

Neutral Citation No. - 2025:AHC:41649

Reserved on 04.03.2025

Delivered on 24.03.2025

Court No. - 10

Case :- WRIT - C No. - 11047 of 2023

Petitioner :- Nazir Ahmad

Respondent :- Board Of Revenue/ Chief Controlling Revenue Authority
And 3 Others

Counsel for Petitioner :- Ashish Kumar Singh, Pushkar Mehrotra, Shreyas
Srivastava

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Shashi Nandan, learned Senior Advocate assisted by Mr. Shreyas Srivastava for the petitioner and Mr. A.C. Mishra, learned ACSC for the State -respondent.

2. By means of present petition, the petitioner is assailing the order dated 6.10.2021 passed by the District Magistrate / Collector, Stamp in Stamp Case No. 11476 of 2019 as well as the order dated 16.3.2023 passed by Board of Revenue / Chief Controlling Revenue Authority, Allahabad in Stamp Revision No. 2474 of 2021.

3. Learned Senior Counsel for the petitioner submits that a registered agreement to sell was executed on 3/4.7.2019 in respect of the property in question which contemplates a clause that the stamp duty shall be borne by the seller of the property in question. He submits that vide registered sale

deed dated 5.8.2019, the property in question was purchased by the petitioner, in which also a provision has been made that the stamp duty shall be borne by the seller of the property in question, however, after execution/registration of the sale deed dated 5.8.2019, a reference has been made to the Collector on the basis of which an exparte report has been submitted, in pursuance of which, a notice has been issued to the petitioner in the proceedings under Section 47 A of the Stamp Act, in response thereto, the petitioner has submitted detailed reply duly disclosing the fact that the stamp duty is to be borne by the seller of the property in question; a copy of the reply is annexed as Annexure no. 5 A of the writ petition.

4. Learned Senior Counsel for the petitioner further submits that in spite of the specific issue being raised by the petitioner, the Collector has passed the impugned order dated 6.10.2021 holding deficiency of stamp, against which, the petitioner has filed a revision in which specific ground was taken as ground no. VIII; that the impugned order has been passed without adverting the objection filed by the petitioner but instead of considering the said ground, the revision of the petitioner has been dismissed by the impugned order dated 16.3.2023.

5. He further submits that the specific grounds have been taken by the petitioner in the writ petition as ground nos. 5 C, 5 D and 5 E, which have also not been denied in the counter affidavit filed by the State-respondents.

6. Learned Senior Counsel further raised the issue for non compliance of the provisions of Rule 7 (3) (c) of UP Stamp (valuation of property) Rules, 1997. He further submits that the industrial property has wrongly been

treated as commercial property without considering the material on record.

7. *Per contra*, learned Standing Counsel supports the impugned orders.

8. After hearing learned counsel for the parties, the Court has perused the records.

9. Learned Senior Counsel has raised various issues but instead of going thorough in details, one legal issue as raised by the learned Senior Counsel appearing for the petitioner is that in the agreement to sell as well as in the sale deed, a clause has been made that the stamp duty shall be borne by the seller of the property in question. The said fact was raised in the objection filed by the petitioner and further a plea has been taken in the revision as ground no. VIII that the Collector has passed impugned order without adverting the objection raised by the petitioner. In the writ petition also, specific grounds were taken as ground nos. 5 C, 5 D and 5 E which had not specifically been denied, in the counter affidavit filed by the State.

10. Before proceeding further, it is pertinent to quote here the relevant **Section 29 of the Stamp Act**, which reads as under:

“29. Duties by whom payable. —In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne —

(a) in the case of any instrument described in any of the following Articles of [Schedule I, IA or IB, as the case may be] namely: —

No. 2. (Administration Bond),

[No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),]

No. 13 (Bill of exchange),

No. 15 (Bond),

No. 16 (Bottomry Bond),

No. 26 (Customs Bond),

No. 32 (Further charge),
No. 34 (Indemnity-Bond),
No. 40 (Mortgage-deed),
[No. 43 (Note or Memorandum)]
No. 49 (Promissory-note),
No. 55 (Release),
No. 56 (Respondentia Bond),
No. 57 (Security-bond or Mortgage-deed),
No. 58 (Settlement),

No. 62 (c). (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance), by the person drawing, making or executing such instrument:

[(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance,

(bb) in the case of a policy of fire-insurance— by the person issuing the policy;]

(c) in the case of a conveyance (including are-conveyance of mortgaged property:) by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee:

(d) in the case of a counterpart of a lease—by the less or:

(e) in the case of an instrument of exchange—by the parties in equal shares,

(f) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates: and,

(ff) in the case of an Instrument of Gift-by the donee; and

(g) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

(h) in the case of sale of security through stock exchange, by the buyer of such security;

(i) in the case of sale of security otherwise than through a stock exchange, by the seller of such security; (j) in the case of transfer of security through a depository, by the transferor of such security;

(j) in the case of transfer of security through a depository, by the transferor of such security;

(k) in the case of transfer of security otherwise than through a stock exchange or depository, by the transferor of such security;

(l) in the case of issue of security, whether through a stock exchange or a depository or otherwise, by the issuer of such security; and

(m) in the case of any other instrument not specified herein by the person making, drawing or executing such instrument.”

11. On perusal of the aforesaid section, it is clear that in the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne according to the schedule made herein above. In the present case, on perusal of the record, it shows that in the agreement to sell as well as in the sale deed, specific clause was made that the liability for payment of stamp duty shall be borne by the seller of the property in question and not by the purchaser i.e. the petitioner.

12. The agreement to sell dated 3/4.7.2019 (copy of which has been annexed as Annexure No. 3 A of the writ petition) contemplates Clause 14 (page 113 of the writ petition), which reads as under:-

“14. The all expenses of this agreement and the sale deed including stamp duty will be borne by the Vendor only.”

13. Whereas in the sale deed dated 5.8.2019, Clause 13 (page 72 of the writ petition) prescribed as under:-

“13. That all the expenses incurred in this deed of sale are borne by the Sellers only as per the agreement dated 3.7.2019 executed between the parties.”

14. Further in the sale deed dated 5.8.2019, Clause 5 (page 54 of the writ petition) provides as under:-

5. Therefore the Sellers have paid the said stamp duty of Rs. 1,39,65,00/= only upon this sale deed according to the provisions of Article 23 (a), as said above. The said stamp duty is paid by the Seller through ‘e-stamp system’ and have obtained e-stamp certificate No. IN-UP06452376170356R dated 05/08/2019 for value Rupees 92,52,600/= only and e-stamp certificate No. IN-UP06452317314899R dated 05/08/2019 for value Rupees 18,27,700/= only and e-stamp certificate No IN-UP06452358659481R dated 05/08/2019 for value Rupees 28,84,700/= only, Total stamp paid 1,39,65,000/=.

15. On perusal of the aforesaid clauses of the agreement to sell as well as sale deed, it is clear that in the instrument, the liability for payment of stamp duty was fixed upon the seller of the property in question. In other words, the payment of stamp duty shall be borne by the seller in consonance with the provisions of Section 29 of the Indian Stamp Act.

16. Further the record shows that the petitioner in his objection (annexed as Annexure No. 5 A; page 133 of the writ petition) to the show cause notice has specifically raised the plea which is quoted hereunder:-

“Dated: 11.06.2020

District Magistrate

Collectorate

Agra

Subject: Reg notice no. 8927 dt. 26.02.2020.

“Dear Sir,

Kindly refer to my previous letter dt. 21.03.2020. I would once again re-iterate the fact that the liability to pay the stamp duty is of the Seller as per the agreement dt. 4th July 2019 and duly mentioned in the Sale Deed registration no. 2809/19 as provided in the law. Hence, it is once again requested that the said notice issued to me should be cancelled as I am not liable to pay. I would also like to emphasize on the fact that though I am not liable to pay, the Stamp duty has been duly calculated and paid as per law to the full satisfaction of the registering authority.

Your's Faithfully

Sd/-

(Nazir Ahmed)”

(Emphasis supplied by this Court)

17. However, without considering the said objection, the Collector has passed the impugned order, against which a revision has been filed. In the grounds of revision also, ground no. VIII has been raised, which reads as under:-

“VIII. Because the District Magistrate has wrongly and illegally rejected the objection of the revisionist dated 14.12.2020 quashing the maintainability of the stamp ase, without adverting itself to the objections filed by the revisionists causing grave injustice to revisionist.”

(Emphasis supplied by this Court)

18. On perusal of the aforesaid ground, it shows that specific objection raised by the petitioner was not considered by the Collector, while passing the impugned order and also the revisional court has failed to consider the same and rejected the revision of the petitioner.

19. The records further shows that in the writ petition, the petitioner has raised specific grounds as ground nos. 5C, 5D and 5E but the same has not been denied in the counter affidavit filed by the State. Once the agreement to sell and sale deed contemplate specific clause that stamp duty shall be borne by the seller of the property in question in consonance with the provisions of Section 29 of the Indian Stamp Act, the proceedings initiated against the petitioner cannot be said to be justified.

20. The record further shows that liability for payment of stamp duty as per the agreement to sell is upon the seller of the property in question and said fact was brought to the notice of the respondent authority at the very first stage, therefore, the respondent authority were duty bound to call upon the seller of the property in question in the present proceeding but he has failed to do so.

21. Section 47 A (2) of the Indian Stamp Act provides as under:

“On receipt of a reference under sub -section (1) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the

property which is the subject of such instrument and the proper duty payable thereon.”

22. In the aforesaid section a word ‘parties’ has been used. Therefore, the Collector ought to have issued notice to the seller of the property in question as well, but he has failed to discharge his duty.

23. The record further shows that no notice was issued to the seller of the property in question in spite of the fact being brought to the notice at the very first stage that liability for payment of stamp duty was upon the seller as per the agreement to sell as well as the sale deed and not upon the purchaser i.e. petitioner.

24. In such circumstances, the proceedings initiated against the petitioner was wholly without jurisdiction and arbitrary in nature.

25. In view of the peculiar facts and circumstances of the case as referred herein above, the impugned orders dated 6.10.2021 and 16.3.2023 cannot be sustained in the eyes of law and same are hereby quashed.

26. Accordingly, the writ petitions are **allowed**.

27. The authority concerned is directed to refund any amount deposited by the petitioner along with interest @ 4% per annum from the date of its deposit till the date of refund, within a period of two months from the date of production of a certified copy of this order.

28. It is open for the respondent authorities to act against the seller of the property in question, if so advised, in accordance with law.

Order Date :- 24.3.2025

Rahul Dwivedi/-