



2025:AHC-LKO:79825

A.F.R.
RESERVED ON 07.10.2025
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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 19818 of 2017

Smt Raziya Kahtoon

.....Petitioner(s)

Versus

State of U.P Thru Prin Secy Stamp and Registration Lko and Ors
.....Respondent(s)

Counsel for Petitioner(s) : Ratnesh Singh Tomar, Surya
Prakash

Counsel for Respondent(s) : C.S.C.,

Court No. - 20

HON'BLE SYED QAMAR HASAN RIZVI, J.

1. Shri Surya Prakash & Shri Arsh Bugga, learned counsels for petitioner; Shri Abhishek Kumar Pandey, learned Additional Chief Standing Counsel along with Shri Suresh Chandra Kushwaha and Shri Mohd. Kasim, learned Standing Counsels for the State, are present.
2. By means of the present writ petition, the petitioner has assailed the order dated 04.02.2016 passed by the Collector, Barabanki in Case No. D20140412001297 under Section 47A / 33 of the Indian Stamp Act, 1899 and the order dated 24.05.2017 passed by the Deputy Commissioner, Faizabad Division, Faizabad in Case No. C2016040000510, under Section 56(1) of the Indian Stamp Act, 1899, inter alia, praying for the following reliefs:

"(i). Issue any writ, order or direction in the nature of certiorari for quashing of the impugned orders dated 04.02.2016 & 24.05.2017 contained as annexure no.1 & 2 to this petition.

(ii). Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to refund the deposited amount along with interest in pursuance of the impugned orders.

(iii). Issue such other order or direction which this Hon'ble Court may deem just and proper of the case."

4. The relevant facts of the case, in brief, as have culled out from the pleadings available on record are that the petitioner purchased half portion of the plot of land having Gata No. 2311 measuring half (1/2) of the area 0.349 Hectare from one, Sri. Maneesh Kumar, on 24.06.2013. The boundary of plot no. 2311 is given as: East: Land of Hospital, West: Pond, North: Land of Mateen and others, South: Deva to Kurshi Road.

5. It is pleaded by the petitioner that at the time of registration of the Sale-Deed in respect of the aforesaid plot of land, the petitioner paid stamp duty @ Rs. 46,00,000/- (Rs. Forty Six Lacs only) per hectare. She also paid 150% excess cost as the land was within 100 meters from the residential area and is adjoining to the village. Thus, total value of the land as calculated was Rs. 20,53,000/- (Rs. Twenty Lacs Fifty Three Thousand only). Further, being a lady, the petitioner paid 4% stamp duty on the amount of Rs. 10,00,000/- (Rs. Ten Lacs only) and 5% stamp duty on the rest of the amount, accordingly, the total stamp duty paid was Rs. 92,650/- (Rs. Ninety Thousand Six Hundred and Fifty only).

6. The Sub Registrar Fatehpur, based on a spot inspection, submitted its Report dated 20.08.2013 before the Assistant I.G. Stamp mentioning therein some deficiency of stamp duty. Accordingly, on

the strength of the said Report, a case under section 47A / 33 of The Indian Stamp Act was registered as Case No. 42/(2013-14). Consequently, notice was issued to the petitioner, however, it is alleged in the writ petition that the same was never served upon the petitioner. The learned Collector, Barabanki (opposite party no.3) finally passed the order dated 28.07.2014 against the petitioner.

7. The Collector, Barabanki (opposite party no.3) vide the aforesaid order dated 28.07.2014 held that the plot of land is situated at Kursi Road and at present a saw-machine / *Aara machine* is stalled in the southern side of the plot of land. Further, some shops also exist on the south side road and a Primary Health Center is located in the eastern side of the said plot. As per the report, no agricultural activity was found on the spot, although, as per the Sale-Deed the plot of land was purchased by the petitioner as agricultural land but in view of the spot inspection report, stamp duty at commercial rate is liable to be determined. Accordingly, the Collector (opposite party no.3) vide order dated 28.07.2014 imposed penalty of Rs. 1,00,000/- (Rs. One Lac only) against the petitioner by holding deficiency of stamp duty amounting to Rs. 4,28,850/- (Rs. Four Lacs Twenty Eight Thousand Eight Hundred and Fifty only) along with simple interest @ 1.5% per month with effect from the date of execution of the sale deed i.e. 24.06.2013, to be recovered from the petitioner.

8. It has been pleaded on behalf of the petitioner that it was only after receipt of Recovery Certificate dated 30.08.2014, the petitioner came to know about the aforesaid order dated 28.07.2014 passed by the Collector, Barabanki (opposite party no. 3). Thereafter, she filed an application for recall of the said order dated 28.07.2014 along with an application for condonation of delay stating therein that neither any notice was ever served upon her nor she had any information about the said proceedings and prayed therein that the said ex-parte order dated 28.07.2014 is liable to be recalled and for

hearing of the Case No. 42/(2013-14) afresh after due opportunity of hearing. The Collector (opposite party no.3) vide order dated 17.10.2014 recalled the order dated 28.07.2014 with the condition of the deposit of 25% amount of the stamp duty.

9. It is stated in paragraph 8 of the Writ Petition that in compliance of the order dated 17.10.2014, the petitioner deposited Rs. 1,00,000/- (Rs. One Lac only). against penalty and Rs. 32,250/- (Rs. Thirty Two Thousand Two Hundred and Fifty only) against stamp duty on 26.11.2014.

10. During the course of proceedings, the Collector (opposite party no.3) sought a report from the Sub-Divisional Magistrate, Fatehpur which was submitted on 26.03.2015 on the basis of the report submitted by the Naib-Tehsildar, Kursi on 25.02.2015.

11. As per the report dated 25.02.2015 annexed as Annexure No.7 to the writ petition, the Naib-Tehsildar, Kursi, Fatehpur conducted an inspection and found a Primary Health Center and an *Aara Machine* on the remaining half portion of Gata No.2311, appurtenant to the plot of land/ subject matter of instrument. It is also mentioned in the said report that the plot of land has not been declared non-agricultural under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 and no construction was found over the same, at the time of inspection.

12. Taking into consideration the aforesaid report dated 26.03.2015, the Collector (opposite party no.3) passed the impugned order dated 04.02.2016. Aggrieved by the said order, the petitioner preferred Revision before the Court of learned Deputy Commissioner, Faizabad Division, Faizabad (opposite party no.2), under Section 56(1) of the Indian Stamp Act, 1899. The said revision came to be registered as Revision No. C 2016040000510. The learned Revisional Court vide the impugned order dated 24.05.2017, found

no case for interference in the order dated 04.02.2016 passed by the Collector (opposite party no. 3), and dismissed the said revision being devoid of merit.

13. The contention of the learned counsel for the petitioner is that the report dated 20.08.2013 submitted by the Sub Registrar was made only on the basis of an ex-parte inspection. Moreover, the Sub Registrar, without any basis, proof or document and in the most arbitrary manner, calculated the estimated value of *Aara Machine* to be of Rs. 2,00,000/- (Rs. Two Lacs only); the value of trees standing on the northern side of the land as Rs. 1,20,000/- (Rs. One Lakh Twenty Thousand only) and the value of land to be Rs. 1,06,30,000/- (Rs. One Crore Six Lacs and Thirty Thousand only), which is totally hypothetical rather unbelievable and as such cannot be the basis for ascertaining the value of the land.

14. It is stated on behalf of the petitioner that she has already deposited Rs. 1,32,250/- (Rs. One Lac Thirty Two Thousand Two Hundred and Fifty only) in compliance of the order dated 17.10.2014 passed by the Collector (opposite party no.3) and the rest of the amount of Rs. 50,750/- (Rs. Fifty Thousand Seven Hundred and Fifty only) was deposited after the final order passed by the Collector (opposite party no.3).

15. Further, it is contended by the learned counsel for the petitioner that the report submitted by the Sub Divisional Officer, Fatehpur dated 26.03.2015 is in utter disregard to Rule 7(3)(c) of the U.P. Stamp (Valuation of Property) Rules, 1997. He submitted that the Collector (opposite party no.3) never inspected the property nor issued any notice to the concerned parties, i.e. seller and purchaser and arbitrarily imposed / determined deficiency in stamp duty. It has been asserted on behalf of the petitioner that determination of deficiency in stamp duty without making any spot inspection or without recording the statement of any public officer / authority or

in the absence of cogent evidence / material, in violation of the provisions of Rule 7(3)(c) of the Rules of 1997 renders the same as illegal and unsustainable under law being *dehors* of relevant rules.

16. It is also argued on behalf of the petitioner that the nature of the land is recorded as agricultural in the revenue records and has never been declared as non-agricultural under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950. The name of the petitioner was entered in the revenue records vide order dated 24.02.2016 passed by the competent Revenue Court, and the penalty imposed by the authority holding deficiency in stamp duty, presuming future potentiality of the land to be commercial is a clear violation of the settled law on the subject. It has been categorically stated by the learned counsel for the petitioner that the plot of land has never been used for commercial purposes by the petitioner. The same reflects the arbitrariness and the non-application of mind by the respondent authorities while passing the impugned orders.

17. It is also submitted that the petitioner herself sold the property in question to one Babu son of Nanhey through registered Sale-Deed dated 16.03.2016 and consequently his name has been mutated in the revenue records vide order dated 13.05.2016.

18. It is argued on behalf of the petitioner that the authorities have committed patent illegality in treating the land as commercial only for the reason that the land in question is situated near the Primary Health Center, Powerhouse and some shops constructed at the southern side of the same. He further argued that the report of the Sub Divisional Officer, Fatehpur provides that on the other half (1/2) portion of the said Gata No. 2311, an *Aara machine* is found stalled but nowhere it has been stated that the same was found in running condition. Therefore, the valuation of the *Aara machine*; the valuation of the trees planted at the northern side is totally baseless and the allegation of evasion of stamp duty amounting to Rs.

4,28,850/- (Rs. Four Lacs Twenty Eight Thousand Eight Hundred and Fifty only) is arbitrary, without any proof and is bad in law being liable to be set aside.

19. It is very categorically argued on behalf of the petitioner that the petitioner has not violated or breached any Rule. She paid the entire stamp duty as per the then 'circle rate' duly fixed by the competent authority and as such the impugned order passed based on the presumption of future use of the plot of land for commercial purpose is totally arbitrary and illegal. It is further submitted that in the present case, it is not the subject matter of instrument on which *Aara machine* was found stalled but on the adjoining piece of land.

20. Per contra, the learned Counsel appearing for the State-respondents submitted that the order dated 04.02.2016 passed by the Collector (opposite party no.3) and the order dated 24.05.2017 passed by the Deputy Commissioner (opposite party no.2), were passed after taking into account the reports based on the spot inspection that the existing nature of the subject matter of instrument is non-agricultural rather commercial. Therefore, the impugned orders do not suffer from any illegality or perversity. To elaborate his contention, the learned counsel for the State-respondents submitted that petitioner purchased the plot of land as agricultural with the intention to evade the stamp duty as the said plot of land is of commercial potential. Thus, the petitioner has violated section 27 of the Indian Stamp Act, 1899. It is further submitted by the learned Counsel appearing for the State-respondents that only after one and a half (1½) month of the execution of the sale-deed, a spot inspection was carried out by the Sub Registrar, Fatehpur, Barabanki on 13.08.2013 and it was found that there was no agricultural activity on Gata No. 2311 or the land adjacent to it. Rather, the abovementioned '*Ara Machine*' was found operational showing commercial activities within the boundary of

the said Gata No. 2311. Moreover, on the adjacent plot, a Primary Health Centre, powerhouse, road and shops on the southern side were found constructed.

21. It is further submitted on behalf of the respondents that the petitioner filed a copy of the *Khatauni* in support of her case. However, just to conceal the usage of the land, no documents such as *Khasra* etc. were produced by the petitioner before the authorities in the said proceeding. It is also submitted that since no legal partition has been carried out on the said Gata No. 2311/0.349 Hectares, the petitioner is the co-tenure holder of half of the whole *Rakba*.

22. It is further submitted by the learned counsel for the State-respondents that half (1/2) portion of the land having Gata No. 2311 ad-measuring 0.349 Hectares, which comes to around 0.1745 Hectares or 1745 square meters, when calculated as per the effective commercial rate of Rs. 6000/- per square meter comes to around Rs. 1,04,70,000/- (Rs. One Crore Four Lacs Seventy Thousand only); while the estimated value of the '*Ara Machine*' as Rs. 2,00,000/- and the estimated value of trees standing on the northern side of the land as Rs. 1,20,000/- (Rs. One Lac Twenty Thousand only) are added to Rs. 3,20,000/- (Rs. Three Lacs Twenty Thousand only) and thereafter the half (1/2) amount, which comes to Rs. 1,60,000/- (Rs. One Lac Sixty Thousand only) is further added to the price of the land. In this way, the total comes to around Rs. 1,06,30,000/- (Rs. One Crore Six Lacs Thirty Thousand only) which is the correct valuation of the non-agricultural land that was purchased by the petitioner. The total stamp duty payable on the said land is Rs. 5,21,500/- (Rs. Five Lacs Twenty One Thousand Five Hundred only), whereas merely Rs. 92,650/- (Ninety Two Thousand Six Hundred and Fifty only) as stamp duty has been paid by the petitioner. Therefore, *prima facie* evasion of stamp duty amounting

to Rs. 4,28,850/- (Rs. Four Lacs Twenty Eight Thousand Eight Hundred and Fifty only) has been found to have been committed by the petitioner and further a penalty amounting to Rs. 1,00,000/- (Rs. One Lac only) has been imposed against the petitioner vide the impugned Order passed by the District Magistrate along with simple interest @ 1.5% per month from the date of execution of the sale deed and in spite of the fact that as per the report submitted the Sub Registrar, Fatehpur on the basis of spot inspection, non-agricultural and commercial activities were found on the plot of land as an '*Ara Machine*' was found operational at the Gata No.2311.

23. It is contended on behalf of the State-respondent that the conversion of the land as per Section 142 and Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 does not have any bearing regarding the determination of market value of a land under the Indian Stamp Act and the valuation of the subject matter of the instrument shall not be in any way influenced by the provisions of the said Act of 1950. In support of his contention, he has placed reliance upon the judgments passed by this Court in the cases of **Haroon Ahmad & Ors. versus State of U.P.**, reported in **2012(115) R.D. 803** and **Sunil Jaiswal and Others versus State of Uttar Pradesh and Others**; reported in **2015 SCC OnLine All 5904**.

24. Learned counsel appearing on behalf of the State-respondents has also placed reliance upon the judgment passed by this Court in the case of **Ganesh Chandra Agarwal versus State of U.P. & others** (Writ-C No. 11531 of 1996, decided on 15.09.2010), wherein a co-ordinate Bench of this Court has held that it is not only use of the land on the date of registration which could have been taken into consideration while determination of market value, but the potentiality of land could also be taken into consideration as relevant factor for determination of correct market value of land.

25. Having heard the rival contentions of the learned counsels for the parties and having perused the material available on record, the issue for consideration before this Court is whether the impugned orders dated 04.02.2016 and 24.05.2017 passed by the Collector, Barabanki (opposite part no.3) and the Deputy Commissioner (Stamp) (opposite party no. 2), Faizabad Division respectively, whereby the instrument was found deficient in payment of stamp duty and the penalty imposed upon the petitioner are sustainable in law or the same suffers from material irregularity warranting interference by this Court in exercise of its powers under Article 226 of the Constitution of India.

26. Before entering into the merits of the case, it would be apt to see whether for the proceeding under Section 47-A of the Indian Stamp Act, is it incumbent upon the Collector to inspect the property after due notice to the parties to the instrument. Further, whether any inspection report which has not been conducted in accordance with the provisions of Rule 7 (3) (c) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997, can form the basis of an order for recovery of deficient stamp duty?

27. For ready reference, Rule 7(3) of the U.P. Stamp (Valuation of Property) Rules, 1997, is extracted hereinbelow:

"Rule 7. (3): The Collector may-

- a. Call for any information or record from any public office, officer or authority under the Government or a local authority;
- b. Examine and record the statement of any public officer or authority under the Government or the local authority; and
- c. Inspect the property after due notice to the parties to the instrument."

28. A Coordinate Bench of this Court in the case of **Ram Gopal versus State of U.P. and others**, reported in **2009(7) ADJ 185 (LB)**, has observed that,

"13. ..The Uttar Pradesh Stamp Valuation of Property Rules, 1997 particularly Rule 7 provides the procedure on receipt of a reference or when suo motu action is proposed under Section 47-A of the Stamp Act. The Rule 7(2) (c) provides that the Collector may inspect the property after due notice to parties to the instrument. The complete reading of the aforesaid rule clearly indicates that while deciding the proceedings under Section 47-A of the Stamp Act the Collector or its authority are required to make an inspection after due notice to the parties to the instrument. The proceeding under Section 47-A of the Stamp Act shall not be decided merely placing reliance on the ex parte report of the Tehsildar or any authority for that purpose. In the present case the Tehsildar's report dated 3.5.2001 does not disclose as to whether any notice was given to the petitioner before inspection of the land in question by the Tehsildar. Rather it clearly shows that it was an ex parte report. Hence the order dated 26.7.2001 was passed in violation of Rule 7(2) (c) of the U.P. Stamp Valuation of Property Rule, 1997."

(emphasis supplied by this Court)

29. Further, in the case of **Ram Khelawan @ Bachcha versus State of U.P. and another**; reported in **2005 (98) RD 511**, this Court also held that,

"25. It has been found in several cases like the present one that the entire basis of determination of market value for the purpose of stamp duty is ex parte report of Tehsildar or other officer. Ex- parte inspection report may be relevant for initiating the proceedings under section 47-A of Stamp Act. However, for deciding the case no reliance can be

placed upon the said report After initiation of the case inspection is to be made by the Collector or authority hearing the case after due notice to the parties to the instrument as provided under Rule-7(3)(c) of the Rules of 1997. Moreover, in the inspection report distance of the property from other residential or commercial properties and road must be shown and wherever possible sketch map must also be annexed along with the report so that correct valuation may be ascertained with reasoned certainty."

(emphasis supplied by this Court)

30. In the instant case, from the perusal of the pleadings on record, it is evident that no 'notice' was served to the petitioner before carrying out the inspection and the order dated 28.07.2014 was passed on the basis of an ex-parte inspection report. However, the said order was recalled vide order dated 17.10.2014. Subsequently, inspection report dated 25.02.2015 was obtained from Naib Tehsildar, Kurshi. Although, the case of the State-respondents is that the said inspection was carried out after due information to the counsel for the petitioner but there is nothing on record to establish that any 'notice' was issued to the petitioner. In any case, the 'notice' to the petitioner as contemplated under Rule 7(3) of the U.P. Stamp (Valuation of Property) Rules, 1997, is lacking in the present case.

31. Now coming to the other aspect of the matter that has been assailed by means of in the present writ petition is that the Collector (opposite party no. 3) before passing the impugned order dated 04.02.2016, determining deficiency in Stamp duty has not considered any oral or documentary evidence and, has passed the impugned order without any basis or proof by merely relying upon the report submitted by the Niab-Tehsildar. Thus, the said impugned order is in contravention to the provisions of section 47-A (3) of the Indian

Stamp Act. This Court in the case of *Ajay Agarwal versus Commissioner*, reported in **2023 (2) ADJ 561 (LB)** observed that;

"18. The provisions of Section 47A (3) of the Act clearly prescribed that prior to passing an order in terms of the aforesaid provision, the Collector has to satisfy himself, which in fact would mean that he has to record his subjective satisfaction with regard to the correctness of market value of the property. Furthermore he is also required to record reasons to believe that market value of such property has not been truly set forth in the instrument, whereafter he is also required to determine the market value of his property and duty payable thereon. Clearly the Collector in exercise of power under Section 47 A(3) of the Act as such is required not to rely only on the spot inspection report but also to record his subjective satisfaction with regard to under valuation of the instrument of transfer. As such while passing orders under Section 47 of the Act, Collector cannot rely only on the post inspection report."

32. A co-ordinate Bench of this Court in the case of **Reena Gupta versus State of U.P. and others**; reported in **(2020) 2 ADJ 162** has held that the burden of proving that the market value of the property is more than that disclosed in the Sale-Deed is to be discharged by the State. From perusal of the record, it is evident that the State has failed to discharge the said burden as there is no document in the form of comparable sale deed of any property in the vicinity to indicate that the value of the property comprised in the instrument is higher than the value that has been disclosed in the sale-deed.

33. Similar view has been taken by the co-ordinate Bench of this Court in the case of **Smt. Leela Devi Shah versus State of U.P. and others**; reported in **(2014) 125 RD 297**, wherein this Court observed as under,

"5. The deficiency in stamp duty has been determined on the basis of the report of Up-Mahanirikshak

Nibandhan dated 27.10.2006 without taking into aid of any other independent evidence for the purposes of determining market value of the property and consequently deficiency in stamp duty. The burden to prove that the market value of the property has not correctly been disclosed in the instrument is on the department who asserts that there is deficiency in stamp duty.

6. In the absence of any material to prove that the market value disclosed in the instrument is incorrect or on the lower side, the authorities below could not have determined the market value on the basis of report of Up-Mahanirikashak Nibandhan. It has been settled by various decisions by this Court that the report of the Registrar/ Up-Mahanirikshak Nibandhan is only for the purposes of initiation of proceedings under Section 47-A of the Act and cannot be read as evidence.

7. Thus, in the absence of any evidence to prove that the market value of the property in question has not correctly been shown, the authorities below have manifestly erred in law in simply relying upon the aforesaid report of Up-Mahanirikshak Nibandhan and determining the market value of the property in question."

34. From the perusal of the impugned order dated 04.02.2016, it emerges that the Collector (opposite part no. 3), on the basis of the spot inspection report submitted by the Naib Tehsildar, Kursi to the Sub Divisional Magistrate, Fatehpur has drawn inference that the subject matter of instrument has not been purchased by the petitioner for the agricultural purposes but with the commercial point of view, the same is not sustainable in the light of law laid down by the Full Bench of this Court in the case of **Smt. Pushpa Sareen versus State of U.P. & others**; reported in (2015) 3 ADJ 136, wherein it has been held that the nature of use is relatable 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 execution of the instrument itself by referring to exemplar or comparable sale instances which may be relevant and germane to determine the true market value. The relevant paragraph of the aforesaid judgement is quoted herein below,

"27. The fact that the land was put to a particular use, 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. v. Ambush Tandon, 2012 (5) SCC 566. This is because the nature of the use is relatable 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 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 that 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."

35. It is settled in law that the registering officer, after registration of the document, can refer the same for adjudication before the Collector, if it finds the subject matter of instrument *prima facie* undervalued and has reasons to believe that the same has been done deliberately. Such a reference is not a mechanical act, but the

Registering Authority should have basis for coming to the conclusion of *prima facie* undervaluation of the property. It is incumbent upon the Registering Authority to ensure that the process of section 47-A (1) does not work as a mechanical tool of oppression nor as a matter of routine, without application of mind as to the existence of any material or reason to believe that there exists malafide intention to evade payment of proper stamp duty. It goes without saying that the belief must be held in good faith. Further, there must be a rational, relevant and strong foundation for the formation of the belief. The expression 'reason to believe' means some material on the basis of which the competent authority can re-open the proceeding. In any case, the satisfaction of the concerned authority is necessary in terms of material available on record. In the case of **Mohali Club, Mohali versus State of Punjab**, reported in **AIR 2011 P&H 23**, a co-ordinate bench of the Punjab and Haryana High Court has held that the expression 'reason to believe' is not synonymous with the subjective satisfaction of the officer. However, satisfaction is necessary in terms of material available on record, which should be based on objective satisfaction arrived at reasonably.

36. The Hon'ble Supreme Court in the case of **Chief Revenue Controlling Officer cum Inspector General of Registration and Others versus P. Babu** reported in **2025 SCC Online SC 42** has been pleased to hold that under section 47-A(1) and under section 47-A(3) of the Indian Stamp Act, if the registering authority has reasons to believe that the instrument of conveyance did not reflect the correct market value of the property, then the registering authority has the power to refer the same to the Collector for determination of market value of the property and the Collector, on reference, under section 47-A(1), may determine the market value of such property in accordance with the procedure prescribed. Enquiry by the Registering Authority is a pre-condition for making

reference to the Collector for determination of market value of the property after providing reasonable opportunity of hearing to the parties. When the Registering Authority finds that the value set forth in an instrument was less than the determined minimum value, then the Registering Authority is empowered to refer the instrument to the Collector for determination of market value of the property and the Stamp Duty payable thereon. The Hon'ble Apex Court has observed that when both the authorities viz., the Registering Authority and the Collector are vested with the discretion to decide regarding the market value of the property, by the expression 'reason to believe', then, whether it reflects the subjective satisfaction of the authorities concerned or it reflects the objective determination of the market value of the property? What is meant by 'reason to believe' is the issue that warrants consideration. In any case, availability of material is the foundation or the basis for any authority to arrive at any decision whatsoever. The basis of a thing is that on which it stands and on the failure of which it falls.

37. While dealing with the similar issue, the Hon'ble Full Bench of the Madras High Court in the case of **G. Karmegam versus The Joint Sub-Registrar, Madurai**, reported in **2007 SCC Online Mad 960** held that the Collector is the prescribed authority to determine the market value of the property after affording reasonable opportunity of hearing to the parties. The Registering Officer cannot make a roving enquiry to ascertain the correct market value of the property by examining the parties. However, it is expected that he provides reason in support of his conclusion for undervaluation however short that may be. In order to reach a conclusion, there is no bar on the Registering Officer to gather information from other sources including official or public record. It was also held that when the Collector exercises powers under sub-sections (2) and (3) of Section 47A of the Indian Stamp Act, he/she shall be deemed to be a quasi-judicial authority. The Collector has been conferred with

such power by the statute. The detailed procedure prescribed in the relevant rules evidently portrays that the Collector's decision is relatable and verifiable by the material on evidence, which he brings into record, on making an enquiry after hearing the parties concerned.

38. At this stage, it would be relevant to refer to the observations made by this Court in the case of **Vijay Kumar and another Versus Commissioner, Meerut Division and Anr.**, reported in **AIR 2008 All 176** and the same is reproduced herein below,

"The sine qua non for invoking provisions of Section 47A (3) of the Act is that the Collector has reason to believe, that the stamp duty has not been properly set forth in the instrument as per market value of the property. Once the instrument is registered and the prescribed stamp duty as prescribed by the Collector has been paid, the burden to prove that the market value is more than the minimum as prescribed by the Collector under the rules, is upon the Collector. The report of the Sub- Registrar or Tehsildar itself is not sufficient to discharge that burden."

39. Further, in the case of **Vijay Kumar (Supra)** the Court also explained the expression '**market value**' as,

"The 'market value' means what a willing purchaser would pay to a willing seller for the property having regard to the advantages available to the land and the development activities which may be going in the vicinity and potentiality of the land."

(emphasis supplied by this Court)

40. Again, in the case of **Ratna Shankar Dwivedi versus State of U.P and others**; reported in **AIR 2012 ALL 100**, this Court held that,

"The term "market value" has not been defined under the Act. However there are some precedents laying down certain guidelines as to how and in what manner a market value would be determined. The consensus opinion is that the market value of any property is the price which the property would fetch or would have fetched if sold in the open market."

(emphasis supplied by this Court)

41. It is trite in law that the nature of the property being commercial, residential or agricultural is not the sole determinant for the 'market value' of the property. In other words, in a particular case, nature of land and its current use may not be the sole factor to assess the market value of the same. Rather, the prevalent rates at which the properties adjacent to the subject matter of instrument are being sold and purchased shall also be taken into consideration for determining the market value of the said property. Further, evidence of bona fide sales between prudent vendor and prudent vendee of land, situated near-about land possessing same or similar advantageous features would furnish basis to determine the market value. The Hon'ble Supreme Court in the case of **Neeraj Jain versus State of U.P. and others (Civil Appeal No. 8286 of 2014**, reported in **(2015) 11 SCC 437**, observed that the Court should require State Government to put forth the material on record that there has been a change of use or there are other contemporaneous sale deeds in respect of adjacent area as the market value has been increased or there has been change in agricultural land to the urban agglomeration and such other ancillary aspect.

42. In the case of **M/s. Maya Food And Vanaspati Ltd. Co. versus Chief Controlling Revenue Authority (Board of Revenue) Allahabad**; reported in **1990 (90) RD 57**, this Court held that the market value of the land for the purpose of payment of stamp duty

cannot be determined with reference to its future use or the intended use to which it is likely to be put by the purchaser.

43. In so far as the argument of the learned counsel for the petitioner that the finding recorded by the Collector (opposite party no. 3) in the impugned order, whereby the Collector (opposite party no. 3) solely relied upon the report of the Sub Divisional Officer is incorrect in as much as the same provides that since the inspection report does not reflect any agricultural activity over the plot in land is indicative of the fact that the plot of land which is the subject matter of instrument was purchased for commercial purposes and not for agricultural purposes. The said finding that the property comprised in the Sale-Deed has been purchased by the petitioner for commercial purposes, is unsustainable in the light of the observations recorded by the Division Bench of this Court in the case of *Sumati Nath Jain versus State of U.P. and another, reported in 2016 (2) ADJ 533 (DB)*. The relevant part of the judgment is extracted hereinbelow,

"16. Section 47-A (3) as a plain reading of the provision would indicate comes into operation if the Collector has before him material which may lead him to believe that the market value of the property comprised in an instrument has not been truthfully disclosed. In the present case the Collector proceeded in the matter solely on the basis of the report of the Sub Registrar dated 7 February 2012. This report doubted the valuation of the property on the ground that in the area abutting it, various residential houses had come up and that Greater NOIDA had become a development hub. Bearing in mind the location of the plot and its likely use, the Sub Registrar opined, it would be inappropriate to value the property at agricultural rates. We find that the very bedrock upon which the opinion of the Sub Registrar based his report

was faulty and could not have consequently formed the basis for further action under section 47-A (3).

17. We may note that on the date of execution of the instrument the land was admittedly recorded as agricultural. In fact the Khasra of the property remained unchanged throughout and continued to represent the land as recorded for agricultural purposes. The respondents were in our opinion wholly unjustified in initiating proceedings based on an unsubstantiated assumption that the property in future was likely to be put to non-agricultural use.

18. The perceived or presumed use to which a buyer may put the property in the future can never be the basis for adjudging its value or determining the stamp duty payable. The Act, we may note is a fiscal statute. The taxable event with which it concerns itself is the execution of an instrument which is chargeable to duty. The levy under the statute gets attracted the moment an instrument is executed. These propositions clearly flow from a plain reading of the definition of the words "chargeable", "executed" and "instrument" as carried in the Act. In the case of an instrument which creates rights in respect of property and upon which duty is payable on the market value of the property comprised therein, since the tax liability gets fastened immediately upon execution it must necessarily be quantified on the date of execution. The levy of tax or its quantum cannot be left to depend upon hypothetical or imponderable facets or factors. The value of the property comprised in an instrument has to be adjudged bearing in mind its character and potentiality as on the date of execution of the instrument. For all the aforesaid reasons we fail to find the existence of the essential jurisdictional facts which may have warranted the invocation of the powers conferred by section 47-A (3). We are therefore of the firm opinion that the initiation of proceedings as well as the impugned order based upon a presumed future use of the

property for residential purposes was wholly without jurisdiction and clearly unsustainable. Dealing with this aspect of the matter and after noticing the consistent line of precedent on the subject the Division Bench in Smt. Vijaya Jain observed:

"This Court on more than one occasion has held that the market value of the land is not liable to be determined with reference to the use to which a buyer intends to put it in future. The market value of the property is to be determined with reference to its character on the date of execution of the instrument and its potentiality as on that date."

XXX XXX XXX

The above principles of law enunciated in the aforementioned judgments have been consistently followed by this Court. We however find that the order of the Collector relies upon no evidence which would support imposition of residential rates on a property which was stated to be agricultural on the date of execution of the instrument."

44. So far as the effect of declaration / notification of the land under Section 142 and 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950, is concerned, the said issue has been dealt with by this Court in the case of ***Haroon Ahmad (supra)*** and ***Sunil Jaiswal & Others (supra)***, wherein it has been held that the non-issuance of the notification of a property under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 cannot be the basis for questioning the determination of the market value of land. Section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 is for a different purpose and cannot control the determination of the market value under the Indian Stamp Act, 1899.

45. There is no doubt that the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950 encompasses different object and cannot be applied for the purpose of determination of the value

of the land insofar it relates to Indian Stamp Act. Such determination is not controlled in any manner by the provisions of U.P. Zamindari Abolition and Land Reforms Act 1950. Notification under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 can at best be one of the factors for consideration at the time of determination of the market value under the Indian Stamp Act and relevant Rules as prescribed under the U.P. Stamp (Valuation of Property) Rules, 1997.

46. In the case of **Wasi Ur Rehman and another versus Commissioner, Muradabad Division and others**; reported in **2015 SCC OnLine All 5680**, a co-ordinate Bench of this Court held that,

"Though entry in the revenue record regarding the nature of the property may be relevant but cannot be the sole factor in determining the market value. Market value is dependent upon other factors viz. change of user in adjacent area or change of agricultural land to urban agglomeration or if the properties were being sold and bought at commercial rate then for the purposes of stamp duty market value of the property would be the same as that of the property bought at commercial rate, irrespective of the entry in the revenue record."

47. From all that is discussed herein above, this court finds that the Collector (opposite party no.3) and the Deputy Commissioner (opposite party no.2) have passed the impugned orders without correctly appreciating the well-settled law. The aforementioned Authorities while holding that the plot of land was purchased by the petitioner with the intention to use it for commercial purpose, did not find any substance being unsupported by any documentary evidence or material which could establish that the property comprised in Sale-Deed was being used for other than agriculture purpose at the time of execution of the instrument. Presumption of usage of subject matter of instrument in future for some commercial

purposes cannot be the ground of invocation of the provisions of the Indian Stamp Act for alleged deficiency in stamp duty. The Collector even could not cite any exemplar to show that the properties adjacent or around the subject matter of instrument have been sold or purchased at the commercial rate. Thus, the findings on the basis of which the impugned deficiency of stamp duty has been determined is unsustainable.

48. Further, in view of the fact that the Indian Stamp Act, 1899 does not provide Collector (opposite party no.3)to order recovery of any deficiency in the payment of 'Registration fee' and in the absence of any statutory provision the Collector could not have passed any order for recovery of 'deficiency of registration fee' in the proceedings instated under the Indian Stamp Act, 1899.

49. Moreover, it is well-settled that penalty should not to be imposed mechanically. The authorities must apply their mind to the facts and circumstances of each case. In the present case, the Revisional Authority has committed error by affirming the order of the Collector (opposite party no.3) without independently applying its mind to the facts and circumstances of the case and without addressing the specific grounds raised by the petitioner in the revision. The order dated 24.05.2017 passed by the Deputy Commissioner (opposite party no.2) does not reflect any consideration of the issues involved. The Deputy Commissioner (opposite party no.2) has simply dittoed that order of the Collector (opposite party no.3) in passing the impugned order dated 24.05.2017 and the same does not stand to reason.

50. In view of the deliberations and observations made hereinabove, this Court is of the considered opinion that the impugned orders dated 04.02.2016 and 24.05.2017 suffer from serious perversity, being based merely on an *ex parte* spot inspection report having no support of any credible material. Value of the land has to be

determined on the basis of the constructive material available before the authorities; which is completely lacking in the present case. The impugned orders are based on irrelevant presumptions and on erroneous appreciation of facts. Further, the authorities have failed to comply with the mandatory requirements of Rule 7 of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 as the impugned order was passed without 'notice' upon the petitioner in the manner as provided under the Rules of 1997 and without appreciation of any oral or documentary evidence by the Collector.

51. Moreover, as has been discussed in the preceding paragraphs, the commercial value of the subject matter of instrument has to be determined on the basis of the constructive material available before the authorities, the same is completely lacking in the present case. Treating the property as commercial merely on the basis of the report showing certain commercial activities around the subject matter of the instrument is not sufficient to treat the nature of the land as commercial, unless it is proved that its nature has undergone a change. The potential of the land is to be assessed on the date of execution of the instrument itself. From perusal of the record, it is evident that the impugned orders do not refer to any document even any documentary evidence in the form of comparable sale deed of any property in the vicinity of the subject matter of the instrument to indicate that the value of the property comprised in the instrument is higher than disclosed in the sale-deed. No other material has been brought on record to show that the subject matter of instrument is commercial in nature. It is not in dispute that at the time of the execution of the Sale-Deed, the nature of the subject matter of instrument was agricultural and in the absence of any material otherwise, the same cannot be treated as commercial. The market value of the land is required to be judged on the nature and use of the land existing on the date of purchase of the land in question and the authorities are not required to judge the use of the land which

could be put to a different use in future. It is clear that the deficiency of stamp can neither be determined on the value of the future use of the property nor it can be leveled on the ground that the property can fetch good market value. Further, no material has been referred in the impugned orders to fortify the subjective satisfaction which would constitute 'reason to believe' regarding the evasion of stamp duty on the part of the petitioner.

52. Taking into consideration the factual matrix of the case in hand and the law on the subject as discussed herein above, the impugned order dated 04.02.2016 passed by the Collector, Barabanki in Case No. D20140412001297 and the judgment and order dated 24.05.2017 passed by the Deputy Commissioner, Faizabad Division, Faizabad in Case No. C2016040000510, are not sustainable in the eyes of law and are liable to be set-aside.

53. In view of the fact that the procedure in passing the impugned orders has been found violative of the relevant rules including Rule 7(3)(c) of the U.P. Stamp (Valuation of Property) Rules, 1997, therefore, this Court is of the considered opinion that no useful purpose would be served in remanding the matter to the authorities to pass fresh order regarding the determination of the stamp duty in respect of the instrument which was executed way back in the year 2013. The law is well settled that the value of the land in so far as it relates to Indian Stamp Act, 1899, can be determined only with reference to the date on which the document was executed and that any subsequent change in the nature or use of the land which may result in the enhancement of the market value of the property can not be taken into account. As such, if any inspection is carried out in the year 2025 or thereafter, the same would be of no use under law for the purpose of determination of the stamp duty on the date of the execution of the sale-deed executed on 24.06.2013.

54. Accordingly, the writ petition succeeds. The impugned order dated 04.02.2016 passed by the Collector, Barabanki in Case No. D20140412001297 and the judgment and order dated 24.05.2017 passed by the Deputy Commissioner, Faizabad Division, Faizabad in Case No. C2016040000510, are **set-aside**. A direction in the nature of Mandamus is issued to the Collector, Barabanki (opposite party no.3) to refund the amount deposited by the petitioner during the pendency of the present litigation pursuant to the impugned order, within one month from the date of production of a certified copy of this order, before it. It is hereby provided that if the amount is not refunded within the aforesaid period, the petitioner shall be entitled of simple interest @ 6 per cent per annum from the date of its deposit till the date of actual refund.

55. The writ petition is **allowed**. No order as to cost.

(Syed Qamar Hasan Rizvi,J.)

December 03, 2025

Virendra Gupta/Abhishek Gupta