

Ikram And Another vs State Of U.P. And 3 Others on 4 February, 2025

Author: Piyush Agrawal

Bench: Piyush Agrawal

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:15208

Court No. - 2

Case :- WRIT - C No. - 3492 of 2023

Petitioner :- Ikram And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Arun Kumar Srivastava, Priyanka Srivastava

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 3514 of 2023

Petitioner :- Mohammad Jafar And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Arun Kumar Srivastava, Priyanka Srivastava

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

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Arun Kumar Srivastava, learned counsel for the petitioners and learned ACSC for the State - respondents.
2. Since learned counsel for the parties submit that the issues involved in these writ petitions are similar, therefore, the same are being decided by the common order. With the consent of the parties, Writ C No. 3492 of 2023 is taken as a leading case for deciding the controversy involved in these writ petitions.
3. The instant writ petition has been filed challenging the impugned order dated 20.05.2022 passed by the respondent no. 3 as well as the impugned order dated 14.12.2022 passed by the respondent no. 2.
4. Learned counsel for the petitioner submits that the petitioners purchased an agricultural land vide registered sale deed dated 11.09.2020 after paying requisite stamp duty. On 07.07.2021, a report was submitted with regard to the deficiency of stamp duty, to which the petitioners submitted reply. Thereafter, the respondent no. 3, vide impugned order dated 20.05.2022, imposed deficiency of stamp duty, together with interest & penalty. Against the impugned order dated 20.05.2022, the petitioners preferred appeal, which has been dismissed vide impugned order dated 14.12.2022.
5. Learned counsel for the petitioners further submits that in the reply, the petitioners have taken a ground that no declaration under section 143 of the U.P. Zamindari Abolition & Land Reforms Act treating the land in question to be non-agricultural has been made. Further, a ground has also been taken in the memo of appeal as well as in the reply that there is a violation of the provisions of rule 7(3)(c) of the Rules framed under the Indian Stamp Act, but no weightage was given by the appellate court while deciding the appeal of the petitioners.
6. He further submits that the petitioners have also brought on record the khasra - khatauni showing therein the three seasons crops, i.e., paddy, potato and maize, as well as the photographs of standing crops, but the same have simply been ignored by the authorities below and only on the basis of ex parte report, the impugned orders have been passed.
7. He further submits that the Sub Registrar, Sambhal submitted the report dated 07.07.2021 without having any spot inspection and without any notice or intimation to the petitioners. He further submits that the land in question has been recorded as agricultural land, in which paddy, potato and maize are being sown. He further submits that the land in question was never converted into urban area for residential purpose and it is still recorded as an agricultural land in the revenue records and therefore, the impugned orders passed merely on the basis of future prospective of the land, cannot be sustained in the eyes of law.

8. In support of his submissions, he has placed reliance on the judgements of this Court in Jagvir Singh Vs. State of U.P. & Others [Writ C No. 27928/2021, decided on 26.11.2024], Mohammad Tariq Vs. State of U.P. & Others [Writ C No. 33863/2015, decided on 07.01.2025] and Raj Kumar Vs. State of U.P. & Others [Writ C No. 19644/2016, decided 13.04.2023].

9. Per contra, learned ACSC supports the impugned orders.

10. After hearing learned counsel for the parties, the Court has perused the records.

11. The record shows that at the time of execution of the sale deed, the land in question was shown as agricultural land and accordingly, due stamp duty was paid treating it to be agricultural land. On the basis of the report, proceedings under sections 47-A/33 of the Indian Stamp Act were initiated. The petitioners have brought on record various materials to show that the land in question at the time of execution of sale deed was an agricultural land, but no weightage was given by the authorities below. The petitioners have also brought on record as Annexure Nos. 10 & 11 the khasra - khatauni as well as the photographs, which were filed before the authorities below, and tried to show that the land in question was an agricultural land at the time of execution of the sale deed.

12. Further, the record shows that specific grounds were taken with regard to violation of rule 7(3)(c) of the Rules framed under the Indian Stamp Act.

13. This Court in Jagroop Singh (supra) has held that in absence of compliance of rule 7(3)(c) of the Rules, the impugned order cannot be justified. The relevant paragraphs are quoted below:-

"7. It is admitted that the sale deed of the vacant plot was executed on 20.10.2012 in favour of the petitioner and on the basis of exparte report, the proceedings were initiated against the petitioner and in pursuance thereof notice was issued but the Collector has not visited the site in question in accordance with Rule 7 (3) (c) of the Rules. Even the respondent authority up to the stage of this Court could show any material in order to justify that prior to initiation of the proceedings, Section 7 (3) (c) of the Rules was complied with in letter and spirit.

8. This Court in the case of Ajay Agrawal (supra) has held as under:-

Nonetheless, in view of submissions advanced by learned State counsel, the question arising for determination would be whether compliance of Rule 7(3)(c) is required in proceedings under Section 47(A)(1) as well as under section 47 A(3) of the Act? Here it is also relevant to indicate that both the orders impugned in present writ petition are based only on the aforesaid spot inspection report, which admittedly was ex parte in nature.

...

14. It is quite discernible that the starting provision of Rule 7 itself indicates the applicability of the Rule to the extent that on receipt of a reference or where action is proposed to be taken suo motu under section 47 A the Collector shall issue notice to parties to the instrument to show-cause. A reading of the aforesaid provision makes it evident that no distinction whatsoever has been carved out under Rule 7 of the Rules of 1997 with regard to procedure being required to be followed under section 47 A. On the contrary, it specifically indicates that the aforesaid Rule is required to be followed even in case suo motu action is taken under section 47 A of the Act, which in effect pertains to Section 47 A(3) of the Act of 1899 with regard to determination of stamp duty after registration of a document of instrument of transfer. As such no such distinction having been carved out under Rule 7, it is not feasible to accede to the submissions of learned State counsel that Rule 7 (3)(c) of the Rules would not be applicable in case of proceeding under section 47 A(3) of the Act.

...

20. In view of aforesaid, it is evident that the power to be exercised by Collector under section 47A (3) of the Act is not pedantic in nature but is required to be made on the basis of observations made hereinabove particularly with regard to the fact that he is required to apply his mind and record subjective satisfaction not only with regard to under valuation of the instrument of transfer but also to record a separate satisfaction regarding market value of the property and the duty payable thereupon and cannot place reliance only on the spot inspection report.

....

22. Upon applicability of aforesaid in the present case, it is evident from a reading of the impugned orders that the same are based only on the spot inspection report and no subjective satisfaction at all has been recorded by the authority either under section 47 A or under section 56 of the Act as required to be done as per observation is made hereinabove.

9. Again this Court in the case of Satendra and another (supra) has held as under:-

11. On a pointed query being made to the learned Standing Counsel as to whether there was any further inquiry after the inquiry was initially held in the form of spot inspection, learned Standing Counsel could not point out either from the record or pleadings of the counter affidavit that any further inquiry was held as contemplated under the Rule 7 of the Rules.

12. This Court notices that after the notices were issued and the Collector had fixed date inviting objections, the Collector failed to fix any further date for spot inspection or for any further oral or documentary evidence and therefore, it cannot be said that the Collector at all undertook any effort to act in accordance with the procedure prescribed in the matter. The conclusion drawn therefore, is devoid of any cogent and convincing material in support thereof and the findings therefore, are liable to be held as perverse. The said rule which has been quoted herein above, has also drawn attention of Full Bench in Smt. Pushpa Sarin v. State of U.P. 2015 (127) RD 855.

However, the Full Bench did not delve into the issue any further regarding the scope and applicability of the Rules because the period which was in dispute under the reference was prior to the rule coming into force. Para 18 of the judgment of Full Bench runs as under:

"18. Subsequently, the provisions of the Stamp Rules in regard to valuation were replaced by the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 which have been made in exercise of the powers conferred by sections 27, 47-A and 75 of the Stamp Act. However, it is not necessary for the Court to express any view on the scheme or provisions of those rules since the period of dispute in the present reference is prior to the enforcement of those rules."

10. In view of above, the writ petition is allowed. The impugned orders dated 23.2.2015 and 20.8.2013 are hereby quashed."

14. Since the specific compliance of Rule 7(3)(c) of the Rules framed under the Stamp Act has not been made as neither the petitioner was put to any notice before the spot inspection, nor any opportunity was given to him, the impugned orders cannot be sustained in the eyes of law.

15. This Court in Jagvir Singh (supra), Mohammad Tariq (supra) and Raj Kumar (supra) has specifically held that the proceedings under sections 47-A/33 of the Stamp Act cannot be justified treating the agricultural land as abadi land without there being any declaration under section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950.

16. In view of the facts & circumstances of the case, as also the decisions of this Court as noted above, the impugned orders passed in these writ petitions cannot be sustained in the eyes of law. The matters require reconsideration.

17. For the said purpose, the impugned orders passed by the authorities below in these writ petitions are hereby quashed.

18. The writ petitions are, accordingly, allowed.

19. The matters are remanded back to the Assistant Commissioner (Stamps)/Collector (Stamps), Sambhal, i.e., the respondent no. 3, for deciding the issue de novo after granting due opportunity of hearing to all the stake holders, expeditiously, preferably, within a period of two months from the date of production of a certified copy of this order.

20. It is made clear that any amount already deposited by the petitioners shall be the outcome of the order passed by the respondent no. 3.

Order Date :-04/02/2025 Amit Mishra