

Court No. - 2

Case :- WRIT - C No. - 24727 of 2024

Petitioner :- Sandeep Kumar Agrawal

Respondent :- Collector District Kushinagar And Another

Counsel for Petitioner :- Purushottam Mani Tripathi, Tarun Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

1. Heard Sri Tarun Agrawal, learned counsel for the petitioner and Sri Siddhart Singh, learned Standing Counsel for the State-respondents.

2. By means of instant writ petition, the petitioner has assailed the order dated 29.09.2020 passed by the respondent no.1 as well as order dated 04.05.2024 passed by the respondent no.2.

3. Learned counsel for the petitioner submits that through sale deed dated 22.11.2018, petitioner purchased an agricultural land after paying the requisite stamp duty thereon. Thereafter, pursuant to the report dated 02.01.2019, claiming deficiency of stamp duty, being submitted by the A.D.M. (F/R), Kushinagar to the respondent no.1, petitioner put in appearance and filed his objection, but without considering the same, impugned order dated 29.09.2020 was passed against which the petitioner preferred an appeal, which was rejected vide order dated 04.05.2024 by the appellate authority. Hence, the present writ petition.

4. He further submits that the proceedings under Section 47-A of the Indian Stamp Act were wrongly initiated against the petitioner because as per Section 47-A (3) (6) of the Indian Stamp Act, no notice was issued for producing the original record and therefore, once the said provision has not been complied with in its letters and spirits by the authorities, the proceedings are itself bad.

5. He further submits that Section 47-A (3) (6) of the Indian Stamp Act is analogous to Section 33 (4) of the Indian Stamp Act.

6. In support of his submission, he has placed reliance upon the judgment of this Court passed in the case of ***M/S Mandira Creation Pvt. Ltd. Vs. State of U.P and 2 others (Writ-C No. 21635 of 2024)***.

7. He further submits that even on merit, the land in question was purchased by the petitioner as an agricultural land after paying the requisite stamp duty thereon. He next submits that however, in the revenue records, the land in question is specifically recorded as parti land, but there is no such declaration under Section

143 of the UPZA & LR Act for converting the land in question into an abadi land, has been made and therefore, in absence of such declaration, the proceedings against the petitioner cannot be said to be justified.

8. He further submits that at the time of execution of the sale deed and even thereafter, the land in question was being used as an agricultural land, in support whereof, various materials were brought on record; such as Khasra and Khatauni, specifically stating that the land in question was an agricultural land, but no weightage has been given to the same by any of the authorities.

9. *Per contra*, learned Standing Counsel supports the impugned orders and submits that so far as violation of provision of Section 47-A (3) (6) of the Indian Stamp Act is concerned, the same was never objected at any stage by any of the authorities below and for the first time, the same has been pressed before the writ court, which is not permissible in the eyes of law as it deems to be waived off the right of the State by the petitioner, which is not permitted to raise it.

10. Upon hearing the parties, the Court has perused the record.

11. The record shows that the provision of Section 47-A (3) empowers the Collector to call for and examine an instrument for the purpose of satisfying himself as to the correctness of the market value, but no notice for the same was ever issued to him. A detailed order-sheets has been annexed as Annexure No.8 to this writ petition, which runs from page nos. 77 to 89, which clearly shows that neither any notice was issued to the petitioner nor the petitioner was called upon to produce the original record as contemplated under Section 47-A (3) of the Indian Stamp act for initiation of proceedings. The said issue goes into the root of the matter, which can be raised at any time of the proceedings in view of the judgments of Hon'ble Apex Court passed in the cases of ***Chief Engineer, Hydel Project & Ors. Vs. Ravinder Nath & Ors., 2008 AIR SCW 1412*** and ***R. Kandasamy (since deceased) & Ors. Vs. T.R.K. Sarawathy & Anr. (Civil Appeal No 3015 of 2013)***. Hence the objection raised on behalf of the State, cannot be sustained.

12. The record further shows that for initiation of proceedings under Section 47-A of the Indian Stamp Act, after the receipt of the report, it was incumbent upon the State to call for the original record, but the same was not done.

13. This Court in the case of ***M/s Mandira Creation (supra)*** has held that if the original records were not produced, the proceeding initiated on the photocopy of the instrument, cannot be permitted in the eyes of law. The relevant paragraph of the said judgment is quoted as below:-

"The record shows that the proceedings were initiated on the basis of report dated 30.11.2005. The impugned order records the issuance of notice, but the record or the counter affidavit do not reflect that the petitioner was called upon to produce the original rent agreement at any stage. Once section 33(4) of the Indian Stamp Act was not complied with,

which is the basis for initiating proceedings on the basis of photocopy of some instrument, if the petitioner fails to produce the same in spite of notice, then the proceedings under section 33(5) of the Act could have been initiated. The authorities below have miserably failed to show or record any finding that in spite of calling for original record and proper service upon the petitioner, the petitioner failed to produce the original rent agreement. Once this vital finding has not been recorded, the subsequent proceedings for determination of the deficiency of stamp duty and dismissal of the revision is bad and cannot be sustained in the eyes of law.

In view of the aforesaid facts & circumstances of the case, the impugned orders cannot be sustained in the eyes of law. The same are hereby quashed."

14. Further, on merit, the land in question has been mentioned as parti land, though the said fact raised at every stage, the same has not been denied. Once the land in question is mentioned in the revenue record as an parti land, i.e. agricultural land in the revenue record, however, no declaration under Section 143 of the UPZA & LR Act has not been made, the stamp duty cannot be charged treating the land in question as an abadi land.

15. This Court in the case of ***Dukhi Vs. State of U.P. and others [2016 (6) ADJ 622]*** has held that stamp act is a fiscal statute and the provisions has to be interpreted strictly and literally. There is no room for presumption or approximation. The market value of the land is required to be assessed on the nature of the land as existing on the date of sale of that land.

16. Admittedly, in the case in hand, at the time of execution of the sale deed, the same was mentioned in the revenue record as parti land and there is no evidence on record to show that the same has been declared as an abadi land converting its nature from agricultural land to an abadi land in view of Section 143 of the UPZA & LR Act and therefore, the presumption cannot be drawn against the petitioner.

17. Further, the proceedings under Section 47-A (3) of the Indian Stamp Act require to call for and examine the original records for the purpose of satisfying himself as to the correctness of the market value. In absence thereof, the entire proceedings goes adverse. Section 47-A (6) of the said Act shows that in the event of failure to produce the original instrument within time specified by the Collector, the person shall be liable to be pay the deficit stamp duty together with penalty on the copy of the instrument. This shows that the proceedings can only be justified if a notice requiring the person to produce the original within the time stipulated therein is issued. In the event of failure to produce the original record, then only on copy of the instrument, the deficit stamp duty is required to be paid.

18. In the case in hand, no material has been brought on record showing that before initiating the proceedings under the provisions of the Indian Stamp Act, notice under Section 47-A (3) of the Indian Stamp Act was issued for producing the

original record.

19. In view of the above facts as stated as well as law laid down in the aforesaid judgments, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.

20. Accordingly, the writ petition is ***allowed***.

21. Any amount deposited by the petitioner pursuant to the impugned orders, shall be refunded to him within a month from the date of production of certified copy of this order.

Order Date :- 6.3.2025

Pravesh Mishra