

**A.F.R.**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

Neutral Citation No. - 2024:AHC:63681  
Court No.1

**WRIT - C No. - 18282 of 2023**

**SHEEL MOHAN BANSAL**

**Vs.**

**STATE OF U.P AND 2 OTHERS**

**Counsel for Petitioner :-** Sanjay Goswami,  
Sukumari Vallabh Goswami

**Counsel for Respondent :-** C.S.C.

**HON'BLE SHEKHAR B. SARAF, J.**

(Judgement dictated in Court)

1. Heard Sri Sanjay Goswami, learned counsel appearing on behalf of the petitioner and Sri Siddharth Singh, learned Standing counsel for the State respondents.

2. This is a petition under Article 226 of the Constitution of India, wherein the petitioner assails the order dated November 18, 2022 passed by respondent no.2 and the order in Appeal dated March 13, 2023 passed by respondent no.3. By virtue of these orders, the authorities have claimed additional stamp duty with regard to a gift deed of a plot of land in question on the ground that the potential of the land would increase the market value of the land. Further ground has been enumerated stating

that within 200 meters of land in question there are residential areas as well as within 50 meters there is a petrol pump.

### **CONTENTIONS OF THE PARTIES**

3. Sri Sanjay Goswami, learned counsel appearing on behalf of the petitioner has submitted that the instrument in question being a deed of gift, the entire proceedings that have been initiated by the authorities under Section 47-A (3) of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act") is without any basis in law. He has submitted that the authorities concerned does not have the power under Section 47-A of the Act to reassess the stamp duty paid by the petitioner on the grounds that duty would be chargeable on the market value of the property. To buttress his arguments, he relies on the judgements in the matter of **Sumit Gupta v. State of U.P. & Others** reported in 2011 (3) ADJ 712; **Vijay Kumar vs. Chief Controller, Board of Revenue and others** reported in [2017 (136) RD 364] and **Sai Janseva And Another v. State of U.P. And 4 Others** (decided on February 7, 2024 in Writ – C No.5185 of 2022 [Neutral Citation No. - 2024:AHC:21964]) and submits that in the case of gift deed, the ‘value of the property’ is required to be taken and not the ‘market value’. He has emphasized the fact that under Article 33 of the Schedule 1-B of the Act, the description of the instrument wherein a gift is given the proper stamp duty is required to be paid for a consideration equal to the ‘value of the property’.

4. Per contra, counsel appearing on behalf of the respondents has relied on the inspection report to indicate that to the east of the property within 50 meters there is a petrol pump as well as

agricultural activities are being carried out. He has further indicated that within 200 meters there are certain residential/commercial activities being carried out. He emphasized that the future potential of the land and the market value of the land would be more, and therefore, actual value should increase by 50%.

### ANALYSIS AND CONCLUSION

5. Upon a perusal of the judgement of a coordinate Bench of this Court penned by Hon'ble Mr. Justice Pankaj Mithal, J. in **Sumit Gupta (Supra)** wherein it has been categorically examined whether in case of gift deed there was any application of Section 47-A, and the very concept of market value. The relevant paragraphs are delineated below:-

*"The more important aspect involved in this writ petition is whether the authorities under the Act are competent under Section 47-A of the Act to determine the market value of the property referred to in the gift-deed in question for the purposes of levy of stamp duty.*

*A Gift-deed is chargeable to stamp duty under Article 33 of Schedule 1-B of the Act, which is reproduced as under:*

	<i>Description of instrument</i>	<i>Proper Stamp-duty</i>
33.	<b>Gift</b> – Instrument of, not being a Settlement (No.58), or Will or Transfer (No.62)	The same duty as a Conveyance No.23 clause (a) for a consideration equal to the <u>value of the property.</u>
	Hiring Agreement or Agreement of Service - See "Agreement" (No.5)	

*Note: Emphasis supplied*

*It provides that a gift is chargeable to stamp duty as a conveyance provided under Article 23 clause (a) for a consideration equal to the value of the property.*

*It may be noted that in the above Article words used are "value of the property" as distinguished from the "market value", meaning thereby that for the purposes of determining stamp duty on a gift-deed market value is not required to be mentioned/determined. The disclosure of the value of the property in the gift is sufficient for the purposes of payment of stamp duty.*

*A perusal of Section 47-A of the Act indicates that it comes into play only where the market value of the property in the instrument is disclosed to be lesser than that determined in accordance with the Rules made under the Act. So disclosure of market value of the property is mandatory for the applicability of Section 47-A of the Act and it should be less than the market value determined under the Rules ie. the circle rate prescribed/notified under the Act/Rules.*

*Thus, there is a clear departure in the language used in Article 33 of the Schedule I-B of the Act and Section 47-A of the Act. Section 47-A of the Act uses the expression in "market value" whereas for levying stamp duty on a gift-deed Article 33 of Schedule I-B of the Act uses the expression "value of the property".*

*The legislature in its wisdom has differently used the words "value of the property" and "market value" in the Act. It is not without purpose. "Market value" refers to the value of the property prevailing in the market on which the prospective purchaser is ready and willing to purchase and seller is ready and willing to sell the property in the ordinary course of*

*business. Therefore, market value is a bilateral transaction depended upon the will of two persons. On the other hand, 'value' simply connotes the estimated monetary worth of the property in the eyes of the seller and is in the nature of a unilateral act.*

*In conveyance, such as sale of property, generally two parties, ie. seller and purchaser are involved and the market value of the property is determined on the basis of the market forces ie., demand and supply of the commodity. In a deed of gift it is only the person making the gift who is relevant. It is up to him how he values his property. The value of the property in the eyes of the person receiving the gift is not material. This being the situation, the legislature has deliberately used the word "value of the property" in Article 33 while subjecting the gift to stamp duty and has refrained from using the term "market value".*

6. In light of the above judgement, it is patently clear that for levying stamp duty on a gift deed, the provisions of Section 47-A of the Act do not come into play. Furthermore, there is no requirement of determination of market value in case of gift deeds. This judgement was accepted by the authorities and has attained finality. The aforesaid judgment was thereafter cited in **Vijay Kumar (Supra)** and a coordinate Bench has held that Section 47-A of the Act would have no application whatsoever. The said principle was thereafter, reiterated by a coordinate Bench of this Court in **Sai Janseva And Another (Supra)**.

7. Upon a perusal of the judgements provided above, it is clear that in case of a gift deed that has been accepted and registered, the authorities cannot take reference to Sub-section (3) of Section 47-A of the Act and *suo moto* seek additional

stamp duty based on the market value of the property. However, the question arises that in the case of under valuation that may have been done by the executor of the instrument what recourse is available to the authorities.

8. In my view, the Indian Stamp Act, 1899 provides for various provisions that may be acted upon that are provided in Sections 27, 33, 62, 62-A, 64 and 64-B, wherein, if adequate stamp duty has not been affixed, the authorities can proceed against the executor for prosecution and collection of deficit stamp duty. However, the authorities cannot proceed under Section 47-A of the Act which is what has been done in the present case. It is also seen, that the respondents have not taken into account the judgements cited by the petitioner and proceeded to adjudicate upon their whims and fancies. It was incumbent upon the authorities to have taken note of the judgements cited by the petitioner and pass a reasoned order on the same, which has clearly not been done in the present case. The authorities are directed to be far more cautious in their approach in *quasi judicial* activities being carried out by them.

9. In light of the above findings, impugned orders dated November 18, 2022 and March 13, 2023 are quashed and set aside.

10. The instant writ petition is allowed in aforesaid terms. Consequential reliefs to follow.

11. The amount that has been deposited by the petitioner is directed to be refunded to the petitioner within a period of six

weeks from date along with interest at the rate of 5% from the date of deposit.

12. There shall be no order as to the costs.

**Order Date :- 10.4.2024**

Dev/-

**(Shekhar B. Saraf, J.)**