

# **State Of U.P. & Ors vs Ambrish Tandon & Anr on 20 January, 2012**

**Equivalent citations: 2012 (5) SCC 566, AIR 2012 SUPREME COURT 1140, 2012 AIR SCW 1185, 2012 (2) ALL LJ 369, (2012) 1 CLR 461 (SC), (2012) 4 CIVLJ 720, (2012) 2 ADJ 545 (SC), 2012 (1) CLR 461, 2012 (2) ADJ 545, 2012 (1) SCALE 631, (2012) 111 ALLINDCAS 32 (SC), 2012 (111) ALLINDCAS 32, AIR 2012 SC (CIVIL) 791, 2012 (1) KER LT 79 SN, (2012) 2 MAD LW 336, (2012) 115 REVDEC 399, (2012) 1 RECCIVR 865, (2012) 1 SCALE 631, (2012) 1 WLC(SC)CVL 402, (2012) 2 ALL WC 1836, (2012) 114 CUT LT 759, (2012) 3 MAD LJ 714, (2012) 2 RAJ LW 1443, (2012) 3 ICC 111**

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**Bench: J. Chelameswar, P. Sathasivam**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 735 OF 2012

(Arising out of SLP (C) No. 33851 of 2009)

State of U.P. & Ors.

.... Appellant (s)

Versus

Ambrish Tandon & Anr.

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) This appeal is filed against the final judgment and order

dated 25.01.2007 passed by the Division Bench of the High Court of Judicature at Allahabad in Writ Petition No. 732 (M/B) of 2005 whereby the Division Bench while allowing the petition filed by the respondents herein issued a writ in the nature of certiorari quashing the impugned order dated 27.09.2004 passed by the Additional Collector (Finance & Revenue), Lucknow and the demand notice dated 20.01.2005.

3) Brief Facts:

a) A Sale Deed dated 16.04.2003 was executed between Har

Charan Singh and the respondents herein in respect of the property situated at 17/1 Ashok Marg, Lucknow measuring 11,029 sq. ft. and registered as Sale Deed Document No. 5341 of 2003. The total value of the property was computed as Rs.

1,55,28,860/- for the purposes of Stamp Duty and the respondents herein paid Rs. 15,53,000/- as stamp duty.

b) The District Magistrate, Lucknow made a spot inspection of the property in question on 21.07.2003. During inspection, the land has been found having an area of 12,099 sq. ft. with a two storey building having an area of 5,646.3 sq. ft. at ground floor and an area of 5192.3 sq. ft. at the first floor. In the inspection report, the property in question has been valued for Rs. 3,87,74,097/- and the stamp duty on the said property has been calculated by the competent authority as Rs. 38,78,000/-. However, at the time of purchase, respondents herein paid Rs. 15,53,000/- as Stamp duty, hence a deficiency of Rs. 23,50,000/- has been pointed out by the authorities. The District Magistrate, vide report dated 26.07.2003, directed to register a case against the respondents herein

c) On the basis of the aforesaid report, Case No. 653 Stamp-2003 under Sections 47A/33 of the Indian Stamp Act, 1899 (in short 'the Act') was registered. Vide order dated 27.09.2004, the

Additional Collector (Finance & Revenue) Lucknow directed the respondents to make good the deficiency in the stamp duty and also imposed a penalty amounting to Rs. 8,46,000/- for such tax evasion. On 20.01.2005, for failure to deposit the aforesaid amount, a demand notice claiming an amount of Rs. 38,30,500/- plus 10% recovery charges was issued and the respondents herein were directed to pay the said amount within a period of seven days.

d) Being aggrieved by the order dated 27.09.2004 and demand notice dated 20.01.2005, the respondent filed a writ petition being No. 732 of 2005 before the High Court. By order dated 25.01.2007, the High Court, while allowing the petition filed by the respondents herein issued a writ in the nature of certiorari quashing the impugned order dated 27.09.2004 passed by the Additional Collector (Finance & Revenue), Lucknow and the demand notice dated 20.01.2005.

e) Aggrieved by the said decision, the State has preferred this appeal by way of special leave petition before this Court.

4) Heard Mr. Shail Kumar Dwivedi, learned Addl. Advocate General for the appellant-State and Mr. K.V. Viswanathan, learned senior counsel for the respondents.

5) The only question for consideration in this appeal is whether the High Court is justified in interfering with the order dated 27.09.2004 passed by the Additional Collector (Finance and Revenue), Lucknow demanding differential stamp duty with interest and penalty in respect of the sale deed dated 16.04.2003 executed in favour of the respondents herein. According to the respondents, through a registered Sale Deed dated 16.04.2003 they have purchased the house No. 17/1 Ashok Marg, Lucknow for a total sale consideration of Rs.1.5 crores on which required stamp duty of Rs. 15.53 lakhs was paid. When the Additional Collector issued a notice under Section 47A/33 of the Act, the respondents submitted objection dated 29.08.2003 stating that the extent, area and valuation are in accordance with the revenue records and the stamp duty paid by them on the sale deed was proper. It is also stated by the respondents that before passing the order dated 27.09.2004, the Additional Collector (Finance and Revenue) Lucknow has not afforded sufficient opportunity to them and the impugned order was passed in a most arbitrary manner ignoring the objection submitted by them. It is also stated that at the time of sale deed the house was a residential property and in order to avoid unnecessary harassment at the hands of the revenue and for the purpose of stamp duty and registration they had valued the said property at the rate fixed by the Collector, Lucknow treating the land as commercial at the rate of Rs.11,300 per sq. metre. In other words, for the purpose of stamp duty and registration, according to the respondents, they added additional 10% to the value.

6) In support of the contention that they were not given adequate opportunity by the Addl. Collector and order was passed on a public holiday, before the High Court as well as in this Court, the respondents herein have placed the order sheet which contains the various dates and the date on which the ultimate decision was taken by him. It shows that the matter was heard and decided on a public holiday. In all fairness, the High Court instead of keeping the writ petition pending and deciding itself after two years could have remitted the matter to the Addl. Collector for fresh orders. However, it had gone into the details as to the area of the plot, nature of the building i.e. whether it

is residential or non-residential and based on the revenue records and after finding that at the time of execution of the sale deed, the house was used for residential purpose upheld the stand taken by the respondents and set aside the order dated 27.09.2004 passed by the Addl. Collector.

7) Learned counsel appearing for the appellant-State submitted that as per the provisions of the Act and the Rules made therein, there is a provision for appeal and instead of resorting the same, the respondents have straightaway approached the High Court by exercising writ jurisdiction under Article 226 which is not permissible. A perusal of the proceedings before the High Court show that the State was not serious in raising this objection relating to alternative remedy and allowed the High Court to pass orders on merits, hence we are not entertaining such objection at this juncture though it is relevant. In fact, on receipt of the notice from the High Court in 2005, the appellants who are respondents before the High Court could have objected the writ petition filed under Article 226 and sought for dismissal of the same for not availing alternative remedy but the fact remains that unfortunately the State or its officers have not resorted to such recourse.

8) We have already held that it is the grievance of the respondents that the orders were passed by the Additional Collector on a public holiday. Regarding the merits though the Collector, Lucknow made a surprise site inspection, there is no record to show that all the details such as measurement, extent, boundaries were noted in the presence of the respondents who purchased the property. It is also explained that the plot in question is not a corner plot as stated in the impugned order as boundaries of the plot mentioned in the freehold deed executed by Nazool Officer and in the sale deed dated 16.04.2003 only on one side there is a road. It is also demonstrated that at the time of execution of the sale deed, the house in question was used for residential purpose and it is asserted that the stamp duty was paid based on the position and user of the building on the date of the purchase. The impugned order of the High Court shows that it was not seriously disputed about the nature and user of the building, namely, residential purpose on the date of the purchase.

Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty.

The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. Though the matter could have been considered by the Appellate Authority in view of our reasoning that there was no serious objection and in fact the said alternative remedy was not agitated seriously and in view of the factual details based on which the High Court has quashed the order dated 27.09.2004 passed by the Additional District Collector, we are not inclined to interfere at this juncture.

9) Under these circumstances, we find no valid ground for interference with the impugned order of the High Court.

Consequently, the appeal fails and the same is dismissed with no order as to costs.

.....J. (P. SATHASIVAM) .....J. (J. CHELAMESWAR) NEW DELHI;

JANUARY 20, 2012.