

Court No. - 19

Case :- WRIT - C No. - 6844 of 2024

Petitioner :- Akhilesh

Respondent :- State Of U.P. Thru. Secy. Deptt. Of Revenue U.P. Lko.
And 2 Others

Counsel for Petitioner :- Jitendra Prakash Mishra, Akshat Prakash
Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar, J.

1. Heard.

2. With the consent of the learned counsel for the petitioner and Sri Hemant Kumar Pandey learned Standing Counsel, the present petition is being decided finally at the admission stage itself.

3. The present writ petition has been preferred for quashing impugned appellate order dated 29.11.2023 passed by the opposite party no. 2- Deputy Commissioner, Stamp Ayodhya Division Ayodhya under Section 56(1-A) of the of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act, 1899') and the judgment and order dated 2.11.2019 passed by the opposite party no. 3- Assistant Commissioner, Stamp District- Ayodhya under Section 47-A of the Act, 1899.

4. The learned counsel for the petitioner has submitted that the petitioner has purchased an agricultural land on 31.7.2018 by registered sale deed after paying requisite stamp duty as per the circle rate fixed by the District Magistrate. The mutation order has also been passed in favour of the petitioner by the Nayab Tahsildar on 28.12.2018.

5. It is further submitted that after five months of the registration of the sale deed, the Sub Registrar made a spot inspection on 11.1.2019 without any prior notice and in absence of the petitioner and submitted an ex-parte report on 14.1.2019 regarding deficiency of the stamp of Rs. 1400150/- In pursuance thereof proceedings under Section 47-A of the Act, 1899 was initiated against the petitioner.

6. It is further submitted that in the proceedings under Section 47-A of the Act, 1899, another report was submitted by the Tehsildar on 24.7.2019 indicating the deficiency of stamp of Rs. 55408/- It is further submitted at no point of time neither any notice was issued to the petitioner prior to the inspection nor inspection was made in the presence of the petitioner as required under Rule 7(3)(c) of the Rules,

1997.

7. It is further submitted that the Collector, without making any inspection as required under Rule 7(3)(c) of the Rules, 1997 which requires that prior to the inspection of the property a due notice to the parties to the instrument may be served, whereas in the present case, no notice was ever issued by the Collector and mainly on the basis of the ex-parte inspection reports submitted by the Sub Registrar and Tehsildar has decided the matter against the petitioner for paying the deficiency of stamp duty along with penalty. Against the said order, the petitioner had preferred an appeal under Rule 56(1-A) of the Act, 1899, taking a specific plea in the appeal that if any, inspection of the property is made without prior notice, it is in contravention of Rule 7(3)(c) of the Rules, 1997 but no finding has been given by the appellate authority and reiterated the order passed by the respondent no. 3.

8. Learned Standing Counsel on the basis of the instruction received from Sahayak Mahanirashak Nibandhan, Barabanki has submitted that neither any notice nor any opportunity is required at the time of inspection made by the Sub Registrar and there is no illegality in placing reliance upon the same in the proceedings under Section 47-A of the Act 1899.

9. It is further submitted that as per the instructions, neither any notice was issued to the petitioner nor inspection was made in the presence of the petitioner by the Tehsildar during the proceedings under Section 47-A of the Act, 1899, which is required under Rule 7 (3) (C) of the Rules, 1997.

10. After hearing the learned counsel for the parties going through the record of the case and the relevant statutory provisions and the law relied by the learned counsel for the petitioner by placing the judgment of this Court in the case of ***Ram Khelawan @ Bachcha v. State of U.P. through Collector, Hamirpur and Anr. [2005 (23) LCD 1681]*** and ***the judgment dated 20.04.2022 passed by this Court in the case of Smt. Saroj Verma v. State of U.P. and Ors. in Writ C No. 1004498 of 2005***, the position which emerges out in the present case is that in pursuance of the ex-parte spot inspection report submitted by the Sub Registrar the proceedings were initiated against the petitioner under Section 47-A of the Act, 1899 and the impugned order has also relied upon the same whereas as per the judgment relied by learned counsel for the petitioner in the case of ***Ram Khelawan @ Bachcha (supra)***, wherein it has been held by this Court that the ex-parte inspection report may be relevant for initiating the proceedings under Section 47-A of the Act, 1899. However, for deciding the case, no reliance can be placed upon the said report. After initiation of the stamp 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, 1997. The said judgment has been followed by this Court in the case of **Smt. Saroj Verma (supra)** relied by the learned counsel for the petitioner, where this Court has also relied upon the judgment in the case of **Ram Gopal vs. State of U.P. and Ors. [2009 (27) LCD 1335]**. The relevant paragraph no. 10 of the judgment in the case of **Smt. Saroj Verma (supra)** is quoted hereinbelow:-

"10. A Coordinate Bench of this Court in Ram Gopal vs. State of U.P. and Other 2009 (27) LCD 1335 has observed, while placing reliance upon Ram Khilawan (Supra), in paragraph 13 as follows:-

"13. The Uttar Pradesh Stamp Valuation of Property Rules, 1997 particularly Rule 7 provides the procedure on receipt of a reference or when suo motu action is proposed under Section 47-A of the Stamp Act. The Rule 7(2)(c) provides that the Collector may inspect the property after due notice to parties to the instrument. The complete reading of the aforesaid rule clearly indicates that while deciding the proceedings under Section 47-A of the Stamp Act the Collector or its authority are required to make an inspection after due notice to the parties to the instrument. The proceeding under Section 47-A of the Stamp Act shall not be decided merely placing reliance on the ex parte report of the Tehsildar or any authority for that purpose. In the present case the Tehsildar's report dated 03.05.2001 does not disclose as to whether any notice was given to the petitioner before inspection of the land in question by the Tehsildar. Rather it clearly shows that it was an ex parte report. Hence the order dated 26.07.2001 was passed in violation of Rule 7(2) (c) of the U.P. Stamp Valuation of Property Rule, 1997."

11. The appellate authority had failed to consider the fact that the order under Section 47-A of the Act, 1899 passed by the respondent no. 3 against the petitioner without making any inspection as required under Rule 7(3)(c) of the Rules, 1997. The impugned orders placing reliance upon the ex-parte inspection conducted by the Sub Registrar is not permissible and the impugned orders are bad in the eyes of law. Both the orders placed reliance upon the ex-parte inspection reports conducted by the Sub Registrar and the Tehsildar.

12. In view of the facts, circumstances and discussion made hereinabove, **the writ petition is allowed.**

13. The impugned appellate order dated 29.11.2023 passed by the opposite party no. 2- Deputy Commissioner, Stamp Ayodhya Division Ayodhya under Section 56(1-A) of the of the Indian Stamp Act, 1899

(hereinafter referred to as 'the Act, 1899') and the judgment and order dated 2.11.2019 passed by the opposite party no. 3- Assistant Commissioner, Stamp District- Ayodhya under Section 47-A of the Act, 1899 are hereby quashed.

14. If any amount has been deposited by the petitioner in pursuance of the order impugned, the same shall be refunded to the petitioner within a period of four months from the date of production of certified copy of this order to the respondent no. 3.

15. The matter is remanded to the respondent no. 3 to decide the case in the light of the observations made above in complying with Rule 7(3)(c) of the Rules, 1997.

Order Date :- 9.8.2024

Anuj Singh