

HIGH COURT OF ALLAHABAD**Bench: Hon'ble Shekhar B. Saraf, J.****Date of Decision: 31st May 2024**

WRIT-C NO. 18519 OF 2013

APPELLANT(S): M/S R.B. INFRA ESTATE PVT. LTD.**VERSUS****RESPONDENT(S): STATE OF UTTAR PRADESH AND OTHERS****Legislation:**

Article 226 of the Constitution of India

Section 47-A of the Indian Stamp Act, 1899

Rule 7(2)(c) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997

Section 27 read with Article 23 of Schedule 1-B of the Indian Stamp Act, 1899

Subject: Writ petition challenging orders related to the determination of market value and deficiency of stamp duty on agricultural land purchased by the petitioner. The case revolves around whether the land should be valued based on its current agricultural use or potential non-agricultural use, and the procedural correctness of the valuation process.

Headnotes:

Stamp Duty – Assessment of Market Value – Petitioner challenged the orders directing payment of deficient stamp duty on agricultural land purchased in 2011 – Contention that the land was being used for agricultural purposes and the authorities erred by not conducting a proper spot inspection – High Court held that the valuation was based on speculative assumptions without proper evidence or spot inspection as required by law – Orders quashed and set aside, with directions to return any deposited amount with interest [Paras 2-14].

Procedure under Section 47-A of the Indian Stamp Act – Statutory requirement for spot inspection and evidence-based determination of market value – Authorities' failure to conduct spot inspection and reliance on an improper comparator for valuation – High Court emphasized the need for concrete evidence and proper procedural adherence in valuation of properties for stamp duty purposes [Paras 7-13].

Burden of Proof – Onus on State – High Court reiterated the principle that the burden of proof lies on the State to justify imposition of additional financial liabilities such as higher stamp duty – Insufficient evidence provided by the State to support its valuation claims [Para 9].

Decision – Writ Petition Allowed – Held – Impugned orders dated September 28, 2012, and February 4, 2013, set aside – Amount deposited by Petitioner towards deficient stamp duty to be returned with interest – Emphasized need for evidence-based and fair valuation practices [Paras 12-14].

Referred Cases:

- Smt. Pushpa Sareen v. State of U.P., (2015) 0 Supreme (All) 132
- Raj Kumar v. State of U.P., Writ-C No.19644 of 2016 (decided on April 13, 2023)
- Ajay Agarwal and others vs. Commissioner Lucknow and others, (2023) 2 ADJ 561 (LB)
- Ram Khelawan alias Bachcha vs. State of U.P. and another, (2005) 2 AWC 1087

Representing Advocates:

For Petitioner: Ms. Suman Jaiswal, Advocate

For Respondents: Mr. Rishi Kumar, Additional Chief Standing Counsel

JUDGEMENT

HON'BLE SHEKHAR B. SARAF, J.

1. The instant writ petition under Article 226 of the Constitution of India has been filed by M/S R.B. Infra Estate Pvt. Ltd. (hereinafter referred to as the 'Petitioner') against the order dated September 28, 2012 passed by the Additional Collector (Finance & Revenue), Ghaziabad (hereinafter referred to as the 'Respondent No. 3') and the order dated February 4, 2013 passed by the Circuit Court, Meerut, Board of Revenue, Allahabad (hereinafter referred to as the 'Respondent No. 2').

FACTS

2. I have laid out the factual matrix of the instant lis below:

a. The Petitioner by means of a registered sale deed dated July 4, 2011 purchased an agricultural land situated at Village Noor Nagar Pargana Loni, District Ghaziabad.

b. Stamp duty of Rs.68,00,300/- was paid at the time of registration of sale.

c. Therefore, proceedings under Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act') for determination were instituted against the Petitioner. A notice was issued on July 24, 2012 to the Petitioner.

e. Petitioner filed an objection on September 7, 2012 denying that the sale consideration shown in the sale deed was less than the market value. The Petitioner further submitted in the objection that the property purchased is an agricultural land and agricultural activities were also going on. He further submitted that since no spot inspection had been done, the report submitted was based on no evidence and therefore the notice was liable to be discharged.

f. The Respondent No. 3 rejected the objection of the petitioner vide its order dated September 28, 2012 and fixed the rate of agricultural land of the petitioner at Rs.15548/- per square metre.

g. Being aggrieved by the order dated September 28, 2012 passed by the Respondent No. 3, the Petitioner filed a stamp appeal before the Respondent No. 2, which was dismissed vide order February 4, 2013.

h. Against the order dated September 28, 2012 passed by the Respondent No. 3 and the order dated February 4, 2013 passed by the Respondent No. 2 in appeal, the Petitioner has preferred the instant writ petition before this Court.

CONTENTIONS OF THE PETITIONER

3. Learned counsel appearing on behalf of the Petitioner has made the following submissions:

a. The land in question is admittedly an agricultural land and name of the Petitioner was also recorded in the revenue record as such. Till date agricultural activities are going on. There are no residential or commercial activities in the vicinity of the land and the land is also away from the main road.

b. The authorities below merely on the ground that the land in question is located near the vicinity of paradise builder and Meerut Road By Pass, of which no evidence was available, imposed stamp deficiency upon the petitioner, which is illegal, arbitrary and unjust.

c. The Petitioner submitted entire evidence and established that the land purchased by the Petitioner is an agricultural land and the Petitioner had paid entire stamp duty. But instead of taking this into account, vide its order dated

February 4, 2013 the Respondent No. 2 illegally and in an arbitrary manner rejected the appeal on the basis of an ex-parte report.

d. Without there being any finding to the effect that the land in question is not an agricultural land, the impugned order has been passed on a presumption and thus the proceedings under section 47-A of the Act are not maintainable against the Petitioner.

e. In the absence of any opportunity being provided to the Petitioner at the time of submitting an ex parte inspection report, the entire proceedings initiated under Section 47-A of the Act are against the provisions of law and in violation of Rule 7(2)(c) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as “the Rules”).

f. Both the authorities below failed to consider the Petitioner's case and hypothetically assumed that the land in question is situated near the paradise builder and Meerut By pass road and several commercial activities near the Petitioner's land have been going on.

g. To buttress his arguments the petitioner has placed reliance on the following judgments:

(i). Reena Gupta v. State of UP and Ors. reported in 2020 (2) AWC 1782

(ii). Smt. Kamini Singh v. State of UP through Principal Secretary Revenue Lucknow reported in 2021(153) RD 253

(iii) Smt. Vishnu Dei Devi v. State of UP and Ors. reported in 2017 (137) RD 32

(iv) M/s RKS Buildcon Pvt. Ltd. Ghaziabad v. CCRA/Board of Revenue UP and Ors. (Civil Misc. Writ Petition No. 35665 of 2010)

(v) Harishchandra Maurya v. State of UP and Ors. reported in 2017 RD (137) 354

CONTENTIONS OF THE RESPONDENTS

4. Learned Additional Chief Standing Counsel appearing on behalf of the Respondents has made the following submissions:

a. The true nature of the property and prevailing market value has not been disclosed by the Petitioner as per the relevant provisions of Section 27 read with Article 23 of Schedule 1-B of the Act. The Sub Registrar, Ghaziabad has reported potential nature of the property based on the nearby building and development activities in the surrounding.

b. The determination of the valuation and deficiency is as per relevant provisions of Article 23 of Schedule I-B of the Act. The Petitioner has paid the stamp duty treating the property as agricultural, whereas the Collector, Ghaziabad has calculated the valuation of the property at the rate of Rs. 15548/- per square metre applied in exemplar sale deed No.9621 dated September 29, 2011 prevailing at the time of registration of the sale deed. There was no need of the further spot inspection in the instant matter. The entry in the revenue records or declaration under Section 143 of U.P.Z.A. and L.R. Act is irrelevant for the purpose of chargeability under provisions of the Act.

c. The potential nature of the property cannot be ignored. The authorities below have passed a reasoned order considering the prevailing market value of the property.

d. This Court and the Hon'ble Supreme Court have held on several occasions that the surroundings of the land in question must be considered while adjudicating the valuation of property in question.

e. Village Noor Nagar of Ghaziabad is very close to the urban area of Ghaziabad and various builders are operative in the whole area and the properties are fetching good market value.

f. There is no illegality or infirmity in passing of the impugned orders. The petitioner has not made out any good ground for interference of this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of Indian. The petitioner is not entitled for any relief as claimed in the writ petition and the interim stay order dated April 15, 2013 passed by this Court is liable to be vacated.

ANALYSIS AND CONCLUSION

5. I have heard the learned counsel appearing for the parties and perused the materials on record.

6. On the power of the Collector under Section 47-A of the Act, reference can be made to the judgment of the Full Bench of this Court in Smt. Pushpa Sareen v. State of U.P. reported in (2015) 0 Supreme (All) 132 penned by the Hon'ble Dr. D.Y. Chandrachud, C.J. (as his Lordship then was). The relevant paragraphs are extracted herein:

“26. The true test for determination by the Collector is the market value of the property on the date of the instrument because, under the provisions of the Act, every instrument is required to be stamped before or at the time of

execution. In making that determination, the Collector has to be mindful of the fact that the market value of the property may vary from location to location and is dependent upon a large number of circumstances having a bearing on the comparative advantages or disadvantages of the land as well as the use to which the land can be put on the date of the execution of the instrument.

27. 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.

28. 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. Ambrish Tandon and another*¹¹. 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.”

7. Upon a perusal of the judgment in Smt. Pushpa Sareen’s case (supra), what emerges is that the Collector can assess the potential use of the land on the date of execution of the instrument for determination of true market value. However, this exercise by the Collector has to be based on adequate materials and cannot be a matter of hypothesis or surmise. The Collector’s finding as to the potential use of the land must be backed by sufficient evidence. In the absence of any materials or sufficient evidence to support its findings, the Collector cannot base his valuation on conjectures and surmises.

8. Further reliance can be placed on the judgment of a Coordinate Bench of this Court in Raj Kumar v. State of U.P. and others (Writ-C No.19644 of 2016 decided on April 13, 2023) wherein it was held that spot inspection has to be carried out in terms of Rule 7(3)(c) of the Rules. Furthermore, the Court held that burden of proof is on the State to establish the payment of deficient stamp duty. It was further held that the valuation of the land in question has to be made on concrete grounds. The relevant paragraphs of Raj Kumar’s case (supra) are delineated below:

17. Moreover, had the allegation of the State been to the effect that though the land was purchased for agricultural purposes, but its user was immediately changed and on the date of sale deed, it was being used for any other purpose like, industrial, commercial or even residential, the situation would have been different. Even in those situations, spot inspection at the relevant point of time was a necessity, but, admittedly, in the present case, no spot inspection has been carried out. Necessity of spot inspection and its mandatory nature, with reference to Rule 7 (3) (c) of the aforesaid Rules of 1997, has been reiterated, time and again by this Court in various authorities including Ajay Agarwal and others vs Commissioner Lucknow and others, reported in 2023 (2) ADJ 561 (LB), and Ram Khelawan alias Bachcha vs State of U.P. and another, reported in 2005 (2) AWC 1087.

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.

9. When the State seeks to impose additional financial liabilities, such as higher stamp duty, it must provide clear and compelling evidence to justify its claims. This principle ensures that property owners are not subjected to arbitrary or unjustified financial burdens. It serves as a cornerstone of fairness and accountability in the legal process, protecting individuals and entities from potential misuse of governmental power. In the context of stamp duty, the burden of proof involves demonstrating that the assessed value of the property, and thus the calculated duty, is accurate and based on tangible, verifiable data. This requirement is essential to prevent arbitrary valuations that could result from assumptions or inadequate investigations. By ensuring that the State must justify its claims with clear evidence, the principle safeguards property owners from potential overreach and ensures that any additional financial burdens are warranted and fair. Courts have constantly underscored that when the State seeks to levy additional taxes or duties, it must do so based on robust and substantiated evidence. For instance, in the case of *Raj Kumar v. State of U.P (supra)*, this Court highlighted that the entire burden of establishing the necessity for additional stamp duty lies with the State. This Court emphasized that without concrete evidence demonstrating a change in the land's use or value, the imposition of additional duty would be unfounded and unjust. Similarly, in the landmark case of *Smt. Pushpa Sareen v. State of U.P. (supra)*, the Full Bench of this Court elaborated on the nature and extent of evidence required from the State. The judgment in *Pushpa Sareen (supra)* underscored that the State must provide detailed and specific evidence about the land's current use, potential use, and market value. General assumptions or indirect evidence are insufficient to meet this burden. The court's insistence on a high standard of proof reflects the principle's role in ensuring fairness and protecting property owners' rights.

10. In the instant case, indubitably no spot verification was carried out as per the Rules. Such being the case, the burden of proof that rested solely on the

Revenue to indicate the nature of the land and the potential use of the land was not discharged properly. Furthermore, the reasoning provided by the authorities below for valuing the land on the basis of non-agricultural use cannot be sustained as the same is based on another piece of the land. It is to be noted that the land, which was used as the base for comparison, was not being used for any agricultural purpose while at the time of execution of the sale deed, the land in question before this Court was being used for agricultural purposes.

11. The reasoning provided by the authorities for valuing the land on the basis of non-agricultural use was fundamentally flawed. The authorities relied on the valuation of a different piece of land without following the mandatory provision for carrying out a spot inspection. This comparison was inappropriate because it did not consider the specific characteristics of the subject land, which might differ significantly from the comparative land in terms of location, accessibility, existing infrastructure, and potential for development. Each parcel of land is unique, with its own set of advantages and disadvantages that must be independently assessed. The use of an improper comparator leads to an inaccurate and potentially inflated valuation, which does not reflect the true market value of the subject property. The Collector's responsibility is to base the valuation on direct and relevant evidence specific to the property under consideration, ensuring that the assessment is both fair and accurate.

12. In light of the aforesaid discussion, I am of the view that the authorities below have erred in law and on facts in determining the value of the land. Accordingly, the impugned orders dated September 28, 2012 and February 4, 2013 are quashed and set aside.

13. The amount, if any, deposited by the Petitioner towards the payment of deficient stamp duty, is directed to be returned to the Petitioner along with interest @ 4 per cent within six weeks from date. On the payment of the aforesaid amount, compliance in this regard must be filed before this Court by the Department.

14. With the above directions, the instant writ petition is allowed.

