

Court No. - 17

Case :- WRIT - C No. - 1005952 of 2006

Petitioner :- Smt.Leelawati Kothari And Another

Respondent :- Commissioner Lucknow Division Lucknow And Another

Counsel for Petitioner :- Sudeep Kumar,A.K.Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. Petition has been filed challenging order dated 09.12.1999 passed under Section 47-A of the Indian Stamp Act registered as Case No. 54/Stamp/1999 whereby Stamp Duty on the instrument of transfer dated 18.02.1999 has been found to be deficient and realization of Rs. 77,800/- towards such deficiency has been imposed. Also under challenge is the order dated 14.09.2006 passed in revision against the aforesaid order.
3. Learned counsel for petitioner submits that the impugned proceedings have been drawn apparently in pursuance of spot inspection report dated 28.06.1999 indicating deficiency of Stamp Duty on the instrument required to be registered. It has been submitted that spot inspection report is ex parte in nature and even otherwise does not indicate any valuation even as per the opposite parties themselves which could substantiate the allegation of deficiency of Stamp Duty. It is further submitted that no spot inspection was conducted by the Collector in terms of Rule 7 (3) of the U.P. Stamp (Valuation of Property) Rules, 1997 which specifically indicates the procedure required to be followed by the authorities concerned with regard to deficiency of Stamp Duty.
4. Learned counsel has placed reliance on judgment rendered by this Court in the case of **Ajay Agarwal and Ors. versus Commissioner Lucknow and Ors., Writ-C No. 1000019 of 2008** to buttress his submission.
5. Learned State Counsel appearing on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with the submission that a perusal of the spot inspection report dated 28.06.1999 will itself make it evident that details with regard to valuation of property have been

clearly set out whereafter deficiency Stamp Duty has been recorded. It is submitted when the deficiency has also been recorded in view of statement of petitioner themselves that the area of property is 2800 square feet whereas upon spot inspection being made, the area was evidenced as 3100 square feet.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that the matter would be covered by judgment rendered in the case of of **Ajay Agarwal** (supra) in which this Court has recorded the procedure which is required to be followed by the authorities concerned for determination of Stamp Duty under Section 47A of the Act of 1989 as well as the Rules of 1997.

7. The relevant portion of the judgment is as follows:-

*"11. The procedure required to be followed for determination of market value of the property and stamp duty required to be paid on the instrument of transfer have been indicated in sub section (4) of Section 47 A which clearly states that if on **inquiry** under sub-section (2) and **examination** under sub-section (3) the Collector finds the market value of the property to be set forth or not truly set forth, he is required to pass appropriate orders pertaining to same. Thus, it is evident that the Collector is required to embark upon an inquiry under sub-section (2) and an examination of instrument of transfer under sub-section 3 in order to find the correct market value of the property and for determination of stamp duty required to be paid.*

17. However upon perusal of Section 47A (3) of the Act, it is evident that the Collector either suo motu or on a reference is required to determine the market value of property for the purposes of satisfying himself as to correctness of the market value of property which is subject of such instrument and the duty payable thereon. The provisions of Section 47A(3) of the Act clearly indicates that while determining market value of the property on the basis of instrument of transfer, the Collector has to satisfy himself with regard to correctness of a market value and if after such examination, he has reason to believe that market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty payable thereon.

18. The provisions of section 47A (3) of the Act clearly prescribed that prior to passing an order in terms of the aforesaid provision, the Collector has to satisfy himself, which in fact would mean that he has to record his subjective satisfaction with regard to the correctness of market value of the property. Furthermore he is also required to record reasons to believe that market value of such property has not been truly set forth in the instrument, whereafter he is also required to determine the market value of his property and duty payable thereon. Clearly the Collector in exercise of power under section 47 A(3) of the Act as such is required not to rely only on the spot inspection report but also to record his subjective satisfaction with regard to under valuation of the instrument of transfer. As such while passing orders under section 47 of the Act, Collector cannot rely only on the post inspection report."

8. The aforesaid Rules of 1997 particularly Rule 7 (3) (c) thereof have been held to be mandatory in judgment rendered in the case of **Ganga Ram versus State of U.P. and Ors.** reported in **2020 (38) LCD 1991.**

9. In the case of **Ram Khelawan @ Bachcha versus State of U.P. and Ors.** reported in **2005 (2) JCLR 610 (Allahabad)**, the provisions of Section 47 (A) of the Act as well as Rule 7 of the Rules of 1999 have been adverted to and standard principles for determination of market value has as per the land acquisition cases have also been held to be applicable in the cases of determination of Stamp Duty. The principles enunciated therein are indicated as follows:-

"9. Entire basis of report of Tahsildar and judgment of A.D.M. is that the land is of residential use/ potential (Awasiya prayojan). Even if it is assumed for the sake of argument that the land in dispute is having Abadi potential, still no basis of determining its valuation has been given. Once sale deed is registered then for determining market value of the land under Section 47-A Stamp Act no reliance can be placed upon Rules of 1997. If a case is instituted under Section 47-A of the Stamp Act after registration of the deed particularly sale-deed then valuation has to be determined on the general principles applicable for determining market value of immovable property. The method of determining market value and the factors to be taken into consideration for the said purpose have been discussed in detail and laid down with precision by the Courts while determining quantum of compensation under Land Acquisition laws. Exactly same principles shall apply for determining market value while deciding a case by Collector under Section 47-A Stamp Act.

11. The three standard principles of determining market value in Land Acquisition cases are; comparable sale method i.e. value of similar adjoining property sold in near past, multiplication by a suitable multiplier of monthly or yearly rent, income or yield; and adding the cost of construction to the value of the land."

10. Upon applicability of the aforesaid judgments in the present facts and circumstances of the case, it is evident that the spot inspection report dated 28.06.1999 has found deficiency of Stamp Duty primarily on the aspect that the constructions raised on the property in question are modern in nature utilizing marble etc. The aspect of deficiency in the area of property in question has also been indicated. However, it is quite evident that determination of market value of the property has been indicated as Rs. 500/- per square feet primarily on the assumption of modernity of the constructions raised.

11. A perusal of the impugned order dated 09.12.1999 passed under Section 47A also indicates that the authority concerned has held valuation of the property to be Rs. 500/ per square feet instead of Rs. 275 per square feet as indicated in the sale deed, primarily on the assumption that the area in question where a property is situate is not only residential but commercial as

well. However, it is also evident that the authority concerned has not indicated any notification or order to arrive at the conclusion that the area in question is commercial. It is also evident that deficiency in Stamp Duty has been adverted on the premise that the construction so raised is modern in nature using marble etc. No valuation thereof has been determined by the authority concerned for such an abstract word as "modern construction". No valuation of marble or the extent of its usage has been indicated in the impugned order, which clearly appears to have been passed on the basis of assumptions and surmises.

12. Clearly the procedure indicated in Rule 7 (3) (c) of the Rules of 1997 has not been adhered to by the authority concerned.

13. The impugned revisional order dated 14.09.2006 has also not adverted at all to any substantive evidence to reach a conclusion that the area where the property is situate is commercial in nature. No valuation of the cost of construction has been indicated in the impugned order. The aspects as required to be considered in the case of **Ram Khelawan** (supra) have also not been adverted.

14. In view of aforesaid facts and circumstances as discussed hereinabove and evidencing of the law propounded, it is evident that the impugned orders dated 09.12.1999 and 14.09.2006 are clearly vitiated for not being in accordance with the provisions of the Act or the law propounded by this Court and are therefore set aside by issuance of a writ in the nature of certiorari. In case any deposit has been made by petitioner in pursuance of the impugned orders, she shall be entitled for the refund of the same expeditiously.

15. Resultantly, the petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 1.4.2024

Satish