

**Court No. - 5**

**Case :-** WRIT - C No. - 14405 of 2021

**Petitioner :-** Reeta Devi @ Sita Devi

**Respondent :-** Commissioner Devi Patan Mandal Gonda And Ors.

**Counsel for Petitioner :-** Vinay Tripathi, Saurabh Shukla

**Counsel for Respondent :-** C.S.C.

**Hon'ble Abdul Moin, J.**

1. Heard learned counsel for the petitioner and learned Standing counsel appearing on behalf of the State-respondents.

2. Instant writ petition has been filed praying for the following main reliefs:-

*"(i) Issue a writ, order or direction in the nature of Certiorari thereby quashing the impugned order dated 11.02.2020 passed by Opp. Party No. 1 in revision No. C201908000000763 under Section 56 (1) of Stamp Act and order dated 31.10.2017 passed by the opp. party no. 2 in case no.-D-201608-6202703 U/S 33/47 of Stamp Act contained as Annexure no. 1 & 2 to this writ petition."*

3. The case set forth by the petitioner is that he had purchased a piece of land through registered sale deed on 09.06.2016. The land also contained certain Sagon trees. The trees have duly been indicated in the said sale deed. It is contended that a report was submitted by the Assistant Inspector General, Shrawasti on 05.11.2016 indicating that the girth of the trees have not been correctly indicated by the petitioner in the sale deed. On the basis of the said report, proceedings under Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as "Act, 1899") have been initiated against the petitioner. Despite a notice being issued to the petitioner, she failed to put in appearance with the result that the competent authority has passed an ex-parte order dated 31.10.2017, a copy of which is annexure 2 whereby the petitioner has been required to pay additional stamp duty and registration charges. Being aggrieved, the petitioner filed an appeal which too has been rejected vide order dated 11.02.2020, a copy of which is annexure 1 to the writ petition.

4. Being aggrieved, the instant writ petition has been filed.

5. The contention of learned counsel for the petitioner is that a perusal of the order impugned dated 31.10.2017 would indicate that the proceedings have been

initiated on the basis of a report dated 05.11.2016 which is also the basis of the order impugned dated 31.10.2017 inasmuch as except for referring to the said report, no other material has been considered by the competent authority while passing the order impugned.

6. Placing reliance on the judgment of this Court in the case of Ram **Khelawan @ Bachcha vs. State of U.P. and another - 2005 SCC OnLine All. 2247**, the contention is that the said inspection report would only be relevant for initiating the proceedings under Section 47-A of the Act, 1899 but not for deciding the case while placing reliance on the said report. He further states that this aspect of the matter has also not been considered by the appellate authority while rejecting the appeal of the petitioner vide order dated 11.02.2020. He thus contends that the impugned orders merit to be set aside.

7. On the other hand, learned Standing Counsel on the basis of averments contained in the counter affidavit argues that as the petitioner failed to put in appearance before the competent authority as such, the competent authority on the basis of material which was available with him i.e the report of the Assistant Inspector General, Shrawasti dated 05.11.2016, has proceeded to pass the order impugned as such, there is no illegality or infirmity in the same and thus it is prayed that the writ petition deserves to be dismissed.

8. Heard the learned counsels appearing on behalf of the contesting parties and perused the records.

9. From a perusal of records it emerges that a piece of land had been purchased by the petitioner through a registered sale deed on 09.06.2016. The sale deed is on record having been filed as annexure 3 to the writ petition. The sale deed duly records the existence of various trees on the said piece of land. A report was submitted by the Assistant Inspector General dated 05.11.2016 indicating that the girth of the trees have not been indicated correctly by the petitioner and consequently, the land was more valuable than what has been indicated by the petitioner. Based on the said report, proceedings under the provisions of the Act, 1899 have been initiated and despite issuance of notice to the petitioner, she

failed to put in appearance and an ex-parte order dated 31.10.2017 has been passed whereby the petitioner has been required to pay additional stamp duty. The appeal filed by the petitioner against the said order has also been rejected.

10. A perusal of the order impugned dated 31.10.2017 would indicate that the only material before the competent authority was the reference report dated 05.11.2016. No other material has been considered by the competent authority while passing the said order.

11. This aspect of the matter has been considered by this Court in the case of **Ram Khelawan (supra)** wherein this Court has held as under:

*"25. It has been found in several cases like the present one that the entire basis of determination of market value for the purpose of stamp duty is ex-parte report of Tehsildar or other officer. Ex-parte inspection report may be relevant for initiating the proceedings under Section 47-A of Stamp Act. However, for deciding the case no reliance can be placed upon the said report. After initiation of the case inspection is to be made by the Collector or authority hearing the case after due notice to the parties to the instrument as provided under Rule-7(3) (c) of the Rules of 1997. Moreover in the inspection report distance of the property from other residential or commercial properties and road must be shown and wherever possible sketch map must also be annexed alongwith the report so that correct valuation may be ascertained with reasonable certainty."*

12. From perusal of the aforesaid judgment, it emerges that though an ex-parte report may be relevant for initiating the proceedings under Section 47-A of the Act, 1899 but for deciding the case no reliance can be placed upon the said report and after initiation of the case, notice to the parties to the instrument as provided under Rule- 7(3)(c) of the Rules, 1997 is a must.

13. Accordingly, considering the law laid down by this Court in the case of **Ram Khelawan (supra)** it emerges that the order impugned dated 31.10.2017 as passed by the competent authority does not adhere to the aforesaid proposition of law in as much as no other material except for the ex-parte report as submitted by the Assistant Inspector General, Shrawasti has been considered by the competent authority. This aspect of the matter has also not been considered by the appellate authority while rejecting the appeal of the petitioner vide order dated 11.02.2020.

14. Keeping in view of the aforesaid discussion, the writ petition is allowed. The

orders impugned dated 11.02.2020 and 31.10.2017, copies of which are annexures 1 & 2 to the petition respectively, are quashed. The matter is remitted to the competent authority i.e. respondent No.2 to pass a fresh order after due opportunity of hearing to all the parties concerned in accordance with law which order would be passed within a period of three months from the date of receipt of certified copy of this order.

15. Learned counsel for the petitioner states that the petitioner would be appearing before the competent authority as and when a date is fixed by the competent authority.

**Order Date :- 8.2.2024**

Pachhere/-