

Neutral Citation No. - 2025:AHC:34285

Reserved on 04.03.2025

Delivered on 10.03.2025

Court No. - 2

Case :- WRIT - C No. - 6366 of 2024

Petitioner :- Rajkumar Lodhi And Another

Respondent :- State Of Up And 5 Others

Counsel for Petitioner :- Ishir Sripat, Saurabh Patel

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Rahul Sripat, learned Senior Counsel assisted by Mr. Ishir Sripat for the petitioner and Mr. A.C. Mishra, learned Additional Chief Standing Counsel for the respondent.

2. The present writ petition has been filed for quashing the order 11.8.2022 passed by respondent no. 2 and the order dated 23.11.2023 passed by respondent no. 6.

3. Learned Senior Counsel for the petitioner submits that the petitioner has entered into a registered agreement to sell with possession dated 13/20.5.2020 in respect of agricultural land of khasra no. 1249 (area 0.3162 hectare) situated in village Sikandrabad Dehat, Distt. Bulandshahar in which the petitioner has paid due stamp duty according to the prevalent circle rate and thereafter in pursuance of the said agreement the possession of the property in question was handed over to the petitioners. He further submits that the registered sale deed of the property in question was executed on

16.3.2022 and since the circle rate was enhanced while executing the sale deed, the additional stamp duty was also paid, however, on the report dated 16.3.2021/22 the proceedings under Section 47 A /33 of Indian Stamp Act was initiated and pursuant thereto notice was received by the petitioners on 23.4.2022 to which the petitioners have submitted objection on 13.5.2022 stating therein that at the time of purchase of the property, the land in question was used as agricultural land, but being not satisfied with the same, the impugned order dated 11.8.2022 has been passed by which deficiency of stamp together with penalty and interest has been imposed. Feeling aggrieved to the said order, the petitioners have filed an appeal but the same has also been dismissed vide order dated 23.11.2023.

4. Learned counsel for the petitioner submits that the land in question was purchased as agricultural land and same was used as such, which is apparent from the khasra and khatauni of the plot in question, copy of which has been annexed as Annexure no. 5 of this writ petition. He submits that the petitioner has purchased very big portion of land, whereas an exemplar has been submitted by the respondent authority that very small portion of land is non -agricultural which cannot be the basis for determining the value of entire property.

5. He further submits that while preparing the report dated 13.7.2022, the respondent authorities have violated the provisions of Rule 7 (3) (c) of UP Stamp (Valuation of Property) Rules 1997, therefore, the impugned order based on the report is itself arbitrary.

6. Learned counsel for the petitioner submits that the plot in question is

big plot and only some part of the land is situated on old G.T. Road in S.D.M. Colony near the abadi land. He further submits that no declaration under section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 has been made declaring the entire land in question as abadi land, therefore, the impugned orders are not justified in the eyes of law.

7. In support of his arguments, learned counsel for the petitioners has relied upon the judgements of this Court in the following cases of :-

- (i) **Naeem Khan and another Vs. State of UP and others** (Writ C No. 29207 of 2018) decided on 14.8.2024
- (ii) **Raj Kumar Vs. State of UP and others** (Writ C No. 19644 of 2016) decided on 13.4.2023
- (iii) **Manohar Lal Vs. Assistant Commissioner and others** (2017 (137) RD 18)
- (iv) **Sarfaraz Vs. State of UP and others** (2017 (137) RD 25)
- (vi) **Brindavan Beverages Pvt. Ltd. Vs. State of UP and others** (Writ C No. 29257 of 2003) decided on 7.4.2017
- (vii) **Chhail Bihari Vs. Additional Commissioner (Jud)** (2014 (124) RD 524)
- (viii) **Shyan Ali Vs. State of UP and others** (Writ C No. 24290 of 2014) decided on 29.4.2014
- (viii) **Meenal Sahkari Awas Samiti Ltd. Vs. Commissioner** (2014 (124) RD 370)
- (ix) **Veer Bal Singh Vs. State of UP and others** (2009 (2) ADJ 481)
- (x) **Smt. Asha Kapoor Vs. Additional Collector and others** (2008 4 ADJ 667)

8. *Per contra*, learned ACSC has supported the impugned order and prays for dismissal of the writ petition.

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

10. It is not in dispute that at the time of purchase of the land in question, the same was an agricultural land. In support of his submission, the petitioners have filed khasra - khatauni of the land in question showing that the land in question was used for agricultural purposes at the time of execution of sale deed. Further specific objection was raised by the petitioner that no declaration under section 143 of the U.P. Zamindari Abolition & Land Reforms Act has been made in respect of the land in question at the time of execution of the sale deed and only some part of the land is situated near the abadi land.

11. This Court in the case of **Raj Kumar (supra)** has held as under:-

18. Insofar as reliance placed upon the exemplar is concerned, comparing the area purchased by the petitioner, i.e. around 11000 square meters, a sale deed covering a very small area of about 139.36 square meters cannot be said to be a rational approach.

19. The observations/findings recorded in the orders impugned are also contrary to principles of burden of proof particularly, in a case where proceedings arise out of a fiscal statute. Once the State was proceeding to impose deficient stamp duty upon the petitioner, the entire burden lay upon the State to establish beyond reasonable doubt that the petitioner made some concealment at the time of getting the sale deed executed in his favour or that within a close proximity of dates, the user of the land in dispute was changed so as to levy additional stamp duty. Nothing to this effect has been brought on record, rather, not only the findings recorded in the orders impugned are contrary to the provisions of the Indian Stamp Act, 1899, as applicable in the State of U.P. as well as U.P. Stamp (Valuation of Property) Rules, 1997, but certainly contrary to the law consistently laid down by this Court.

12. Again this Court in the case of **Manohar Lal (supra)** has held as under :

“On behalf of the petitioner reliance has been placed upon a Full Bench judgment of this Court reported in 2015 (3) ADJ 136 (FB) Pushpa Sareen vs. State of U.P. wherein the Full Bench has held that if the land surrounding the property in question has been put to commercial use, it would be improper to hold that this is a circumstance which should not weigh with the Collector as a factor,

which influences the market value of the land.

Relevant paragraphs 26 and 27 of the said judgement read as under:

"26. Undoubtedly, the Collector is not permitted to launch upon a speculative inquiry about the prospective use to which a land may be put to use at an uncertain future date. The market value of the property has to be determined with reference to the use to which the land is capable reasonably of being put to immediately or in the proximate future. The possibility of the land becoming available in the immediate or near future for better use and enjoyment reflects upon the potentiality of the land. This potential has to be assessed with reference to the date of the execution of the instrument. In other words, the power of the Collector cannot be unduly circumscribed by ruling out the potential to which the land can be advantageously deployed at the time of the execution of the instrument or a period reasonably proximate thereto. Again the use to which land in the area had been put is a material consideration. If the land surrounding the property in question has been put to commercial use, it would be improper to hold that this is a circumstance which should not weigh with the Collector as a factor which influences the market value of the land.

27. The fact that the land was put to a particular use, say for instance a commercial purpose at a later point in time, may not be a relevant criterion for deciding the value for the purpose of stamp duty, as held by the Supreme Court in State of U.P. and others vs. 23 Ambrish Tandon and another¹¹. This is because the nature of the user is relateable to the date of purchase which is relevant for the purpose of computing the stamp duty. Where, however, the potential of the land can be assessed on the date of the execution of the instrument itself, that is clearly a circumstance which is relevant and germane to the determination of the true market value. At the same time, the exercise before the Collector has to be based on adequate material and cannot be a matter of hypothesis or surmise. The Collector must have material on the record to the effect that there has been a change of use or other contemporaneous sale deeds in respect of the adjacent areas that would have a bearing on the market value of the property which is under consideration. The Collector, therefore, would be within jurisdiction in referring to exemplars or comparable sale instances which have a bearing on the true market value of the property which is required to be assessed. If the sale instances are comparable, they would also reflect the potentiality of the land which would be taken into consideration in a price agreed upon between a vendor and a purchaser."

Thus on the facts of the case and law laid down by the Supreme Court as well as the Full Bench of this Court the impugned orders dated 31.3.2004 and 28.2.2000 cannot survive and are accordingly quashed."

13. Hon'ble Apex Court in the case of **Prakashwati Vs. Chief**

Controlling Revenue Authority, Board of Revenue, UP at Allahabad

1996 (4) SCC 637 has held as under:

“3. Before the High Court as also here, it was urged on behalf of the appellant that since sufficient guidelines have not been provided in Section 47-A of the Act, the provision was unworkable. The High Court repelled the contention holding that a procedure was prescribed under sub-sections (3) and (4) of Section 47-A which requires to be adopted for determining market value of the property which has not been truly set-forth in the document in question. The manner of the inquiry, as required to be held, is appropriately given therein. According to the High Court the procedure postulated was observed in the instant case and nothing further was required to be done. Rule 341 of the U.P. Stamp Rule 1942 providing for determination of the minimum market value, also subserving the purpose of Section 47-A of the Act was explained to say that the minimum market value determinable was not the end of the matter and value could be determined at a figure higher than that if warranted.

4. We have carefully examined the orders of the first respondent. Noticeable the house is built on a very small area i.e 68.84 sq yards only in a town which is not metropolis. Presumably the smallness of the area would not suggest the same by itself to be a costly property or be situated in a prestigious or posh locality, where the upper classes would rub shoulders to acquire it. Secondly, its being situated in an area which is close to Samrat Vikram Colony, said to be decent locality, where people of high income group reside does not by itself make it a part thereof. we are doubtful whether the said factum of closeness by itself would cast any reflection on the price of property in question. Seemingly, influenced by the factor of the close proximity of Samrat vikram colony the Assistant Commissioner, Stamps, for one does not know how, determined the monthly rental value of the property at Rs. 1500/- per mensem and worked out the price of the house on that basis. Despite that the Tehsildar at a subsequent stage reported that the annual rental value of the house was Rs. 1200/- per annum, whereas for house tax purpose it was recorded as Rs. 480/- per annum. The first respondent ignoring the same worked out the monthly rental of the property at Rs. 830/- per mensem and its value at Rs. 2.5 lack, ostensibly on the basis that the average cost of construction of building in the year 1992 was about Rs. 400/- per sq yards, inclusive of the land cost. This figures too was arrived at, one knows not from where, without determining the age of the building, the quality of construction and citing appropriate instances. The approach of the authorities, to say the least, was highly vain, casual and unsatisfactory and dehors any constructive material on the basis of which one could have said that the decision arrived at by the first respondent was fair and reasonable. we cannot approve of such an assumptive posture of the respondent in treating the appellant as an evader. We must therefore, upset the impugned order of the first respondent and the proceedings for the supposed deficient payment of

stamp, but confining the end result to the facts and circumstances of the instant case, when the valuation under Section 341 of the Stamp Rules.”

14. Further this Court in Writ-C No.51205 of 2010 (M/s Indo Continental Hotels and Resorts Pvt. Ltd. Vs. State of U.P. Thru Secretary Min) Neutral Citation No. - 2023:AHC:175077 has held as under :

“16. However, if deed has been registered then action may be taken only under section 47-A (3) of the Stamp Act. Rule 7 of the Rules of 1997 prescribes the procedure for determining market value of the subject-matter of the instrument. This Rule nowhere refers to the minimum value of the property fixed in accordance with Rule 4 of the said Rules, Sub-section (2) of section 47-A of Stamp Act obliges the Collector for the purpose of determining of the market value of the property which is the subject of instrument presented for registration after holding inquiry in such manner as may be prescribed by Rules made under the said Act. This clearly refers to Rule 7 of Rules of 1997. However, subsection (3) of the said section only says that Collector may examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property, which is subject of such instrument. Manner of examination has not been mentioned and the said sub-section (3) also does not refer to any Rules. However, Rule 7 makes itself applicable to both situations; pre-registration inquiry as well as post registration examination regarding market value of the property. It is interesting to note that Rule 7 no where prescribes the basis, formula or principle for determining market value. It only prescribes procedure like notice, admission of oral or documentary evidence, calling for information or record from any public office and inspection of property. The result is that, whether Rule 7 of Rules of 1997 applies or not market value has to be determined on the same principle on which market value in land acquisition cases is determined. Minimum market value fixed in accordance with Rules of 1997 is relevant only and only for the purposes of referring the document by Registering Officer to the Collector before registration. Even after such reference market value is to be determined not in accordance with the minimum value fixed under Rule 4 of the Rules of 1997 but in accordance with general principles of determination of market value as applicable in land acquisition cases. Simultaneously when proceedings are initiated after registration of the document under section 47-A (3) of the Act market value has to be determined in accordance with general principles applicable for the said purpose like principles of determination of market value in land acquisition cases without taking recourse to minimum market value of the property fixed in accordance with Rule 4 of the Rules of 1997.

20. In Maya Food v. C.C.R.A., a Single Judge of this Court has held

that market value of the land cannot be determined with reference to the use of the land to which buyer intends to put it and that in determining the market value the potential of the land as on the date of the sale alone can be taken into account and not the potential it may have in the distant future.

*22. In Smt. Prabhawati v. C.C.R.A., held that mere smallness of the area would not suggest the same by itself to be a costly property and that merely because property situated in an area which is close to a decent colony where people of high income group reside does not by itself make it a part thereof.” Hon’ble Apex Court in the case of **Prakashwati Vs. Chief Controlling Revenue Authority, Board of Revenue, UP at Allahabad 1996 (4) SCC 637** has held as under:*

“3. Before the High Court as also here, it was urged on behalf of the appellant that since sufficient guidelines have not been provided in Section 47-A of the Act, the provision was unworkable. The High Court repelled the contention holding that a procedure was prescribed under sub-sections (3) and (4) of Section 47-A which requires to be adopted for determining market value of the property which has not been truly set-forth in the document in question. The manner of the inquiry, as required to be held, is appropriately given therein. According to the High Court the procedure postulated was observed in the instant case and nothing further was required to be done. Rule 341 of the U.P. Stamp Rule 1942 providing for determination of the minimum market value, also subserving the purpose of Section 47-A of the Act was explained to say that the minimum market value determinable was not the end of the matter and value could be determined at a figure higher than that if warranted.

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cannot approve of such an assumptive posture of the respondent in treating the appellant as an evader. We must therefore, upset the impugned order of the first respondent and the proceedings for the supposed deficient payment of stamp, but confining the end result to the facts and circumstances of the instant case, when the valuation under Section 341 of the Stamp Rules.”

15. The said judgement passed in **M/s Indo Continental Hotel and Resort (supra)** squarely covers the issue raised in the case in hand.

16. The record shows that no contrary material has been brought on record to show that the land in question was converted as abadi land under the provisions of Section 143 of UP Z.A. & L.R. Act.

17. Further the respondent authorities have failed to bring on record any material to show that the inspection was made in accordance with the provisions of Rule 7 (3) (c) of UP Stamp (Valuation of Property) Rules 1997 after giving due notice to the petitioner.

18. In view of the aforesaid discussions and looking to the facts and circumstances of the case as well as law laid down by this Court and the Apex Court as referred herein above, the impugned orders dated 11.8.2022 and 23.11.2023 cannot be sustained in the eyes of law and same are hereby quashed.

19. The writ petition succeeds and is **allowed**.

20. 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.

Order Date :- 10.3.2025
Rahul Dwivedi/-