

Court No. - 5

Case :- WRIT - C No. - 5307 of 2021

Petitioner :- Sanjay Seth

Respondent :- State Of U.P.Thru.Addl.Chief
Secy/Prin.Secy.Stamp And Ors.

Counsel for Petitioner :- Gaurav Mehrotra,Maria Fatima,Rani
Singh

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard.

2.The instant petition has been filed praying for the following
reliefs:

*" I. Issue a writ, order or direction in the nature of Certiorari
setting aside the impugned judgment and order dated
14.01.2020 passed by Respondent No 2 in Stamp Appeal
bearing case no. 01774/2019 contained as to Annexure 1 this
Writ Petition.*

*II. To issue a writ, order or direction in the nature of Certiorari
setting aside the Impugned order dated 21.03.2009 passed by
Respondent No 3. in Stamp Case No 248/stamp 04) contained
as Annexure No.- 2 to this Writ Petition.*

*III. To issue a writ, order or direction in the nature of
Certiorari quashing the impugned on spot inspection report
dated 09.03.2004 submitted by Respondent No 4 contained as
Annexure No.-3 to this Writ Petition.*

*IV. Issue a writ, order or direction in the nature of Certiorari
quashing the impugned recovery notice dated 21.03.2009
issued on 12.11.2020 by Respondent No 5, copy whereof is
annexed as Annexure No.4 to this Writ Petition;*

*V. Issue a writ, order or direction in the nature of Mandamus
commanding the Respondents not to proceed with recovery in
pursuance of the impugned judgment and order dated
14.01.2020 and impugned order dated 21.03.2009 (contained
as Annexure- land Annexure-2 to this Writ Petition respectively)
and not to issue any consequential recovery notice with respect
to the agreement deed dated 26.02.2004.*

VI. Such other relief, as may be deemed fit in view of the facts and circumstances of the case, may also be granted by this Hon'ble Court, protecting the rights and interest of the Petitioner."

3. The case set forth by learned counsel for the petitioner is that the petitioner had purchased a piece of land along with certain construction over it through registered sale deed dated 26.02.2004. A report was submitted by the Sub-Registrar-I, Lucknow on the basis of which proceedings under Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act, 1899') were initiated against the petitioner. The petitioner put in appearance and filed his objections. The competent authority vide his order dated 21.03.2009, a copy of which is Annexure-2 to the writ petition, after considering the said report of the Sub-Registrar-I, Lucknow, has required the petitioner to pay additional stamp duty along with penalty and registration charges.

4. Being aggrieved, the petitioner filed an appeal, which too has been rejected vide order dated 14.01.2020, a copy of which is annexure 1 to the petition.

5. Being aggrieved against the orders impugned, the instant writ petition has been filed.

6. The legal ground taken by the petitioner while seeking to challenge the orders impugned is that a perusal of the order dated 21.03.2009 passed by the competent authority would indicate that it is only the inspection report of the Sub-Registrar, on the basis of which proceedings under the Act, 1899 have been initiated against the petitioner which has been considered and no other material has been considered.

7. Placing reliance on the judgment of this Court in the **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 47A of the Act, 1899 but not for deciding the case while only placing reliance on the said report.

8. The argument is that a perusal of the order impugned passed by the competent authority while deciding the case and requiring the petitioner to pay additional stamp duty would run against the settled position of law as laid down by this Court in the case of **Ram Khelawan (supra)** and as such, on this ground alone, the order impugned has to be set aside. On the same analogy, as this aspect of the matter has also not been considered by the appellate authority consequently, the

appellate order dated 14.01.2020 also deserves to be set aside.

9. On the other hand, learned Standing counsel does not dispute the aforesaid proposition of law as enunciated by this Court in the case of **Ram Khelawan (supra)**.

10. Having heard the learned counsel for the parties and having perused the records, what emerges is that the order impugned dated 21.03.2009, which has been passed by the competent authority, has only been passed on the basis of report submitted by the Sub-Registrar. No other material has been considered by the competent authority while requiring the petitioner to pay additional stamp duty.

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 47A 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 21.03.2009 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. This aspect of the matter has also not been considered by the appellate authority while rejecting the appeal

of the petitioner vide order dated 14.01.2020.

14. Keeping in view of the aforesaid discussion, the writ petition is **allowed**. The orders impugned dated 14.01.2020 and 21.03.2009, copies of which are annexures 1 & 2 to the petition respectively, are quashed. Consequences to follow.

15. The matter is remitted to the competent authority i.e. respondent No.3 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.

16. 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 :- 12.2.2024

A. Katiyar