

Court No. - 19

Case :- WRIT - C No. - 6911 of 2024

Petitioner :- Kanij Fatma

Respondent :- The State Of U.P. Thru. Its Prin. Secy. Deptt. Of Tax And Registration Lko And 4 Others

Counsel for Petitioner :- Dharmendra Pratap Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Heard Shri Dharmendra Pratap Singh, learned counsel for the petitioner assisted by Shri Lal Gaurav Singh, Advocate and learned Standing Counsel for the State respondents.

2. Present petition has been preferred for quashing of the impugned judgment and order dated 29.08.2022 passed by the District Magistrate/Collector, District Gonda respondent no. 3 under Section 47 A of the Indian Stamp Act, 1899 (hereinafter referred to as, the Act, 1899) and the impugned appellate order/judgment dated 26.06.2024 passed by the Additional Commissioner, Administrative Second, Devi Patan Mandal, Gonda-respondent no. 2 under Section 56 (1-A) of the Act, 1899 and also for quashing of the impugned recovery citation dated 02.05.2023 issued by the respondent no. 2.

3. With the consent of learned counsel for the petitioner and learned Standing Counsel, the present petition is being disposed of at the admission stage itself.

4. Learned counsel for the petitioner has submitted that the petitioner has purchased a agricultural land by a registered sale deed executed on 15.07.2021 situated at Sitarampur Grant, Pargana Budhapayar, Tehsil, Manikapur and District Gonda after paying due stamp duty on the same, in accordance with the circle rate prevailing at that time.

5. It is further submitted that on 17.11.2021, respondent no. 5-Sub Registrar, Tehsil Manikapur, District Gonda had made a spot inspection without issuing any notice to the petitioner or behind the back of him and submitted a report to the Inspector General of Stamp indicating the deficiency in stamp duty of Rs. 1,32,740/- and in pursuance thereof, the proceedings under Section 47-A of the Act, 1899 were initiated.

6. It is further submitted that the Collector passed the impugned order dated 29.08.2022 on the basis of report submitted by the respondent no. 5 without making spot inspection as required under Rule 7(3) (C) of the U.P. Stamp (Valuation of Property) Rule, 1997 (hereinafter referred to as, the Rules, 1997) as neither any notice was issued to the petitioner nor any inspection was made by the Collector prior to the passing of the impugned order. Against the said order, the petitioner preferred an appeal and the appellate authority without application of mind dismissed the appeal reiterating the order passed by the Collector.

7. After rejection of the appeal, a recovery citation has also been issued on 02.05.2023 against the petitioner.

8. It is further submitted that the appellate authority had not considered the specific plea taken by the petitioner in the appeal that the order has been passed without following the procedure for inspection as provided under Rule 7(3)(c) of the Rules, 1997 prior to the passing of the order under Section 47 A against the petitioner, nor it had considered that the order passed under Section 47-A.

9. It is further submitted that the order under Section 47-A of the Act, 1899 has been passed on the basis of the alleged inspection report filed by respondent no. 5 which could be considered for the purposes of initiating the proceedings under Section 47 A, but the order cannot be passed under Section 47 A by placing reliance on the said report, whereas the impugned order under Section 47 A has been passed merely on the basis of the alleged inspection report submitted by respondent no. 5, without making any inspection by the respondent no. 3 as per Rule 7(3)(C), Rules, 1997.

10. On the other hand, learned Standing Counsel on the basis of instructions received from Sub Registrar, Manikapur, district Gonda has submitted that there is no requirement of any notice to the petitioner prior to the inspection made by the Sub Registrar.

11. It is further submitted that during the pendency of the case under Section 47-A of the Act, 1899 before the Collector, no enquiry/spot inspection was made by the Collector as required under Rule 7 (3) (C) of the Rules, 1997. The said instructions are taken on record.

12. 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 the impugned order under Section 47 A has been passed merely on the basis of the alleged inspection report submitted by respondent no. 5, 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."

13. 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 is 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 report submitted by the respondent no. 5 is without making any inspection by the respondent no. 3 as per Rule 7(3)(C), Rules, 1997, is not permissible and the impugned orders are bad in the eyes of law.

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

15. The judgment and order dated 29.08.2022 passed by the District Magistrate/Collector, District Gonda respondent no. 3 under Section 47 A of the Indian Stamp Act, 1899 and the impugned appellate order/judgment dated 26.06.2024 passed by the Additional Commissioner, Administrative Second, Devi Patan Mandal, Gonda-respondent no. 2 under Section 56 (1-A) of the Act, 1899 and the impugned recovery citation dated 02.05.2023 issued by the respondent no. 2 are hereby quashed.

16. It is however, open for the respondents to proceed afresh by following the procedure prescribed under the Rules, 1997.

17. It is however, made it clear that 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.

Order Date :- 14.8.2024
Ashish