

Court No. - 5

Case :- WRIT - C No. - 541 of 2024

Petitioner :- Sammukh Land Developers And Promoters Pvt. Ltd. Jaunpur Thru. Director Pankaj Jaiswal And Another

Respondent :- Collector/District Magistrate, Ambedkar Nagar And Another

Counsel for Petitioner :- Mohammad Ehtesham Khan, Anil Kumar Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioners and Shri Rahul Shukla, learned Additional Chief Standing Counsel for the respondents no. 1 and 2.
2. With the consent of learned counsel appearing for the contesting parties, the writ petition is being finally decided.
3. The instant writ petition has been filed challenging the order dated 21.12.2023 passed by the respondent no. 1 in Stamp Case No. 695 of 2023 in re: State vs Sammukh Land Developers and another under Section 47A of the Indian Stamp Act 1899 (hereinafter referred to as the Act, 1899), a copy of which is annexure 1 to the petition.
4. A preliminary objection has been taken by Shri Rahul Shukla, learned Additional Chief Standing Counsel appearing for the respondents that the petitioners have a statutory remedy of filing of an appeal under the provisions of Section 56(1A) of the Act, 1899, as such the writ petition deserves to be dismissed on this ground alone.
5. Responding to that Shri M.E. Khan, learned counsel for the petitioners argues that the order impugned is contrary to the statutory provisions contained in the Act, 1899 as well as the rules namely the U.P. Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as the Rules, 1997) on various grounds and as such, the remedy of appeal will not be an

absolute bar in this Court entertaining the writ petition under Article 226 of the Constitution of India.

6. In this regard, the first ground that has been urged by Shri M.E. Khan, learned counsel for the petitioners as stands recorded in the orders dated 19.01.2024 and 25.01.2024, as passed by this Court, are that in terms of the Rules 1997 and Section 47-A(3) of the Act, 1899 the Sub-Registrar is not competent for sending the reference after registration of the document (in this case the sale deed) in as much as the authority who can make reference has duly been set forth in Section 47-A(3) of the Act, 1899 which provides that the Collector may suo motu on a reference from any court or from the Commissioner of Stamp, or from Additional Commissioner of Stamp or from a Deputy Commissioner of Stamp or from Assistant Commissioner of Stamp or any officer authorized by the State Government in that behalf may call for and examine the instrument for the purpose of satisfying himself regarding the correctness of market value of the property and if he has reason to believe that the market value has not been properly set forth in the instrument, he may determine the market value.

7. Placing reliance on Rule 2(f) of the Rules 1997, the argument of Shri M.E. Khan, learned counsel for the petitioners is that the said rule specifically defines the referring officer as meaning the court or any of the following namely the Commissioner of Stamp, Additional Commissioner of Stamp, Deputy Commissioner of Stamp, Assistant Commissioner of Stamp or any officer authorized by the Board of Revenue under Section 47-A of the Act 1899.

8. The argument is that a perusal of the order impugned dated 21.12.2023 would indicate that the proceedings under Section 47-A of the Act, 1899 have been initiated on the basis of a

reference made on the basis of the report submitted by the Sub-Registrar, Akbarpur and he not being an authority / an officer indicated either in Section 47A(3) of the Act, 1899 or Rule 2(f) of the Rules 1997 consequently any decision that has been taken by the competent authority on the basis of the said reference would be void ab initio and hence statutory remedy of appeal as provided under the provisions of the Act, 1899 would not be an absolute bare in the instant petition being entertained by this Court.

9. Responding to that Shri Rahul Shukla, learned Additional Chief Standing Counsel argues on the basis of instructions that admittedly a report was submitted by the Sub-Registrar, Akbarpur on 27.04.2023 which was a confidential report, a copy of which is annexure 6 to the petition. He further states that a perusal of the endorsement made on the said report as would be apparent from a perusal of the said report (page 62) would indicate that the reference was not made by the Sub-Registrar, Akbarpur rather the said report had been considered by the Assistant Deputy Inspector General Stamp (Registration), Ambedkar Nagar and upon he having recorded the satisfaction of the said report that it was required that the stamp case should be registered. Thus it is contended that as the reference per se was not made by the Sub-Registrar, Akbarpur vide his report dated 27.04.2023 rather the reference has been made by Assistant Deputy Inspector General Stamp (Registration), Ambedkar Nagar after considering the said report consequently the officer as prescribed under the provisions of Rule 2(f) of the Rules 1997 and Section 47A(3) of the Act, 1899 would not be the Sub-Registrar rather, in this case, would be the Assistant Deputy Inspector General Stamp (Registration), Ambedkar Nagar who was also having the charge of the post of Assistant Commissioner of Stamp who is

one of the authorities prescribed both in Rule 2(f) of the Rules 1997 as well as of the Section 47A(3) of the Act, 1899 and hence the said reference was made by the competent authority.

10. Shri Shukla further argues that merely because in the order impugned dated 21.12.2023 it has been indicated that the reference has been made on the basis of the report of the Sub-Registrar, Akbarpur dated 27.04.2023 the same would not depart from the orders which are already there on record in as much as mere typographical error or mere mentioning of wrong facts would not vitiate the said order more particularly when no prejudice has been caused to the petitioners even if the said erroneous fact has been indicated in the order impugned.

11. Shri Rahul Shukla has also placed reliance on the circular dated 28.07.2017 issued by the Inspector General of Registration, U.P., Lucknow to contend that all the Sub-Registrar have been given the power of submitting confidential reports with respect to the registration which takes place in the district after spot inspection.

12. Heard learned counsel for the parties and perused the record.

13. From perusal of record it emerges that the order impugned dated 21.12.2023 has been passed under the provisions of Section 47-A of the Act, 1899 whereby the petitioners have been required to pay additional stamp duty alongwith registration charges and penalty. The writ petition has been filed raising a challenge to the order impugned without availing the remedy of filing of an appeal as provided under Section 56(1A) of the Act, 1899 on the ground that the order impugned is patently without jurisdiction by contending that once the Act, 1899 as well as the Rules, 1997 provides the officer competent

to make a reference, which does not include the Sub-Registrar consequently the order impugned being passed on the reference submitted by the Sub-Registrar would itself vitiate the order impugned making it patently without jurisdiction.

14. A perusal of the order impugned dated 21.12.2023 would indicate that the proceedings under Section 47-A of the Act, 1899 have been initiated on the basis of a report dated 27.04.2023 submitted by the Sub-Registrar, Akbarpur.

15. However, a perusal of the confidential report submitted by the Sub-Registrar dated 27.04.2023 would indicate that an order has been passed on the said report by the Assistant Deputy Inspector General Stamp (Registration), Ambedkar Nagar after perusal of the said report and after agreeing with the said report that he has required a stamp case to be registered.

16. The Assistant Deputy Inspector General Stamp (Registration), Ambedkar Nagar is also having the charge of Assistant Commissioner of Stamp. Assistant Commissioner of Stamp is one of the officers who can make a reference under the provisions of Section 47-A(3) of the Act, 1899 read with Rule 2(f) of the Rules 1997. Thus merely because in the order impugned it has been indicated that the stamp case has been registered on the basis of reference submitted by the Sub-Registrar Akbarpur would not vitiate the order impugned more particularly when the records belie the said sentence as indicated in the order impugned and more particularly when the Court has itself gone through the records and has found that reference was never made by the Sub-Registrar. Further no prejudice has been caused to the petitioners even if a wrong fact has been mentioned in the order impugned which would not vitiate the merit of the said order.

17. Considering the aforesaid the Court specifically finds that though the order impugned records that the proceedings have been initiated on the basis of the report submitted by the Sub-Registrar, Akbarpur yet the records reveal that though the report was submitted by the Sub-Registrar, Akbarpur yet after perusal of the said report, the competent officer, as per Rule 2(f) of the Rules 1997 as well as Section 47-A(3) of the Act, 1899, has required proceedings to be instituted under provisions of Act, 1899 that the said proceedings have been initiated. Thus, the Court does not find that proceedings have been initiated on the reference by the Sub-Registrar.

18. Thus the aforesaid argument of Shri M. E. Khan, learned counsel for the petitioners is rejected.

19. At this stage Shri M. E. Khan, learned counsel for the petitioners argues that without prejudice to the above, a perusal of the order impugned dated 21.12.2023 would indicate that the same is solely based on the report dated 27.04.2023 to the extent that the report has been reproduced verbatim in the findings given by the competent authority while passing the order impugned dated 21.12.2023. He says that this Court in the case of **Ram Khelawan @ Bachcha vs State of U.P. and another, 2005 SCC Online All 2247** has held that the said inspection report would only be relevant for initiating proceedings under Section 47-A of the Act, 1899 but not for deciding the case while only placing reliance on the said report.

20. Shri M.E. Khan has taken the Court to the order impugned dated 21.12.2023 and the report dated 27.04.2023 to indicate that the findings in the order impugned dated 21.12.2023 when read in consonance in the report dated 27.04.2023 are a verbatim reproduction of the said report which indicate that there has been no application of mind on the part of the

competent authority while passing the order impugned.

21. He further states that keeping in view the law laid down by this Court in the case of **Ram Khelawan (supra)** it was the duty of the competent authority, after initiation of the case, to have made an inspection after due notice to the parties as provided under Rule 7(3)(c) of the Rules 1997 and an order solely passed on the basis of the reference report would be per se illegal more particularly when the said report could only be used for the purpose of initiation of proceedings but not for passing of any orders on the basis thereof. He thus contends that filing of an appeal against the order impugned would be a futile exercise keeping in view the law laid down by this Court in the case of **Ram Khelawan (supra)** and as such on this ground alone the order impugned merits to be set aside.

22. Shri Rahul Shukla does not dispute the applicability of the law as laid down by this Court in the case of **Ram Khelawan (supra)** and the proposition of law as enunciated in the said judgement.

23. Having heard learned counsel for the parties on this ground what the Court finds upon perusal of the order impugned dated 21.12.2023 is that the competent authority only referred to the report dated 27.04.2023 that has been submitted by the Sub-Registrar to the extent of reproducing the said report verbatim as emerges from the perusal of the report dated 27.04.2023 and the order dated 21.12.2023. Thus the Court finds that there is no application of mind by the competent authority and also keeping in view the law laid by this Court in the case of **Ram Khelawan (supra)**, no inspection of the properties as provided under 7(3)(c) of the Rules 1997 was carried out.

24. 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."

25. 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.

26. Accordingly, considering the law laid down by this Court in the case of **Ram Khelawan (supra)** it emerges that the order impugned dated 21.12.2023 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 Sub-Registrar has been considered by the competent authority.

27. Keeping in view of the aforesaid discussion, the writ petition is **allowed**. The order impugned dated 21.12.2023, copy of which is annexure 1 to the petition, is quashed. The

matter is remitted to the competent authority i.e. respondent No.1 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.

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

Order Date :- 2.2.2024

J.K. Dinkar