

Neutral Citation No. - 2024:AHC:130300

Court No. - 2

Case :- WRIT - C No. - 15140 of 2019

Petitioner :- Prayag Dant Vigyan Anusandhan

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Vinod Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.
2. By means of instant writ petition, the petitioner has assailed the order dated 19.12.2018 passed by respondent no.2 in Appeal No.593/2017/Computer Serial No.C20170200593 as well as the order dated 21.04.2017 passed by respondent no.4 in Case No. D20150203003793/2015-16.
3. Counsel for the petitioner submits that vide registered Sale deed dated 26.09.2014, an agricultural land was purchased and paid the due stamp duty thereof. Thereafter, on the basis of spot inspection dated 18.12.2018, proceedings under Section 47-A of the Indian Stamp Act were initiated against the petitioner. In pursuance thereof, a notice was issued to the petitioner to which a reply was submitted, but not being satisfied from the same, the impugned order was passed holding deficiency of stamp duty amounting to Rs. 1,25,750/- as well as penalty of Rs. 12,000/- along with interest @ 1.5% per mensem from the date of execution of sale deed, against which an appeal was preferred, which has also been dismissed without considering the material available on record.
4. Learned counsel for the petitioner further submits that the property in question was an agricultural land and was not declared under Section 143 of U.P.Z.A. & L.R. Act as an abadi land. Once the land in question has not been declared as an abadi land, the authorities were not justified in treating the same as non-agricultural land. He further submits that even assuming without admitting that some activity was going on in the vicinity of the land in question, it will not affect the land in question as use for agricultural purposes. He further submits that once at the time of survey, it was found that the land in question was an agricultural land, then the burden shift to the revenue to bring on record the cogent material to show otherwise.

5. In support of his submission, he has placed reliance upon **Writ- C No.17285 of 2019 (Ramvati Rathore and Another Vs. State of U.P. and 2 others)**, decided on 01.08.2024.

6. Further, he has placed reliance upon **Writ-C No.51202 of 2010 (M/s Indo Continental Hotels and Resorts Pvt. Ltd. Vs. State of U.P. Thru Secretary Min. of Revenue and others)**, decided on 04.09.2023.

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

8. After hearing the parties, the Court has perused the record.

9. It is an admitted fact that the land in question was purchased as an agricultural land and at the time of survey, it was also not in dispute that the proceedings of Section 143 of UPZA and LR Act were not initiated and the land in question was not declared as an abadi land.

10. Further, this Court in the case of **Ramvati Rathore (supra)** in para nos. 13 & 14 has held as under:-

"13. On perusal of the spot inspection reports as mentioned above, it is evident that the lands in question were found to be used as an agricultural land and no cogent material has been brought on record by the revenue authority, showing it as non-agricultural lands.

14. If the authorities are making allegation then the burden of proof is upon the prosecution to show that the provision of Section 27 of the Stamp Act has not been complied with."

12. Furthermore, this Court in the case of **M/s Indo Continental Hotels and Resorts Pvt. Ltd.** in para no14, 22 & 23 has held as under:-

"14. This Court in the case of Sunny Motors (supra) has held that proceedings can be initiated on the basis of report but decision cannot be relied upon on the basis of said report until and unless the Collector has made the inspection himself or through some authorized person. Further the Court has observed that until and unless area in question has been declared as commercial by the State Government, the land use cannot be changed from industrial to commercial and no stamp deficiency can be levied. The relevant part of the judgement is quoted hereunder :-

"7. After respective arguments have been advanced relevant provision which covers the field namely section 47-A of the Indian Stamp Act as applicable in the State of U.P. and relevant provision of U.P. Stamp (Valuation of Property) Rules, 1997 are being quoted below:

Section 47-A :under-valuation of instrument.—

[1).

(a) If the market value of any property, which is the subject of any

instrument, on which duty is chargeable on market value of the property as set forth in such instrument is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908 shall, notwithstanding anything contained in the said Act, immediately after presentation of such instrument and before accepting it for registration and taking any action under section 52 of the said Act, require the person liable to pay stamp duty under section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with section 23 of the Registration Act, 1908.

(b) When the deficit stamp duty required to be paid under Clause (a), is paid in respect of any instrument and the instrument is presented again for registration, the registering officer shall certify by endorsement thereon, that the deficit stamp duty has been paid in respect thereof and the name and the residence of the person pay them and register the same.

(c) Notwithstanding anything contained in any other provisions of this Act, the deficit stamp duty may be paid under Clause (a) in the form of impressed stamps containing such declaration as may be prescribed.

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in Clause (a) and presents the instrument again for registration, the registering officer shall, before registering the instrument refer the same to the Collector for determination of market value of the property and the proper duty payable thereon.]

(2) 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.

(3) The Collector may, suo motu, on a reference from any Court or from the Commissioner of Stamps, or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorized by the State Government in that behalf, within four years from the date of registration of any instrument, on which duty is chargeable on the market value of the property not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property, which is the subject of such instrument, and the duty payable thereon and if after such examination he has reason to believe that the market value of such property has not been truly set forth in such instrument, he may determine the market value of such property and the duty payable thereon: Provided that, with the prior permission of the State Government an action under this sub-section may be taken after a period of four years but before a period of eight years from the date of registration of the instrument on which duty is chargeable on

the market value of the property.

[Explanation.—The payment of deficit stamp duty by any person under any order of the registering officer under sub-section (1) shall not prevent the Collector from initiating proceedings on any instrument under sub-section(3)].

(4) If on enquiry under sub-section (2) and examination under sub-section (3), the Collector finds the market value of the property—

(i) truly set forth and, the instrument duly stamped, he shall certify by endorsement that it is duly stamped and returned it to the person who made the reference;

(ii) not truly set forth and the instrument not duly stamped, he shall require the payment of proper duty or the amount required to make up the deficiency in the same, together with a penalty of an amount not exceeding four times the amount of the proper duty or the deficient portion thereof.

8. Relevant portions of Rules 4, 5 and Rule 7 of U.P. Stamp (Valuation of Property) Rules, 1997 are quoted below:-

"Rule-4. Fixation of minimum rate for valuation of land construction value of non-commercial building and minimum rate of rent of commercial building.—(1) The Collector of the district shall biennially, as far as possible, in the month of August, fix the minimum value per acre/per square meter of land, the minimum value per square meter of construction of non-commercial building and the minimum monthly rent per square meter of commercial building situated in different parts of the district taking into consideration the following facts:

(a) in case of land—

(i) classification of soil,

(ii) availability of irrigation facility,.

(iii) proximity to road, market, bus, station, railway station, railway station factories, hospitals and Government offices, and

(iv) location with reference to its situation in urban area, semi-urban area or country side.

(b) In case of non-commercial building—

(i) cost of material used in the construction of building,

(ii) labour charges

(iii) type of construction, age, and depreciation of building.

(c) In case of commercial building—

(i) prevailing rent in locality, and

(ii) nature of economic activity in the locality.

(2) The Collector of the district may suo motu or on an application made to him in this behalf, on being satisfied about the incorrectness of the minimum value of land or of the construction of non-commercial building, or the minimum rent of a commercial building fixed by him under sub-rule (1), for reasons recorded in writing, revise the same within a period of two years from the date of fixation of minimum value or rent, as the case may be.

(3) The Collector of the district shall after fixing the minimum value per acre/per square meter of land, and of the construction of noncommercial building and the minimum rent per square meter of commercial building under sub-rule (1), send a statement in three part to the Registrar, the first part of such statement shall contain the division of the district under his jurisdiction, into urban area, semi-urban area and the country side, second part shall specify the minimum value of land situated in different parts of the sub-district and the third part shall contains, in the case of non-commercial building the minimum value of construction and in the case of commercial building the minimum rent fixed under sub-rule (1).

(4) The Registrar shall supply copies of statement mentioned in sub-rule (3) to the Sub-Registrars under his control and shall also forward a copy of the same to the Inspector General of Registration, Uttar Pradesh.

(5) Every Registering Officer shall cause a copy of the above statement to be affixed on the notice board outside the registering offices.

Rule-5 :Calculation of minimum value of land, grove, garden and building—For the purposes of payment of stamp duty, the minimum value of immovable property forming the subject of an instrument shall be deemed to be such as may be arrived at as follows:

(a) In case of land—Minimum value. Whether agriculture or non-agriculture— Area of land multiplied by minimum value fixed by Collector of the district under rule.

(b) in case of grove of garden:

(i), (ii), (iii), (iv),(c) in case of building:

(i)Non-commercial building—Minimum value of land whether covered by the construction or not, which is subject-matter of instrument, as worked out under Clause (a) building arrived at by multiplying the construction area of each floor of the building by the minimum value fixed by the Collector of the district under rule.

(ii)Commercial building—Minimum value of land whether covered by the construction or not, which is subject-matter of instrument at worked out under Clause (a) plus three hundred times the minimum monthly rent of

the building arrived at by multiplying the constructed area of each floor of the building with the minimum rent fixed by the Collector of the district under Rule 4.

Rule-7.Procedure on receipt of a reference or when suo motu action is proposed under section 47-A.—(1) 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 within thirty days of the receipt of such notice as to why the market value of the property set forth in the instrument and the duty-payable thereon be not determined by him.

(2) The Collector-may admit oral or documentary evidence, if any, produced by the parties to the instrument and call for and examine the original instrument to satisfy himself as to the correctness of the market value of the subject-matter of the instrument and for determining the duty payable thereon.

(3) The Collector may:

(a) call for any information or record from any public office, officer or authority under the Government or local authority;

(b) examine and record the statement of any public officer or authority under the Government or-local authority;

(c) inspect the property after due notice to the parties to the instrument.

(4) After considering the representation of the parties, if any, and examining the records and other evidence, the Collector shall determine the market value of the subject-matter of the instrument and the duty payable thereon.

(5) If, as a result of such inquiry, the market value is found to be fully and truly set forth and the instrument duly stamped according to such value, it shall be returned to the person who made the reference with a certificate to that effect. A copy of such certificate shall also be sent to the Registering Officer concerned.

(6) If as a result of such inquiry, the market value is found to be undervalued and not duly stamped, necessary action shall be taken in respect of it according to relevant provision of the Act.

9. The provisions quoted above has been subject-matter of interpretation before this Court in the case of Ram Khelawan v. State of U. P., as follows:

Relevant paragraphs 15 to 25 is being extracted below:

"15. It is quite possible that even in the first instance the instrument/deed may show the valuation of the property to be less than the minimum value determined in accordance with Rules of 1997 (popularly known as circle

rate) still purchaser or seller may not be required to pay more stamp duty. The only purpose of the minimum market value fixed and circulated under Rule 4 of the Rules of 1997 is that in case on the face of it the market value of the property set forth in the sale deed is less than minimum market value fixed under the said Rules then Registering Officer cannot register the deed and it will have to refer the same to the Collector unless on being asked by him to make good the deficiency in stamp duty, parties to the sale deed make good the requisite deficiency. In case deficiency is not made good then matter will have to be referred by Registering Officer to the Collector. However, thereafter it is quite possible that Collector may hold that even though market value of the property set forth in the deed is less than minimum market value fixed under the Rules of 1997 still the market value set forth in the sale deed is correct and proper stamp has been paid. It is quite clear from section 47-A(4)(i) and Rule 7(5).

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.

17. It has been held by a Division Bench of this Court in *Kaka Singh v. Additional Collectors, District Magistrate (F & R)*, that treating method of calculation of market value given under Rule 341 (since repealed and substituted by Rule 4 of the Rules of 1997) as conclusive and final is erroneous in law. It has further been held that the purpose of entire exercise under section 47-A as supplemented by the relevant rules is to see as to whether the parties to the conveyance or instrument have deliberately under valued it for the purpose of deceitful gain. In a case where it is found that the value of the conveyance was fraudulently made although more has passed on it, section 47-A would come into play (para-10). In the said authority the following observation of AIR 1974 Mad 117 was quoted:

"We are inclined to think that the object of the Amending Act being to avoid large scale evasion of stamp duty, it is not meant to be applied in a matter of fact fashion and in a haphazard way Market value itself as we already mentioned, as a changing factor and will depend on various circumstances and matters relevant to the consideration. No exactitude is in the nature of things possible. In working the Act, great caution should be taken in order that it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion."

18. The Supreme Court in *R.C. Bansal v. D.M.*, has held that circle rates under Rule 340-A (since repealed and substituted by Rule 4 of Rules of 1997) is merely a guideline and at best prima facie rate of the area concerned and on the one hand parties to the deed are entitled to say that actual valuation is less than the circle rate and on the other hand Collector is also empowered to decide that actual market value is more than the circle rates.

19. In *State of Punjab v. Mahabir Singh*, which was a case from Punjab it has been held that circle rate is merely a guideline provided by the State which would only serve as prima facie material and that no absolute higher or minimum value can be pre-determined (para-5). The Supreme Court approved the judgment of Punjab & Haryana High Court in AIR 1991 P & H 26. which held that the guidelines cannot control the quasi Judicial discretion to determine the correct valuation of the property.

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.

21. In *R.K. Agarwal v. C.C.R.A.*, a Single Judge of this Court has held that assumed rental value without any basis cannot form the basis for determining market value and that the proper course is to decide the market value on the basis of some exemplars of other land in the vicinity which had been sold at the relevant time (para-4).

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.

23. The view that Rules of 1997 (which have been framed at the place of old Rules 340, 340-A and. 341) cannot be taken into consideration at the time of determination of market value which I have taken is squarely covered by the authority of a Single Judge of this Court in *Aniruddha Kumar v. C.C.R.A.*. In the said authority it has also been held that agricultural land cannot be treated as residential plot unless declaration under section 143 of U.P.Z.A. & L.R. Act is made and that market value of land is to be determined on the basis of the character of the land and its user. In para-21 of the said authority i??? has also been held that valuation cannot be determined on the basis of its future potential.

24. In *H.L. Sahu v. State of U.P.* a Single Judge of this Court struck down Note-2 of order dated 3.8.1997 prescribing circle rate of District Kaushambi under Rule 4 of the Rules of 1997 which provided that in case agricultural land is not transferred in favour of a co-tenure holder or a person having adjoining agricultural plot then the same shall be valued on the basis of per Sq. Meter in case area of the land sold is less than 1500 Sq. Meter.

25. It has been found in several cases like the present one that the entire basis of determination of market value for the purpose of stamp duty is ex-parte report of Tehsildar or other officer. Ex-parte inspection report may be relevant for initiating the proceedings under section 47-A of Stamp Act. However, for deciding the case no reliance can be placed upon the said report. After initiation of the 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 of 1997. Moreover in the inspection report distance of the property from other residential or commercial properties and road must be shown and wherever possible sketch map must also be annexed alongwith the report so that correct valuation may be ascertained with reasonable certainty."

10. Division Bench of this Court in the case of *Kishore Chandra Agarwal v. State of U.P.*, has held as follows:

"22. In the case of *Prakashwati v. Chief Controlling Revenue Authority, Board of Revenue, Allahabad*, Hon'ble the Apex Court has held that situation of a property in an area close to a decent colony not by itself would make it part thereof and should not be a factor for approach of the authority in determining the market value. According to said decision, valuation has to be determined on constructive materials, which could be made available before the authorities concerned.

23. The rate list dated 16.6.2004 also provides that the valuation of the agricultural land situate on the main road for the purpose of stamp duty and registration from Chihat circle upto the border of Lucknow district has been fixed at the rate of Rs. 24,00,000/- per hectare and the petitioner

has paid the stamp duty at the rate of Rs. 24,00,000/- per hectare. The agricultural land situate on the roadside of a highway in semi-urban area or countryside area cannot be treated as commercial or residential unless that area is declared as commercial or residential in the Master Plan prepared by the State Government. Admittedly, Khasra No. 448 is recorded, as agricultural land and it cannot be treated to be a residential plot or commercial plot until there is a declaration under section 143 of the U.P. Zamindari Abolition and Land Reforms Act.

26. While revising the rates for the purposes of stamp duty and registration under the provisions of U.P. Stamp (Valuation of Property) Rules, 1997, the authorities must remember at what rate they are acquiring the property under the provisions of the Land Acquisition Act and at what rate they are intending to sell to the public at large. Artificial increase of the rates of residential, commercial and agricultural is not in the interest of general public at large. The Collector, Lucknow, who has acquired the land for Lucknow Development Authority for Gomti Nagar Extension Scheme has paid the compensation to the land owner at the rate of Rs. 23/- per Sq. Ft. and for sale after development they have valued the same land for residential purposes about Rs. 400/- per Sq. Ft. and for commercial purposes about Rs. 600/- per Sq. Ft. in a most arbitrary and illegal manner. The artificial increase of the price of such land is not in the interest of public at large. While fixing the rates of the agricultural, residential and commercial land for the purposes of stamp duty under the provisions of the U.P. Stamp (Valuation of Property) Rules, 1997, the provisions of sections 48 and 50-C of the Income Tax Act should also be kept in mind.

27. The Collector/District Magistrate, Lucknow under the provisions of the U.P. Stamp (Valuation of Property) Rules, 1997 has no jurisdiction to say that the stamp duty in respect of the agricultural land situate in semi-urban area or country side area shall be charged treating the land as commercial. The Collector/District Magistrate, Lucknow while issuing the rate list under the provisions of Rule, 1997 has no authority to declare the agricultural land as residential or commercial for the purposes of realisation of stamp duty as the authority to declare a particular area of the district as residential or commercial vests with the State Government while preparing the Master Plan of the City."

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22. In view of aforesaid law laid down, it is clear that deficiency of stamp can neither be determined on the value of future use of the property nor it can be levied on the ground that property can fetch good market value nor in the absence of any declaration made by the State Government changing the nature of the land from industrial to commercial. The judgement referred by the counsel for the petitioner clearly indicates for determination the stamp duty only on the date of execution of deed.

23. The case in hand, the property in question was purchased as vacant industrial plot and no material has been brought on record to treat the same as commercial plot. The authorities below have failed to bring on record that nature of the land in question has been changed by passing appropriate order under the relevant Act

converting its use from industrial to commercial. In view of above facts as well as law laid down as aforesaid, the impugned orders cannot be sustained in the eyes of law. "

11. The respondents have not brought on record any material to show that the category of the land in question had been changed as per Section 143 of UPZA & LR Act. Further, the land has been used as agricultural land at the time of execution of sale deed as well as as at the time of spot inspection.

12. In view of the facts as stated above as well as law laid down by this Court in the aforesaid judgments, the impugned orders cannot be sustained in the eyes of law and the same are hereby set aside.

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

14. 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 :- 12.8.2024

Pravesh Mishra