

Court No. - 17

Case :- WRIT - C No. - 1004597 of 2003

Petitioner :- Sanat Kumar Jain Objection Filed

Respondent :- State Of U.P. Thru Collector Bahraich And 3 Ors

Counsel for Petitioner :- P.V Chaudhary

Counsel for Respondent :- C.S.C

Hon'ble Manish Mathur,J.

1. Heard Mr. P. V. Chaudhary, learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed challenging order dated 28.10.2002 passed in proceedings under section 33/35/40/47A of the Indian Stamp Act whereby deficiency has been adjudicated with regard to sale-deed executed on 01.05.1998.
3. Also under challenge is order dated 25.09.2003 passed in Revision under Section 56 of the Act rejecting the same.
4. Learned counsel for petitioner submits that as would be evident from the order dated 28.10.2002, spot inspection of the premises in question were undertaken by the prescribed authority himself and clearly indicates the property being in a vacant stage but has erroneously come to a conclusion that it is being utilized for commercial activity. It is submitted that the property has been taken to be commercial in nature only on the basis of commercial activities being carried out in surrounding areas. It has been submitted that close proximity of the property which is subject matter of an instrument of transfer to the commercial area is not a criteria for adjudicating that the property in question is commercial itself. It has also been submitted that future or potential use of a property is also required to be excluded from consideration. He has placed reliance on judgment rendered by Full Bench of this Court in the case of ***Smt. Pushpa Sareen v. State of U.P. and others***

reported in 2015(3) AWC 2856.

5. He has also placed reliance on the following judgments:-

"(i) *Smt. Prakashwati versus Chief Controlling Revenue Authority, Board of Revenue, Allahabad & Ors.* reported in (1996) 4 SCC 657,

(ii) *Sarvoday Bahu Uddeshiya Vikas Samiti, Etawah versus Commissioner, Kanpur Division, Kanpur & Ors.* reported in 2014(3) AWC 2238,

(iii) *Prafulla Singh versus State of U.P. through Chief Controller of Revenue Allahabad & Ors.* reported in 2009(106) RD 749,

(iv) *State of U.P. & Ors. v. Ambrish Tandon & Anr.* reported in 2012 AIR SCW 1185,

(v) *Aniruddha Kumar & Anr. versus Chief Controlling Revenue Authority, U.P. Allahabad & Anr.* reported in 2000 SCC Online All. 576 and,

(vi) *Ram Khelawan @ Bachcha versus State of U. P. through Collector, Hamirpur & Anr.* reported in 2005 (98) RD 511.

6. Learned State counsel appearing on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with the submission that from the facts of the case, particularly the spot inspection undertaken by the Prescribed Authority himself, it is abundantly clear that the property in question is in the midst of commercial properties as well as abadi area and is adjacent to a market place as well as a coal depot. It is submitted that the order clearly indicates that certain other shops of petitioner are also situated barely two hundred meters away from the property in question which even otherwise is situate on a National High way.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that stamp duty on the instrument of transfer has been paid on the basis that the said property is agricultural in nature.

By means of impugned order dated 28.10.2002, it appears that proceedings were initiated in pursuance of report dated 13.03.2001. The prescribed authority has himself undertaken a spot inspection of the property in question and has come to a conclusion that the property is commercial in nature since no agricultural activities are ongoing. The aspect has also been considered in the context that property is surrounded by commercial activity and is also situate on the State Highway.

8. From the order in question, it is thus quite evident that location of the property has been a main stay for adjudicating it to be commercial in nature particularly in view of the fact that it is adjacent to properties where commercial activity is ongoing.

9. In the case of ***Smt. Prakashwati*** (supra), Hon'ble the Supreme Court has enunciated that in determining the nature of property which is subject matter of an instrument of transfer, its proximity to other areas having commercial activity is not a factor required to be considered and in fact it is use of the property in question which would be material. The same view has been enunciated by Hon'ble the Supreme Court in the case of ***State of U.P. and others v. Ambrish Tandon & Anrs.*** reported in ***(2012)5 SCC 566***.

10. In the case of ***Sarvoday Bahu Uddeshiya Vikas Samiti, Etawah*** (supra), it has again been held that potential value of land in future and future user would not justify determination of market value of property which is to be seen as on the date when the instrument was executed/registered. It has been held that there must be definitive proof or basis or material available on record for the authority concerned for determining higher market value than that which has been stated in the instrument. Reliance has also been placed on various other judgments rendered by this Court that higher stamp duty cannot be imposed merely on the basis of presumption that the property

may be used for commercial activities.

11. In the case of ***Prafulla Singh*** (supra), it has been held that an agricultural land remains agricultural as on the date of purchase and could not be treated to be residential on an assumption that it was in close proximity of residential land.

12. In the case of ***Smt. Pushpa Sareen*** (supra) however Full Bench of this Court has held that the possibility of land becoming available in the immediate and near future for better use and enjoyment reflects upon potentiality of the land, the same has to be assessed with reference to the date of execution of the instrument and is a factor which can be seen by the prescribed authority while determining valuation of the property. However it has also been held that the Collector must have material on record to the effect that there has been a change of user or other contemporaneous sale-deeds in respect of adjacent area which would have a bearing on a market value of the property under consideration and for that purpose the Collector would be required to refer to exemplar or comparable sale instances which have a bearing on the truth market value.

13. Upon examination of aforesaid judgments in addressed herein-above, it is thus evident that stamp duty is to be assessed on the market value of the property as on the date of execution of a deed for which purpose its current use is to be seen by the Collector. Potential or future use of the property can be taken into account but only as on the date of execution of the deed for which purpose its proximity to commercial areas may be seen but again as has been held in the case of ***Smt. Pushpa Sareen*** (supra), the Collector would be required to refer to exemplar or comparable sale instances which would have a bearing of the true market value of the property. Relevant portion of judgment are as follows:

"30. 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 v. The Ambrish Tandon and another, (2012) 5 SCC 566: 2012 (2) AWC 1836 (SC). 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. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is quite evident that the property in question has been held to be commercial in view of its close proximity and being adjacent to other plots on which commercial activities is ongoing. While this may reflect upon potential or future use of the property in question as on the date of execution of a deed, but the Collector was also required to advert to exemplars of other sale-deeds which would have been executed in adjacent areas or to have indicated whereas no such exemplars are present. Such a course of action having not been indicated by the Collector in his order vitiates the impugned order which is therefore not in consonance with the judgments referred to herein-above.

15. The revisional order also has rejected the revision only on the basis that the property in question is in close proximity to other plots where commercial activity is ongoing as well as the fact that the property in question is situate on a State Highway.

16. In view of discussion made herein-above, the impugned

orders dated 28.10.2002 and 25.09.2003 not being in consonance with the law on point are hereby set aside.

17. Consequences to follow.

18. Resultantly, the petition succeeds and is ***allowed***. Parties to bear their own costs.

19. It is provided that in case petitioner has deposited any amount in pursuance of interim order dated 17.12.2003, he shall be entitled for a refund of the same expeditiously.

Order Date :- 19.4.2024

Subodh/-