

Reserved

AFR

Case :- WRIT - C No. - 1001107 of 2007

Petitioner :- The Assembly of God North India Balrampur and another

Respondent :- State of U.P. through Secy. Revenue Lko. and 3 others

Counsel for Petitioner :- Dhruv Mathur, D.M.Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. The present writ petition has been filed impugning the orders dated 29.9.2006 and 9.1.2007 passed by the Collector (Stamp), Balrampur and Commissioner, Devipatan Division, Gonda under the provisions of the Indian Stamp Act, 1899 (for short 'the Act)
2. Petitioner no.1 claims to be a registered society under the provisions of the West Bengal Societies Registration Act, 1961 having its registered office at 18 Ride Street, Kolkata, West Bengal. It is a society formed by the Pentecostal believers. The object of the society is to promote education at all levels for the children of all communities of India through schools, existing institutions and adult literacy programmes.
3. The petitioner-society had purchased a land comprised in Gata Nos.497 and 498, area 0.408 hectares situated at Village Amaya Deveria, Pargana Utraula, District Balrampur vide sale deed dated 6.1.2006. Petitioner-society paid stamp duty on a sale consideration of Rs.24 Lakhs.
4. Deputy Registrar, Utraula in his report dated 28.2.2006 said that the land purchased by the petitioner-society had commercial use, for which the rate was fixed at Rs.5,400/- per Sq. M., whereas the stamp duty was paid at agricultural rate of the land i.e.

Rs.3,50,000/- per acre. Total stamp duty of Rs.1,91,000/- was paid by the petitioners' society.

5. On 13.2.2006, spot inspection of the land in question was made and it was found that on north of the land, there was a house of one Izharul Hasan and on the south, house of Pankaj was being constructed and on west, after the pathway, houses of Raza Pajtan and Israt Husain were constructed. 50 Meters away from the land in question, petrol pump and National Modern Public Junior High School were situated.

6. Considering the use of the land, it was said that the stamp duty ought to have been paid on commercial rate. However, by concealing the material facts, deficit stamp duty of Rs.3,12,360/- was paid. On the basis of the aforesaid report, after impounding the sale deed, a notice was issued for payment of the deficit stamp duty of Rs.3,12,360/- to the petitioner-society.

7. The petitioners' society in his reply submitted that the land in question was being used for agricultural purposes. There was Borewell situated on the land. The stamp duty was paid at Rs.24 Lakhs, whereas the sale consideration was only Rs.23,45,000/-. It was said that nature of the land in question was agricultural land and, therefore, the stamp duty on commercial rate was not payable by the petitioner-society. The petitioner-society had submitted khasra for 1413 Fasli in respect of the land in question showing land being used for agricultural purposes.

8. After the above reply, Collector (Stamp) himself along with Area Lekhpal visited the land in question on 11.8.2006. It was found that the petitioner-society had purchased the land for housing purposes. However, this fact was not clearly mentioned in the sale deed. Collector (Stamp) also noted that at the time when the land was purchased, it was said that the land would be used for household (Grihasti) purposes, but at the time of inspection, construction activities of houses were being carried out.

9. Collector (Stamp) also found that on adjacent land, residential/commercial buildings were standing. The land is adjacent to the main Public Works Department Road. It was said that the stamp duty ought to have been paid considering the future use of the land and the petitioner-society got the sale deed registered by concealing the important facts.

10. In view thereof, the Collector (Stamp) passed the impugned order dated 29.9.2006 directing the petitioner-society to make payment of the deficit stamp duty of Rs.3,12,360/- with penalty of Rs.1,00,000/- along with interest @1.5% per month from the date of execution of the sale deed.

11. Aggrieved by the said order passed by the Collector (Stamp), petitioner-society filed an appeal under Section 56(1-A) of the Act before the Divisional Commissioner. The Divisional Commissioner vide impugned order dated 9.1.2007 dismissed the appeal and affirmed the order passed by the Collector (Stamp). However, the penalty was reduced from Rs.1,00,000/- to Rs.50,000/-

12. Sri Dhruv Mathur, learned counsel for the petitioner has submitted that for the purposes of payment of stamp duty, nature of the land at the time of execution of the sale deed is the relevant factor. The future use of the land cannot be considered for payment of the stamp duty. He has further submitted that the land was being used for agricultural purposes. There was a Bore-well on the land. In the relevant khasra also, the land was used for agricultural purposes and, therefore, the levy of stamp duty considering its futuristic use, is wholly untenable and the two orders passed by the stamp authorities are liable to be quashed.

13. Learned counsel for the petitioner has further submitted that all true and correct facts were disclosed in the sale deed. It was mentioned that the land would be used for household (Grihasti) purposes. The sale consideration i.e. Rs.23,45,000/- was less than the amount i.e. Rs.24 Lakhs, on which stamp duty was paid. It is,

therefore, submitted that the finding recorded by the two authorities that true and correct facts were not disclosed in the sale deed, are not correct. He has also submitted that since the petitioner is using the land for housing purposes, it would not determine the stamp duty payable inasmuch as when the petitioner-society bought the land, it was being used for agricultural purposes only, and the petitioner had paid the stamp duty accordingly on the sale consideration as per the Rules prescribed for the agricultural land.

14. On the other hand, Sri Rishi Raj, leaned counsel representing the State has supported the two orders passed by the stamp authorities. He has submitted that for the purposes of payment of stamp duty, relevant factor is the market value of the property.

15. Under Section 27 of the Act read with Rules, 3, 4, 5 and 6 of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 (for short 'Rules, 1997'), the duty is cast upon the parties to a deed to set forth/mention in instrument, the consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty on the amount of the duty with which it is chargeable.

16. Learned counsel representing for the State has also submitted that under Section 27(2) of the Act, instrument relating to an immovable property chargeable with *ad valorem* duty on the value of the property requires setting forth of various factors or may be prescribed under the Rules, 1997. The stamp duty is payable on the "market value" of the property and not on the circle rate fixed by the Collector under Rule 4 of the Rules, 1997. The Collector fixes the minimum value under Rule 4 and Article 23 of Schedule I-B of the Act. Article 23 of Schedule I-B of the Act provides that stamp duty is payable on amount or value of the consideration paid or "market value" of the property, whichever is greater.

17. Learned counsel representing for the State has also submitted that location is one of the relevant factor for assessing the marker

value of the property. He has drawn attention of this Court to the report dated 28.2.2006 and 1.8.2006 of the Deputy Registrar and Collector (Stamp), which have been placed on record along with counter affidavit to submit that the land in question had commercial use when it was purchased and in fact the same was being used for commercial purpose i.e. construction of houses by the petitioner-society. The petitioner did not purchase the land for agricultural purposes, but had purchased the land for housing purposes and, therefore, the stamp duty was to be paid on the rate fixed for commercial purpose of the land.

18. Learned counsel representing the State has further submitted that petitioner did not mention clearly that the land was being purchased for housing purposes, but it was said that it was for household (Grihasti) purposes. He has, therefore, submitted that there is no substance in the submissions of learned counsel for the petitioner that all true and correct facts were disclosed in the sale deed. He has also submitted that the penalty could have been imposed four times of the deficit amount of stamp duty paid, but the Collector (Stamp) has been considerate in imposing only One Lakh penalty. He has also submitted that the case is not of futuristic use of the land and rather it is concealment of material particulars by the petitioner for the purposes of evading the stamp duty and instead of mentioning the housing purpose, he has mentioned household (Grihasti) in the sale deed.

19. I have considered the submissions advanced on behalf of the learned counsel for the petitioners as well as by the learned counsel representing the State and perused the record of the writ petition.

20. Under Section 27 of the Act, it is provided that besides consideration, all other facts and circumstances affecting the chargeability of any instrument with duty are required to be truly set forth in the instrument. Under this Section, in case of instruments relating to immovable property chargeable with an *ad valorem* duty, the duty is payable on the true value of the property

and not on the value set forth in the instrument. Section 27 of the Act reads as under:-

“27. Facts affecting duty to be set forth in instrument. —(1) The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

(2) In the case of instruments relating to immovable property chargeable with an ad valorem duty on the value of the property, and not on the value set forth, the instrument shall fully and truly set forth the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property the local rates, Municipal or other taxes, if any, to which such property may be subject and any other particulars which may be prescribed by rules made under this Act.”

21. Where it is found that an instrument is undervalued, the procedure has been set forth under Section 47-A of the Act for assessing the correct stamp duty on the instrument. Section 47-A of the Act reads as under:-

“47-A. Under-valuation of the instrument.--- "(1) (a) If the market value of any property which is the subject of any instrument, on which duty is chargeable on the 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 paying 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 the 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, or 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 for of such instrument, and the duty payable thereon and if after such examination he has reason to believe that 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.

....."

22. From the reading of Section 47-A of the Act, it is evident that what has to be seen is the market value of the property and, if it is found that value of the property mentioned in the instrument is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer is empowered to impound the instrument when it is presented for registration and require the person liable to pay stamp duty with deficit stamp duty as computed on the basis of the minimum value determined in accordance with the rules and return the instrument for presenting again for registration.

23. The Collector (Stamp) is empowered to determine the correct stamp duty on receipt of reference or by *suo motu*. If on inquiry and examination, the Collector finds that the market value of the property has not been truly set forth and the instrument is not properly stamped, he is empowered to order for payment of proper duty and also for making the deficiency good together with a penalty on an amount not exceeding four times the amount of deficit duty besides statutory interest 1.8% per month.

24. The State Government in exercise of powers under Sections 27, 47-A and 75 of the Act has framed Rules, 1997. Rule 3 of the aforesaid Rules prescribes the facts to be set forth in an instrument relating to immovable property chargeable with an *ad valorem* duty.

25. Under Rule 4 of the Rules, 1997, the Collector is empowered to fix minimum rate for value of land, construction value of non-commercial building and minimum rate of rent of commercial building. This minimum value is to be fixed biennially after taking into consideration the facts as mentioned in the Rules.

26. Rule 5 of the Rules, 1997 provides for calculation of minimum value of land, grove, garden and building for the purposes of payment of the stamp duty as may be prescribed under the said Rule.

27. A Full Bench of this Court in the case of ***Smt. Pushpa Sareen Vs. State of U.P. and others***, 2015 (2) ESC 819 (All) (FB) has held that the power of Collector to determine the market value either on a reference under Sub-section (1) or (2) of Section 47-A or acting *suo motu* under sub-section (4) was to determine the correct market value of the property. 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 Collector would be within jurisdiction in referring to exemplars which have a bearing on the true market value of property which is

required to be assessed. The Full Bench considered the following questions in the said judgement:-

“(1) Whether the registering officer can refer a document even if he does not find that the market value of the property as set forth in the instrument is less than even the market value determined in accordance with the rules made under this Act;

(2) 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;

(3) What should be the norms for fixing the valuation of a free-hold land viz-a-vis lease land;

(4) Whether the Collector can demand stamp duty under Section 47-A of the Stamp Act without a finding of fact that the market value as stated in the document is less than that which was actually agreed upon between the parties;

(5) Whether the orders passed by the Chief Controlling Revenue Authority can be reviewed if it is shown that the known norms of valuation have not been followed in the case.”

28. The Full Bench while answering Question No.2 has held that power and jurisdiction of the Collector under Section 47-A of the Act is to determine the actual market value of the property. The Collector in making that determination is not bound either by the value as described in the instrument or for that matter, the value as discernible on the basis of the Rules. It has been further held that 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. Paragraphs 26, 27 and 28 of the said judgement which are relevant, are extracted herein below:-

“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, (2012) 5 SCC 566. 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.”*

29. In the present case, it is admitted case of the petitioners that they had bought the land in question not for agricultural purposes, but for household (Grihasti) purposes and in fact within a few months, they had started construction of the houses on the said land, which is evident from the report of the Collector dated 11.8.2006. The Collector (Stamp) has determined the true market value of the property after considering the relevant factors as mentioned above in the said judgement of *Smt. Pushpa Sareen* (supra).

30. Considering the aforesaid facts, I do not find that either the Collector (Stamp) or the Commissioner erred in determining the true market value of the property and accordingly the stamp duty payable on the instrument.

31. In view thereof, the present writ petition has no force and is hereby *dismissed*. Interim order, if any, stands vacated.

(Dinesh Kumar Singh, J.)

Order Date: 24th March, 2022
Rao/-