
(2003) 09 AHC CK 0256
In the Allahabad High Court
Case No : C.M.W.P. No. 15595 of 2001

J.H.V. Sugar Corporation Ltd.

APPELLANT

Vs

Chief Controlling Revenue Authority and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 47, 47A(1), 47A(4), 56

Citation : AIR 2004 All 60

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : R.N. Singh, Tarun Verma, G.N. Verma, S.N. Singh and A.K. Gupta, for the Appellant; Bharat Ji Agrawa and Surya Prakash and Kesarwani, S.C., for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri R. N. Singh, Senior Advocate, appearing for the petitioner and Sri Bharat Ji Agarwal, Senior Advocate assisted by Sri S. P. Kesarwani for the respondents.

2. Affidavits have been exchanged between the parties and as agreed by the parties, the writ petition is being finally decided.

3. By this writ petition, the petitioner has prayed for quashing the order dated 9th April, 2001 passed by Chief Controlling Revenue Authority.

4. Facts giving rise to this writ petition, briefly stated, are; Oswal Foods Limited, a registered company, owned a licence dated 26th/30th July, 1996 for establishment and running of a Vacuum Pan Sugar Mill at village Gadaura/Jamui Kalan, tahsil Nichlaul, district Maharajganj, Uttar Pradesh. Oswal Foods Limited [hereinafter referred to as OFL) purchased 63.80 acres free hold land in village Gadaura, Bhagwanpur and Jamui Kalan and developed the land. The OFL entered into an agreement with M/s. R. S. Builders and Engineers Limited, Ludhlana for

the purpose of constructing the building, factory sheds and godowns. The OFL also entered with an agreement with WIL, Pune for supply of entire machinery and equipment required to establish the said sugar factory on a turnkey basis. The suppliers, i.e., M/s. Walchandnagar Industries Limited (hereinafter referred to as WIL) brought machinery amounting to Rs. 581.12 lacs. The OFL had made payment of Rs. 1168.44 lacs to WIL. The OFL also purchased machinery from local suppliers and contracted with other contractors for supply of boiler and other accessories for running the factory. The Board of Directors in its meeting dated 21st October, 1997 resolved to dispose of whole movable and immovable properties of the company's sugar unit including its movable plants and machinery spares, tools and accessories and other movables both present and future. The Board of Directors in its meeting dated 21st January, 1998 decided to dispose of the sugar unit on "as is where is basis". The OFL entered into an agreement dated 14th May, 1998 with petitioner, J.H.V. Sugar Corporation Limited, a registered company. for transferring the sugar division to the petitioner. The agreement mentioned transfer of land, incomplete building structures, building materials including machinery foundations, steel structure and machinery lying at site and also including the licence. In pursuance of the agreement dated 14th May, 1998 a sale deed was executed on 24th March, 1999 by OFL transferring bhumidhari land building with tin-shades for consideration of Rs. 5,53.62,000/-. The sale deed included sale of bhumidhari land at village Jamui Kalan of 2685.9004 square meters and bhumidhari land at Mauza Gadaura 12617.12 square meters. Land of both the villages totalled 16303.0204 square meters. Sub-Registrar, Nichlaul sent a report dated 1st May, 1999 to the Registrar, Maharajganj for impounding the document and for recovery of deficiency in the stamp duty. The report stated that by deed dated 24th March, 1999 the sugar mill has been transferred and before the execution of the deed all machineries had already been fixed but no mention of machineries has been made in the document nor its valuation has been shown. Objection was also raised with regard to valuation of land on which residential buildings were existing. A sale deed dated 23rd March, 1999 was also executed by OFL regarding agricultural land situate in Jamui Kalan area 8.942 hectares and in Bhagwanpur area 3.733 hectares. In the aforesaid sale deed the duty was paid treating the land as agricultural land. A notice dated 3rd June, 1999 was issued to the petitioner under Sections 47-A(1)/33 and 47-A(4 of Indian Stamp Act, 1899 (hereinafter referred to as Act). The Additional District Magistrate called for valuation report from Tahsil: Tahsil report first informed valuation as Rs. 3,85,40,160.00 and subsequently submitted report dated 2nd September, 1999 giving valuation as Rs. 96,17,81,600.00. A district level committee was constituted in pursuance of the order of Special Secretary of the State Government consisting of Chief Engineer, U. P. Sugar Corporation, Siswa Unit, Assistant Inspector General, Registration, Maharajganj and Sub-Divisional Magistrate, Nichlaul. The said committee submitted a valuation report dated 20th July, 2000 valuing the building and assets as Rs. 87,19,30,847.50. The petitioner replied to the notice issued u/s 47-A of the Act refuting the valuation. In reply it

was stated that the payment of plant and machinery amounting to Rs. 34,08.04,000.00 was made by the petitioner itself. It was stated that land purchased from tenure holders was agricultural land and error has been committed in treating the land as of commercial value. It was further stated that declaration u/s 143 of Zamindari Abolition and Land Reforms Act, 1950 has already been granted with regard to 40 acres land in the year 1995. The Collector after hearing the parties valued the land at the rate of Rs. 75/- per square meter. The valuation of land and building was assessed by Collector as Rs. 7,71,35,775.00. The Collector found deficiency in the payment of stamp duty up to the extent of Rs. 9,03,377.00. An order was passed for imposing deficiency of stamp duty to the extent of Rs. 9,03,377.00 with 2% penal interest quarterly from the date of registration vide its order dated 11th September, 2000. A revision u/s 56(1) of the Act was filed by State of U. P. through Commissioner (Stamp) against the order of the Collector dated 11th September, 2000 passed in Case No. 1 /7. A writ petition, being Writ Petition No. 124 of 2001, was filed by the petitioner challenging the maintainability of the revision at the instance of the State of U. P. before the Chief Controlling Revenue Authority u/s 56(1) of the Act. This Court vide its judgment dated 27th February, 2001 dismissed the writ petition and held that revision u/s 56(1) of the Act was maintainable before the Chief Controlling Revenue Authority against the order of Collector at the instance of the State of U. P.

5. The Chief Controlling Revenue Authority allowed the revision and set aside the order of Collector. The Chief Controlling Revenue Authority found deficiency of stamp duty to the extent of Rs. 602.95 lacs. A penalty to the extent of four times of deficiency of the stamp duty was also imposed. This writ petition has been filed by the petitioner challenging the order of Chief Controlling Revenue Authority.

6. Sri. R. N. Singh, Senior Advocate, appearing for the petitioner, challenging the order of Chief Controlling Revenue Authority, made following submissions In support of the writ petition :--

(i) By sale deed dated 24th March, 1999 only agricultural land and building covered by tin shade was transferred for the consideration mentioned in the sale deed. There being no transfer of machinery by the sale deed, the Chief Controlling Revenue Authority committed error in adding the valuation of machinery In the deed. The valuation can be determined only of the property which is transferred by the deed, the premise and subject matter of the deed cannot be varied by leading any other evidence.

(ii) The machinery worth Rs. 34.07 crores was purchased by the petitioner subsequent to 24th March, 1999 and OFL not being owner of the machinery, its valuation has wrongly been added. The Collector has recorded finding that on the basis of bills and vouchers produced before the Collector that machinery were purchased by the petitioner and the finding of the Chief Controlling Revenue Authority to the contrary is based on no evidence.

(iii) The entire land purchased by the petitioner cannot be valued at the rate of Rs. 1400/- per square meters. The land purchased also Included the land which was of a agricultural nature and was purchased for industrial use. The valuation of land as determined by Chief Controlling Revenue Authority is not correct.

(iv) The report submitted the District Level Committee before the Collector dated 20th July, 2000 could not have been looked into since the said district level committee was constituted by order of the State Government dated 24th February, 2000 who had no Jurisdiction to constitute a committee for valuing the property.

(v) In the revision filed by the State of U.P.against the order of Collector, no prayer was made for imposing the penalty, the Chief Controlling Revenue Authority without there being any prayer imposed penalty.

(vi) The Chief Controlling Revenue Authority has imposed four times penalty of the deficiency in the stamp duty without any basis. The imposition of four times penalty is unjustified. No reasons were given by the Chief Controlling Revenue Authority for imposing four times penalty against the petitioner.

7. Sri Bharat Ji Agarwal, Senior Advocate, refuted the submissions of the counsel for the petitioner and supported the order passed by Chief Controlling Revenue Authority. He submitted that the Board of Directors of OFL had already passed a resolution dated 21st October 1997 for selling movable and immovable properties of the company"s sugar unit including movable plant and machinery both present and future. By subsequent resolution dated 21st January, 1998 Board of Directors gave consent to dispose of the sugar unit of the company on "as is where is basis". The deed dated 24th March, 1999 by which the land, constructed building, tin shades has been transferred by OFL was in essence deed of transfer of entire sugar unit including plant and machinery. The instrument dated 24th March, 1999 do not fully and truly set forth all other facts and circumstances affecting the chargeability of the instrument. Section 27 of the Act has not been complied with. The sugar unit has already started running with effect from 5th March, 1999 and all the plant and machinery were already fitted in the unit before its start and entire sugar unit including machinery worth Rs. 3408.04 crores was embedded to the earth which was not set forth with an intent to evade payment of stamp duty. Referring to the balance sheet of OFL and petitioner which has been brought on the record in pursuance of the order of this Court dated 18th July, 2001, it has been submitted that balance sheet discloses that the company has started functioning before 31st March, 1999. The various portions of the balance sheet of OFL has been referred to, to emphasise that the sale was of entire sugar unit and not of only land and building. The valuation of land as given in the deed was not correct. The entire land is surrounded, by a boundary wall. It has been contended that petitioner itself has shown the valuation of some plots included in the area of sugar unit at the rate of Rs. 1400/- per square meter by unregistered document dated 24th March, 1999, hence the entire land has rightly been valued at the rate of Rs. 1400/- per

square meter. The penalty has rightly been imposed on the petitioner in view of the finding that stamp duty was evaded by the document dated 24th March, 1999.

8. The counsel for both the parties have relied on various decisions which shall be referred while dealing with their respective submissions.

9. The first and second submissions made by counsel for the petitioner, being interrelated, are taken together. Before coming to the submissions made by counsel for the petitioner, it is necessary to consider the relevant facts and event, which culminated into the execution of the deed dated 24th March, 1999. There is no dispute between the parties that OFL was granted licence by Central Government for establishing a Vacuum Pan Sugar Factory. The OFL had purchased the land measuring 63.80 acres and had entered into agreement for constructing the building, factory sheds, godowns In the year 1995. The OFL also entered into an agreement with WIL, Pune for supply of entire machinery, equipment etc. required to establish the sugar machinery on a turnkey basis. Resolution was passed in the annual general meeting of the company on 21st October, 1997 for selling whole of movable and immovable properties of OFL Sugar Unit including movable plant and machinery both present and future. The relevant extract of the resolution of annual general meeting dated 21st October, 1997 has been brought on the record by the petitioner as part of Annexure-8 of the writ petition. The above resolution is extracted below :--

"Resolved that pursuant to the provisions of Section 293(1)(a) and all other applicable provisions, if any, of the Companies Act, 1956 and subject to such other approvals as may be required from other authorities/ Institutions, the consent of the Company be and is hereby accorded to the Board of Directors of the Company for selling/disposing of the whole of the movable and immovable properties of the company"s sugar Unit being commissioned at Tehsil Nichlaul, Distt. MaharajganJ (U.P.) including its movable plant and machinery spares, tools and accessories and other moveables both present and future."

10. Again resolution was passed on 21st January, 1998 in the meeting of the Board of Directors for selling the sugar unit on "as is where is basis". The following extract of the resolution is useful to note:--

"Resolved That pursuant to the approval of the shareholders granted in the Annual General Meeting of the company held on 21st day of Oct., 97 consent of the Board of Directors of the company be and is hereby given to dispose off the Sugar unit of the Company being commissioned at Village Gadaura, Tahsil Nichlaul, Distt. MaharajganJ, U.P. on "As is where is Basis"

11. In paragraph 4 of the writ petition, the petitioner itself has referred to agreement dated 14th May, 1998 entered into with OFL copy of which has been filed as Armexure-8 to the writ petition. It is relevant to take note of following conditions incorporated in agreement dated 14th May, 1998:--

"And Whereas, OFL is now desirous to transfer, alienate and/or sell the aforesaid assets as mentioned in Annexure 1, 2 & 3 including the licence for the manufacture of Sugar having a capacity of 2500 TCD, freehold land, incomplete building Structures, building materials including machinery Foundations, steel structure, and machinery lying at site, along with various agreements undertakings made by them for the purpose of establishing the said Sugar Factory.

And Whereas the JHVSCL, is willing and gave its consent for taking over all the assets as mentioned in Annexures 1, 2 and 3 including the licence for the manufacture of sugar having a capacity of 2500 TCD, land, incomplete building structures, building materials including machinery foundations, steel structures and machinery lying at site, along with various agreement undertakings made by OFL for a total consideration of Rs. 2061.45 lacs, only from OFL on the terms and condftions provided hereinafter;

And Whereas both the parties have agreed this agreement through their respective authorised representatives for the purpose of record and future reference with the clear intention of transferring the said assets as mentioned in Annexures 1, 2 and 3 including the licence for the manufacture of sugar having a capacity of 2500 TCD, land, incomplete building structures, building materials including machinery foundations, Steel Structures and machinery lying at site, along with various agreements, undertakings in the name of JHVSCL."

12. The aforesaid conditions referred to assets mentioned in Annexures 1, 2 and 3 of the agreement. Annexure-1 mentions the details of various lands purchased by OFL in the aforesaid villages. Annexure -2 refers to various incompleted buildings and details of other work. Annexure-3 contains the list of plant and machinery supplied by M/s. WIL. Annexure 3 contains list of more than 100 items. Annexure-3 also contains list of plant and machinery supplied by other manufactures. Annexures-1, 2 and 3 contain the details of assets including the machinery which were existing on 14th May, 1998. After agreement dated 14th May, 1998 was executed, more than 8 months further elapsed giving time for completion of further work and for acquiring of other machinery. The sale deed dated 24th March, 1999 refers to sale of bhumidhari land, tin shades, building Included in the boundary for an amount of Rs. 5,53,62,000.00. The principle submission which has been raised by the petitioner is that the sale deed having referred only sale of bhumidhari land, tin shades and building, it cannot be treated to be sale of sugar unit having machinery fixed in it. The petitioner's case is that machinery of more than Rs. 34.00 crores was acquired by the petitioner subsequent to the sale deed dated 24th March, 1999, hence the said machinery cannot be taken for valuation. The contention is that the terms of the sale deed cannot be varied. It has further been contended that even though reference of resolution of the Board of Directors dated 21st January, 1998 has been made in the deed, the terms and conditions of the said resolution cannot be incorporated in the sale deed. The learned counsel for the petitioner has placed

reliance on a judgment of the Apex Court in Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority,

13. This Court vide its order dated 18th July, 2001 has directed for bringing the balance sheet of the petitioner as well as OFL to be brought on the record for effective and complete adjudication of the controversy. By supplementary affidavit dated 23rd July, 2001 sworn by Sachindra Nath Dubey, balance sheet of the petitioner as well as OFL has been filed. The balance sheet of OFL for the year 1998-99, annual report together with added account for the financial period of 18 months ended on 30th September, 1999 has been brought on the record. The balance sheet of OFL clearly mentions the sale of sugar division of the company. It is useful to extract following part of Item No. 22 from the aforesaid notes of account:--

"22. Notes on Accounts (Annexed to & Forming Part of Balance Sheet & Profit & Loss Account for the period Ending on 30th September, 1999)

1 to 2

(a) to (b)

(i) and (ii)

(iii) During the period the company has sold out its Sugar Division to M/s. J.H.V. Sugar Corporation Ltd., on terms specified as per agreement dt. 14th May, 1998. Therefore the entire Capital work in progress including project and pre-operative expenses related to Sugar Division has been adjusted against the sale consideration and the balance of Rs. 13,94,29,615/- has been debited as loss on sale of sugar division to the profit and loss account. The itemwise details of figures are as per the Schedule XXI for loss on sale of Sugar Division."

One more Item No. 21 is relevant which enumerates loss on sale of sugar division. Part of Item No. 21 is extracted below :-

Particulars

Current year 30-9-99

Previous year 31-3-98

(Rs.)

(Rs.)

21 . Loss on Sale of Sugar Division Land

Capital Works in Progress

(a) Building under construction

1,84,74,038

(b) Plant & Machinery

5,52,04.145

(c) Site Development Charges

53,980

(d) Capital Works in Progress

91,002

(e) Furniture & Fixtures

6,10,340

(f) Office Equipment

11,108

(g) Misc. Tools

6,443

7,44,49,056

7,44,49,056"

14. The balance sheet of OFL clearly mentions that what was sold to the petitioner was entire sugar factory and not only the land, building and tin shades. The resolution of Board of Directors dated 21st January, 1998 also mentioned the sale on "as is where is basis". From the aforesaid, it is established that entire sugar factory including plant and machinery was sold to the petitioner. The learned counsel for the respondents has much emphasised on the fact that even prior to sale deed dated 24th March, 1999, the sugar factory has been commissioned and had started running. The Chief Controlling Revenue Authority has adverted to the said question and after considering the materials on record recorded finding that factory has started from 5th March, 1999. The Chief Controlling Revenue Authority has also referred to the newspapers publication dated 6th March, 1999 which mentioned that crushing in factory has started from 5th March, 1999 and crushing capacity is 35 thousand quintal per day. The counsel for the respondents has also referred to the balance sheet of the petitioner filed as Annexure-1 to the supplementary affidavit dated 23rd July, 2001 in which sugarcane purchased up to 31st March, 1999 was 6222.29 quintals. The aforesaid details in the balance sheet fully support the contention of the respondents that sugar factory was running at the time when the petitioner purchased the unit. The sugar factory being already running before the sale deed dated 24th March, 1999, the submissions of the respondents that plant and machinery was already fixed with the land has rightly been accepted because sugar factory cannot run without necessary plant and machinery having been installed in the premises. Much emphasis has been laid by counsel for the petitioner on finding of the Collector that from bills and vouchers submitted by the petitioner before the Collector, it was held that machinery up to the amount

of Rs. 34,08,04,000/- was paid by the petitioner. The Collector in his order has observed that payment of Rs. 34.07 crores towards machinery was made by purchaser before the registration and after the registration and on the said basis Collector held that ownership of the aforesaid machinery worth Rs. 34,07 crores is not proved with transferee, hence its sale to purchaser cannot be accepted.

15. The above question was elaborately considered by Chief Controlling Revenue Authority. The Chief Controlling Revenue Authority before recording the finding that above machinery was already there before sale has also referred to agreement dated 14th May, 1998 entered into between the parties. As noted above, the agreement dated 14th May, 1998 contained Annexure-3 which mentioned details of the machineries. It was also mentioned that machinery worth Rs. 581.12 lacs has already been sent by WIL which is available in the factory. Reference of advance of Rs. 527.32 lacs to WIL was also made. The Chief Controlling Revenue Authority has also noted the purchases made by OFL from local suppliers. After considering all the materials finding was recorded that machinery worth Rs. 34.08 crores was already there before sale deed dated 24th March, 1999. Finding being recorded by Chief Controlling Revenue Authority that no evidence has been brought on the record to prove that said machinery worth Rs. 34.08 crores has been purchased subsequent to 24th March, 1999, the Chief Controlling Revenue Authority has rightly observed that since factory has already started running from 5th March, 1999, hence in the deed dated 24th March, 1999 reference of machinery was deliberately not made to evade the payment of stamp duty. No error can be said to have been committed by Chief Controlling Revenue Authority in holding that stamp duty on the plant and machinery fixed in the factory worth Rs. 34,06 crores was evaded by not mentioning the same in the deed although the entire sugar unit including plant and machinery was purchased by the petitioner. Reliance has been placed by counsel for the respondents on the Judgment of the Apex Court in *Duncans Industries Ltd. Vs. State of U.P. and Others*, In the aforesaid case before the Apex Court sale of fertiliser unit was made on "as is where is basis". In the conveyance dated 9th June, 1994 there was no mention of the plant and machinery relating to the fertilizer business. The, Chief Controlling Revenue Authority valued the plant and machinery and imposed deficiency of the stamp duty on the deed. The submission was made before the Apex Court that Vendor did not transfer the title of the plant and machinery, hence the order of the authorities including the plant and machinery is erroneous. The submission was also made before the Apex Court that terms and conditions of conveyance deed cannot be varied. Reliance was placed on the judgment of the Apex Court in *Himalayas House Company's* case (supra). Considering the aforesaid judgment of the Apex Court, the Apex Court held that judgment of the Apex Court in *Himalayas House Company's* case (supra) does not in any manner lay down the law in absolute terms that a Court cannot look into prior agreements while considering the intention of the parties for finding out what actually is the property that is conveyed under the deed under consideration. Paragraphs 11 and 13 of the aforesaid judgment is

extracted below :--

"11. Learned counsel for the appellant has placed for our consideration a Judgment of this Court in the case of Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority, to contend that a mere reference to an earlier agreement does not amount to incorporation of the terms and conditions of an earlier transaction or the intention of the parties. We have carefully considered the said judgment and, in our opinion, that judgment does not in any manner lay down the law in absolute terms that a Court cannot look into prior agreement while considering the intention of the parties for finding out what actually is the property that is conveyed under the deed under consideration. It is again based on facts of that case that this Court came to the conclusion therein that the so called terms and conditions which were found in an earlier agreement were not intended to be incorporated in the subsequent document. This is clear from the following observations of this Court appearing in para 10 of the said judgment :

"From the language used in the Assignment Deed, it is not possible to come to the conclusion that the terms and conditions of the earlier transaction have been made a part of that Deed. Further barring one particular agreement, other agreements were not before the Court. Therefore, it is not possible to know what the terms and conditions of those agreements were. Before the terms and conditions of an agreement can be said to have been incorporated into another document, the same must clearly show that the parties thereto intended to incorporate them. No such intention is available in this case."

13. For the reasons stated above, we are of the considered opinion that the vendor as per the conveyance deed dated 9-6-1994 has conveyed the title it had not only in regard to the land in question but also to the entire fertiliser business in "as is where is" condition including the plant and machinery standing on the said land. Therefore, the authorities below were totally Justified in taking into consideration the value of these plant and machineries along with the value of the land for the purpose of the Act."

16. The learned counsel for the petitioner contended that Duncans" case (supra) has no application in the facts of the present case. For distinguishing the said case, the counsel for the petitioner contended that in Duncans" case (supra) it was a running business which has been sold whereas in the present case the sugar unit which was in process of being set-up has been sold. It was further contended that in Duncans" case (supra) deed in question has made reference of schedule and paragraphs of the agreement which has been held to be incorporated in the sale deed whereas in the present case there is no reference of any clause of the agreement nor any clause has been incorporated in the sale deed. It has further been submitted that there was no dispute in Duncans" case (supra) with regard to ownership of the plant and machinery.

17. On the basis of above facts pointed out by learned counsel for the petitioner,

it cannot be said that judgment of Apex Court in Duncans" case (supra) is not attracted in the facts of the present case. In the present case also the sale deed of running business i.e. running sugar factory has been sold. From the materials on the record it is clear that sugar factory has already started running from 5th March, 1999. In sale deed the reference of resolution of Board of Directors dated 21st January, 1998 has been made which mentioned the sale of unit on "as is where is basis." Further the submission of petitioner that it was actually the petitioner who purchased machinery worth Rs. 34,08 crores after 24th March, 1999 has not been accepted by Chief Controlling Revenue Authority after considering the relevant materials on the record. From the materials on the record including the agreement to sale dated 14th May, 1998, from the extract of balance sheet and other facts, it is fully proved that machinery was already there which was supplied by WIL before start of factory. Even up to the date of agreement dated 14th May, 1998 machinery worth Rs. 531 lacs were already supplied by WIL which was laying in the factory. The ratio laid down by the judgment of the Apex Court in Duncans" case (supra) is fully applicable in the facts of the present case and no error has been committed by Chief Controlling Revenue Authority in holding that plant and machinery were also sold along with unit to which stamp duty was liable to be paid.

18. The second and third submissions raised by counsel for the petitioner relates to valuation of land included in the sale deed. The Chief Controlling Revenue Authority in Its judgment has held that the basis of determination of land by Collector Rs. 75/- per square meter (industrial rate) was erroneous since rules were framed, namely, Uttar Pradesh, Stamp (Valuation of Properties) Rules, 1997 and in the statutory rules only commercial buildings and non commercial buildings have been provided for. It was noted that the said rate of Rs. 75/- per square meter was not in force when the sale deed was executed. The Chief Controlling Revenue Authority has taken into consideration the fact that in the deed dated 24th March, 1999 the sale of 1.629 hectares land was given valuation of Rs. 228.24 lacs which comes to Rs. 1400/-per square meters. The Chief Controlling Revenue Authority has observed that above document is a relevant material for determining the value of the land and the said land being part of one and the same premise, the entire land is to be valued at the rate of Rs. 1400/- per square meter. The district level committee has also in its report has mentioned the valuation of Rs. 1400/- per square meters of the land. No error can be said to have been committed by Chief Controlling Revenue Authority in valuing the land at the rate of Rs. 1400/- per square metre when the petitioner itself for the part of the land situate in the same premises has shown Rs. 1400/- per square metre. The bhumidhari land which was sold along with building and tin shades was valued at the rate of Rs. 1400/~ per square meter by the petitioner itself, however, on the same day another sale deed of bhumidhari land measuring 22.387 hectares was differently valued by the Collector at the rate of Rs. 75/-per square metre claiming same to be agricultural land. The land covered by sale deed dated 29th May, 1998 being document No. 876/98 also related to

the same premises but was valued at the agricultural rate. The bhumidhari land which was sold by deed dated 24th March, 1999 (unregistered deed) and the land covered by registered sale deed dated 24th March, 1999 (Document No. 689/99) was in the same premises. The entire land which was in the premises of Mill has rightly been valued at the rate of Rs. 1400/- per square metre by the Chief Controlling Revenue Authority. Finding has been recorded by Chief Controlling Revenue Authority that the entire land is situated in Sugar Mill premises. The district level committee has also in its report valued the entire land at the rate of Rs. 1400/- per square metre. From the facts which have been brought on the record. It is clear that the land which has been valued at the rate of Rs. 1400/- per square metre by the Chief Controlling Revenue Authority is not the entire land which was purchased by the petitioner apart from above three documents, there are several agricultural lands purchased by the petitioner on different dates which has been referred to in the order of Chief Controlling Revenue Authority with regard to which even notices u/s 47-A of the Act have not yet been issued. The land which has been valued at the rate of Rs. 1400/- per square metre is not the entire land purchased by the petitioner so as to accept the contention of the petitioner that entire land cannot be valued at the rate of Rs. 1400/- per square metre. The land situated in the same premises has rightly been valued at the rate of Rs. 1400/- per square metre which needs no interference by this Court in this writ petition. It is to be noted that the residential land was also shown in the deed dated 24th March, 1999 at the rate of Rs. 2000/- per square meter. The valuation of the Collector at the rate of Rs. 75/- per square metre for a land of industrial use was erroneous and has rightly not been relied by Chief Controlling Revenue Authority. The Apex Court in *Duncans'* case (supra) has held that question of valuation is basically question of fact. The finding of Chief Controlling Revenue Authority being based on material on record, this Court in exercise of writ jurisdiction under Article 226 of the Constitution is reluctant to reappraise the material and examine the findings. The finding of Chief Controlling Revenue Authority being based on relevant material regarding valuation of land, need no interference by this Court under Article 226 of the Constitution.

19. The counsel for the petitioner has also contended that report submitted by district level committee cannot be looked into since the committee was constituted by the order of the State Government who had no authority or Jurisdiction. The order of Collector makes it clear that case of the petitioner before the Collector was that district level committee has been constituted at the instance of the Additional District Magistrate (Finance & Revenue). The district level committee consisted of Chief Engineer, U.P. Sugar Corporation, Siswa Unit, Assistant Inspector General, Registration, Maharajganj and Sub Divisional Magistrate, Nishauli. The report of the committee was only a material to arrive at correct valuation of the property in question. In *Duncans'* case (supra) also objection was raised to the report of the enquiry committee. The Apex Court held in the aforesaid judgment that constitution of enquiry committee by the Collector

is for the purposes of finding out the true market value of the property conveyed under the deed and Collector has every authority in law to take assistance from such source as is available, even if it amounts to constituting or reconstituting more than one committee. Following was observed in paragraph 15 of the judgment (at page 361 of AIR) :

"15. The question of valuation is basically a question of fact and this Court is normally reluctant to interfere with the finding on such a question of fact if it is based on relevant material on record. The main objection of the appellant in regard to the valuation arrived at by the authorities is that the Collector originally constituted an Enquiry Committee consisting of the Assistant Inspector General (Registration), General Manager, District Industries Centre, Sub-Registrar and the Tehsildar. After the report was submitted by the Sub-Committee for the reasons of its own, the Collector reconstituted the said Enquiry Committee by substituting Additional City Magistrate in place of Sub-Registrar. This substitution of the Enquiry Committee, according to the appellate, is without authority of law. We are unable to accept this contention. Constitution of an Enquiry Committee by the Collector is for the purpose of digging out the true market value of the property conveyed under the Deed. In this process, the Collector has every authority in law to take assistance from such source as is available, even if it amounts to constituting or reconstituting more than one Committee....."

20. The emphasis of the argument is that committee was not constituted by Collector but it was constituted by the State of U.P. The order constituting the committee has not been brought on the record by the petitioner, rather it has been mentioned in the order of Collector that committee was constituted at the instance of the Additional Collector. Even if Additional Collector has requested the Government to constitute a committee for valuation, no exception can be taken to the said committee, moreover when contention of the petitioner before the Collector was that said committee was got constituted by Additional District Magistrate (Finance & Revenue) himself. The said committee having been constituted at the instance of Additional Collector, as contended by petitioner itself before the Collector, the report of the committee is to be treated as a material for the assistance of Collector In determining the market value of the property and no exception can be taken to the report of the said committee. The finding of Chief Controlling Revenue Authority is not solely based on report of committee dated 20th July, 2000. The Chief Controlling Revenue Authority himself has considered the entire materials on the record and has arrived at the valuation as fixed in the order. The contention of counsel for the petitioner cannot be accepted that since the committee was constituted at the instance of the State Government, the order of Chief Controlling Revenue Authority is vitiated.

21. The fifth submission of the counsel for the petitioner is that petitioner in the grounds of revision has not prayed imposition of any penalty, hence the Chief Controlling Revenue Authority committed error in imposing the penalty on the

petitioner. The power of imposition of penalty is contained in Section 47-A(4)(ii) of the Act. The provisions of Section 47-A(4)(ii) of the Act provide that if Collector finding the market value of the property not truly set forth and nor instrument duly stamped he shall require the payment of property duty or the amount required to make up the deficiency in the same together with a penalty of an amount not exceeding four times the amount of the proper duty or the deficient portion thereof. The Chief Controlling Revenue Authority while exercising the jurisdiction u/s 56 of the Act can exercise the same jurisdiction which is vested in the Collector. There was no lack of jurisdiction in Chief Controlling Revenue Authority for imposing the penalty when a finding was recorded that instrument was not duly stamped. The mere fact that in the grounds of revision there was no prayer made by the respondents to impose penalty cannot denude the Chief Controlling Revenue Authority its jurisdiction to impose penalty. The power to impose penalty is statutorily given which can be exercised by Chief Controlling Revenue Authority while exercising the jurisdiction u/s 56 of the Act. The power of imposing penalty goes along with order requiring payment of proper duty when instrument is not duly stamped. In view of this, the submission of the petitioner cannot be accepted that since there was no prayer in the grounds of revision, the Chief Controlling Revenue Authority cannot impose penalty.

22. Now the last submission of counsel for the petitioner regarding penalty is to be considered. The Full Bench of Balkrishna Bihari Lal Vs. Board of Revenue, M.P. and Others, ; Balkrishna Bihari Lal v. Board of Revenue M. P. while considering the question of penalty under the Act laid down in paragraph 16 which is quoted as below :

"16. Turning now to the sixth question the powers of the Collector u/s 40 of the Stamp Assistant Commissioner are discretionary in respect of imposition of penalty. There are no discretion. That being so, the general principle of law, that discretion must be exercised according to reason and justification, must be followed."

The Act does not provide any guideline for imposing penalty. Section 47-A(4) of the Act provides that penalty of an amount not exceeding four times the amount of proper duty or the deficient portion thereof can be imposed. Sub-section (4) of Section 47-A is quoted as below :

"47-A. Under-valuation of the instrument.--
(1)

(4) If on enquiry under Sub-section (2) and examination under Sub-section (3) the Collector finds the market value of the property --

(i) truly set forth and the instrument duly stamped, he shall certify by endorsement that it is duly stamped and return it to the person who made the reference;

(ii) no truly set forth and the instrument not duly stamped, he shall require the payment of proper duty or the amount required to make up the deficiency in the same together with a penalty of an amount not exceeding four times the amount of the proper duty or the deficient portion thereof."

23. Penalty of four times the amount of the proper duty or the deficient portion thereof is a maximum penalty provided u/s 47-A of the Act. In view of the finding recorded by Chief Controlling Revenue Authority that true value of the property has not been given in the instrument, the imposition of penalty together with deficiency in the stamp duty was fully justified. The only question remains is as to whether in the facts and circumstances of the case maximum penalty was justified or not. The amount of deficiency in the stamp duty as imposed by Chief Controlling Revenue Authority is Rs. 602.95 lacs. An equal amount of penalty is fully justified in the facts of the present case. The petitioner's unit is a running sugar factory and imposition of maximum penalty will seriously prejudice the petitioner and hamper the running of sugar factory. No reasons have been given by Chief Controlling Revenue Authority for imposing maximum penalty in the present case. The order imposing penalty neither gives reason nor any basis for imposing maximum penalty. As observed above, the penalty of an equal amount, i.e. and amount of Rs. 602.95 lacs will serve the ends of justice. Consequently the order dated 9th April, 2001 in so far as it imposes penalty of four times of deficiency in the stamp duty is set aside and modified to the extent that penalty of Rs. 602.96 lacs is leviable.

24. In view of the foregoing discussions, the order of Chief Controlling Revenue Authority dated 9th April, 2001 imposing the deficiency of the stamp duty to the extent of Rs. 602,95 lacs is upheld. The order dated 9th April, 2001 in so far as it imposes four times penalty of the above deficiency in the payment of stamp duty is quashed and the order of penalty is substituted by an order of penalty equivalent to the deficiency of the stamp duty, i.e. Rs. 602.95 lacs.

25. The writ petition is allowed to the extent as indicated above. Parties will bear their own costs.