was made on the said land. In the revenue records, it is entered as an agricultural land and till date no construction has been made by the petitioners so the assessment has been made on the basis of presumption and future potentiality of the land, which is not permissible as per the law laid down by Hon'ble Supreme Court as well as by this Court wherein, it has been held that potentiality of the land can be assessed on the date of execution of the instrument itself and in support of his submissions the learned counsel for the petitioners has placed reliance upon the following judgments:-

1. State of Uttar Pradesh and others Vs. Ambrish Tandon and another reported in (2012) 5 SCC 566

2. Surendra Singh and another Vs. State of U.P. and others reported in (2009) 27 LCD 442.

3. Jingle Bell Nursery School Society, Faizabad Vs. Chief Controlling Revenue Authority and others reported in (2008) 26 LCD 1284

4. Smt. Anasuya Singh Vs. Commissioner, Faizabad Division Faizabad and another reported in (2008) 26 LCD 588

5. Smt. Sandeep Kumar Kanodiya Vs. Chief Controller Revenue Board of Revenue, Alld U.P.

7. On the other hand, learned Standing Counsel has placed reliance upon the judgments passed in ***Writ C No. 1001107 of 2007 (The Assembly of God North India Balrampur and another Vs. State of U.P. and others*** and ***Writ C No. 12 of 2024 (Saurabha Srivastava and others Vs. State of U.P. and***

others) where this Court by placing reliance upon the Full Bench decision of this Court has dismissed the writ petition and has held that future potentiality of the land is to be seen for determination of the stamp duty.

8. After hearing learned counsel for the parties and going through the record of the case, the position which emerges out in the present case is that the land which was purchased by the petitioners is entered as agricultural land in the revenue records and the nature or use of the land has yet not been changed under Section 143 of the U.P.Z.A. & L.R. Act, 1950 till date. From the perusal of the impugned orders and the reports it is nowhere disclosed that any construction was found by the officers, who made the alleged spot inspection of the land rather it is an admitted case that the land is still vacant.

9. In the case of Surendra Singh (supra), relied by learned counsel for the petitioners, it has been held that nature of the land under the instrument should be considered on the date of execution of the instrument and not the future use to which the land may be put by the buyer. Potential of the land as on the date of sale alone could be taken into account in determining the market value and that the potential value of the land that could be put in use in future could not be taken into consideration.

10. In the case of Jingle Bell Nursery School Society (supra), relied by learned counsel for the petitioners, this court has held that the authority had proceeded to determine the value on the presumption that though the land is agricultural land but it has not been purchased for the said purpose. Such a presumption does not appear to be sound and reasonable.

11. Reliance has also been placed by learned counsel for the petitioner in the case of Anasuya Singh (supra), wherein it has been held by placing reliance upon the judgment passed in the case of ***Kishore Chandra Agarwal Vs. State of U.P. (2008) (104) RD 235*** that situation of a property in an area close to a decent colony not by itself would make it part thereof and should not be factor for approach of the authority in determining the market value. It has further been observed in the said judgment that the said agricultural land situated on the roadside of a highway in semi-urban area or country side area cannot be treated as commercial or residential unless that area is declared as commercial or residential in the Master Plan prepared by the State Government. It has also been held therein by placing reliance upon the judgment in the case of ***Neelam Gupta Vs. Commissioner, Kanpur Division, Kanpur (2007) 25 LCD 36***, that the present status of the land is to be seen and the

presumption that the plot has a potential in future like becoming a commercial or residential area is not relevant.

12. In the case of Ambrish Tandon (supra), Hon'ble Supreme Court has held that merely because the property is being used for commercial purpose at the later point of time may not be relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. The relevant para of the said judgment is reproduced hereunder:-

"15. The impugned order of the High Court shows that it was not seriously disputed about the nature of user of the building, namely, residential purpose on the date of the purchase. Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. Though the matter could have been considered by the appellate authority in view of our reasoning that there was no serious objection and in fact the said alternative remedy was not agitated seriously and in view of the factual details based on which the High Court has quashed the order dated 27-9-2004 passed by the Additional District Collector, we are not inclined to interfere at this juncture."

13. In the case of Sandep Kumar Kanodia (supra) relied by learned counsel for the petitioners, it has been held by this Court that authority has clearly erred in law in treating future potential use of the property on the basis of future exemplars instead of exemplars to be taken as on the date of execution of sale of transfer.

14. On the other hand, the judgment relied by learned Standing Counsel in the case of Assembly of God (supra), which was given by placing reliance upon the Full Bench judgment of this Court in the case of **Pushpa Sareen Vs. State of U.P. and others (2015) 2 ESC 819** is not applicable in the facts of the present case for the reason that the Full Bench of this Court placing reliance on the judgment of Hon'ble Supreme Court in the case of Ambrish Tandon (supra) has held that the nature of the user is relateable to the date of purchase which is relevant for the purposes 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. The relevant para nos. 27, 28 and 29 of the Full

Bench judgment is quoted hereinbelow:-

"27. 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.

28. 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.

29. 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."

15. Submission of learned Standing Counsel that on one side of the land purchased by the petitioner a foundation was there and on the other side of the land a house is constructed but it is nowhere mentioned either in the report or in the impugned orders that what is the nature of those lands on which the foundation or house is constructed and when it was made or constructed respectively, whether prior to the registry made in favour of the petitioners. In the present case there is nothing on the record by which it could be inferred that the petitioners would construct a house on the land. There is nothing on the record to show that the petitioners had taken any steps to infer that they intended to construct a house on the land. The fact that two persons chose to construct a house in the neighbouring plots & those persons not being connected with the petitioners, it cannot lead to an inference that the petitioners also shared the same intention of construction of house on their agricultural plot. Such an inference drawn by the authorities is conjectural or hypothetical. No exemplars or comparable sale instances were taken into consideration.

16. From the judgments referred above, the position is apparent that the land purchased by the petitioner is an agricultural land entered in the revenue records. The petitioners have not raised any construction on the said land. Meaning thereby, even on the date of inspection, the date on which impugned order was passed, there was no construction over the said land and the order has been passed on the basis of presumption that the land was purchased for the purpose of residential purpose which is not permissible as per the law settled by this Court as well as Hon'ble Supreme Court, as discussed above.

17. In view of the facts, circumstances and discussion made hereinabove, the present petition is **allowed**.

18. The impugned orders dated 31.08.1998 passed under Section 47 A of the Stamp Act, 1899 by the Parganan Adhikari Sadar/Collector of Stamps, Gonda and the order dated 01.12.1998 whereby the recall application preferred by the petitioner for recalling the order dated 31.08.1998 was rejected

as well as revisional order dated 10.04.2000 passed by the respondent no. 3-Mukhya Niyantrak Rajasva Pradhikari, Rajasva Parishad, Allahabad are hereby quashed.

Order Date :- 11.7.2024

Ashish