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**(2015) 02 AHC CK 0126**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 24151 of 2013

Jalaluddin and Others

APPELLANT

Vs

Chief Controlling Revenue Authority and Others

RESPONDENT

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**Date of Decision :** 26-02-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Stamp Act, 1899 — Section 27

**Citation :** (2015) 3 ADJ 411 : (2015) 4 ALJ 255 : (2015) 127 RD 610

**Hon'ble Judges :** Suneet Kumar, J

**Bench :** Single Bench

**Advocate :** Zafar Naiyar, V.K. Mishra and Himanshu Mishra, for the Appellant

**Final Decision :** Disposed off

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## **Judgement**

Suneet Kumar, J.—The petitioner vide instrument No. 2165 dated 23.5.2012 purchased property situated on premises No. 87/73(3) in the compound of Hindustan Tanries admeasuring 388.09 sq. mtrs., being hybrid building, that is, residential-cum-commercial; paid stamp duty, as per the minimum value (circle rate) applicable as on the date of execution of the deed. The value set forth in the instrument was at Rs. 1,59,54,000/-, stamp duty of Rs. 11,16,780 was paid. On reference by the Additional District Magistrate (Finance and Revenue), Kanpur Nagar on 2.7.2012, it was reported, inter alia, as follows:

"1. Total area.....388.09 sq. mtr.

Constructed Area:

2. Ground Floor.....321.04 sq. mtr.

3. First Floor.....277.71 sq. mtr.

4. Second Floor.....125.70 sq. mtr.

5. Five year old RCC Construction"

2. The Collector in proceedings under the Indian Stamp Act, 1899 valued the property on commercial and residential rates for constructed area and vacant land, determined the market value at Rs. 3,43,41,786/- accordingly, the deficient stamp at Rs. 12,86,300/- was determined, penalty of equal sum and interest @ 1.5% per annum w.e.f. the due date was imposed.

3. Aggrieved by the order dated 31.1.2013, the petitioner preferred revision being revision No. 73 of 2012-13, before the Chief Controlling Revenue Authority, Allahabad, who vide order dated 20.3.2013, affirmed the order of the Collector in revision.

4. Aggrieved, the petitioner has approached this Court in writ jurisdiction under Article 226 of the Constitution of India.

5. I have heard Sri Jaffar Nair, Senior Advocate assisted by Sri Himansu Mishra and Sri Nimai Das, learned Standing Counsel appearing for the respondents.

6. It is submitted on behalf of the petitioner that the petitioner was not given an opportunity as the property in question was not inspected in presence of the petitioner, the area of the residential and commercial portions of the property was wrongly mentioned in the reports, thus there being violation of Rule 7 and Rule 9(d) of the U.P. Stamp (Valuation of Property) Rules 1997 (Rules).

7. Further, the rates fixed by the Collector, as applicable on the date of execution of the deed, was not applied, but rates as applicable on 10.7.2012 was applied to calculate the deficiency of duty, finally, the penalty imposed was uncalled for as the details of the property were rightly set forth in the instrument.

8. Per contra, the learned Standing Counsel would defend the impugned orders contending that the rates as applicable on the date of execution was applied, the property had been assessed for duty at the market value, spot inspection was carried out at the behest of the petitioner, there is no dispute that the property was being used for commercial and residential purpose.

9. The instrument details the property, inter alia, as follows:

"1. Area of plot.....388.09 sq. mtr.

2. Residential land area.....181.17 sq. mtr.

3. Commercial area:

(a) Nursing Home, ground floor 206.92 sq. mtrs.

(b) Residential area 181.17 sq. mtrs.

(c) Residential area

(i) 114.12 sq. mtrs. (ground floor)

(ii) 339.15 sq. mtrs. (first floor)

(iii) 118.22 sq. mtrs. (second floor)

Total Area - 471.49 sq. mtrs."

10. The proceedings were initiated under the Indian Stamp Act, 1899 (the Act) on the report of the Additional District Magistrate, during the course of the proceedings petitioner made an application to get the property inspected in his presence. On the said application, the property was reinspected on 12.12.2012, the report on reinspection reaffirmed the earlier report dated 2.7.2012 regarding the areas under residential and commercial use.

11. The learned counsel has confined his argument to the non-compliance of Rule 7 and Rule 9(d) of the Rules, submitting that the, petitioner was informed of the date of inspection on telephone thus depriving the petitioner of notice as contemplated by Rule 9(d) and, secondly the area under residential use of the property in question, has been wrongly reported.

12. Rule 7 of the Rules reads as follows:

"7. Procedure on receipt of a reference or when suo motu action is proposed under Section 47-A.--(1) On receipt of a reference or where action is proposed to be taken suo motu under Section 47A, the Collector shall issue notice to parties to the instrument to show-cause within thirty days of the receipt of such notice as to why the market value of the property set forth in the instrument and the duty payable thereon be not determined by him.

(2) The Collector may admit oral or documentary evidence, if any, produced by the parties to the instrument and call for the examine the original instrument to satisfy himself as to the correctness of the market value of the subject-matter of the instrument and for determining the duty payable thereon.

(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 parties to the instrument.

(4) After considering the representation of the parties, if any, and examining the records and other evidence, the Collector shall determine the market value of the subject-matter of the instrument and the duty payable thereon.

(5) If, as a result of the such inquiry, the market value is found to be fully and truly set forth and the instrument duly stamped according to such value, it shall be returned to the person who made the reference with a certificate to that effect. A copy of such certificate shall also be sent to the Registering Officer concerned.

(6) If, as a result of inquiry, the instrument is found to be undervalued and not duly stamped, necessary action shall be taken in respect of it according to relevant provisions of the Act."

13. Rule 9 of the Rules reads as follows:

"9. Service of notices, etc.-All notices, orders and other documents required to be served upon any person shall be deemed to be duly served,-

(a).....

(b).....

(c).....

(d) in any other case, if it is addressed to the person, to be served, and

(i) is given or tendered to him or his authorized agent, or

(ii) is sent by registered post to that person, or

(iii) if such person cannot be found and notice or order or the document sent to him through registered post is received back undelivered, is affixed on some conspicuous part of his last known place of residence or business, or is given or tendered to some adult member of his family."

14. Contesting the inspection report dated 12.12.2012 petitioner vide application dated 9.1.2013 urged before the Collector that on 19.11.2012, the Collector directed the Additional District Magistrate (Finance 8b Revenue), to get the property inspected alongwith Revenue Authorities after informing the petitioner. In paragraph 5 of the application it had been averred that on 10.12.2012 at 4 p.m. the petitioner came to know that the officials had visited the site but on reaching the site petitioner saw the authorities leaving the premises, hence requested the officials that the site be inspected again in his presence, therefore, prayed that the property be re-inspected.

15. It is contended by the learned counsel for the petitioner that the procedure for notice as prescribed under Rule 9 was not followed.

16. The argument on the face of it, appears to have some merit, but a closer assessment would show that it lacks merit; it is not being disputed by the petitioner that it was on his application and in his presence the order was passed by the Collector for inspection of the property, further, it is also not the case of the petitioner that he was not informed by the Additional District Magistrate, though over the telephone, the date and time of the inspection. The application for reinspection would clearly reflect that the petitioner was aware and had knowledge from the authorized person that the property in question is to be inspected on the date fixed, the petitioner pursuant thereof, reached the site but avoided the authorities and, the inspection in his presence.

17. When the legislature used the word "notice" it must be presumed to have

borne in mind that it means not only a formal intimation but also an informal one. Similarly it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. The service of notice under Rule 9 is "deemed to be duly served" upon the person if the notice is addressed and served as required under sub-rule (2)(i)(ii)(iii) of Rule 9.

18. In the facts of the case, the petitioner has not disputed before the Collector that he had no notice of the date of inspection, but had merely stated that the notice had not been served upon him as required under Rule 9. The plea of the petitioner becomes unsustainable once the petitioner contended of having notice of the date, though not in the form as required under Rule 9(d), further, the petitioner upon the notice/information presented himself on the date fixed at the site. Participation or non-participation of the petitioner in the inspection of the property in question is entirely a different issue. The petitioner cannot turn around to submit that the property was not inspected in his presence, when as per his own case the petitioner was present on the spot but chose to avoid the inspection of the property.

19. In these circumstances, the contention of the petitioner that Rules 7 and 9(d) of the 1997 Rules were not followed becomes untenable, rather, the conduct of the petitioner, reflects, that the petitioner was trying to buy time, in order to maneuver the area under residential/commercial use. The initial report of 2.7.2012 clearly shows that the entire first floor was used as leather godown, on 10.12.2012 in reinspection of the property it was reported that half portion of first floor was lying vacant, i.e. the goods were removed.

20. Section 27 of the Act provides as follows:

"Section 27: Facts affecting duty to be set forth in instrument:

(1) The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

(2) In the case of instruments relating to immovable property chargeable with an ad valorem duty on the value of the property, and not on the value set forth, the instrument shall fully and truly set forth the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property the local rates, Municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act."

21. Rule 6 and the Form prescribed thereunder provides as follows:

"Rule 6 of Rule 1997 requires furnishing of statement of market value of the immovable property in the prescribed Form.

Rule 6. Statement of market value to be furnished to the Registering Officer.

(1) The party presenting an instrument relating to immovable property

chargeable with an ad valorem duty. shall submit alongwith the instrument a statement in duplicate in the Form appended to these rules.

(2).....

(3).....

The Form referred to under Rule 6 requires the transferor to furnish, inter alia, the following information in respect of the immovable property.

Form

2.....

3.....

4. Location of property (whether located in Urban/Semi-Urban area/Country side).....

5. Approximate distance (in kilometres or metres) of property from nearest road with the name of road and its approximate width.....

6. Approximate distance (in kilometres or metres) of property from railway station, bus-station, public offices, hospitals, factories and educational institution, etc. Mention any one which is nearest to the property under transfer.....

7. Nature of Economic, Industrial, Developmental activity, if any, prevailing in the locality in which property is situate.....

8. Any other special feature affecting the value of the property.....

9.....

10.....

11. Fair market value of the property:

12. Other information:

In case of Agricultural land:

(i) The Khasra number;

(ii) Area in hectare;

(iii) If Cultivable, whether do-fasali or otherwise;

(iv) Land revenue or rent (Whether exempted or not) payable by the tenure-holder;

(v) Land revenue per hectare;

Whether irrigated by canal, lift canal, well, tank, pumpset, tubewell water or any other sources (name the sources)

(vii) Minimum value of land, fixed by the Collector of the district;

Non-agricultural land;

(i) Khasra/Plot number;

(ii) area (in hectare/square metre);

(iii) minimum value of land fixed by the Collector of district;

Signature of transferor"

22. Section 27 read with Rule 6 and the Form prescribed thereunder, requires that facts affecting duty has to be set forth in the instrument. The insistence of the petitioner to get the property reinspected for the third time appears to be motivated lacking bona fide. It appears that the petitioner intends to manipulate the area being used commercially on the date of execution of the instrument.

23. The property in question was inspected on the request of the petitioner, the question as to how much area was under residential or commercial use on the date of execution of the instrument is a question of fact which cannot be gone into in writ jurisdiction. The petitioner has failed to show any error or irregularity in the contents of the inspection report.

24. Penalty can be imposed, if there is an attempt to evade stamp duty. Penalty pre-supposes culpability and an intention to conceal or to play fraud with authorities. Before imposing penalty, authorities must record finding based on relevant material that the purchaser or the person liable to pay stamp duty had concealed relevant facts in execution of sale-deed and had intention to evade payment of stamp duty. Smt. Asha Kapoor Vs. Addl. Collector (Finance and Revenue ), The Commissioner Meerut Division and The State of U.P., (2008) 2 AWC 1879 .

25. In the facts of the present case, the Collector has not recorded any finding that the person liable to pay stamp duty had concealed the relevant facts in execution of the sale-deed and had intention to evade payment of duty. The area of the land in which area of the constructions were disclosed in the instrument which has not been disputed in the subsequent reports.

26. In such view of the matter, the imposition of penalty was unwarranted. Hence, the penalty imposed by the impugned order is unsustainable accordingly the penalty is set aside.

27. As regards the rate applicable on the date of execution, petitioner placed on record the rate list dated 17.6.2011 determined by the Collector under Rule 4 for 2011, the rate (circle rate) has been made applicable w.e.f. 1st July, 2011, the property was sold on 23.5.2012 thus, the rates as per the list dated 17.6.2011 was applicable on the date of execution of the property. According to the petitioner, Collector had applied the rate as applicable w.e.f. July, 2012. The question of the circle rate as applicable on the date of execution can be

examined by the Collector.

The matter is remanded to Assistant Commissioner of Stamp, Kanpur Nagar respondent No. 3 to determine the value of the property in question, as per the inspection report dated 12.12.2012 by applying the rate (circle rate) as was applicable on the date of execution of the instrument and consequently the deficient stamp duty, the exercise to be carried out within 3 months from the date of service of certified copy of the order.

28. Subject to the above, the writ petition is disposed of. No order as to costs.