

Court No. - 5

Case :- WRIT - C No. - 24633 of 2018

Petitioner :- Smt. Gulaba Devi

Respondent :- State Of U.P. Thru Secy. Revenue Civil Sectt.Lko. And Ors.

Counsel for Petitioner :- Yogesh Singh

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard.

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

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 30.06.2018 passed by the Additional Commissioner (Stamp), Faizabad Division, in an Appeal No.01032/2018; Smt. Gulaba Devi versus State of U.P., under Section 56(1-A) of the Indian Stamp Act, as well as order dated 26.03.2018 passed by the Collector Ambedkarnagar in Case No.444/2017; State vs. Smt. Gulaba Devi, under Section 47-A of the Indian Stamp Act as contained in Annexures 1 and 2.

3. The case set forth by the learned counsel for the petitioner is that the petitioner had purchased a piece of land through a registered sale deed dated 29.07.2016. An ex-parte inspection report was submitted by the Sub-Registrar, Akbarpur dated 09.06.2017. On the basis of the said report the 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 filed his reply in the said proceedings which did not find favour with the authority concerned, who vide the order impugned dated 26.03.2018, a copy of which is Annexure-2 to the writ petition, required the petitioner to pay additional stamp duty as well as penalty. The petitioner being aggrieved, filed an appeal against the said order, which too has been rejected vide the order impugned dated 30.06.2018, a copy of which has been filed as Annexure-1 to the writ petition. Being aggrieved, instant writ petition has been filed.

4. The contention of learned counsel for the petitioner is that a perusal of the impugned order dated 26.03.2018 would indicate that the competent Authority has indicated about initiation of the proceedings under the Act, 1899 on the basis of the report of Sub-Registrar dated 09.06.2017. He further states that a perusal

of the impugned. order would indicate that no other report has been called for by the authority concerned despite the provisions to the said effect as provided under Rule 7(3) (c) of the U.P. Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as the 'Rules, 1997').

5. 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 legal argument of learned counsel for the petitioner is that this Court has categorically held that though a report on the basis of which proceedings under the Act, 1999 would have relevance for the purpose of initiation of proceedings but subsequent there to for deciding the case no reliance can be placed upon the said report and after initiation of the case inspection is to be made by the Collector or authority hearing the case after due notice to the parties concerned to the instrument as provided under Rule 7(3) (c) of the Rules, 1997, which incidentally has not been done and the authority has only placed reliance on the ex-parte report and has proceeded to pass the order impugned which would run foul to the specific judgment of this Court in the case of **Ram Khelawan (supra)**. He further contends 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 30.06.2018.

6. On the other hand, learned Standing Counsel has supported the impugned orders passed by the authorities on the basis of the averments contained in the counter affidavit. However, he does not dispute the legal position as enunciated by this Court in the case of **Ram Khelawan (supra)**.

7. Heard learned counsels for the contesting parties and perused the records.

8. From perusal of records, it emerges that the petitioner had purchased a piece of land through a registered sale deed dated 29.07.2016. After a period of almost a year an inspection was carried out and a report was submitted by the Sub-Registrar on 09.06.2017. Based on the said report, proceedings were registered and initiated against the petitioner under the provisions of Section 47-A of the Act, 1899. The petitioner filed his objections in the said proceedings which did not find favour with the authority concerned, who vide impugned order dated 26.03.2018 required the petitioner to deposit additional stamp duty and also

imposed penalty. Upon an appeal being filled, the said order has been affirmed by the appellate authority with the dismissal of the appeal vide impugned order dated 30.06.2018 and hence the petition.

9. The sheet-anchor of the case of the petitioner is the judgment of this court in the case of **Ram Khelawan (supra)** wherein this Court has held that an ex-parte inspection report submitted by the Sub-Registrar 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 on the said report and after initiation of the case an inspection has 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, 1997. For the sake of convenience, relevant observations in the case of **Ram Khelawan (supra)** are reproduced below:-

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.

10. From perusal of the judgment of this Court in the case of **Ram Khelawan (supra)** it thus emerges that after the proceedings have been initiated under the provisions of Section 47-A of the Act, 1899, an inspection is required to be conducted by the authority concerned under Rule 7 (3)(c) of the Rules, 1997 in order to have some material to hold that the stamp duty as paid by the purchaser of the property is not in accordance with rules or does not conform to the valuation of the property. From perusal of the order impugned dated 26.03.2010 it emerges that the authority concerned has only placed reliance on an ex-parte inspection report submitted by the Sub-Registrar dated 09.01.2017 and no other material except a sale-deed of a portion of the said plot has been considered but no inspection as categorically provided under Rule 7 (3) (c) of the Rules, 1997 has been made.

11. Considering the aforesaid as well as the judgment of this Court is the case of **Ram Khelawan (supra)** it thus emerges that the order impugned does not conform to the provisions of law as laid down by this Court in the case of **Ram Khelawan (supra)**. This aspect of the matter has also not been considered by the appellate authority while rejecting the appeal of the petitioner vide order dated 30.06.2018.

12. Accordingly, the writ petition deserves to be allowed and is allowed. The orders impugned dated 26.03.2018 and 30.06.2018, copies of which are annexures 2 and 1 respectively to the writ petition, are quashed. The matter is remitted to respondent no. 3 to pass a fresh order in accordance with law after due hearing to all parties concerned.

13. Let an order in this regard be passed. within three months from the date of receipt of a certified copy of this order.

Order Date :- 23.1.2024

A. Katiyar