

Court No. - 7

Case :- WRIT - C No. - 35989 of 2016

Petitioner :- Smt. Sharifan

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pradeep Kumar Rai

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - C No. - 35990 of 2016

Petitioner :- Smt. Asma Khatoon

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pradeep Kumar Rai

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Since the similar issues are involved in both the aforesaid writ petitions, both are being decided together by this common judgment.

2. For the convenience, the facts from Writ-C No. 35989 of 2016 are being delineated

3. Heard Sri Prajyot Rai, learned counsel holding brief of Shri Pradeep Kumar Rai, learned counsel for the petitioner and Sri Siddharth Singh, learned Standing Counsel for the State-respondents.

4. By means of instant writ petition, the petitioner has assailed the order dated 05.05.2016 passed by the Additional Commissioner, Moradabad Division, Moradabad and impugned order dated 26.03.2015 passed by Additional Collector (F & R), Moradabad (Annexure Nos. 1 & 2).

5. Learned counsel for the petitioner submits that vide registered sale deed dated 06.12.2014, the petitioner purchased an agricultural land after paying requisite stamp duty in accordance with the prevalent circle rate at that time. Thereafter, on the basis of an ex-parte report, proceedings under the provisions of Indian Stamp Act were initiated against the petitioner and a notice was issued to the petitioner to which the petitioner filed his objection, making specific request with regard to make the spot inspection in presence of the petitioner, however, spot inspection was made on 11.02.2015 behind the back of the petitioner and even after the inspection, no opportunity was given to the petitioner for filing objection, the impugned order dated 26.03.2015 was passed holding the deficiency of stamp duty and penalty along with interest @ 1.5% per month

from the date execution of the sale deed. Aggrieved against the said order, the petitioner preferred revision, which has been dismissed vide impugned order dated 05.05.2016 without considering the material available on record. Hence, this writ petition.

6. Learned counsel for the petitioner submits that at the time of execution of the sale deed, the plot in question was open land and no residential activity was going on. He further submits that no notice was served upon the petitioner before the spot inspection. He further submits that the character of the land cannot be the basis of its future potential and as such, the impugned order is bad in law.

7. He further submits that in the grounds of appeal, a specific plea has been made that there is no compliance of rule 7(3)(c) of the Rules framed under the Stamp Act, but without considering the same, the impugned order has been passed. He further submits that specific ground is also taken in the writ petition in paragraph no. 10, which have not specifically been denied in counter affidavit filed on behalf of the State.

8. In support of his submissions, he has placed reliance on the judgements of this Court in **Jagroop Singh Vs. State of U.P. & 2 Others** [Writ C No. 20752/2015 decided on 15.07.2024].

9. Per contra, learned A.C.S.C. supports the impugned orders and submits that the proceedings have rightly been initiated against the petitioner.

10. After hearing learned counsel for the parties, the Court has perused the record.

11. It is not in dispute that the property was purchased in the year 2014 and thereafter, on the basis of ex parte spot inspection report, the proceedings under section 47-A of the Stamp Act were initiated, but in spite of the specific ground having been taken in the memo of appeal with regard to non-compliance of rule 7(3)(c) of the Rules framed under the Stamp Act, no finding was recorded with regard to the same. The petitioner has also taken the ground in the writ petition as mentioned above, which has not been denied in the counter affidavit filed on behalf of the State.

12. This Court in **Jagroop Singh** (supra) has held that in absence of compliance of rule 7(3)(c) of the Rules, the impugned order cannot be justified. The relevant paragraphs are quoted below:-

"7. It is admitted that the sale deed of the vacant plot was executed on 20.10.2012 in favour of the petitioner and on the basis of exparte report, the proceedings were initiated against the petitioner and in pursuance thereof notice was issued but the Collector has not visited the site in question in accordance with Rule 7 (3) (c) of the Rules. Even the respondent authority up to the stage of this Court could show any material in order to justify that prior to initiation of the proceedings, Section 7 (3) (c) of the Rules was complied with in letter and spirit.

8. This Court in the case of Ajay Agrawal (supra) has held as under:-

9. Nonetheless, in view of submissions advanced by learned State counsel, the question arising for determination would be whether compliance of Rule 7(3)(c) is required in proceedings under Section 47(A)(1) as well as under section 47 A(3) of the Act? Here it is also relevant to indicate that both the orders impugned in present writ petition are based only on the aforesaid spot inspection report, which admittedly was ex parte in nature.

...

14. It is quite discernible that the starting provision of Rule 7 itself indicates the applicability of the Rule to the extent that on receipt of a reference or where action is proposed to be taken suo motu under section 47 A the Collector shall issue notice to parties to the instrument to show-cause. A reading of the aforesaid provision makes it evident that no distinction whatsoever has been carved out under Rule 7 of the Rules of 1997 with regard to procedure being required to be followed under section 47 A. On the contrary, it specifically indicates that the aforesaid Rule is required to be followed even in case suo motu action is taken under section 47 A of the Act, which in effect pertains to Section 47 A(3) of the Act of 1899 with regard to determination of stamp duty after registration of a document of instrument of transfer. As such no such distinction having been carved out under Rule 7, it is not feasible to accede to the submissions of learned State counsel that Rule 7 (3)(c) of the Rules would not be applicable in case of proceeding under section 47 A(3) of the Act.

...

20. In view of aforesaid, it is evident that the power to be exercised by Collector under section 47A (3) of the Act is not pedantic in nature but is required to be made on the basis of observations made hereinabove particularly with regard to the fact that he is required to apply his mind and record subjective satisfaction not only with regard to under valuation of the instrument of transfer but also to record a separate satisfaction regarding market value of the property and the duty payable thereupon and cannot place reliance only on the spot inspection report.

....

22. Upon applicability of aforesaid in the present case, it is evident from a reading of the impugned orders that the same are based only on the spot inspection report and no subjective satisfaction at all has been recorded by the authority either under section 47 A or under section 56 of the Act as required to be done as per observation is made hereinabove.

9. Again this Court in the case of Satendra and another (supra) has held as under:-

11. On a pointed query being made to the learned Standing Counsel as to whether there was any further inquiry after the inquiry was initially held in the form of spot inspection, learned Standing Counsel could not point out either from the record or pleadings of the counter affidavit that any further inquiry was held as contemplated under the Rule 7 of the Rules.

12. This Court notices that after the notices were issued and the Collector had fixed date inviting objections, the Collector failed to fix any further date for spot inspection or for any further oral or documentary evidence and therefore, it cannot be said that the Collector at all undertook any effort to act in accordance with the procedure prescribed in the matter. The conclusion drawn therefore, is

devoid of any cogent and convincing material in support there of and the findings therefore, are liable to be held as perverse. The said rule which has been quoted herein above, has also drawn attention of Full Bench in Smt. Pushpa Sarin v. State of U.P. 2015 (127) RD 855. However, the Full Bench did not delve into the issue any further regarding the scope and applicability of the Rules because the period which was in dispute under the reference was prior to the rule coming into force. Para 18 of the judgment of Full Bench runs as under:

"18. Subsequently, the provisions of the Stamp Rules in regard to valuation were replaced by the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 which have been made in exercise of the powers conferred by sections 27, 47-A and 75 of the Stamp Act. However, it is not necessary for the Court to express any view on the scheme or provisions of those rules since the period of dispute in the present reference is prior to the enforcement of those rules."

10. In view of above, the writ petition is allowed. The impugned orders dated 23.2.2015 and 20.8.2013 are hereby quashed."

13. In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court, the matter requires re-consideration. Thus, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.

14. Accordingly, the writ petitions are **allowed**. The matter is remanded to the authority concerned for deciding afresh by passing a reasoned and speaking order, after hearing all the stakeholder, within a period of three months from the date of production of certified copy of this order.

15. Any amount deposited by the petitioner pursuant to the impugned orders, shall be subject to the outcome of the fresh order to be passed by the authority concerned.

Order Date :- 29.7.2025

Pravesh Mishra