

**A.F.R.**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

Neutral Citation No. - 2024:AHC:40768  
Court No.1

**WRIT-C NO.12727 OF 2012**

**M/S UTTARANCHAL AUTOMOBILES PRIVATE LIMITED**

**v.**

**CHIEF CONTROLLING REVENUE AUTHORITY AND OTHERS**

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

(Judgment dictated in Court)

1. Heard learned counsel for the petitioner and the learned Additional Chief Standing Counsel for the State.
2. This writ petition under Article 226 of the Constitution of India has been filed assailing the order dated February 3, 2011 passed by the respondent No.2 in Stamp Case No.V-767/09-10 and the order passed in appeal dated October 17, 2011 by the respondent No.1 in Appeal No.21/2010-11.
3. The challenge in this writ petition is with regard to the additional stamp duty sought by the respondents-authorities having treated the land in question as a non-agricultural land.

**CONTENTIONS OF THE PARTIES**

4. Counsel appearing on behalf of the petitioner submits that the nature of the land at time of execution of the sale deed was agricultural in nature and it was forty metres away from the highway. He has submitted that the authorities have treated the land as non-agricultural land on the basis of another sale deed of an adjacent land that is nearer to the highway. He has further submitted that no spot verification was carried out as per Rule 7(3)(c) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 (hereinafter

referred to as “the Rules”), which according to him is mandatory as has been pronounced time and again by this Court in various judgments including **Ajay Agarwal and others v. Commissioner Lucknow and others** reported in **2023 (2) ADJ 561 (LB)**, and **Ram Khelawan alias Bachcha v. State of U.P. and another** reported in **2005 (2) AWC 1087**. Lastly, counsel for the petitioner submitted that at the relevant point of time, the land in question was agricultural in nature and there were no structures or any activity apart from agriculture being carried out on the said land. He has relied upon the judgment of the 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) and the Full Bench judgment of this Court in **Smt. Pushpa Sareen v. State of U.P.** reported in **(2015) 0 Supreme (All) 132** to support his arguments.

5. Per contra, learned Additional Chief Standing Counsel has also relied upon the judgment in **Smt. Pushpa Sareen’s case (supra)** to indicate that the Collector has the power to evaluate the value of a land depending on the potential use of the said land in question. He specifically relied upon paragraph Nos.26 to 28 of the aforesaid judgement to buttress his argument. He has fairly submitted that the spot verification was not carried out as per the said Rule and no notice of the same was given to the petitioner. He, however, submits that the valuation carried out by the Collector is in line with the principles established in law and in keeping with the potential use of the land in question.

### **ANALYSIS AND CONCLUSION**

6. The Full Bench judgment of this Court in **Smt. Pushpa Sareen’s case (supra)** penned by Hon’ble D.Y. Chandrachud, C.J. (as he then was) has, in great detail, dealt with the power of Collector under Section 47-A of the Indian Stamp Act, 1899 (as applicable in the State of U.P.). The relevant paragraphs of the said judgment are provided 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<sup>11</sup>. 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)**, it is clear that the potential of the land can be assessed on the date of execution of the instrument for determination by the Collector of the true market value. However, this exercise by the Collector has to be based on adequate material and cannot be a matter of hypothesis or surmise. The Collector must have material on record to come to a finding as to the potential use of the land and only thereafter assess the same on such potential use. In the event there is no material present, the Collector cannot base his valuation only on conjectures and surmises.

8. One may further look into the judgment of the coordinate Bench of this Court in **Raj Kumar’s case (supra)** wherein the coordinate Bench has 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 prove that deficient stamp duty has been paid by the petitioner and 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.*

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*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. In the present 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 cannot be sustained as the same is based on another piece of the land that was much closer to the highway and certain constructions were made on that piece of land.

10. It is to be noted that the land, which was used as the base, 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. In light of the above findings, I am of the view that the authorities below have erred in law and on facts in determining the value of the land basing the same as a land for non-agricultural purposes.

12. Accordingly, the impugned orders dated February 3, 2011 and October 17, 2011 are quashed and set aside. The amount, if any, deposited by the petitioner for the deficient stamp duty, should be returned to the petitioner along with interest @ 4 per cent within six weeks from date.

13. With the above direction, the writ petition is allowed.

**Date :-** 6.3.2024

Kuldeep

(Shekhar B. Saraf,J.)