

A.F.R.

Court No. - 5

Case :- WRIT - C No. - 12 of 2024

Petitioner :- Saurabha Srivastava And 2 Others

Respondent :- State Of U.P. Thru. Secy. Revenue Deptt. Lko. And 4 Others

Counsel for Petitioner :- Ravindra Kumar Yadava,Ram Suphal

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioners and Sri Vikram Soni, learned Standing Counsel appearing on behalf of the respondents.

2. Instant petition has been filed praying for the following main reliefs:-

"i) Issue a writ, order or direction in the nature of CERTIORARI to quash the impugned order dated 20-07-2022 passed by Learned Collector Gonda and order dated 6-7-2023 passed by the Additional Commissioner (Administrative-II) Devipatan Mandal Gonda, annexed as Annexure No-1 and 2 respectably with this writ petition.

ii) Issue a writ, order or direction in the nature of MANDAMUS directing the concerning authorities to stay the execution and implementation of the order dated 20-07-2022 passed by Learned Collector Gonda and order dated 6-7-2023 passed by the Additional Commissioner (Administrative-II) Devipatan Mandal Gonda during the pendency of the writ petition."

3. The case set forth by the petitioners is that they had purchased the land Gata No.1842 area 0.7280 hectares situated in village Durgaganj, Pargana Nawabganj, Tehsil Tarabganj, District Gonda on 04.02.2021 through registered sale deed. Although the land was agricultural yet as more consideration was being paid beyond the value of land as per circle rate, which was Rs.18.20 lakhs but as per the market value of the land sale consideration was paid as Rs.90 lakhs. It is contended that an inspection was conducted by the Sub-Registrar, Tarabganj, Gonda and a report was submitted on 15.03.2021 from which it emerged that plotting was being carried out over the land in dispute and a road was also constructed and the electricity poles had also been installed on the 25 feet wide road. On the

basis of the said report, the proceedings were initiated under the provisions of Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act, 1899').

4. Despite notice to the petitioners, they failed to put in appearance with the result the competent authority passed an ex-parte order dated 20.07.2022, a copy of which is Annexure-1 to the writ petition. The competent authority after assessing the market value of the land in terms of U.P. Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as the 'Rules, 1997') was of the view that the land was to be valued at Rs.3900 per square meter and after arriving at fair market value, imposed stamp duty of Rs.969600 and penalty along with registration fee upon the petitioners.

5. The petitioners being aggrieved, filed an appeal before the appellate authority under the provisions of Section 56(1-A) of the Act, 1899, which appeal has also been rejected vide impugned order dated 06.07.2023, a copy of which is Annexure-2 to the writ petition.

6. Still being aggrieved, instant writ petition has been filed.

7. The grounds as raised by the learned counsel for the petitioners while seeking to challenge the impugned orders are that (a) already an excess amount was paid while purchasing the land inasmuch as although the agricultural rate was less yet more amount was paid as sale consideration and consequently, towards stamp duty (b) the respondents have calculated the market value on the basis of prospective utilization of the land which is legally misconceived, (c) the value of residential rate is Rs.2500 per square meter but the competent authority has assessed the value as Rs.3900 per square meter, and (d) inspection having been made at a later date.

8. Placing reliance on the judgment of this Court in the case of **Smt. Omwati vs. Commissioner, Meerut and others - 2008(3) ADJ 182**, the contention is that future market value of the land could not have been taken into consideration by the competent authority while arriving at the fair market value of the said land.

9. On the other hand Sri Vikram Soni, learned Standing Counsel appearing on behalf of the respondents, has placed reliance on the Full Bench judgment of this Court in the case of **Smt. Pushpa Sareen vs. State of U.P. and others - 2015 (3) ADJ 136**, to contend that one of the questions which were considered by the Full Bench of this Court was:-

"Whether the Collector Stamps has power to fix the valuation of a plot on the assumption that the same is likely to be used for commercial purposes, and whether the presumed future prospective use of the land can be a criterion for valuation by the Collector".

10. He contends that the question has been answered by the Full Bench of this Court by holding that though 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 yet 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.

11. Placing reliance on the aforesaid Full Bench judgment of this Court the argument of Sri Soni is that the land was purchased by the petitioners on 04.02.2021 and the inspection was conducted on 15.03.2021 on the basis of which proceedings were initiated against the petitioners. Thus once the inspection was conducted in close proximity to the execution of the sale deed which inspection was done within a period of one and half month of the execution of the sale deed and from the inspection it emerged that the cutting of plots had been done, 25 feet wide road was existing and the electricity poles had been installed consequently the same would fall within the ambit of question which has been answered by the Full Bench i.e. the potential of the land as emerged in the inspection report dated 15.03.2021 and the inspection having been conducted within a reasonable time of the execution of the sale deed from which it emerged that the land was being put for the use of plotting of plots/carving of the plots consequently considering Rules, 1997 the fair market value of the land has been arrived at.

12. So far as the valuation of the land as per the circle rate which is indicated as Rs.2500 per square meter vis-a-vis the rate indicated by the competent

authority at Rs.3900 per square meter, reliance has been placed on the judgment of this Court in the case of **Gyan Prakash vs. State of U.P. and others** passed in Misc. Single No.17858 of 2016 decided on 07.02.2019, to contend that this Court has held that the 'market value' of the land is to be assessed under the Rules, 1997 and thus there is no illegality or infirmity in the orders impugned more particularly when the market value has been arrived at in terms of Rules, 1997.

13. Heard learned counsels for the parties and perused the records.

14. From perusal of the records, it emerges that the petitioners claim to have purchased a piece of land as described above through registered sale deed on 04.02.2021. Admittedly, the stamp duty was affixed at agricultural rates but as a higher market value was paid consequently the stamp duty was paid at the sale consideration. An inspection was conducted on 15.03.2021 from which it emerged that plots were being carved out over the land, 25 feet wide road was existing and electricity poles were also installed over the land. On the basis of the said report, proceedings were initiated against the petitioners under the provisions of the Act, 1899. Despite service of notice, the petitioners failed to put in appearance and an ex-parte order dated 20.07.2022 was passed by the competent authority whereby the market value of the land was assessed at Rs.3900 per square meter and the petitioners have been required to deposit more stamp duty, registration charges as well as penalty. The petitioners being aggrieved filed an appeal which has also been rejected vide the order impugned dated 06.07.2023. Being aggrieved, instant petition has been filed.

15. The grounds raised in the petition are that (a) already an excess amount was paid while purchasing the land inasmuch as although the agricultural rate was lesser yet more amount was paid as sale consideration and consequently towards stamp duty, (b) the respondents have calculated the market value on the basis of prospective utilization of the land which is legally misconceived, and (c) the value of residential rate is Rs.2500 per square meter but the competent authority has assessed the value as Rs.3900 per square meter and (d) inspection having been made at a later date.

16. So far as the inspection having been conducted subsequent to the sale deed having been executed on 04.02.2021 and the inspection being conducted on 15.03.2021, the Court may refer to the answer of the Full Bench on this point in the case of **Smt. Pushpa Sareen (supra)** where the Hon'ble Full Bench has held as under:-

*"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."*

(emphasis by the Court)

17. From perusal of the question as was considered by the Full Bench, it emerges that the Hon'ble Full Bench has categorically held that 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**.

18. From perusal of the records, it clearly emerges that the land was purchased on 04.02.2021 and the inspection was conducted on 15.03.2021 i.e. within a period reasonably proximate to the purchase of the land. From a perusal of the inspection report, it clearly emerges that the plots have been carved out, 25 feet wide road was existing and the electricity poles had also been installed on the said piece of land. Thus, it cannot be said that the Collector concerned/competent authority has considered future value of the land inasmuch as it is from the inspection report from which it emerged that the land was being put to residential use by carving out plots and as such by

considering the provisions of Rules, 1997 the Collector/competent authority has arrived at a fair market value.

19. The arrival of a fair market value would also not be circumscribed by the circle rates as held by this Court in the case of **Gyan Prakash (supra)** wherein this Court after considering the provisions of the Rules, 1997 has held as under:-

*"30. The next question that arises is as to how the authority concerned would adjudicate the matter pertaining to the 'market value' and the stamp duty which in fact has been paid on the sale deed. This question may also not detain this Court inasmuch as Section 47-A (3) of the 1899 Act clearly gives the said power to the Collector to call for an examine the instrument for the purpose of satisfying himself as to the correctness of the **market value** of the property and if he has **reason to believe** that the market value of such property has not been truly set forth in the instrument he may determine the 'market value' of the said property and the duty payable thereon. Thus, **reason to believe** is vested with the Collector and upon which the determination of the market value is to follow. The term "reason to believe" used in Section 47-A (3) of the 1899 Act clearly spells out that the authority must have some material, with a direct, circumstantial or even intrinsic evidence on the basis of which he may come to a reasonable belief that the market value of the property has not been correctly indicated in the instrument/sale deed. Thus, there has to be some material before the authority in order to arrive at the said conclusion. This aspect of the matter is also no longer res-integra keeping in view the judgment of this Court in the case of **Duncans Industries Limited vs. State of U.P. 1997 SCC On line All 423**, wherein this Court after placing reliance on the judgment of Hon'ble the Supreme Court in the case of **Ganga Saran and sons vs. Income Tax Officer (1981) 3 SCC 143** and **State of Punjab vs. Mahavir Singh (1996) 1 SCC 609** has held as under:-*

*"Section 47A (2) of the Act postulates that if the Registering Authority while registering the instrument on which duty is chargeable on the market-value of the property, has "reason to believe" that the market-value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value, of such property and proper duty payable thereon. The term 'reason to believe' occurring in Sub-section (2) of Section 47A spells out that Registering Officer, must have some material-direct, circumstantial or even intrinsic evidence on the basis of which, he may come to a reasonable belief that the market value of the property has not been truly set forth in the instrument. In other words, the belief must be that of the honest and reasonable person based upon reasonable grounds. In **Ganga Saran and Sons v. Income Tax***

Officer (1981) 3 SCC 143: AIR 1981 SC 1363, the Supreme Court while dwelling on the expression 'reason to believe' occurring in Section 147(a) of the Income Tax Act, 1961 was pleased to hold as under:

"The important words under Section 147(a) are 'has reason to believe' and these words are stronger than the words 'is satisfied'. The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under Section 147(a). If there is no rational or intelligible nexus between the reasons and the belief so that on such reasons no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the Assessee, had escaped assessment and such escapement was by reason of the omission or failure on the part of the Assessee to disclose fully and properly all material facts and the notice issued by him would be liable to be struck down as invalid."

Formulation of the requisite belief under Section 47A of the Stamp Act is not a matter of purely subjective satisfaction. In State of Punjab v. Mahavir Singh (1996) 1 SCC 609 : (1996) 1 SCC 609, the Supreme Court while considering identical Section 47A as inserted in the Act by Punjab Stamp (Amendment) Act, 1992 held that the Registering Authority has to satisfy himself that the value of the property or the consideration of it has not been truly set forth in the instrument and further that it will be "only an objective satisfaction" that the authority has to reach a reasonable belief that the value or consideration of the property conveyed has not been truly set forth in the instrument relating to the transfer of property. It is thus patent that it would be matter of objective satisfaction of the Registering Authority to reach a reasonable belief that the value or consideration of the property which is the subject-matter of transfer, has not been truly set forth."

20. From perusal of the judgment of this Court in the case of **Gyan Prakash (supra)**, it is thus apparent that the market value of the land would have got nothing to do with the circle rates inasmuch as it is the determination of the Collector which would determine the market value of the land along with some material which may have a direct, circumstantial or even intrinsic value on the basis of which he can come to a reasonable belief that the

market value of the property has not been correctly indicated in the instrument/sale deed.

21. As already indicated above, from a perusal of the inspection report it emerged that the land was not being put to agriculture use rather plots had been carved out, road was existing over the said piece of land and electricity poles had also been installed and thus the fair market value as has been arrived at by the Collector needs no interference by this Court and would not be circumscribed by the circle rate.

22. So far as the ground of more value having been paid while purchasing the land vis-avis the agricultural circle rate, the said ground is also patently misconceived inasmuch as the amount paid by the petitioners has been found to be less than the fair market value as assessed by the Collector. Thus, the said ground is also rejected.

23. So far as the judgment of this Court in the case of **Smt. Omwati (supra)** is concerned, obviously the same would give way to the Full Bench judgment of this Court in the case of **Smt. Pushpa Sareen (supra)**.

24. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition is dismissed.

Order Date :- 9.1.2024

A. Katiyar