

# **Ram Naresh And 2 Others vs State Of U.P. Thru. Prin. Secy. Stamp And ... on 3 March, 2025**

**Author: Manish Mathur**

**Bench: Manish Mathur**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12584

Court No. - 19

Case :- WRIT - C No. - 10079 of 2024

Petitioner :- Ram Naresh And 2 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Stamp And Registration Deptt. Lko. And 4 0

Counsel for Petitioner :- Neeraj Kumar Rai,Ganesh Kumar Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. Ganesh Kumar Gupta learned counsel for petitioners and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 23rd August, 2023 passed under Section 47-A of the Indian Stamp Act whereby deficiency in Stamp Duty alongwith penalty and interest has been imposed upon petitioner. Also under challenge is the appellate order dated 23rd August, 2024 passed under Section 56 of the Act.

3. It has been submitted that earlier petitioner had purchased one fifth part of Khasra No. 945 situate in village Ataria, Pargana Manvat, Tehsil Sidhauri, District Sitapur by means of sale deed dated 16th December, 2016. It is submitted that out of the total area 0.303 Hectare of the said plot, only 0.063 Hectare was purchased, although the area indicated in the sale deed is one third of the plot.

4. It is submitted that subsequently a reference was sent on 13th February, 2017 whereafter order dated 17th October, 2017 was passed under Section 47-A of the Act imposing deficiency and penalty and interest upon petitioner indicating the property in question to be non agricultural in nature. Appeal filed thereagainst was allowed by means of order dated 6th July, 2018 and the case was remanded primarily on the ground that spot inspection report dated 16th September, 2017 was an ex parte report and therefore directions were issued for fresh inspection to take place.

5. It is submitted that subsequently another order dated 22nd October, 2019 was passed but again placing reliance on the same ex parte report. The said order was again challenged in appeal under Section 56 of the Act and was allowed by means of order dated 26th August, 2021, again remanded the case for fresh consideration after calling for fresh report in terms of Section 7(3)(c) of the 1997 Rules.

6. It is submitted that despite such specific directions being issued by the appellate authority, the impugned order has again been passed in the same manner considering the earlier report dated 16th September, 2023 as well as the subsequent report dated 20th December, 2022 as well as placing reliance on certain exemplars with regard to sale deeds executed by petitioners themselves pertaining to the plot in question.

7. It is submitted that the only difference in the impugned order and the earlier orders which had been set aside in appellate proceedings is that in the present case, the appellate authority has adjudged the plot in question to be agricultural in nature but has thereafter enhanced the market value by 35% on the basis of its future potentiality.

8. It is submitted that authorities have clearly erred in passing the impugned orders by placing reliance on the earlier ex parte report dated 6th September, 2017 which has already been set aside while subsequent report dated 20th December, 2022 did not indicate the situation of the plot as on the date of execution of sale deed. It is submitted that exemplars have also been wrongly relied upon since they were executed subsequent to the adjacent plot being acquired for widening of the national highway.

9. Learned counsel has placed reliance on judgments in the cases of Vinod Kumar Agarwal versus State of U.P. and others, 2020 (149) RD 752; Sarfaraz @ Ssafai versus State of U.P. and others, 2017 (137) RD 25 and Chhotey Lal versus State of U.P. and others, 2021 (152) RD 141.

10. Learned State Counsel has refuted submissions advanced by learned counsel for petitioners with submission that as per submissions of the petitioners themselves, the plot in question has been treated to be agricultural in nature and only 35% enhanced valuation has been imposed on the

aspect of future potentiality in view of the fact that the plot is adjacent to commercial activities and is situated within radius of 100 metre of national highway and admittedly no agricultural activities were or are being conducted thereupon.

11. It is also submitted that as per the valuation list, neither at the time of execution of sale deed, separate rates were effective on all the plots up to 100 meters on both sides from the last point of the national highway road. It is also submitted that the authorities have not only placed reliance on the reports but also on the exemplars with regard to sale deeds executed by petitioners themselves within a period of eight months from the date of execution of sale deed in question. It is therefore submitted that there is no occasion to interfere with the order impugned.

12. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that earlier petitioner had purchased the plot in question by means of sale deed dated 16th December, 2016 and upon a reference being made, was adjudged to be deficient in stamp duty by means of order dated 17th October, 2017 which placed reliance on the report of Tehsildar dated 16th September, 2017.

13. The order dated 17th October, 2017 was thereafter set aside by the appellate court by means of order dated 6th July, 2018 primarily on the ground that report dated 16th September, 2017 was an ex parte report and was in violation of Rule 7(3)(c) of the Rules of 1997. It appears from record that after remand, fresh order was passed under Section 47-A of the Act dated 22nd October, 2019, which was also set aside in appeal by means of order dated 26th August, 2021, remanding the dispute for consideration afresh by holding the fresh inspection of the plot in question. The impugned orders have been passed in pursuance thereof.

14. From a perusal of the impugned order dated 23rd August, 2023, it is discernible that the prescribed authority has not only adverted to fresh inspection report dated 20th December, 2022 but also to the earlier report dated 16th September, 2017.

15. Once the report dated 16th September, 2017 had already been set aside by the appellate court earlier for violation of Rules 7(3)(c) of the Rules of 1997, there was no occasion for the authority to have relied upon the same. So far as report dated 20th December, 2022 is concerned, perusal of the same will also make it evident that it also pertained to the situation of the plot in question as on the date when the inspection was conducted in December, 2022 and does not at all advert to the situation of the plot as on date of execution of sale deed in 2016.

16. The future potentiality of the plot in question has thereafter been seen in terms of both the aforesaid reports as well as the aspect of proximity of the plot in question to abadi land and such land where commercial activities were ongoing. The order also indicates that on a certain portion of the gata No. 945, six shops had already been constructed although no such shops are present over the purchased part. However there is no indication in the order as to the date on which the shops had been constructed over the plot in question.

17. The impugned orders have also placed reliance on the fact that subsequently the adjoining plot pertaining to one Smt. Sudha Singh had been acquired for the purposes of widening of national highway due to which the present location of the plot is adjacent to the national highway.

18. However the orders are completely silent with regard to the date on which the adjoining plot was acquired for being brought under the national highway. This relevant fact was required to be taken into consideration by the authorities concerned to ascertain whether the adjoining plot came within national highway prior to execution of the sale deed or subsequently and was also relevant for the purposes of placing reliance on subsequent sale deeds executed by petitioners themselves with regard to other portions of the same gata since the said sale deeds clearly indicate enhanced rates of market value on the ground that they are in proximity of the national highway. The said fact is silent in the sale deed in question.

19. In the considered opinion of this Court, the said exemplars could not have been relied upon by the authorities concerned without first ascertaining the date on which the adjoining plots or the plots indicated in the exemplars were brought under or in proximity of the national highway.

20. From a perusal of impugned orders and the reports and exemplars relied upon, the status and condition of the plot in question as on the date of execution of the sale deed on 16th December, 2016 is not apparent.

21. Hon'ble Supreme Court in the case of State of U.P. and others versus Ambrish Tandon and another, reported in (2012) 5 SCC 566 has clearly enunciated the law that market value of a property is to be adjudicated upon for the purposes of stamp duty in terms of its own existing status and condition without being influenced by commercial or non agricultural activities in its proximity.

22. The aforesaid aspect has thereafter also been considered by the Full Bench of this Court in the case of Pushpa Sareen versus State of U.P. and others reported in 2015(33) LCD 1575 to the extent that future potential of a plot may be seen by the authorities for the purposes of market value for imposition of stamp duty but only with regard to the circumstances existing as the date of execution of the sale deed on the basis of exemplars of sale deeds executed at that time.

23. Upon applicability of the aforesaid judgments in the present facts and circumstances of the case, it is evident that future potentiality of the plot in question has been adjudicated upon taking into account the situation of the plot in question as in the year 2022 and not as on the date of execution of sale deed on 16th December, 2016.

24. In view of discussion made herein above, it is evident that impugned orders have been passed on the basis of subsequent situation of the plot in question and not as on the date of execution of sale deed. The impugned orders dated 23rd August, 2023 and 23rd August, 2024 therefore being in violation of settled law, are hereby quashed by issuance of writ in the nature of Certiorari.

25. Resultantly the petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 3.3.2025 prabhat