

(2015) 02 AHC CK 0100

In the Allahabad High Court

Case No : Reference Against Misc. Acts. No. 1 of 1993

Pushpa Sareen

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Stamp Act, 1899 — Section 17, 27, 38(2), 56(1), 57

Citation : (2015) 3 ADJ 136 : AIR 2015 All 83 : (2015) 111 ALR 264 : (2015) 3 AWC 2856 : (2015) 3 CTC 241 : (2015) 2 ESC 819 : (2015) 2 RCR(Civil) 1026 : (2015) 128 RD 713 : (2015) 127 RD 855 : (2015) 3 UPLBEC 1770

Hon'ble Judges : D.Y. Chandrachud, C.J.; Dilip Gupta, J.; Suneet Kumar, J

Bench : Full Bench

Advocate : Ajay Kumar Singh, Ashish Kumar Singh and Rajendra Kumar, for the Appellant; C.B. Yadav, A.A.G. and Sashank Shekhar Singh, A.C.S.C., Advocates for the Respondent

Judgement

Dr. Dhananjaya Yashwant Chandrachud, C.J.

1. The present reference to a bench of three Judges is in pursuance of the provisions of Section 57(1) of the Indian Stamp Act 1899 (Stamp Act). The questions which have been referred to this Full Bench for determination by the Chief Controlling Revenue Authority are as follows:

"(1) Whether the registering officer can refer a document even if he does not find that the market value of the property as set forth in the instrument is less than even the market value determined in accordance with the rules made under this Act;

(2) Whether the Collector Stamps has power to fix the valuation of a plot on the assumption that the same is likely to be used for commercial purposes, and whether the presumed future prospective use of the land can be a criterion for valuation by the Collector;

(3) What should be the norms for fixing the valuation of a free-hold land vis-a-

vis lease land;

(4) Whether the Collector can demand stamp duty under Section 47-A of the Stamp Act without a finding of fact that the market value as stated in the document is less than that which was actually agreed upon between the parties;

(5) Whether the orders passed by the Chief Controlling Revenue Authority can be reviewed if it is shown that the known norms of valuation have not been followed in the case."

An agreement to sell was entered into on 11 November 1982 for the sale of certain immovable property, admeasuring 17377 sq.ft. equivalent to 1615 sq. mtrs., more particularly described as J-13/93, Chauka Ghat, Cotton Mills Compound at Varanasi for a consideration of Rs. 2,96,660/-. A deed of conveyance was executed on 30 August 1985. When the document was presented for registration, registration was postponed because no map was attached to the sale-deed. In the meantime, a complaint was addressed to the Additional Collector (Finance and Revenue) stating that the valuation of the plot together with structure standing thereon would not be less than Rs. 13 lacs and that there was a willful attempt to evade stamp duty.

2. The Additional Collector called for a report together with the original documents. On 26 December 1985, the Joint Sub-Registrar, Varanasi made a reference under Section 47-A(1) of the Stamp Act. Following the receipt of the reference, a notice to show-cause was issued to the purchasers who filed their objections. On behalf of the purchasers, it was urged that the rate which was reflected in the agreement to sell was higher than the market rate and the stamp duty had been paid on a much higher valuation of Rs. 3,70,000/- as compared to the rate of Rs. 1,44,000/- fixed under the United Provinces Stamp Rules, 1942 (the Stamp Rules). The Additional Collector (Finance and Revenue), by an order dated 21 October 1987, adjudicated upon the case and directed the purchasers to pay a deficit of stamp duty of Rs. 1,46,317.50 holding the valuation of the land and building to be Rs. 17,63,032/-. The purchasers filed a revision under Section 56(1) of the Stamp Act before the Chief Controlling Revenue Authority which was dismissed on 13 January 1990. On 1 January 1991, the purchasers moved the Chief Controlling Revenue Authority stating that the case involved substantial questions of law which should be referred to the High Court under Section 57(1) of the Stamp Act. Allowing the application, a reference has been made of the questions referred to above.

3. Before we deal with the questions which have been referred to this Bench on a reference under Section 57(1), it would be necessary to answer a preliminary objection which has been raised by the learned Additional Advocate General to the maintainability of the reference. The submission which has been urged is that the Chief Controlling Revenue Authority has the power to refer a case under Section 57(1), which is pending before it. For, it is only when a case is pending before the authority, that Section 59(2) contemplates that the authority would

dispose of the case on the basis of the judgment of the High Court rendered on the reference. In the present case, it was urged that once the Chief Controlling Revenue Authority had disposed of the case, there was no pending proceeding before it and a reference could not have been made.

4. The preliminary objection does not raise an issue which is *res integra*. The issue as to whether a reference can only be made in a pending case was dealt with in several judgments by the Supreme Court.

5. In *The Chief Controlling Revenue Authority and Another Vs. The Maharashtra Sugar Mills Ltd.*, AIR 1950 SC 218, a Constitution Bench of the Supreme Court held that the power to make a reference under Section 57 is not only to the benefit of the Chief Controlling Revenue Authority but also enures for the benefit of a party which is affected by the assessment. The power which is conferred upon the Chief Controlling Revenue Authority is coupled with a duty which is cast on him, as a public officer to do the right thing and when an important and intricate question of law in regard to the construction of a document arises before him, the officer is duty bound to make a reference. Moreover, if he was to omit to do so, it would be open to the High Court in the exercise of its jurisdiction to issue a mandamus directing him to discharge the duty and make a reference to the Court.

6. The issue as to whether the power to make a reference in a case which is not pending before the authority is exhausted once the case has been disposed of stands concluded by the decision of the Supreme Court in *Banarsi Das Ahluwalia Vs. The Chief Controlling Revenue Authority, Delhi*, AIR 1968 SC 497 : (1968) 1 SCR 685. In that case, a deed of trust was submitted to the Sub-Registrar for registration, where it came to be impounded and forwarded to the Collector under Section 38(2) of the Stamp Act. The Collector adjudicated the stamp duty and penalty against which a revision was filed before the Chief Controlling Revenue Authority. The revisional authority reduced the deficit duty and penalty by passing an order on the revision. Subsequently, an application was made to the authority to state a case to the High Court under Section 57(1) which was rejected and a writ petition before the High Court was also dismissed in limine. The Supreme Court held that the view which had been taken *inter alia* by the High Court of Allahabad holding that a reference could be made under Section 57 only when a case is pending and in which a question of the amount of stamp duty is yet to be decided proceeded on an erroneous construction of the decision in *Maharashtra Sugar Mills* (*supra*). The Supreme Court held that in *Maharashtra Sugar Mills* (*supra*), there was no case pending before the authority or any other Court and yet a mandamus granted by the High Court was confirmed. Consequently, the principle of law which has been stated is as follows:

"...It also must now be taken as settled that that duty is not affected by the question whether the case is pending before the Authority or not. The principle underlying the decision is that Section 57 affords a remedy to the citizen to have his case referred to the High Court against an order of a revenue authority

imposing stamp duty and/or penalty provided the application involves a substantial question of law and imposes a corresponding obligation on the authority to refer it to the High Court for its opinion. Such a right and obligation cannot be construed to depend upon any subsidiary circumstance such as the pendency of the case before the Authority. If the position is as held in I.L.R. 25 Mad. 752 the mere fact that the Collector has determined the duty and closed the case would render nugatory not only the controlling jurisdiction of the Authority but the remedy which Section 57(1) gives to the citizen as also the obligation of the Authority to state the case. The difficulty which the learned judges felt in I. L. R. 25 Mad. 752 and repeated in subsequent decisions is not, in our view, a real one because as soon as a reference is made and the High Court pronounces its judgment the decision of the Authority is at large and the Authority, as required by Section 59(2) would have to dispose of the case in conformity with such judgment. The position therefore is that when a reference has been made to the Authority or the case has otherwise come to his notice, if an application is made under Section 57(1) and it involves a substantial question of law, whether the case is pending or not, the Authority is bound to state the case in compliance with its obligation. The Authority is in a similar position as the Income-tax Tribunal under analogous provisions in the Income-tax Act."

In view of this decision, the preliminary objection cannot be accepted.

7. Undoubtedly, once a decision is rendered on the reference under Section 57, Section 59(2) requires the Court to remit a copy of its judgment to the revenue authority by which the case was stated. The revenue authority on receiving a copy of the decision has to dispose of the case conformably to such judgement. The word's "dispose of the case" are not amenable to the construction nor can they be construed to mean a case which is pending before the revenue authority. What Section 59(2) essentially requires is that effect has to be given to the decision of the High Court on a reference under Section 57. Once a decision is rendered on a reference, the authority making the reference has to act in conformity with the decision by disposing of the case. We, therefore, are unable to accept the preliminary objection to the maintainability of the reference.

8. We will now proceed to analyze the questions referred to in the order of reference. At the outset, it would be necessary for the Court to clarify that the position will have to be considered on the basis of the provisions of the Indian Stamp Act 1899 as it stood at the material time and the United Provinces Stamp Rules 1942.

9. Section 47-A as amended by U.P. Act Nos. 11 of 1969, 20 of 1974, 49 of 1975 and 6 of 1980 provided as follows:

"47-A Instruments of conveyance etc., if undervalued, how to be dealt with.--(1) If the market value of any property which is the subject of any instrument of conveyance, exchange, gift, settlement, award or trust as set forth in such instrument, is less than even the minimum value determined in accordance with

any rules made under this Act the registering officer appointed under the Indian Registration Act, 1908, shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) Without prejudice to the provisions of sub-section (1), if such registering officer while registering any instrument on which duty is chargeable on the market value of the property has reason to believe that the market value of the property which is the subject of such instrument, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(3) On receipt of a reference under sub-section (1) of sub-section (2) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject of the instrument and the duty as aforesaid. The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty.

(4) The Collector may, suo motu, or on a reference from any Court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the Board of Revenue in that behalf within four years from the date of registration of any instrument on which duty is chargeable on the market value of the property not already referred to him under sub-section (1) or sub-section (2), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject of such instrument and duty payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty payable thereon in accordance with the procedure provided for in sub-section (3). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty."

10. Sub-section (1) of Section 47-A enables the registering officer who is appointed under the Indian Registration Act, 1908 to refer an instrument to the Collector for determining the market value of the property and the duty payable thereon. The registering officer was empowered to do so, if the market value of any property which was the subject of the instrument, as set forth in the instrument, was less than even the minimum value determined in accordance with the rules made under the Indian Stamp Act, 1899. Subsection (2) of Section 47-A was without prejudice to the provisions of sub-section (1), and enabled the registering officer while registering any instrument to refer the instrument to the Collector for determination of the market value of the property and the duty payable thereon. Subsection (2) indicated that the registering officer had to do so after registering such instrument. His power to refer the instrument to the Collector for adjudication of the market value and the duty payable thereon came

into existence on his having reason to believe that the market value of the property had not been truly set forth in the instrument. On receipt of a reference under sub-section (1) or Sub-section (2), the Collector under sub-section (3) was empowered to determine the market value of the property after holding an enquiry in which the parties would have a reasonable opportunity of being heard. Thereupon, the difference in duty was payable by the person liable to pay the duty. Sub-section (4) conferred a suo motu power upon the Collector as well as a power on a reference from any Court where the instrument had not been referred under sub-section (1) or sub-section (2). Under sub-section (4), the Collector was empowered to call for and examine the instrument for the purpose of satisfying himself of the correctness of the market value of the property and the duty payable thereon and if he had reason to believe that the market value of such property was not truly set forth, he would determine the market value as well as the duty payable in accordance with the provisions of Sub-section (3). Sub-sections (1), (2), and (4) of Section 47-A operated in distinct eventualities. Sub-section (1) operated in a situation where the registering officer found that the market value of the property which was the subject-matter of the instrument was less than even the minimum prescribed in the rules made under the Act. Sub-section (2) applied to a situation where the registering officer formed a reason to believe that the market value of the property has not been truly indicated in the instrument, when it was presented to him for registration and the registering officer was empowered after registering the instrument to refer it to adjudication to the Collector. Sub-section (4) inter alia enabled the Collector suo motu to examine an instrument and to adjudicate upon the market value of the property if he had reason to believe that the market value was not truly set forth in the instrument. Under sub-section (4), the power was exercisable by the Collector within a stipulated period from the date of the registration of the instrument. The expression "reason to believe" conditions the exercise of power under sub-sections (2) and (4). On the other hand, under sub-section (1), the registering officer could refer the instrument to the Collector, if the market value of the property as reflected therein, was less than the minimum which was prescribed in the rules. Hence, a situation where the market value of the property was less than even the minimum prescribed in the rules, was a condition which applied to exercise of the power under sub-section (1). However, sub-sections (2) and (4) did not condition the exercise of power on a finding that the market value as reflected in the instrument is below the market value prescribed in the rules. Under both sub-sections (2) and (4), the registering officer or, as the case may be, the Collector had to form a reason to believe; the reason to believe being that the market value, as reflected in the instrument, was not a correct reflection of the true market value of the property.

11. Once this legal position is clear from a plain and literal construction of the provisions of Section 47-A, the answer to the first question in the reference does not pose any difficulty. The registering officer under sub-section (1) was required to find that the market value of the property as set forth in instrument is less

than even the market value prescribed by the rules. However, this requirement of Sub-section (1) of Section 47-A had not been incorporated by the legislature either in sub-section (2) or in sub-section (4). The registering officer under sub-section (1) of Section 47-A, exercised the power to refer the matter to the Collector even before the registration of the document. On the other hand, without prejudice to the provisions of sub-section (1), the registering officer was empowered by sub-section (2) to refer the instrument to the Collector for adjudication of the market value and the duty, if he had reason to believe that the market value of the property had not been truly set forth in the instrument. The power under sub-section (2) came into existence, if while registering the instrument, the registering officer formed a reason to believe and the provision stipulated that after registering the document, he was required to forward it to the Collector who, in turn, upon receipt of the instrument, had to pursue the procedure under Sub-section (3). Hence, it would not be a correct interpretation of the provisions of Section 47-A to read the requirement of sub-section (1) into the provisions of subsections (2) and (4). Each of them operates in a distinct field and is governed by a different set of conditions. We, therefore, answer question 1 by holding that a finding that the market value of the property as set forth in the instrument is less than even the minimum market value determined in accordance with the rules made under the Act applies to a situation governed by sub-section (1) and not to a situation governed by sub-sections (2) and (4),

12. In connection with the first question, we will now take up the fourth question for analysis.

Section 27 of the Stamp Act stipulated as follows:

"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."

13. In exercise of the powers conferred by the provisions of the Stamp Act, the Stamp Rules were made. Chapter XV contains provisions for the determination of the market value on certain instruments.

14. Sub-section (3) of Section 47-A provided that on receipt of a reference under sub-section (1) or sub-section (2), the Collector after furnishing a reasonable opportunity of being heard and upon holding an enquiry as prescribed by the rules was required to determine the market value of the property which is the

subject-matter of the instrument as well as the duty. The question as framed for reference is whether the Collector should demand stamp duty under Section 47-A without a finding of fact that the market value as stated in the document is less than that which was agreed upon between the parties. The Collector, as we have already noted, could be moved on a reference by the registering officer under sub-section (1) or sub-section (2) or could even exercise his powers suo motu under sub-section (4). When he received a reference under sub-sections (1) and (2), the Collector was required to follow the provisions of sub-section (3). Similarly, even when the Collector acted suo motu under sub-section (4), he was required to follow the procedure provided in sub-section (3). In other words, once the Collector was seized with the proceedings either on a reference under sub-section (1) or sub-section (2) or suo motu under sub-section (4), what he was required to determine is the market value of the property in accordance with the provisions of sub-section (3). Whether the market value, as stated in the document, is less than that which was actually agreed upon between the parties, to our mind, begs the basic question. The jurisdiction of the Collector was to determine the correct market value. These provisions of Section 47-A were introduced in order to curb the evasion of stamp duty and to enable the Collector to determine what is the correct market value of the property in a situation where the instrument was not reflective of the correct market value.

The law on the subject was duly formulated in several decisions of this Court.

15. In *Kaka Singh Vs. The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another*, AIR 1986 All 107 : (1987) RD 286 , a Division Bench of this Court noted that Section 47-A filled in a lacuna because prior to the insertion of the provision, there was no enabling provision under the Act empowering the revenue authority to make an enquiry into the value of the property conveyed for determining the duty payable thereon. Section 27 of the Act laid down that 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 truly and fully set forth therein. However, prior to the insertion of Section 27, if the instrument did not set forth the true market value of the property, the revenue was not empowered to adjudicate upon the correct market value. This lacuna which was noticed in a judgment of the Supreme Court in *Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority*, AIR 1972 SC 899 : (1972) 1 SCC 726 : (1972) 3 SCR 332 , was remedied by the insertion of Section 47-A. After the insertion of Section 47-A, this Court had taken the consistent position that the power of the Collector was not only confined to the minimum value which was prescribed in the rules framed under the Act. Rule 341 of Chapter XV of the Stamp Rules provided that for the purposes of the payment of stamp duty, the minimum market value of immovable property forming the subject inter alia of a conveyance referred to in Section 47-A(1) would not be less than what was arrived at on the basis of the provisions of the rules. But it was well-settled that the power of the Collector was not confined to the minimum as prescribed in Rule

341. In other words, the value computed under Rule 341 was not conclusive of what should be the correct market value when the Collector had to make a determination in pursuance of an inquiry under sub-section (3) of Section 47-A. Under sub-section (1) of Section 47-A, the registering officer could make a reference to the Collector, if he found that the market value as reflected in the instrument was less than even the minimum prescribed in the Rules. However, the minimum which was prescribed in the rules was at best a guiding factor for the Collector and was not conclusive of his power to determine the market value. For that matter, the value under Rule 341 was not binding either on the person who produced the instrument for registration or on the State Government.

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

17. We may also note at this stage that the decision of the Division Bench in Kaka Singh (supra) was followed by another Division Bench of this Court in Agra City Real Estate Development Organisation Vs. State of U.P. and Others, (2003) 4 AWC 3342 : (2003) 95 RD 322 : (2003) 3 UPLBEC 2201 : (2003) 3 UPLBEC 2101 , where it was held as follows:

"Section 47A (1) does not say that the valuation of the property for the purpose of stamp duty has to be the minimum value determined under the Rules. All it says is that if the valuation set forth in the instrument is less than the minimum value determined in accordance with the rules, then a reference has to be made to the Collector. Thus, the minimum value fixed under the rules is only for the purpose of getting a reference made to the Collector. When the reference comes before the Collector, he has to make an enquiry and determine the correct market value of the property. After such enquiry, the Collector can even hold that the correct market value of the property is less than the minimum fixed under the Rules."

18. In this view of the matter, we answer question 4 by holding that the power of Collector to determine the market value either on a reference under sub-section (1) or (2) of Section 47-A or acting suo motu under sub-section (4) was to determine the correct market value of the property.

19. Now insofar as the second question is concerned, the issue posed for consideration before the Court is whether the Collector has the power to fix the valuation of a plot on the assumption that it is likely to be used for commercial purposes and whether the presumed future prospective use of the land can be a criterion for valuation by the Collector. The Collector, while exercising his jurisdiction under Section 47-A, is required to determine the market value of the property on the date of the instrument. It is a well-settled principle of law that

stamp duty is a levy which is imposed not on the transaction but on the instrument.

20. The attention of the Court has been drawn to certain judgments of the learned Single Judges of this Court which had taken the view that the market value of the land could not be determined with reference to the use of the land to which the buyer intends to put it in future.

21. Section 17 of the Stamp Act provides that all instruments chargeable to duty and executed by any person in India shall be stamped before or at the time of execution.

22. In certain judgments of the learned Single Judges of this Court, a view had been taken that the authorities are required to determine the value of the land on the date on which the sale was made and cannot consider the potential value of the land to which it could be put to use in future. *Smt. Kusum Lata Jaiswal Vs. State of U.P. and Others*, (2010) 2 AWC 1720(1) . Similarly in *Dinesh Tiwari Vs. Commissioner, Gorakhpur and others*, (2012) 3 AWC 2343 , it was held that the Collector had no power to assess the market value of the property on the basis of a future value which the property may acquire.

23. The power and jurisdiction of the Collector, as contained in Section 47-A, is to determine the actual market value of the property. The Collector in making that determination is not bound either by the value as described in the instrument or for that matter, the value as discernible on the basis of the rules.

24. In *Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others*, AIR 1999 SC 2126 : (1999) 4 JT 469 : (1999) 3 SCALE 636 : (1999) 5 SCC 62 : (1999) 3 SCR 462 : (1999) 2 UJ 1035 : (1999) AIRSCW 1873 : (1999) 5 Supreme 443 , the Supreme Court held as follows:

"The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is matter for common knowledge in order to escape such duty by unfair practice, many a time under valuation of a property or lower consideration is mentioned in a sale-deed. The imposition of stamp duty on sale-deeds are on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast on authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village; from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is likely value of such property in that area. In its absence it would be very difficult for such Registering Authority to assess the valuation of such instrument. It is to give such support to the Registering Authority the Rule 340-A is introduced. Under this Collector has to

satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area concerned. This is merely a guideline which helps the Registering Authority to assess the true valuation of a transaction in an instrument. This gives him material to test prima facie whether description of valuation in an instrument is proper or not.... Reading Section 47-A with the aforesaid Rule 340-A it is clear that the circle rate fixed by the Collector is not final but is only a prima facie determination of rate of an area concerned only to give guidance to the Registering Authority to test prima facie whether the instrument has properly described the value of the property. The circle rate under this Rule is neither final for the authority nor to one subjected to pay the stamp duty. So far sub-sections (1) and (2) it is very limited in its application as it only directs the Registering Authority to refer to the Collector for determination in case property is under valued in such instrument. The circle rate does not take away the right of such person to show that the property in question is correctly valued as he gets an opportunity in case of under valuation to prove it before the Collector after reference is made. This also marks the dividing line for the exercise of power between the Registering Authority and the Collector. In case the valuation in the instrument is same as recorded in the circle rate or is truly described it could be registered by Registering Authority but in case it is under valued in terms of sub-section (1) or sub-section (2), it has to be referred and decided by the Collector. Thus, the circle rate, as aforesaid, is merely a guideline and is also indicative of division of exercise of power between the Registering Authority and the Collector."

25. The true test for determination by the Collector is the market value of the property on the date of the instrument because, under the provisions of the Act, every instrument is required to be stamped before or at the time of execution. In making that determination, the Collector has to be mindful of the fact that the market value of the property may vary from location to location and is dependent upon a large number of circumstances having a bearing on the comparative advantages or disadvantages of the land as well as the use to which the land can be put on the date of the execution of the instrument.

26. Undoubtedly, the Collector is not permitted to launch upon a speculative inquiry about the prospective use to which a land may be put to use at an uncertain future date. The market value of the property has to be determined with reference to the use to which the land is capable reasonably of being put to immediately or in the proximate future. The possibility of the land becoming available in the immediate or near future for better use and enjoyment reflects upon the potentiality of the land. This potential has to be assessed with reference to the date of the execution of the instrument. In other words, the power of the Collector cannot be unduly circumscribed by ruling out the potential to which the land can be advantageously deployed at the time of the execution of the instrument or a period reasonably proximate thereto. Again the use to which land in the area had been put is a material consideration. If the land surrounding the property in question has been put to commercial use, it would be improper to

hold that this is a circumstance which should not weigh with the Collector as a factor which influences the market value of the land.

27. The fact that the land was put to a particular use, say for instance a commercial purpose at a later point in time, may not be a relevant criterion for deciding the value for the purpose of stamp duty, as held by the Supreme Court in *State of U.P. and Others Vs. Ambrish Tandon and Another*, AIR 2012 SC 1140 : (2012) 114 CLT 759 : (2012) 1 CTC 556 : (2012) 1 RCR(Civil) 865 : (2012) 1 SCALE 631 : (2012) 5 SCC 566 : (2012) AIRSCW 1185 : (2012) 1 Supreme 324 . This is because the nature of the user is relatable to the date of purchase which is relevant for the purpose of computing the stamp duty. Where, however, the potential of the land can be assessed on the date of the execution of the instrument itself, that is clearly a circumstance which is relevant and germane to the determination of the true market value. At the same time, the exercise before the Collector has to be based on adequate material and cannot be a matter of hypothesis or surmise. The Collector must have material on the record to the effect that there has been a change of use or other contemporaneous sale-deeds in respect of the adjacent areas that would have a bearing on the market value of the property which is under consideration. The Collector, therefore, would be within jurisdiction in referring to exemplars or comparable sale instances which have a bearing on the true market value of the property which is required to be assessed. If the sale instances are comparable, they would also reflect the potentiality of the land which would be taken into consideration in a price agreed upon between a vendor and a purchaser.

28. In the circumstances, we answer the second question as referred in the aforesaid terms.

29. The third question which has been referred would not arise in this reference. The question is what should be the norms for fixing the valuation of free hold land vis-?-vis lease hold land. In the present case, it is not in dispute that the land was not lease hold property. Hence, properly construed the question would not arise for determination in this reference.

30. Finally, in respect of the fifth and the last question, the law on the subject is clear. The power of substantive review is a statutory power which has to be conferred upon an authority by an enabling provision of law. The power of a substantive review cannot be implied.

31. In a decision of the Supreme Court in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, AIR 1970 SC 1273 : (1971) 3 SCC 844 , the principle of law was enunciated in the following terms:

"...It is well-settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its

order..."

32. In *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, AIR 1981 SC 606 : (1981) 42 FLR 88 : (1981) 1 LLJ 327 : (1981) 2 SCR 341 : (1981) 1 SLJ 510 : (1981) 13 UJ 42 , a distinction was made between a procedural review which is inherent or implied in a Court or Tribunal and a review on merits where the error which is sought to be corrected is one of law and is apparent on the face of the record.

33. The decision in *Patel Narshi* has been construed in the judgement in *Grindlays Bank (supra)* to exclude a substantive power of review where there is no enabling provision. However, when a review is sought due to a procedural defect arising out of an inadvertent error committed by the Tribunal, such as when an authority or Tribunal has decided a proceeding without notice to the affected parties, the power of a procedural review inheres in the Tribunal or authority. This principle has been reiterated by the Supreme Court in *Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another*, AIR 2005 SC 1782 : (2005) 105 FLR 416 : (2005) 2 LLJ 271 : (2005) 13 SCC 777 : (2006) SCC(L&S) 1635 : (2005) 2 SCR 888 : (2005) 2 SLJ 338 . In this view of the matter, we hold that the Chief Controlling Authority does not possess a substantive power to review its own decision. However, a limited procedural review in terms of the judgments of the Supreme Court referred to above would be maintainable.

The reference is answered in the above terms.

There shall be no order as to costs.