

Court No. - 17

Case :- WRIT - C No. - 1004544 of 2006

Petitioner :- Awadesh Kumar Awasthi Stamp Objection Filed

Respondent :- Chief Controlling Revenue Authority U.P.Allahabad And Others

Counsel for Petitioner :- Rajendra Singh Chauhan

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.

2. Petition has been filed assailing order dated 14.10.1996 passed under section 47-A of Indian Stamp Act 1899 (hereinafter referred to as the Act of 1899) whereby deficiency in instrument of transfer dated 12.10.1993 has been indicated whereafter deficiency along with penalty has been imposed. Also under challenge is the revisional order dated 28.05.2001 rejecting petitioner's revision under Section 56 of the Act of 1899 as well as order dated 01.06.2006 whereby recall application has been rejected.

3. Learned counsel for petitioner submits that as would be evident from order dated 14.10.1996 that the same has been passed in an ex parte manner placing reliance on spot inspection report dated 20.05.1995. It is submitted that the only basis of the order is a presumption with regard to future potentiality of the property under instrument of transfer. It is submitted that there is no examination of exemplars or even the use of property concerned at the time of execution of the instrument of transfer.

4. Learned counsel further submits that even the revisional order dated 28.05.2001 has not considered the aforesaid aspect which also decided the revision on an ex parte basis whereafter

recall Application was filed which too has been rejected.

5. 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.

6. Learned State Counsel appearing on behalf of opposite parties has refuted the submissions advanced by learned counsel for petitioner with submission that a perusal of orders impugned will make it evident that they are based on the spot inspection report submitted by the Sub-Registrar which clearly indicated the potentiality of land under transfer. It is also submitted that no such ground has been taken by the petitioner in the writ petition with regard to potentiality of the land.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident that order dated 14.10.1996 passed under Section 47-A of the Act of 1899 is based entirely on the initial spot inspection report dated 20.05.1995 which only pertains to future potentiality of the land as residential. It is quite evident that neither any exemplars have been indicated nor even the nature of surrounding properties in the order. In fact, the order has been passed only on the aspect of future potentiality of the property.

8. The revisional order also follows the same without any other deviation.

9. Hon'ble the Supreme Court in **Ambrish Tandon**(supra) has enunciated the law as follows:-

"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."

10. The aforesaid aspect has also been adverted to by Full Bench of this Court in **Pushpa Sareen**(supra) in the following manner:-

"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. In view of aforesaid facts, it is quite evident that the orders impugned are based only on the aspect of future use of property under transfer, which is an aspect which was not required to be taken into consideration at all.

12. The orders therefore clearly have been passed in violation of judgments rendered by Hon'ble the Supreme Court as well as this Court and is also against the provisions of Section 47-A of the Act of 1899 and therefore in the considered opinion of this Court, such a ground having not been taken, would not be fatal for adjudication of this Petition since it goes to the very root of the dispute.

13. In view of aforesaid discussion, it being evident that impugned order dated 14.10.1996 passed under Section 47-A of the Act of 1899 and order dated 28.05.2001 passed under Section 56 of the Act of 1899 being against the provisions of law, are hereby set aside. The consequential order dated 01.06.2006 would also stand set aside.

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

15. It is directed that in case petitioner has deposited any amount in pursuance of impugned orders, he shall be entitled for a refund of the same forthwith.

Order Date :- 30.4.2024

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