(2015) 02 AHC CK 0096

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 22901 of 2011

Kashi Nath Upadhyay	APPELLANT
Vs	
Commissioner, Varanasi and Others	RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

- Cantonments Act, 1924 — Section 3
- Constitution of India, 1950 — Article 226
- Stamp Act, 1899 — Section 56
- Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 — Section 2
- Uttar Pradesh Industrial Area Development Act, 1976 — Section 6
- Uttar Pradesh Urban Planning and Development Act, 1973 — Section 3
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (2015) 4 ADJ 24 : (2015) 4 ALJ 375 : (2015) 110 ALR 727 : (2015) 2 AWC 1758 : (2015) 127 RD 627

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : H.N. Singh and Vineet Kumar Singh, for the Appellant

Final Decision : Allowed

Judgement

Suneet Kumar, J.—Petitioner purchased plot No. 764/1M, 764/2M and 764/2M and 764M admeasuring 0.135 hectares vide instrument No. 697/04 dated 6.2.2004. The Sub Registrar, Jaunpur on 24.2.2004, reported that the property in question is surrounded by a boundary wall and approximately 2000 square ft. tin shed was standing on pillars, earlier the property was used by Mahendra Tractors for service station, the property is surrounded by residential houses, hence, the property having commercial potential, had to be valued as a commercial property, accordingly deficient stamp duty of Rs. 5,74,000/- have to be recovered.

2. On reference, proceedings was instituted under the Indian Stamp Act 1899 (the Act), being case No. 1652 of 2004, the petitioner in objection to the notice urged that the sale-deed was executed for Rs. 11,00,000/- lacs, the property in

question being recorded as an agricultural land in the revenue records, accordingly, stamp duty @ Rs. 50,000/- per decimal on agricultural land, as fixed by the Collector under the 1997 Rules was paid. The Collector called for a report from the Tahsildar, who vide report dated 11.12.2008 noted that the property in question is situated within Nagar Palika Parishad, Jaunpur, was earlier used as a godown by a tractor agency, is adjacent to the Abadi, 3 k.m. from the Railway Station and presently the property has a two storey building and is being used for a Eye Clinic and residential purposes.

3. The Collector vide order dated 27.3.2010 held that since the property in question was earlier used for commercial purposes, by a tractor company, and merely because the company had shut down the agency, way back in 1998-1999, would have no bearing regarding the potentiality of the property, accordingly, the property was valued at commercial rate. The area of the property being 9169.46 square metre, of which 185.87 square metre being covered by tinshed, accordingly the land was valued at Rs. 35,28,486.59 @ Rs. 3850/- square metre, the covered area was valued at Rs. 33,45,660/- @ Rs. 60/- per square metre per month being the prescribed rent, accordingly, deficiency of stamp duty of Rs. 5,61,449/- was determined, penalty of Rs. 1000/- and interest @ of Rs. 1.5% per month from the due date was imposed.

4. Aggrieved, petitioner preferred an appeal before the Chief Controlling Revenue Authority/Additional Commissioner (Judicial) Varanasi Division, Varanasi being Stamp Appeal No. 43 of 2010. The appellate authority vide order dated 31.3.2011 affirmed the order of the Collector.

5. The orders passed by the appellate authority and the Collector is being assailed by the petitioner under Article 226 of the Constitution of India.

6. This Court vide order dated 29.1.2013 remanded the matter to the Collector to examine whether or not commercial building was existing on the site in question on the relevant date and whether it could be called commercial activity at all or not.

The order is extracted:

This writ petition has been filed by the petitioner being aggrieved by an order passed by the Collector regarding an instrument executed on 6.2.04. The Collector has come to the conclusion that 185.87 square meters of plot was having a building of commercial nature and this fact has not been disclosed in the sale-deed at all by the petitioner.

Learned Standing Counsel states that the tin shed, which has been found in the premises, clearly indicates that commercial building was standing there. Learned counsel for the petitioner strongly refused this factum and states that business of the tractor show room had come to an end in the year 1998-99 and on the date of the execution of the instrument, no commercial activity was carried on, so as to attract provisions of Rule 2(d) of the U.P. Stamp Rules, 1997, which defines commercial building.

Learned counsel for the petitioner has argued that the commercial rate, which has been settled by the Collector is arbitrary and excessive, especially in view of the fact that no commercial activity is being carried on.

Learned counsel for the petitioner has argued that even though he has raised this objection before the Collector, his objection has not been considered by the Collector.

The matter is, therefore, remanded to the Collector for consideration on this point, to examine whether or not commercial building was existing on the plot in question on the relevant date and whether it could be called a commercial activity at all or not.

The Collector may fix a date in the matter with due notice to the petitioner and hear him on this point and, thereafter, pass fresh orders on merits and in accordance with law.

7. Pursuant thereof, the Collector Jaunpur vide order dated 26.4.2013 reiterated and re-affirmed his earlier order, but enhanced the penalty from Rs. 1000/- to half of the deficient stamp duty at Rs. 2,80,724/- alongwith interest @ Rs. 1.5% from the due date. The order of the Collector is under challenge by amending the writ petition.

8. The learned standing counsel has raised a preliminary objection that the order is appellable/revisable under Section 56 of the Act, the petitioner should first approach the forum prescribed under the Act.

9. Per contra, it is submitted on behalf of the petitioner that facts are not in dispute, the order of the Collector was passed on the direction of the Court, the Collector has merely reaffirmed his earlier order without answering the query of the Court, the only difference being that penalty has been enhanced, hence, the matter be heard by the Court.

10. The facts are not in dispute, the question for determination is as to whether the property in question could be valued as a commercial property merely because the property was earlier put to commercial use.

11. I have heard Shri H.N. Singh, learned senior advocate assisted by Shri Vineet Kumar Singh for the petitioner and learned standing counsel for the State respondent.

12. It would be apposite to examine the provisions of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 (1997 Rules), framed under the Act. 1997 Rules defines commercial building by adopting the definition of commercial establishment and shop contained in Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 (Adhiniyam), the definition reads as follows:

2(d) ''Commercial building'' means commercial establishment or shop as defined respectively in clause (4) and clause (16) of Section 2 Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam, 1962.

Adhiniyam defines commercial establishment and shop as follows:

(1) ''Commercial establishment'' means any premises, not being the premises of a factory, or a shop, wherein any trade, business, manufacture, or any work in connection with, or incidental or ancillary thereto, is carried on for profit and includes a premises wherein, journalistic or printing work, or business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, or which is used as theatre, cinema, or for any other public amusement or entertainment or where the clerical and other establishment of a factory, to whom the provisions of the Factories Act, 1948, do not apply, work;

(2) ''Shop'' means any premises where any wholesale or retail trade or business is carried on, or where services are rendered to customers, and includes, all offices, godowns or warehouses, whether in the same premises or not, which are used in connection with such trade or business;

13. Section 2(h) and 2(k) of the 1997 Rules defines semi-urban area and urban area as follows:

2(h) ''Semi-urban area'' means an area-

(i) other than the urban area declared as development area under Section 3 of the Uttar Pradesh Urban Planning and Development Act, 1973;

(ii) other than the urban area to which Avas Evam Vikas Parishad Adhiniyam, 1965 is applicable:

(iii) of two kilometres width of revenue villages peripheral to an urban area not covered by clause (i) or clause (ii);

2(k) Urban area'' means an area-

(i) comprised in metropolitan area or a municipal area as defined in the Uttrar Pradesh Municipal Corporation Act, 1959; or

(ii) comprised in a smaller urban area as defined in the United Provinces Municipalities Act, 1916, or

(iii) comprised in a cantonment as defined under Section 3 of the Cantonments Act, 1924; or

(iv) demarcated for industrial, commercial and residential purposes by the concerned Industrial Development Authority under clause (c) of sub-Section (2) of Section 6 of the Uttar Pradesh Industrial Area Development Act, 1976.

14. Rule 3 of 1997 Rules, mandates the particulars of the immovable property that should be truly stated in the instrument regarding land and building, in addition to market value. Rule 3 read as follows:

Rule 3. Facts to be set forth in an instrument--In case of an instrument relating to immovable property chargeable with an ad valorem duty, the following particulars shall also be fully and truly stated in the instrument in addition to the market value of the property:

(I) In case of land-

(a) included in the holding of a tenure holder, as defined in the law relating to land tenures-

(i) the Khasra number and area of each plot forming part of the subject-matter of the instrument;

(ii) whether irrigated or unirrigated and if irrigated, the source of irrigation;

(iii) if under cultivation whether do-fasali or otherwise;

(iv) land revenue or rent whether exempted or nor and payable by such tenure-holder;

(v) classification of soil, supported in case of instruments exceeding twenty thousand rupees in value, by the certified copies, or extracts from the relevant revenue records issued in accordance with law;

(vi) location (whether lies in an urban area, semi-urban area, or countryside); and

(vii) minimum value fixed by the Collector of the district;

(b) being non-agricultural land-

(i) area of land in square metres;

(ii) minimum value fixed by the Collector of district;

(iii) location (whether lies in urban area, semi-urban area, or country-side).

(3) In case of buildings--

(a) total covered area and open land, if any, in square metres;

(b) number of storeys, area and covered area of each storey in square metres;

(c) whether pucca or katchha construction;

(d) year of construction;

(e) actual annual rent;

(f) annual value assessed by any local body and the amount of house tax payable thereon, if any;

15. 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) ....

16. 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/ Countryside.......................

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/squre metre);

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

Signature of transferor

17. Rule 5 for the purposes of payment of stamp duty, provides for calculation of the minimum value of land and building both non-commercial and commercial building.

18. Rule 7 provides for the procedure for the Collector to determine the market value of the property, in case the Collector has reasons to believe that the market value of the property has not been correctly set forth in the instrument.

19. Sub-section (3) of Section 47 A requires the Collector to "examine the instrument for satisfying himself of the correctness of the market value", after such examination Collector has "reasons to believe" that the market value has not been truly set forth, he may ''determine the market value of such property"

20. Stamp Act being a taxing statute, the purpose is duty chargeable on an instrument, the immovable property has to be valued as per the provisions of the 1997 Rules. Under Rule 5, for non commercial building value is to be calculated by multiplying the constructed area of each floor by the minimum value fixed by the Collector under Rule 4, whereas, for commercial building minimum value is determined by multiplying the minimum monthly rent as fixed by the Collector under Rule 4, by the area of the construction by three hundred times.

21. In respect of commercial property, the Collector would inter alia, consider:

(1) location of the property whether in Urban/Semi Urban area/Country side,

(2) nature of economic activity in the locality,

(3) whether the property is a commercial building.

The facts that emerge from the record reflects that the property in question:

(1) is recorded as an agricultural property;

(2) earlier (1998-99) was used for non-agricultural purpose,

(3) no economic activity was being carried on the property on the date of execution of the instrument;

(4) surrounded by residential buildings;

(5) property presently being used for residential cum clinic;

22. Collector valued the property having commercial potential, merely for the reason that the property was used for non-agriculture purpose in the past, admittedly, the property on the date of execution of the instrument was not being used for commercial purpose, as none of the activities, mentioned in the expression "commercial establishment/shop" as contained in Adhiniyam, was being carried on the said property. Neither the property was being used as an agricultural property. Though the property was put to non agricultural use in the past but continued to be recorded as agricultural property in the revenue records, therefore it is being contended that the property be valued as an agricultural property.

23. This Court in Ratna Shanker Dwivedi Vs. State of U.P. and others, (2012) 5 ADJ 414 : AIR 2012 All 100 : (2012) 116 RD 17 , explained the objects of the Stamp Act as follows:

"The sole object of Stamp Act under its various provisions is to require the parties concerned to set forth correct market value of the property at which the transaction has taken place so that appropriate duty in accordance with the Act is paid by them to avoid large scale evasion of stamp duty. It also mandates that while setting forth the correct market value of the property in dispute the competent authority must not apply their mind in a fact fashion and in a haphazard way."

(Refer Himalaya House Company v. Chief Controlling Revenue Authority, 2008 (3) AWC 299 (All)).

24. The minimum value (circle rate) is only for the purpose of collecting the stamp duty and it cannot form the foundation to determine the market value. (U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, AIR 1996 SC 1170 : (1996) 2 CTC 60 : (1996) 1 JT 354 : (1996) 1 SCALE 389 : (1996) 3 SCC 124 : (1996) 1 SCR 683 : (1996) 1 UJ 549 ; State of Haryana and Others Vs. Manoj Kumar, AIR 2010 SC 1779 : (2010) 2 JT 577 : (2010) 2 SCALE 783 : (2010) 4 SCC 350 : (2010) 4 SCR 175 : (2010) 3 UJ 1386).

25. Market value of the property has to be determined with reference to the date on which the document is executed. (Hariom Agrawal Vs. Prakash Chand Malviya, AIR 2007 SC 166 : (2008) 3 CTC 457 : (2007) 12 JT 49 : (2007) 11 SCALE 705 : (2007) 8 SCC 514 : (2007) 10 SCR 772 ; State of Rajasthan and Others Vs. Khandaka Jain Jewellers, AIR 2008 SC 509 : (2008) 1 CTC 60 : (2007) 13 JT 82 : (2007) 13 SCALE 190 : (2007) 12 SCR 105 : (2007) AIRSCW 3619).

26. Market value as referred to in the expression conveyance is the price which a willing purchaser would pay to a willing seller for the property. The Court in Vijay Kumar and another v. Commissioner, 2008 (7) ADJ 293, explained the expression

"market value":

"The ''market value'' means what, a willing purchaser would pay to a willing seller for the property having regard to the advantages available to the land and the development activities which may be going in the vicinity and potentiality of the land."

27. Again in Ratna Shankar Dwivedi (supra) the Court held that:

"The term "market value" has not been defined under the Act. However there are some precedents laying down certain guidelines as to how and in what manner a market value would be determined. The consensus opinion is that the market value of any property is the price which the property would fetch or would have fetched if sold in the open market."

28. The sine qua non for invoking provisions of Section 47-A(3) of the Act is that the Collector had reason to believe, that the value had not been properly set forth in the instrument as per market value of the property. Once the instrument is registered and the stamp duty as prescribed by the Collector was paid, the burden to prove that the market value was more than the minimum prescribed by the Collector under the rules, was upon the Collector. The report of the sub-Registrar or Tehsildar was not sufficient to discharge that burden. (Vijay Kumar v. Commissioner, Meerut Division, 2008 (7) ADJ 293.

29. The expression "reason to believe" is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith, it cannot be merely a pretence. It is open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not irrelevant or extraneous to the purpose of the section. (Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others, AIR 1985 SC 989 : (1985) 58 CompCas 477 : (1986) CriLJ 824 : (1985) 46 CTR 319 : (1985) 6 ECC 103 : (1985) 155 ITR 166 : (1985) 1 SCALE 1208 : (1985) 3 SCC 72 : (1985) 3 SCR 969 ; State of Punjab v. Mahavir Singh, AIR 1996 (1) SCC 609 ; Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, AIR 1976 SC 1753 : (1976) 103 ITR 437 : (1976) 3 SCC 757 : (1976) 3 SCR 956).

30. The term "reason to believe" occurring in sub-section (3) of Section 47-A spells out that the Registering Officer, must have some material-direct, circumstantial or even intrinsic evidence on the basis of which he may come to a reasonable belief that the market value of the property has not been truly set forth in the instrument. (Duncans Industries Limited Vs. State of U.P. and Others, AIR 1998 All 72 (affirmed by Supreme Court in appeal), Duncans Industries Ltd. Vs. State of U.P. and Others, AIR 2000 SC 355 : (2000) 1 CTC 374 : (2000) ECR 19 : (1999) 9 JT 421 : (1999) 7 SCALE 344 : (2000) 1 SCC 633 : (2000) 1 UJ 659 : (1999) AIRSCW 4485 : (1999) AIRSCW 4902 : (1999) 10 Supreme 91 .

31. It was not enough for the authority for the purpose of invoking Section 47-A of the Act that the consideration amount shown in the agreement for sale was less than the prevailing market value, but the authority must be satisfied as to an attempt on the part of the party to under value the property. (Residents Welfare Association, Noida Vs. State of U.P. and Others, (2009) 1 CLR 1032 : (2009) 6 JT 448 : (2009) 6 SCALE 94 : (2009) 14 SCC 716 : (2009) 6 SCR 112 : (2009) 7 UJ 3150)

32. It is open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not irrelevant or extraneous to the purposes of the section. (Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others, AIR 1985 SC 989 : (1985) 58 CompCas 477 : (1986) CriLJ 824 : (1985) 46 CTR 319 : (1985) 6 ECC 103 : (1985) 155 ITR 166 : (1985) 1 SCALE 1208 : (1985) 3 SCC 72 : (1985) 3 SCR 969).

33. The binding precedent referred hereinabove would suggest that the burden to prove that the property was undervalued was upon the Collector. The only material available with the Collector was the report of the Tehsildar dated 11.12.2008. The report was not sufficient to discharge that burden. Evidence of comparable bona fide sales of land situated of near about land, possessing same or similar advantageous feature would furnish basis for determining the market value. Merely because the property at some point of time was put to non-agricultural use would not mean that the market value of the property could be valued at commercial rate. The Collector has not referred to a single exemplar to indicate that similar property in the vicinity is being sold and purchased at commercial rate. The Tehsildar''s report on the contrary is indicative of the fact that property in question is surrounded by residential houses, suggesting that there has been a change of land use from agricultural to an urban agglomeration predominantly being of residential use.

34. The object of the Act is to collect proper stamp duty on an instrument or conveyance. An obligation is cast on the authorities to properly ascertain its true value. The market value of a property may vary from village to village, from location to location and even may differ from the sizes of land area and other relevant factors viz. predominant land-use. Entry in revenue record though relevant is not the sole determining factor of the market value under the Act. This apart there has to be some material before the authority as to what is the likely value of such property in that area. Such ''reason to believe'' must be based on tangible, relevant and legally admissible evidence. There must be an intelligible nexus between the ''reason'' and the ''belief''. Such belief should not be substitute for roving enquiries or the authorities ''reason to suspect''.

35. Having due regard to the provisions of the Rules and the law referred to, I am of the opinion that the Collector was in error in determining the value of the property merely for the reason that the property was put to non agricultural use ten years back. The reason becomes untenable as it fails to subscribe to the

parameters for determining the market value as detailed in the Rules. The impugned orders on that count cannot be sustained.

36. It is urged on behalf of the petitioner that the property being recorded as an agricultural property in the revenue records, therefore, the property should have been valued as such and not as a property having commercial potential. The contention cannot be accepted as explained in the earlier part of the order. Market value is dependent on several factors and not merely on the nature of the property as described in the revenue record.

37. The Court in Aniruddha Kumar and Ashwini Kumar Vs. Chief Controlling Revenue Authority, Uttar Pradesh, Allahabad and another, (2000) 3 AWC 2587 : (2000) 91 RD 566 , laid down that where in respect of agricultural land there is no declaration under Section 143 of the U.P.Z.A. and L.R. Act 1950 its nature would not change and its market value for the purposes of payment of stamp duty would be determined on the basis of the agricultural character of the land not on the future potentiality.

38. A Division Bench in Kishore Chandra Agarwal v. State of U.P. and others, 2007 (10) ADJ 607 (DB) (LB), in the facts of that case, where the land which was recorded as a bhoomidhari or agricultural land and stamp duty was being demanded treating the land commercial land to be in semi-urban area. The Court made following observation:

"The agricultural land situate on the roadside of a highway in semi-urban area or countryside area cannot be treated as commercial or residential unless that area is declared as commercial or residential in the Master Plan prepared by the State Government."

39. In Prakashwati (Smt) Vs. Chief Controlling Revenue Authority, Board of Revenue, U.P. at Allahabad and Others, (1996) 5 AD 401 : (1996) 6 JT 190 : (1996) 5 SCALE 73 : (1996) 4 SCC 657 : (1996) 2 UJ 653 , the Hon''ble Supreme Court held that situation of a property in an area close to a decent colony would not by itself make it part thereof and should not be a factor for approach of the authority in determining the market value. Accordingly, valuation has to be determined on constructive materials, which could be made available before the authorities concerned.

40. This Court in Shivkali Devi Vs. Commissioner, (2014) 106 ALR 512 : (2014) 124 RD 739 , relying upon Prakashwati (supra) and Kishore Chandra Agarwal (supra), observed that the land recorded in revenue record as agricultural land cannot be treated as non agricultural land merely on the report of Additional Collector.

41. Market value of the property has to be seen irrespective of the fact whether it is residential, commercial or agricultural. Nature of the land and its current use may not be relevant, if around the plot in question, properties were being sold and bought at commercial rates, then for determination of stamp duty, market

value of the property would be the same as that of property bought for commercial use. D.P.R. Foods (P.) Ltd. v. State of Uttar Pradesh, 2010 (6) ADJ 341.

42. Evidence of bona fide sales between prudent vendor and prudent vendee of land acquired or situated near about land possessing same or similar advantageous features would furnish basis to determine the market value. (Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, (1994) 2 JT 604 : (1994) 2 SCALE 298 : (1994) 4 SCC 595 : (1994) 1 SCR 368 : (1994) 2 UJ 17).

43. The Supreme Court in Neeraj Jain v. State of U.P. and others, Civil Appeal No. 8286 of 2014, decided on 26.8.2014, observed that "the Court should require State Government to put forth the material on record that there has been a change of user or there are other contemporaneous sale-deeds in respect of adjacent area and the market value has been increased or there has been a change in the agricultural land to the urban agglomeration and such other ancillary aspects."

44. In M/s. Maya Food and Vanaspati Ltd. Co. v. Chief Controlling Revenue Authority (Board of Revenue) Allahabad, 1990 (90) RD 57, the Court held that market value of the land for the purposes of payment of stamp duty cannot be determined with reference to its future use or the intended use to which it is likely to be put by the purchaser.

45. The decided cases do not detail the norms or parameters for determination of the market value, the cases have been decided on the facts of those cases. It would not be proper for the Court to lay down the parameters or norms for determination of the market value. Market Value would vary from facts of each case depending upon a number of factors including entry of the nature of the property in revenue record.

46. Though entry in the revenue record regarding the nature of the property may be relevant but would not constitute the sole factor in determining the market value. Market value is dependent upon other factors viz. change of user in adjacent area or change of agricultural land to urban agglomeration or if the properties were being sold and bought at commercial rates then for the purposes of stamp duty the market value of the property would be the same as that of the property bought at commercial rate, irrespective of the entry in the revenue record.

47. The petitioner had not placed before the Collector any exemplar of similar property to show that the predominant use in the vicinity of the property in question is agricultural and not non-agricultural. So did the Collector failed to show that the predominant land use in the area was commercial irrespective of the property being entered in revenue record as agricultural.

48. Having due regard to the material available on record i.e. the undisputed

spot inspection report, coupled by the spot inspection of the Collector (undertaken in 2013), the property in question was not being used commercially on the date of execution of the deed, the property is located in a urban area (municipal area), the predominant land use appears to be residential as the property is surrounded by residential buildings, and there being no reference of any economic activity in the vicinity of the property, therefore the property in this background cannot be said to be hiving commercial potential on the date of the execution of the sale-deed.

49. Therefore, the determination by the Collector that the property in question would have to be valued commercially, merely because the property, in the past, was being used for non agricultural purposes, would riot bring the property within the expression of commercial building/shop.

50. Penalty could have been imposed, if there was 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 .

51. For the reasons and law stated herein above, the impugned order dated 26.4.2013 passed by the second respondent, Collector Jaunpur is quashed.

52. The matter is remitted back to the Collector, Jaunpur for redetermination of the market value of the property in the light of the direction and observation made in the judgment within three months from the date of service of certified copy of this order.

53. Subject to above, the writ petition stands allowed. The approach of the Collector in determining the market value despite the direction of this Court dated 29.1.2013 was a very casual and not based on the parameter of settled position of law in determining the market value of a property under the Act. The Collector instead of returning the determination as directed by the Court, merely reiterated the earlier reasoning and enhanced the penalty which was not called for. I am of the opinion that the petitioner has been subjected to the unnecessary hardship and inconvenience for having to resolve the writ proceedings for quashing the order. The petitioner is therefore, entitled to costs which is quantified at Rs. 50,000/- payable by the Collector, Jaunpur. It will be open for the State to recover the cost from the salary of the then Collector, Jaunpur.

