(2008) 08 AHC CK 0243

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12432 of 2008

Sunny Motors Pvt Ltd APPELLANT

Vs

State of U.P.and Others RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Stamp Act, 1899 — Section 27, 33, 47A
Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 — Rule 4, 5, 7
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (2008) 08 AHC CK 0243

Hon'ble Judges : V.K.Shukla, J

Final Decision : Disposed Of

Judgement

V.K. Shukla, J.—Petitioner in the present writ petition is assailing the validity of the order dated 31.12.2007 passed by Additional District Magistrate, (F&R) Kanpur Nagar in Stamp Case No. 411 of 200607 under Section 33/47A of the Indian Stamp Act holding deficiency of stamp duty and imposing penalty as affirmed in Revision by the Chief Controlling Revenue Authority, U. P. Allahabad on 25.2.2008.

2. Brief background of the case is that on 21.7.2004 petitioner purchased plot No. 139 area 0.348 hectares i.e. 1 Bigha 14 Biswa situated at village Rooma, Tehsil and District Kanpur Nagar from the then Bhumidhar by a registered sale deed. The market value of the plot was assessed at Rs. 10, 32, 920/and a sum of Rs. 1, 03, 300/ as stamp duty was paid by the petitioner. The nature of the land at the time of sale deed was agricultural. Thereafter on 28.8.2004 after execution of the sale deed the name of the petitioner was recorded in the relevant revenue record by the order of Tehsildar. Thereafter petitioner sought to change the nature of the land from agricultural to Industrial (Commercial) and sought a declaration under Section 143 of the U.P.Z.A&L.R. Act and same was allowed on 25.11.2004. On 9.10.2006 the DIG (Registration) Kanpur Nagar conducted an exparte inspection and submitted his report pointing out a deficiency of Rs. 8, 36, 300/ and recommended proceedings under Section

47A(3) to be initiated against the petitioner. On 17.11.2006 notice was issued to petitioner to appear and submit his reply. Pursuance thereto petitioner entered appearance and filed its objection. Additional District Magistrate, (F&R) Kanpur Nagaron 31.12.2007 passed order imposing stamp deficiency of Rs. 8, 36, 300, and interest of Rs. 5, 26, 869 and penalty of Rs. 6, 831/ total amount of Rs. 13, 70, 000 as due against the petitioner. Said order was questioned by the petitioner by preferring Revision before Chief Controlling Revenue Authority, UP. Allahabad and said Revision had also been dismissed. At this juncture present writ petition has been filed. Counter affidavit on behalf of Staterespondents has been filed and therein action taken has been sought to be justified by mentioning that chargeability of stamp duty has been provided under Section 27 of the Indian Stamp Act read with U.P. Stamp (Valuation of Property) Rules, 1997 and here in term of the same evaluation has been done and rightful orders have been passed.

3. Rejoinder affidavit has been filed disputing the averments mentioned in the counter affidavit and reiterating the averments mentioned in the writ petition. After pleadings mentioned above have been exchanged present writ petition has been taken up for final hearing and disposal with the consent of the parties.

4. Sri Ashutosh Srivastava, learnedCounsel for the petitioner contended with vehemence that both Additional District Magistrate, (F&R) Kanpur Nagar as well as Chief Controlling Revenue Authority, U.P. Allahabad have totally misdirected themselves by ignoring this aspect of the matter that ex parts inquiry has been carried out and based on the same deficiency has been pointed out and thereafter no endeavour whatsoever has been made to determine the market value of the property on the date when instrument in question has been executed and by blindly placing reliance on circle rate fixed market value has been determined as such virtually no exercise whatsoever has been undertaken for determination of market value of the property in question, as such writ petition in question deserves to be allowed.

5. Learned Standing Counsel on the other hand contended that valid reasons have been assigned for coming to the conclusion that instrument in question was undervalued and as such no interference is required.

6. In order appreciate the respective arguments which has been advanced the view point of Hon''ble Apex Court as well as this Court is being looked into.

7. After respective arguments have been advanced relevant provision which covers the field namely Section 47A of the Indian Stamp Act as applicable in the State of U.P. and relevant provision of U.P. Stamp (Valuation of Property) Rules, 1997 are being quoted below:

?Section 47A: Undervaluation of instrument.[(1)(a) If the market value of any property, which is the subject of any instrument, on which duty is chargeable on market value of the property as set forth in such instrument is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908 shall, notwithstanding anything contained in the said Act, immediately after presentation of such instrument, and before accepting it for registration and taking any action under Section 52 of the said Act, require the person liable to pay stamp duty under Section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with Section 23 of the Registration Act, 1908.

(b) When the deficit stamp duty required to be paid under clause (a), is paid in respect of any instrument and the instrument is presented again for registration, the registering officer shall certify by endorsement thereon, that the deficit stamp duty has been paid in respect thereof and the name and the residence of the person pay them and register the same.

(c) Notwithstanding anything contained in any other provisions of this Act, the deficit stamp duty may be paid under clause (a) in the form of impressed stamps containing such declaration as may be prescribed.

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in clause (a) and presents the instrument again for registration, the registering officer shall, before registering the instrument refer the same to the Collector for determination of market value of the property and the proper duty payable thereon.

(2) On receipt of a reference under subsection (1), the Collector shall, after giving the parties a reasonable opportunity of being heard, and after holding an inquiry 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 such instrument, and the proper duty payable thereon.

(3) The Collector may, suo motu, 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 authorized by the State Government 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 subsection (1), 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 the 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 such instrument fie may determine .the market value of such property and the duty payable thereon:

Provided that, with the prior permission of the State Government an action ''under this subsection may be taken after a period of four years but before a period of eight years from the date of registration of the instrument on which duty is chargeable on the market value of the property.

[Explanation.The payment of deficit stamp duty by any person under any order of the registering officer under subsection (1) shall not prevent the Collector from initiating proceedings on any instrument under subsection(3)].

(4) If on enquiry under subsection (2) and examination under subsection (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 returned it to the person who made the reference;

(ii) not 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.

Subsections 4A to 6 are not relevant.

8. Relevant portions of Rules 4, 5 and Rule 7 of U.P. Stamp (Valuation of Property) Rules, 1997 are quoted below:

?Rule4 Fixation of minimum rate for valuation of land construction value of noncommercial building and minimum rate of rent of commercial building.(1) The Collector of the district shall biennially, as far as possible, in the month of August, fix the minimum value per acre/per square meter of land, the minimum value per square meter of construction of noncommercial building and the minimum monthly rent per square meter of commercial building situated in different parts of the district taking into consideration the following facts:

(a) in case of land (i) classification of soil,

(ii) availability of irrigation facility,

(iii) proximity to road, market, bus, station, railway station, railway station factories, hospitals and Government offices, and

(iv) location with reference to is situation in urban area, semi urban area or country side.

(b) In case of noncommercial building

(i) cost of material used in the construction of building,

(ii) labour charges

(iii) type of construction, age, and depreciation of building.

(c) In case of commercial building

(1) prevailing rent in locality, and

(ii) nature of economic activity in the locality.

(2) The Collector of the district may suo motu or on an application made to him in this behalf, on being satisfied about the incorrectness of the minimum value of land or of the construction of noncommercial building, or the minimum rent of a commercial building fixed by him under subrule (1), for reasons recorded in writing, revise the same within a period of two years from the date of fixation of minimum value or rent, as the case may be.

(3) The Collector of the district shall after fixing the minimum value per acre/per square meter of land, and of the construction of noncommercial building and the minimum rent per square meter of commercial building under subrule (1), send a statement in three part to the Registrar, the first part of such statement shall contain the division of the district under his jurisdiction, into urban area, semiurban area and the country side, second part shall specify the minimum value of land situated in different parts of the subdistrict and the third part shall contains, in the case of noncommercial building the minimum value of construction and in the case of commercial building the minimum rent fixed under subrule (1).

(4) The Registrar shall supply copies of statement mentioned in subrule (3) to the SubRegistrars under his control and shall also forward a copy of the same to the Inspector General of Registration, Uttar Pradesh.

(5) Every Registering Officer shall cause a copy of the above statement to be affixed on the notice board outside the registering offices.

Rule5: Calculation of minimum value of land, grove, garden and building.For the purposes of payment of stamp duty, the minimum value of immovable property forming the subject of an instrument shall be deemed to be such as may be arrived at as follows:

(a) In case of landMinimum value.

Whether agriculture or nonagricultureArea of land multiplied by minimum value fixed by Collector of the district under rule.

(b) in case of grove of garden:

(i)

(ii)

(iii)

(iv)

(c) in case of building:

(1) Noncommercial buildingMinimum value of land whether covered by the construction or not, which is subject matter of instrument, as worked out under Clause (a) building arrived at by multiplying the construction area of each floor of the building by the minimum value fixed by the Collector of the district under

rule.

(ii) commercial buildingMinimum value of land whether covered by the construction or not, which is subjectmatter of instrument as worked out under Clause (a) plus three hundred times the minimum monthly rent of the building arrived at by multiplying the constructed area of each floor of the building with the minimum rent fixed by the Collector of the district under Rule 4.

Rule7. Procedure on receipt of a reference or when suo motu action is proposed under Section 47A.(1) On receipt of a reference or where action is proposed to be taken suo motu under Section 47A, the Collector shall issue notice to parties to the instrument to show cause within thirty days of the receipt of such notice as to why the market value of the property set forth in the instrument and the dutypayable thereon be not determined by him.

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

(3) The Collector may:

(a) call for any information or record from any public office, officer or authority under the Government or local authority;

(b) examine and record the statement of any public officer or authority under the Government or local authority;

(c) inspect the property after due notice to the parties to the instrument.

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

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

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

9. The provisions quoted above has been subject matter of interpretation before this Court in the case of Ram Khelawan v. State of U.P, 2005(98) RD 511 as follows:

Relevant paragraphs 15 to 25 is being ?extracted below:

?15. It is quite possible that even in the first instance the instrument/deed may show the valuation of the property to be less than the minimum value determined in accordance with Rules of 1997 (popularly known as circle rate) still purchaser or seller may not be required to pay more stamp duty. The only purpose of the minimum market value fixed and circulated under Rule 4 of the Rules of 1997 is that in case on the face of it the market value of the property set forth in the sale deed is less than minimum market value fixed under the said Rules then Registering Officer cannot register the deed and it will have to refer the same to the Collector unless on being asked by him to make good the deficiency in stamp duty, parties to the sale deed make good the requisite deficiency. In case deficiency is not made good then matter will have to be referred by Registering Officer to the Collector. However, thereafter it is quite possible that Collector may hold that even though market value of the property set forth in the deed is less than minimum market value fixed under the Rules of 1997 still the market value set forth in the sale deed is correct and proper stamp has been paid. It is quite clear from section 47A(4)(i) and Rule 7(5).

16. However, if deed has been registered then action may be taken only under Section 47A (3) of the Stamp Act. Rule 7 of the Rules of 1997 prescribes the procedure for determining market value of the subject matter of the instrument. This Rule nowhere refers to the minimum value of the property fixed in accordance with Rule 4 of the said Rules. Subsection (2) of Section 47A of Stamp Act obliges the Collector for the purpose of determining of the market value of the property which is the subject of instrument presented for registration after holding inquiry in such manner as may be prescribed by Rules made under the said Act. This clearly refers to Rule 7 of Rules of 1997. However, subsection (3) of the said section only says that Collector may examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property, which is subject of such instrument. Manner of examination has not been mentioned and the said subsection (3) also does not refer to any Rules. However, Rule 7 makes itself applicable to both situations; pre registration inquiry as well as post registration examination regarding market value of the property. It is interesting to note that Rule 7 no where prescribes the basis, formula or principle for determining market value. It only prescribes procedure like notice, admission of oral or documentary evidence, calling for information or record from any public office and inspection of property. The result is that, whether Rule 7 of Rules of 1997 applies or not market value has to be determined on the same principle on which market value in land acquisition cases is determined. Minimum market value fixed in accordance with Rules of 1997 is relevant only and only for the purposes of referring the document by Registering Officer to the Collector before registration. Even after such reference market value is to be determined not in accordance with the minimum value fixed under Rule 4 of the Rules of 1997 but in accordance with general principles of determination of market value as applicable in land acquisition cases. Simultaneously when proceedings are initiated after registration of the document under Section 47A (3) of the Act market value has to be determined in accordance with general principles applicable for the said purpose like principles

of determination of market value in land acquisition cases without taking recourse to minimum market value of the property fixed in accordance with Rule 4 of the Rules of 1997.

17. It has been held by a Division Bench of this Court in Kaka Singh v. Addl. Collector & Dist. Magistrate (F&R), AI R1986 All 107 that treating method of calculation of market value given under Rule 341 (since repealed and substituted by Rule 4 of the Rules of 1997) as conclusive and final is erroneous in law. It has further been held that the purpose of entire exercise under Section 47A as supplemented by the relevant rules is to see as to whether the parties to the conveyance or instrument have deliberately under valued it for the purpose of deceitful gain. In a case where it is found that the value of the conveyance was fraudulently made although more has passed on it, Section 47A would come into play (para10). In the said authority the following observation of AIR 1974 Mad 117 was quoted:

?We are inclined to think that the object of the Amending Act being to avoid large scale evasion of stamp duty, it is not meant to be applied in a matter of fact fashion and in a haphazard way. Market value itself as we already mentioned, as a changing factor and will depend on various circumstances and matters relevant to the consideration. No exactitude is in the nature of things possible, in working the Act, great caution should be taken in order that it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion.?

18. The Supreme Court in R.C. Bansal v. D.M., A.I.R. 1999 S.C. 2126 has held that circle rates under Rule 340A (since repealed and substituted by Rule 4 of Rules of 1997) is merely a guideline and at best prima facie rate of the area concerned and on the one hand parties to the deed are entitled to say that actual valuation is less than the circle rate and on the other hand Collector is also empowered to decide that actual market value is more than the circle rates.

19. In State of Punjab v. Mahabir Singh, A.I.R. 1996 S.C. 2994 which was a case from Punjab it has been held that circle rate is merely a guideline provided by the State which would only serve as prima facie material and that no absolute higher or minimum value can be predetermined (para5). The Supreme Court approved the judgment of Punjab & Haryana High Court reported in A.I.R. 1991 P&H 26 which held that the guidelines cannot control the quasi judicial discretion to determine the correct valuation of the property.

20. In M/s Maya Food v. C.C.R.A., 1999RevenueJudgments(RJ.)619a Single Judge of this Court has held that market value of the land cannot be determined with reference to the use of the land to which buyer intends to put it and that in determining the market value the potential of the land as on the date of the sale alone can be taken into account and not the potential it may have in the distant

future.

21. In R.K.Agarwal v. C.C.R.A., 1997 R.D. 383 a Single Judge of this Court has held that assumed rental value without any basis cannot form the basis for determining market value and that the proper course is to decide the market value on the basis of some exemplars of other land in the vicinity which had been sold at the relevant time (para4).

22. In Smt Prabhawati v. C.C.R.A., 1996 R.D. 419 Supreme Court held that mere smallness of the area would not suggest the same by itself to be a costly property and that merely because property situated in an area which is close to a decent colony where people of high income group reside does not by itself make it a part thereof.

23. The view that Rules of 1997 (which have been framed at the place of old Rules 340, 340A and 341) cannot be taken into consideration at the time of determination of market value which I have taken is squarely covered by the authority of a Single Judge of this Court in Aniruddha Kumarv. C.C.R.A., 2000 R.D. 566. In the said authority it has also been held that agricultural land cannot be treated as residential plot unless declaration under Section 143 of U.P.Z.A.&L.R. Act is made and that market value of land is to be determined on the basis of the character of the land and its user. In para21 of the said authority it has also been held that valuation cannot be determined on the basis of its future potential.

24. In H.L Sahuv. State of U.P., AIR 2004 All 190 a Single Judge of this Court struck down Note2 of order dated 3.8.1997 prescribing circle rate of District Kaushambi under Rule 4 of the Rules of 1997 which provided that in case agricultural land is not transferred in favour of a cotenure holder or a person having adjoining agricultural plot then the same shall be valued on the basis of per Sq. Meter in case area of the land sold is less than 1500 Sq. Meter.

25. It has been found in several cases like the present one that the entire basis of determination of market value for the purpose of stamp duty is exparte report of Tehsildar or other officer. Exparte inspection report may be relevant for initiating the proceedings under Section 47A of Stamp Act. However, for deciding the case no reliance can be placed upon the said report. After initiation of the case inspection is to be made by the Collector or authority hearing the case after due notice to the parties to the instrument as provided under Rule7(3)(c) of the Rules of 1997. Moreover in the inspection report distance of the property from other residential or commercial properties and road must be shown and wherever possible sketch map must also be annexed along with the report so that correct valuation may be ascertained with reasonable certainty.?

10. Division Bench of this Court in the case of Kishore Chandra Agarwal v. State of U.P. and other, 2007(10) ADJ 607 (DB) has held as follows:

?22. In the case of Prakashwati v. Chief Controlling Revenue Authority, Board of

Revenue, Allahabad, 1996AWC 1331, Hon''ble the Apex Court has held that situation of a property in an area close to a decent colony not by itself would make it part there of and should not be a factor for approach of the authority in determining the market value. According to said decision, valuation has to be determined on constructive materials, which could be made available before the authorities concerned.

23. The rate list dated 16.6.2004 also provides that the valuation of the agricultural land situate on the main road for the purpose of stamp duty and registration from Chinhat circle up to the border of Lucknow district has been fixed at the rate of Rs. 24, 00, 000/ per hectare and the petitioner has paid the stamp duty at the rate of Rs. 24, 00, 000/ per hectare. The agricultural land situate on the roadside of a highway in semiurban 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. Admittedly, Khasra No. 448 is recorded, as agricultural land and it cannot be treated to be a residential plot or commercial plot until there is a declaration under Section 143 of the UP. Zamindari Abolition and Land Reforms Act.

26. While revising the rates for the purposes of stamp duty and registration under the provisions of U.P. Stamp (Valuation of Property) Rules, 1997, the authorities must, remember at what rate they are acquiring the property under the provisions of the Land Acquisition Act and at what rate they are intending to sell to the public at large. Artificial increase of the rates of residential, commercial and agricultural is not in the interest of general public at large. The Collector, Lucknow, who has acquired the land for Lucknow Development Authority for Gomti Nagar Extension Scheme has paid the compensation to the land owner at the rate of Rs. 23/ per Sq.Ft. and for sale after development they have valued the same land for residential purposes about Rs. 400/ per Sq.Ft. and for commercial purposes about Rs. 600/ per Sq.Ft. in a most arbitrary and illegal manner. The artificial increase of the price of such land is not in the interest of public at large. While fixing the rates of the agricultural, residential and commercial land for the purposes of stamp duty under the provisions of the U.P. Stamp (Valuation of Property) Rules, 1997, the provisions of Sections 48 and 50C of the Income Tax Act should also be kept in mind.

27. The Collector/District Magistrate, Lucknow under the provisions of the U.P. Stamp (Valuation of Property) Rules, 1997 has no jurisdiction to say that the stamp duty in respect of the agricultural land situate in semiurban area or country side area shall be charged treating the land as commercial. The Collector/ District Magistrate, Lucknow while issuing the rate list under the provisions of Rule, 1997 has no authority to declare the agricultural land as residential or commercial for the purposes of realisation of stamp duty as the authority to declare a particular area of the district as residential or commercial vests with the State Government while preparing the Master Plan of the City.?

11. Recently this Court again in the case of Vijay Kumar and others v.

Commissioner, 2008(7) ADJ 293 has taken the view that burden to prove that market value is more than the minimum fixed is upon the Collector and mere report is not sufficient. Relevant paragraphs of the said judgment 7, 8, 9, 12, 13, 16 and 20 are being extracted below:

?7. The Stamp Act is a fiscal statute and it has to be interpreted strictly and construction of hardship or equity has no role to play in its construction. It is a taxing statute and has to be read as it is. In other words, the literal rule of interpretation applies to it See State of Rajasthan v. Khandaka Jain Jewellers, AIR 2008 SC 509]. In this case the Supreme Court has referred its earlier judgment in case of A. V. Fernandez v. State of Kerala, AIR 1957 SC 657. Also Government of A. P. and others v. Smt. P. Laxmi Devi, 2008 AIR, SCW 1826.

8. In the above background the phrase ''reason to believe'' occurring in subsection (3) of Section 47A has to be considered. Identical phrases have been placed in almost every fiscal statutes such as Income Tax Act, Sales Tax Act etc. With reference to the expression ''reason to believe'' used in Section 34 of the Old Income Tax Act it has been held that they do not mean purely subjective satisfaction on the part of the Income Tax Officer. The ''belief must have been held in good faith, it cannot be merely a pretence. To put it differently it is open to Court to examine the question whether the reasons to believe have a rational connection or a relevant bearing to the formation of belief and are not extraneous or irrelevant to the purpose of Section, as held in S. Narayanappa and others v. C.I.T. Bangalore, AIR 1967 SC 523. The words ''reason to believe'' are stronger than the expression ''for satisfaction'' Belief must not be arbitrary or irrational. It must be reasonable or must be based on reasons which are relevant and material.

9. In view of the fact that expression ''reason to believe'' has been used in subsection (3) of Section 47A of the Act, the power conferred under this Section though is wide but they are not plenary. The power cannot be exercised when the Collector has reason to suspect that there is evasion of proper stamp duty.

12. The other phrase used in subsection (3) of Section 47A is ''market value''. The ''market value'' means what is willing purchaser would pay to a willing seller for the property having regard to the advantages available the land and the development activities which may be going in the vicinity and potentiality of the land and as such an offer to sale of land to an industrialist on concessional rate with a view to induce him to set up industry in a particular area is not market value. [See Mahabir Prasad v. Collector, Cuttack, MR 1987SC720].

13. The ''market value'' of land means a price at which both buyers and sellers are willing to do business the market or current price.

16. The sole basis of the impugned orders holding that proper stamp duty has not been paid by the petitioners is the report of the SubRegistrar, reporting the matter to the ADM (F&R) that proper stamp duty has not been paid. Except the said report, there is no material on record to show that the petitioners by

arrangement deliberately undervalued the property while setting forth the market value in the instrument.

20. There is another aspect of the case. The sine qua for invoking the provisions of Section 47A(3) of the Act is that the Collector has reason to believe that the stamp duty has not been properly set forth in the instrument as per market value of the property. Once the instrument is registered and the prescribed stamp duty as prescribed by the Collector as has been paid, the burden to prove that the market value is more than the minimum as prescribed by the Collector under the rules, is upon the Collector. The report of the SubRegistrar or Tehsildar itself is not sufficient to discharge that burden. Reference can be made to a Division Bench judgment of this Court in Kaka Singh v. Additional Collector and District Magistrate, (Finance and Revenue) Bulandshahr and another 1986 A.L.J. 49.?

12. On the touchstone of the provision quoted above and view point of this Court quoted above fact of the present case is being looked into. In the present case admitted position is that at the point of time when sale deed in question had been registered in favour of petitioner land in question was shown as agricultural and thereafter petitioner applied for change of nature of land from agricultural to industrial (commercial) and declaration under Section 143 of U.P.Z.A& L.R. Act was allowed on 25.11.2004. Exparte inspection has been carried out on 9.10.2006 by DIG (Registration) Kanpur Nagar, Kanpurand thereafter proceedings in question have been undertaken. Entire basis for fixing market value in the present case is circle rate which has been prescribed and the exparte report of D.I.G. (Registration) Kanpur Nagar. It has also been mentioned that nature of land was parti and not agricultural and normally it is used for residential purpose, and its subsequent user fortifies this situation. It has also been mentioned that it is situated in the area developed by UPSIDC, with various facilities. Market value is to be factually ascertained qua the date when instrument in question was presented for registration. In the present case no real exercise has been undertaken to determine the market value of the land on the date when instrument in question had been executed. Market value has to be determined applying general principles of determination of market value.

13. Consequently order dated 31.12.2007 passed by Additional District Magistrate (Finance and Revenue), Kanpur Nagar, Kanpur and order dated 25.2.2008 passed by Chief Controlling Revenue Authority, U.P. Allahabad are hereby quashed and set aside. Matter is remitted back for being decided afresh in accordance with law by the authority concerned preferably within two months from the date of presentation of certified copy of this order.

14. For the reasons stated above, present writ petition is allowed and disposed of.

