(2005) 2 AWC 1087 : (2005) 98 RD 511 : (2005) 1 RD 511

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 36661 of 2004

Ram Khelawan alias Bachcha		APPELLANT
	Vs	
State of U.P. and Prashant Shukla		RESPONDENT

Date of Decision: March 4, 2005

Acts Referred:

- Registration Act, 1908 - Section 23, 29, 52
- Stamp Act, 1899 - Section 47A, 47A(1), 47A(2), 47A(3), 47A(4)
- Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 - Rule 340, 340A, 341, 4, 5
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 143
- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 285B, 285I

Citation: (2005) 2 AWC 1087 : (2005) 98 RD 511 : (2005) 1 RD 511

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Advocate: Pankaj Saksena and K.N. Saksena, for the Appellant; C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

S.U. Khan, J.
In this writ petition a detailed interim order was passed on 23.9.2004 calling for counter and rejoinder affidavits. Thereafter counter and rejoinder affidavits were exchanged and parties were heard at length and judgment was reserved.

2. Through the impugned orders sale deed dated 8.9.2000 in respect of 3 acres of agriculture land has been impounded u/s 47A Stamp Act. In the sale deed valuation of property was shown to be Rs. 1,90,000/- which was in accordance with minimum value per acre of agriculture land in the area in question as fixed and circulated by Collector at the relevant time under Rule 4 of U.P. Stamp (Valuation of property) Rules 1997

(hereinafter referred to as Rules of 1997). Requisite stamp of Rs. 15,200/- was affixed on the said sale deed.

3. One Kamta Prasad son of Gayadeen filed a complaint that valuation of the property in dispute was much more than shown in the sale deed and huge loss (about crores of rupees) to the state Exchequer had been caused by under valuing the property in the sale deed and paying highly inadequate stamp duty. In the complaint it was stated that the property was having Abadi potential. A case on the said complaint was registered on the file of A.D.M. (Finance & Revenue), Hamirpur in the form of case No. 216 of 2000-01 State v. Prashant Shukla. The case was decided on 31.12,2001 holding valuation of land in dispute to be Rs. 1,700/- per squire meter [total valuation Rs. 2,32,02,960/- (Rupees two crores thirty two lacs two thousand nine hundred and sixty only)]. Accordingly, stamp deficiency of Rs. 18,41,036/- was determined and demanded through the said order alongwith interest for 16 months at the rate of 2% per month amounting to Rs. 5,89,131/-(in this manner through the said order amount of Rs. 24,30,167/-was imposed and demanded as deficiency in stamp duty and interest). A.D.M. (Finance & Revenue) treated the land to be Abadi land. The ratio in between the valuation of the property shown in the sale deed and determined by A.D.M. (Finance & Revenue) is about 1 : 125. Revision filed against the said order being revision No. 119 of 2001-02 was also dismissed by C.C.R.A./ Board of Revenue, Allahabad on 11.8.2004, hence this writ petition.

4. Meanwhile in realization of the said dues of twenty four lacs and odd property covered by the sale deed itself was auctioned on 27.10.2003. State Government purchased the said property for Rs, 1/-. Deputy Collector, Hamirpur accepted the said bid of Rs. 1/- in favour of the State Government on 27.10.2003. Through Annexure-IX which is copy of order dated 31.10.2003, Tahsildar asked Consolidation Officer to record the name of the State Government over the land in dispute in revenue records.

5. In view of the above shocking circumstances the court directed Collector and other concerned authorities to be present in court on 17,9.2004. The authorities present in court through their learned standing counsel stated that the sale in favour of the State Government shall be deemed to be for the entire amount of the dues for which property was put to auction i.e. Rs. 2430167/- under Rule 285-B of U.P.Z.A. & L.R. Rules. The A.D.M. (Finance & Revenue) himself determined the valuation of the property to be rupees two crores thirty two lacs and odd, hence in all fairness State should have purchased the property for the said amount. The court on 17.9.2004 tentatively suggested that both the orders i.e. order determining the market value and deficiency in stamp duty dated 31.12.2001 and order dated 27.10.2003 selling the land in dispute in favour of the State Government might be maintained on payment of the market value of the property as determined by order dated 31.12.2001 by the State to the petitioner and respondent No. 2 after deducting the amount due as stamp duty. However, as recorded in the interim order dated 23.9.2004, officers of the State who were present in court and learned standing counsel did not agree to the said suggestion. They were dismayed at the said

suggestion making it abundantly clear that they could not even imagine that the property in dispute could have so much valuation.

6. In several stamp matters it has been found that provisions of Section 47-A of Stamp Act are being stretched too far which may ultimately prove counter productive. State must not attempt to kill the goose which is laying golden eggs. This case is most glaring example of zeal and over enthusiasm of State Officers to extract as much as possible in the form of stamp deficiency u/s 47-A of Stamp Act.

7. Against the sale dated 27.10.2003 objection under Rule 285-I of U.P.Z.A. & L.R. Act have already been filed by the petitioner before Commissioner Chitrakoot Dham which are stated to be pending. The auction sale (for Rs. 1/-) has also not been challenged in this writ petition, hence the court refrains from saying anything further in that regard. However, it may be noted that in the counter affidavit it has been stated that the sale shall be deemed to be for the entire arrears i.e. Rs. 24,30,167/-. In para 10 of writ petition it has been stated that movable property of the petitioner was also taken and sold for Rs. 5,000/-. In view of the stand taken in the counter affidavit that the sale deed should be treated for the entire arrears (Para 12 of the counter affidavit by Deputy Collector and para 5 of the counter affidavit by Collector), the Collector is directed to forthwith return Rs. 5,000/- to petitioner with penal interest of 2% per month within one month from today.

8. It is not disputed that at the time of execution and registration of sale deed land in dispute was entered as agricultural land in revenue records and that valuation of property shown in the sale deed (on which required court fees was paid) was perfectly in accordance with the rates of agricultural land situate in the area in question fixed under Rule-4 of the Rules of 1997 for the relevant time. In the impugned order it is mentioned that report of Tahsildar was called for and Tahsildar, Hamirpur submitted the report on 23.4,2001. According to the said report the land in dispute is situate in between Railway line and Pailani Road and is adjacent to Pailani Road and that the land in dispute at the time of inspection was found to be vacant and ploughed and the land is of Abadi use/ potential and that according to the rate of Abadi land fixed by District Magistrate under Rule-4 of the Rules of 1997 valuation of property in dispute comes to Rs. 2,32,02,960/- requiring stamp of Rs. 18,56,326/-. It was also mentioned by Tahsildar that the land was within the town area limit of Sumerpur and was lying vacant. However, Tahsildar did not file any site map showing the exact location of the land in dispute and its distance from the road, residential sites and nearby Abadi and commercial buildings. This Objection was specifically raised by the petitioner before the A.D.M. and is mentioned in his judgment. The complainant filed several documents. Both the parties (purchaser and complainant) filed records of the cases pending in between them in different courts. The number of agricultural plots in dispute are 1515 (.40 acres) and 1248 (2.6 acres). It was argued by the petitioner before the A.D.M. that unless in Khasra nature of plot was recorded as Abadi after survey and declaration u/s 143 of U.P.Z.A. & L.R. Act, the land must not be treated to be Abadi. The A.D.M. rejected the said contention on the ground that the adjacent plots i.e. 1515/1, 1515/2, 1515/3 and 1247 were recorded as Abadi in

the Khasra. The reason given by A.D.M. is self defeating. If adjoining land is shown to be Abadi and land in dispute is shown as agricultural then it is quite clear that the land in dispute is not Abadi land otherwise the same should also have been shown as Abadi.

9. Entire basis of report of Tahsildar and judgment of A.D.M. is that the land is of residential use/ potential (Awasiya prayojan). Even if it is assumed for the sake of argument that the land in dispute is having Abadi potential, still no basis of determining its valuation has been given. Once sale deed is registered then for determining market value of the land u/s 47-A Stamp Act no reliance can be placed upon Rules of 1997. If a case is instituted u/s 47-A of the Stamp Act after registration of the deed particularly sale deed then valuation has to be determined on the general principles applicable for determining market value of immovable property. The method of determining market value and the factors to be taken into consideration for the said purpose have been discussed in detail and laid down with precision by the courts white determining quantum of compensation under Land Acquisition laws, Exactly same principles shall apply for determining market value while deciding a case by Collector u/s 47-A Stamp Act.

10. Circle rates fixed by the Collector for the purpose of payment of stamp duty do not form the basis for determining market value in land acquisition cases. There cannot be two market values of a property at a particular time one for realizing stamp duty and the other for payment of compensation if land is acquired. To hold otherwise will be unjust and arbitrary. If circle rate is not to be taken into consideration while determining market value in land acquisition cases then it can also not be considered while determining correct valuation of the property which is subject matter of the instrument after enquiry and examination u/s 47-A(3).

11. The three standard principles of determining market value in Land Acquisition cases are; comparable sale method i.e. value of similar adjoining property sold in near past, multiplication by a suitable multiplier of monthly or yearly rent, income or yield; and adding the cost of construction to the value of the land.

12. Fixation of minimum value under Rule 4 of Rules of 1997 is relevant only when instrument is to be referred by Registering Officer before registration. u/s 47A(1)(d) of the Act Registering Officer is required to refer the instrument before registering to the Collector for determination of market value of the property if the market value of property as set forthwith in the instrument is less than the market value determined in accordance with Rule of 1997.

13. Relevant provisions of Section 47-A are quoted below:-

47-A. Under-valuation 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 u/s 52 of the said Act, require the person liable to pay stamp duty u/s 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 Sub-section (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 Sub-Section (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, he may determine the market value of such property and the duty payable thereon:

Provided that, with the prior permission of he State Government an action under this Sub-section 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 Sub-section (1) shall not prevent the Collector from initiating proceedings on any instrument under Sub-section(3)],

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

(i) truly set forth and the instrument duly stamped, he shall certify by endorsement that it is duly stamped and 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.

Sub-Sections 4-A to 6 are not relevant

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

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 allowing facts:

(a) to (c) - not relevant.

(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 cas4e 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.

Rule-5: 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 land Whether agriculture or non-agriculture	Minimum value. Area of land multiplied by minimum value fixed by Collector of the district under Rule 4.
(b) not quoted....	
(i)	
(ii)	
(iii)	
(iv)	
(c) in case of building:	
(i) Non-commercial building	Minimum 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 4.
(ii) commercial building	Minimum value of

	land whether covered by the construction or not, which is subject-matter 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.

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.

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 can not 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 u/s 47-A(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. Sub section (2) of Section 47-A 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, sub section 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 sub section (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 u/s 47-A(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 reported in Kaka Singh Vs. The Additional Collector and District Magistrate (Finance and Revenue), Bulandshahr and Another, 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 u/s 47-A 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 47-A would come into play (para-10). 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 Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others, has held that circle rates under Rule 340-A (since repealed and substituted by Rule 4 of Rules of 1997) is merely a guideline and at best primafacie 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 and Others Vs. Mohabir Singh etc. etc., 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 primafacie material and that no absolute higher or minimum value can be pre-determined (para-5). The Supreme Court approved the judgment of Punjab &

Haryana High Court reported in Chamkaur Singh and another Vs. The State of Punjab and another, which held that the guidelines cannot control the quasi judicial discretion to determine the correct valuation of the property.

20. In Maya Food v. C.C.R.A. 1999 RJ 619 a 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. reported in 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 (para-4).

22. In Smt. Prabhawati v. C.C.R.A. reported in 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, 340-A 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 reported in Aniruddha Kumar v. C.C.R.A. 2000 R.D. 566. In the said authority it has also been held that agricultural Sand cannot be treated as residential plot unless declaration u/s 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 para-21 of the said authority it has also been held that valuation cannot be determined on the basis of its future potential.

24. In Hajeri Lal Sahu Vs. State of U.P. and Others, a Single Judge of this court struck down Note-2 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 co-tenure 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 ex-parte report of Tehsildar or other officer. Ex-parte inspection report may be relevant for initiating the proceedings u/s 47-A 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 Rule-7(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 alongwith the report so that correct valuation may be ascertained with reasonable certainity.

26. Accordingly, writ petition is allowed. Orders dated 31.12.2001 and 11.8.2004 are set aside. Matter is remanded to A.D.M.(Finance & Revenue) to decide the valuation of the property in the light of observations made above. Inspection of the property shall be made by the authority hearing the case after due notice to the petitioner. As the orders under which deficiency in stamp duty was determined have been set aside hence sale of the property in realization of the said arrears automatically vanishes particularly due to the reason that decree holder i.e. State was purchaser. The revision directed against the same pending before Board of Revenue has therefore become infructuous and it shall be dismissed as such.