

Court No. - 17

Case :- WRIT - C No. - 1001368 of 2008

Petitioner :- Shiv Poojan Awasthi

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

Counsel for Petitioner :- Bhupendra Veer Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. Bhupendra Veer Singh, learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.

2. Petition has been filed challenging order dated 31.10.2007 passed under Section 47-A of Indian Stamp Act 1899 (hereinafter referred to as the Act of 1899) whereby deficiency in stamp duty on the instrument of transfer has been indicated imposing penalty and interest thereupon. Also under challenge is the revisional order dated 12.02.2008 whereby petitioner's Appeal has been rejected.

3. Learned counsel for petitioner submits that petitioner purchased property in question by means of sale deed executed on 06.06.2006 whereafter the land usage was changed under Section 143 of U.P. Zamindari Abolition and Land Reforms Act, 1950(hereinafter referred to as the Act of 1950) on 18.01.2007 whereafter notice under Section 47-A of the Act of 1899 was issued to petitioner on 27.02.2007 and impugned orders have been passed in pursuance thereof.

4. It has been submitted that the property in question has been determined to be undervalued and has been considered to be residential property apparently in view of alleged averment made in the sale deed that it is situate within the town area Oel within the *Abaadi* area and a gas go-down was found to be

established thereupon. It has been submitted that the Prescribed Authority has clearly fell in error in considering the property in question to be within the town area on basis of an alleged statement made in the sale deed whereas the averment made in the sale deed was completely contradictory and specifically stated that the property in question is situate outside the town area. Thus, the consideration is based on misreading of the sale deed. It has been submitted that impugned order even otherwise has been passed on the basis of future potential use and not as per the use as on the date of execution of sale deed. Learned counsel for petitioner has placed reliance on judgment rendered by Hon'ble the Supreme Court in **State of U.P. and others v. Ambrish Tandon and another**, reported in (2012) 5 SCC 566. He has also placed reliance on a Full Bench decision of this Court rendered in **Pushpa Sareen v. State of U.P. and others**, reported in 2015(33) LCD 1575 to buttress his submission.

5. It has been further submitted that even in memorandum of Appeal, a specific plea has been taken as ground (*cha*) that the property in question is situate outside the town area of Oel and Khatauni to buttress the fact had also been submitted by petitioner but these factors have been ignored by appellate authority.

6. Learned State Counsel appearing on behalf of opposite parties has refuted the submissions advanced by learned counsel for petitioner with submission that the impugned order is clearly based on the potentiality of land as on the date of execution of the deed since the property was purchased vide sale deed dated 06.06.2006 and a go-down was admittedly established thereupon within a period of six months. It is submitted that petitioner himself admits the fact that usage of the property in question was changed from agricultural on

18.01.2007 under Section 143 of the Act of 1950. He has also placed reliance on judgment rendered in **Pushpa Sareen**(supra) to submit the aspect of potentiality.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident that the Prescribed Authority has held the property in question to be situate within the town area of Oel on the basis of averments made in the sale deed while also advertng to fact that the property in question is surrounded by *Aabadi* area.

8. However, a perusal of sale deed specifically indicates the fact that a contradictory statement has been made therein with a specific averment that the property under transfer is situate outside the town area of Oel. It is thus apparent that the very foundation of such a finding by the Prescribed Authority was on a misreading of the sale deed.

9. It also appears that spot inspection report was submitted on 01.08.2007 during the pendency of proceedings under Section 47-A of the Act of 1899 which has been taken into consideration by the Prescribed Authority who has reached to a conclusion that the property in question was surrounded by *Abaadi* area basing on the said report.

10. The aspect of potentiality of property as on the date of execution of deed has been enunciated in **Pushpa Sareen**(supra) as follows:-

"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."

11. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is thus evident that for a finding to be recorded by the Prescribed Authority regarding nature of the land, it was incumbent upon him to have adverted to exemplars of surrounding properties as well as to revenue records, which has however escaped consideration in the impugned order which is based solely on the spot inspection report dated 01.08.2007.

12. It is also evident that the spot inspection report has been submitted in violation of Rule 7(3)(c) of the U.P. Stamp (Valuation of Property) Rules, 1997 which specifically provides for prior notice to the assessee and his presence at the time of spot inspection. The said provision has been held to be mandatory in nature by this Court in **Ganga Ram v. State of U.P. and others** reported in 2020 (38) LCD 1991.

13. Considering the aforesaid facts, it is quite evident that the twin grounds for considering the property in question to be non-agricultural are based on a misreading of the sale deed and the other on inadmissible evidence.

14. It is also evident that specific ground with regard to same had been taken by petitioner in the memorandum of Appeal but has not been dealt with, with only a passing reference being made thereupon. It is therefore evident that the order impugned in the petition have been passed in violation of law enunciated as indicated herein above.

15. Considering aforesaid facts, impugned order 31.10.2007

passed under Section 47-A of the Act of 1899 as well as appellate order dated 12.02.2008 passed under Section 56 of the Act of 1899 being against the provisions of law, are hereby set aside. Consequences to follow.

16. It has been submitted by learned counsel for petitioner that in pursuance of impugned orders, amount has been deposited with authorities concerned.

17. In view of orders passed herein above, the petitioner is held entitled for refund of the amount so deposited forthwith.

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

Order Date :- 2.5.2024

kvg/-