
(2011) 08 AHC CK 0266
In the Allahabad High Court
Case No : Writ C. No. 2541 of 2008

Vibhor Rungata

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Stamp Act, 1899 — Section 3, 31, 33, 47A

Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 — Rule 3, 4

Citation : (2011) 8 ADJ 125 : (2011) 114 RD 813

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Judgement

Sudhir Agarwal, J.—All the writ petitions involve common questions of law and facts and therefore as agreed by learned Counsel for the parties have been heard together and are being decided by this common judgement.

2. The writ petition No. 2541 of 2008 has been filed by one Vibhor Rungata Son of Santosh Kumar Rungata assailing the orders dated 31st March, 2005 passed by Respondent No. 3 Deputy Commissioner Stamp, Gorakhpur in purported exercise of power u/s 33 and 47-A of Indian Stamp Act, 1899 (hereinafter referred to as "Act") requiring the Petitioner to pay Rs. 1,08,800/- towards deficiency of stamp and Rs. 10,880/- towards penalty as also interest on the aforesaid amount.

3. There was a project namely Ram Garh Tal Project. M/s Hotel Clarks Siddharth Branch Varanasi got a plot No. 1/2 area 5 acres initially on lease, later on converted into free hold. The Project, it is said, ultimately failed. The land was located at about 110 meters from the main road. M/s Hotel Clarks intended to alienate the aforesaid property to one Hari Mohan Das Agrawal, partner M/s A.D. Estate Developer. The said developer made an application u/s 31 of the Act on 21st November, 2003 for determining the duty chargeable on the instrument. The Additional District Magistrate (Finance & Revenue), Gorakhpur (hereinafter referred to as "A.D.M.") obtained report from Tahsildar, Sadar regarding the

location of the plot in question and vide order dated 20th March, 2004 determined amount of stamp duty to Rs. 9.5 lacs on the market value of the property determined as Rs. 95 lacs i.e. Rs. 19 lacs per acre. The order dated 20th March, 2004 of A.D.M. was challenged by State of U.P. before this Court in Writ Petition No. 21535 of 2007 but the same was dismissed vide judgment dated 9th May, 2007 and the Court affirmed the order dated 20.3.2004 passed u/s 31 of the Act. The said deed was executed between the parties accordingly.

4. Later on, a notice was issued on 4th June, 2005 by Deputy Inspector General of Stamp, Gorakhpur Mandal, Gorakhpur alleging that valuation of the property was much higher and the duty paid is deficient. The aforesaid notice dated 4th June, 2005 was challenged in Writ Petition No. 46951 of 2005 by M/s A.D. Estate Developers and this Court vide judgment dated

3rd August, 2007 allowed the aforesaid writ petition, quashed the said notice, observing as under:

In view of the above law laid by the Apex Court and by this Court once the Collector has determined the value of the property and the stamp duty, it is not open to the authorities concerned to reopen the case and challenge the same. The Collector becomes functus officio and provisions of section 33 of the Act have no application.

5. It is worthy to mention that aforesaid M/s A.D. Estate Developers had purchased only 4.07 acre of land though the total area of the plot was 5 acres. The sale deed was executed on 26th March, 2004. The rest of 0.93 decimal area of the plot 4 was sold by M/s Hotal Clarks through different sale deeds to several persons namely Smt. Nutan Tyagi and A.K. Tyagi (Writ Petition No. 2547 of 2008), Dr. Km. Nisha Mishra (Writ Petition No. 2548 of 2008), Shashi Mauli Pandey (Writ Petition No. 2543 of 2008, the present Petitioner, Sri Anup Kumar Agrawal (Writ Petition No. 2544 of 2008), Pashupati Nath Gadaia (Writ Petition No. 2546 of 2008) Anil Agrawal (Writ Petition No. 6429 of 2008) and Kashyap Adit (Writ Petition No. 6430 of 2008). The details i.e. area of plot, date of sale deed, price on which the instrument was executed, stamp duty paid, amount of deficient stamp duty, penalty along with interest determined by Respondents and the dates of impugned orders in all these writ petitions, including the present writ petition are shown as under:

Writ Petition No.

Area of plot in sq. meter

Date of sale deed

Price on which instrument is executed

Stamp duty paid

Deficit stamp duty

Penalty alongwith interest

Date of impugned order

2541/08

280.60

26.03.2004

4,00,000/-

64,400/-

84,200/-

1,80,896/-

31.03.05 & 31.10.07

6430/08

214.57

26.03.2004

2,40,000/-

64,400/-

83,200/-

1,07,744/-

31.03.05 & 31.10.07

6429/08

214.57

26.03.2004

2,25,000/-

64,400/-

83,200/-

1,07,744/-

31.03.05 & 31.10.07

2546/08

285.775

26.03.2004

4,00,000/-

85,800/-
1,10,700/-
1.43,357/-
31.03.05 & 31.10.07
2544/08
286.35
26.03.2004
4,00,000/-
86,000/-
1,10,900/-
1,43,616/-
31.03.05 & 31.10.07
2543/08
281.175
26.03.2004
4,00,000/-
84,400/-
1,09,000/-
1,41,155/-
31.03.05 & 31.10.07
2548/08
284.337
26.03.2004
4,90,000/-
85,400/-
1,10,100/-
1,42,580/-
31.03.05 & 31.10.07
2547/08
285.775

26.03.2004

4,00,000/-

85,800/-

1,10,700/-

1,43,357/-

31.03.05 & 31.10.07

6. All these Petitioners paid stamp duty on the basis of determination made u/s 31 of the Act on the application filed by another purchaser M/S A.D. Estate Developers. Moreover, the land was purchased by all these Petitioners for residential purposes and thus the stamp duty was paid on residential rates. The Assistant Registrar, however referred the matter u/s 47A/33 of the Act to the Respondent No. 3. The Respondent No. 3 held that the determination made u/s 31 of the Act vis a vis M/s

A.D. Estate Developers cannot applied as such to the case of the Petitioners. The land was in commercial area and therefore is liable to be determined on the basis of the value of commercial property in the said area. He, therefore, enhanced the value by 25% and determined the stamp duty payable accordingly.

7. Sri A.P. Tiwari, learned Counsel appearing for all these Petitioners contended that once stamp duty payable in respect to the land constituting a single plot was already determined u/s 31 of Act, it was not open to the Respondents to treat the property in question differently when the Petitioners have clearly stated that the land is being purchased for residential purposes. The determination of Stamp duty, treating the land in question as commercial land, is illegal and arbitrary. He submitted that in the proceedings u/s 31 of the Act though these Petitioners were not party but the property being same, a different treatment cannot be met the Petitioners when the same property was valued in one matter differently and the said determination has attained finality.

8. A supplementary affidavit has also been filed by the Petitioner in writ petition No. 2541 of 2008 annexing a copy of the application dated 21.11.2008 filed by Hari Mohan Das Agrawal u/s 31 of the Act requesting the Collector Gorakhpur to give his opinion about the Stamp duty payable on the instrument for purchase of plot No. 1/2, area 5 acres and giving the boundary of the said property. Sri Tiwari also contended that determination obtained from Collector u/s 31 of the Act was in respect to the entire area and not for a smaller part thereof. Therefore the determination made for the entire area cannot be altered or changed merely because the property in question has been sold to more than one person with smaller area.

9. A counter affidavit has been filed on behalf of the Respondents sworn by Sri G.K. Srivastava, Deputy Commissioner, (Stamp) posted in Headquarter, Allahabad. It is stated that the sale deeds executed in favour of the Petitioners

were referred u/s 33/47-A of the Act alleging that true stamp duty was not paid. The property situated in Mohalla Bilandpur (Ram Garh Tal Pariyojna) and was commercial. It was allotted to Hotel Clarks, Varanasi by Gorakhpur Development Authority. The said Hotel later on sold the property to the Petitioners. The Petitioners ought to have applied the rate of Rs. 6,875/- per sq. mtr. prescribed for the said property. The property situated near the Circuit house. The Respondents have not made any other change except that the determination was made by the Collector treating the property residential but noticing the fact that it was a commercial, the rates applicable to commercial land in the said area have been applied by means of the impugned order, therefore, no interference is called for.

10. In my view, only two questions need be answered in all these matters emanating from the rival submissions are:

1. Whether determination u/s 31 of the Act would be extendable/applicable in its entirety to the Petitioners.
2. Whether Respondents were justified in determining the value of the property at commercial rates instead of residential rates.

11. I take up the second issue as first. The Respondents in para of the counter affidavit have said that the property is situated in Civil Lines near Circuit house. This itself is sufficient to prove commercial potentiality of the property. The whole area was commercial. The agricultural/residential activities in the said area, as claimed by the Petitioners, is therefore irrelevant. From the application submitted by Sri Hari Mohan Das Agrawal there is no doubt that he wanted opinion of Collector u/s 31 of the Act in respect to the entire area of the plot No. 1/2 stating that in the master plan of Gorakhpur Development Authority the land use mentioned of the said plot is "local park". The land is situated away 110 Mts. from the main road but the sub road is about 10 ft. below. The land is agricultural but he wanted to purchase it for residential purpose. He gave boundary of the plot constituting a single unit as under:

East: Undeveloped land of others

West: Land of M/s Lotus Trans Travels Ltd.

North: Sub road

Sought: Land of others.

12. It is in this context, the determination was made u/s 31 by the A.D.M. vide order dated 20th March, 2004 expressing his opinion that the market value of the land would be 19 lacs per acre. The location of the land, the nearby other places of importance reflecting on the value of the property were taken into consideration by A.D.M. while determining value of Rs. 19 lacs per acre, as is evident from order dated 20.3.2004, a copy whereof is on record as Annexure No. 1 to the writ petition.

13. Whether valuation was determined treating the land in question as residential or commercial is not clear. In fact in the application dated 21.11.2003, Sri Hari Mohan Das Agrawal did not disclose any specific purpose for which he intended to purchase the land but he mentioned the state of affairs vis a vis the land in question existing on that date namely its land use under Gorakhpur Master Plan is "local park" and the land is agricultural. The A.D.M. in its order dated 20th March, 2004 clearly mentioned that the plot No. 1/2 Village Bilandpur, Tappa and Pargana Haveli, Tahsil Sadar measuring 5 acres (20,241.69 Sq.m.) was leased out to M/s Hotel Clarks and was subsequently made free hold. Its mutation was not given effect to in revenue records and therefore land use or change of land use as such did not appear to have been mentioned in revenue records. Tahsildar in his report dated 19th February, 2004 assessed value of the land in question measuring more than 0.45 decimal at Rs. 15 lacs per acre since most of the plots at the site were owned by Development Authority and since property is situated on the mattress road connecting National Highway (Pedleganj) and Circuit house, hence it was a valuable property. The A.D.M. opined value at Rs. 19 lacs per acre instead of 15 lacs. The said value was approved by Collector u/s 31 on the 9 application made by Sri Hari Mohan Das Agrawal.

14. In the appellate order it has been mentioned by Appellate authority that in 1989, land was allotted and leased to M/s Hotel Clarks for constructing a Five Star Hotel on the said plot. Obviously, the purpose for which the land was given to M/s Hotel Clarks in 1989 was "commercial". The land could not be used for the said purpose and Hotel was not constructed is not material since it cannot be said that after thirteen years the status and value of the land would have diminished or altered negatively. But simultaneously it is also evident that on 31st October, 2002 M/s Hotel Clark was permitted to transfer land for commercial and residential purposes both. It is furtherance thereto the land in question has been transferred by sale to these Petitioners and Sri Hari Mohan Das Agrawal and Shobhit Agrawal of A.D. Developers by M/s Hotel Clarks.

15. Once the appellate authority admits that M/s Hotel Clarks was permitted to transfer the land in question for residential as well as commercial purposes, this Court find it difficult to accept that valuation of the land shall be made only on commercial rates and not otherwise. Moreover, the valuation of the property is not to be made automatically and in a mechanical manner on the basis of only one or two considerations but it is an assessment made after a cumulative and consolidated exercise arrived at by considering several relevant factors. How valuation of the property will be determined to find out whether there is any deficiency in stamp duty or not u/s 47-A of the Act, statutory rules have been framed in 1997 namely U.P. Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as "1997 Rules"). One or two facts by themselves will not make it conclusive as to whether the property has been valued correctly or not. The power in the case in hand has been exercised u/s 47-A of the Act, the condition precedent in order to determine value is that the registering authority

must have reason to believe that the market value of the property subject matter of the instrument has not been truly set forth in the instrument. When the reference is made by the Sub-Registrar to the Collector under sub-section 2, the Collector has to determine the market value of the property which is subject of the instrument. In order to determine market value, the Collector is bound to take into considerations all relevant factors which necessarily are taken into account to determine such value otherwise determination ignoring one or more relevant factors or considering one or more irrelevant factors would vitiate the entire exercise.

16. In an instrument of sale before making reference u/s 47-A of the Act, the Registrar will examine whether the value, set forth in document, is the minimum value of property or not. In case the value set forth in the instrument is less than minimum value, there is a statutory obligation upon him to make reference to Collector even before registering the instrument. Thereafter the Collector would determine market value on which the stamp duty is payable. Therefore, the statute makes it obligatory upon the parties to an instrument to set forth the value of property in transaction atleast minimum value thereof. How the minimum value shall be determined is provided in Rule 4 of 1997 Rules, which reads as under:

Rule-4. Fixation of minimum rate for valuation of land construction value of non-commercial 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 non-commercial 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 its situation in urban area, semi urban area or country side

(b) In case of non-commercial 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-

(i) 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 non-commercial building, or the minimum rent of a commercial building fixed by him under sub-rule (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 non commercial building and the minimum rent per square meter of commercial building under sub-rule (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, semi-urban area and the country side, second part shall specify the minimum value of land situated in different parts of the sub-district and the third part shall contains, in the case of non-commercial building the minimum value of construction and in the case of commercial building the minimum rent fixed under sub- rule (1).

(4) The Registrar shall supply copies of statement mentioned in sub-rule (3) to the Sub-Registrars 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.

17. The fact which are to be set forth in an instruction are also provided in Rule 3 of 1997 Rules, which reads as under:

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 in addition to the market value of the property:

(1) 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-the source of irrigation,

(iii) if under cultivation-whether dofasali or otherwise.

(iv) land revenue or rent, whether exempted or not, and

(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 laws.

(vi) location, (whether lies in an urban area, semi- urban area or country side), and

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

(b) being non-agricultural land:

(i) area of land in square metre,

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

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

(2) In case of grove or garden-

(a) the nature, size, number and age of trees;

(b) annual recorded land revenue or where the grove is not assessed to any revenue, or is exempt from it, the annual rent and/or premium, if let out; otherwise the average annual income which has arisen from it during the three years immediately preceding the date of the instrument;

(c) area covered by the grove or garden;

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

(3) In case of building:

(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 pukka or katcha 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,

(g) nature of building, whether non-commercial or commercial, and (i) in case the building is non-commercial its minimum value of construction as fixed by the Collector of the district, and

(ii) in case the building is commercial, its minimum monthly rent per square metre and covered area fixed by the Collector of the district, and (iii) location (whether lies in urban, semi-urban or country side).

18. However, this is only with respect to minimum value. The charging provision attracting stamp duty, refers to "market value". Meaning thereby, the duty is payable not on minimum value but the "market value". No factor has been mentioned in 1997 Rules or the statute to determine "market value" as such but the procedure is prescribed in Rule 7 which reads as under:

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

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

(3) The Collector may:

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

19. The important aspect which one could gather from a cumulative reading of 1997 Rules would be that many factors, which are relevant in appreciation or depreciation of the value of a property are already taken into account while determining minimum rate for valuation of a property. For example in case of a land, Rule 4 contemplates consideration of classification of soil, availability of irrigation facility, proximity to road, market, bus station, railway station, factories, hospitals and government offices and location with reference to its situation in urban area, semi-urban area or country side etc. If these factors are already noticed and taken into account while determining minimum value of property, and value set forth in the instrument is at par or more than minimum value, then in order to arrive at a conclusion that "market value" has not been set forth something more than what is already provided and considered in Rule 4 must exist which has to be specifically mentioned by authorities concerned so as to determine market value which is different and higher than minimum value. It

cannot be said that same factors would multiply the cost every time whenever they are taken into consideration though while determining minimum value they are already looked into. There may be a case where the time gap when the minimum value is determined by 16 Collector and when document is being executed, may have resulted in some changes in the value of property due to local development etc. but that must clearly spell out from the order of Collector determining market value and this determination cannot be based solely on conjectures and surmises. It is a serious thing. It results in depriving a person of his property, i.e., by asking him to pay more stamp duty. It would be permissible only strictly in accordance with the procedure prescribed in law and not otherwise. The Stamp Act is a physical statute and, therefore, in a slipshod manner revenue authorities cannot be allowed to ask a person to pay higher stamp duty than what he has already paid setting forth value of property much more than the minimum value, and according to parties, market value. To hold a person guilty of mentioning wrong market value is not a routine matter but the revenue authorities have to apply themselves in a more serious, sincere and objective manner. The experience of this Court in such matter has shown that revenue authorities used to work in a routine manner, and, the orders which usually come up for judicial review largely show either lack of study of relevant provisions by officials responsible for discharging their function under the statute or lack of sincere application of mind or may be a deliberate or intentional negligence. It is true that the authorities who are made responsible in passing the orders u/s 47-A are extremely busy authorities since almost in every statute it is the Collector, in one or the other manner, who is entrusted with administrative or quasi judicial power resulting in an overburdened official having lesser time to spare. Unmindful of these practical aspects, the Government does not appear to be keen to decentralise these powers resulting in that most of the time the Courts find such orders illegal and erroneous and the cases are decided against revenue. This causes not only an unnecessary harassment and dissatisfaction among the common people but also results in delay of revenue collection by the Government. In interest of all, a pragmatic but a real practical solution is needed at the earliest as that will also lessen burden on judiciary. Time and again the Courts are making such observations but it appears that legal department of the Government either have no time to read and consider these observations in their true perspective or there is otherwise lack of will for the reasons not known. The end result however, is a total chaos everywhere.

20. Be that as it may, coming back to the case in hand the Collector in the impugned order has proceeded by observing that the property was transferred to M/s Hotel Clarks as commercial property. It has considered some of the aspect in the matter which were already considered when the determination was made u/s 31 of the Act of the same property but consideration is not strictly in accordance with 1997 Rules. It is true that a determination u/s 31 of the Act made in respect to "A" would not be considered to be binding in respect to "B" but such

determination may be and would constitute a relevant material which could be taken into consideration in determination of market value under sub section 3 of section 47- A of the Act. Such determination cannot be brushed aside only by observing that it is not binding on other parties. It would constitute a relevant material and relevant factor and has to be taken into account.

21. One of the aspect, which may weigh in favour of the Respondents distinguishing determination u/s 31 of the Act vis a vis the case of the Petitioners hereat is that the determination was made treating the entire land of 5 acres as one unit but the land was actually transferred in a much smaller units. Such determination thus as such may not be wholly binding yet it constitute a relevant material. It is matter of common knowledge that size of land constitute a relevant factor in determining market value. A much larger chunk of land reduces number of purchasers since everybody may not have the capacity to purchase huge land in a single unit but if the smaller piece of land is to be transferred by sale, it is like plotting of the lands in smaller piece and may fetch much higher rates. Therefore, this is a major distinction in not applying determination u/s 31 of the Act as such in the present case but this does not mean that the said determination as a whole can be ignored or brushed aside. This Court is not saying that such determination as such ought to be taken as binding but it constitute a relevant material and therefore had to be considered.

22. In view of the above discussion, I am clearly of the opinion that determination of market value ought to be made by the Collector afresh in accordance with relevant statute and the rules. Even though he was not bound by determination made u/s 31 of the Act in respect to another person but in the present case the determination having been made taking into consideration all the relevant facts it had a persuasive value and could not have been brushed aside entirely.

23. Coming to the second aspect of the matter, I have already 19 touched it. Further this Court is fortified from a earlier judgment of this Court that determination u/s 31 of the Act as such would be available to the person at whose instance the same has been made. (See Darbari Singh Saini Vs. The Board of Revenue, U.P. at Allahabad, Even if the land is same and situated at the same place, such determination as such may not be available to another person but this by itself will not solve the problem. Section 31 talks of an instrument which would be referred for opinion whether executed or not and whether previously submitted or not.

24. In this case, the application submitted by Sri Hari Mohan Das Agrawal shows that there did not exist any instrument at all when he submitted an application on 21.11.2003. The language of the letter clearly shows that he wanted to purchase the entire land i.e. plot No. 1/2 area 5 acres but there was any instrument or not is not at all mentioned therein. From the order of A.D.M. passed on the aforesaid application dated 20.03.2004 of Sri Hari Mohan Das Agrawal also it cannot be said that any instrument was placed before the

authority concerned which contains stipulations and other relevant aspects set out in the instrument relevant for determining value. At this stage, this Court cannot comment upon the correctness of order dated 20th March, 2004 since it has attained finality after dismissal of writ petition by this Court and dismissal of appeal by Apex Court, may be on account of delay. The fact however remains that the said order as such cannot be said to be binding or the benefit thereof cannot be extended to the Petitioners since they were not party to the said application. Hence merely for the reason that the said determination has not been followed by the Collector in the case of the Petitioners it cannot be said that the impugned orders are vitiated in law.

25. Besides above, it is also well settled that the proceeding u/s 31 of the Act is of different nature. When the question arose, whether a document is property valued or not and sufficient stamp duty has been paid or not, the power of Collector u/s 33 read with 47-A of the Act has to be exercised in a different manner as has held in *State of U.P. v. Mohd. Amir Ahmad*, AIR 1971 SC 787. The Court said:

The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him u/s 31. If it is not properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purpose of evidence, he is to make up the duty u/s 31 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than the seeking the determination of the duty payable; then, no consequence will follow, and an executed document is in the same position as instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes *functus officio* and the provisions of section 33 have no application. The provisions of that section are a subsequent stage when something more than mere assessing of the opinion of the Collector is to be done.

26. In view of the above discussion and the finding of the Court in respect to the question No. 2, discussed above, it is evident that two impugned orders dated 31st March, 2005 and 31st October, 2007 cannot be sustained. The writ petitions are therefore allowed. The impugned orders dated 31st March, 2005 and 31st October, 2007, impugned in all the writ petitions, are hereby quashed.

27. However, the matter is remanded to the Collector to redetermine market value of the property in question u/s 47-A read with Section 33 of the Act in the light of the observations made above and to pass a fresh order in accordance with law after giving due opportunity of hearing to all concerned parties.