

(iii). It is provided that till the order is passed by the Electrical Inspector, no recovery shall be made from the petitioner in pursuance of the bills dated 05.06.1985 and 07.06.1985.

(iv). This protection shall be available only till passing of an appropriate order by the Electrical Inspector as directed by this Court.

17. In light of the aforesaid direction, the writ petition is **disposed of**.

-----  
**(2023) 5 ILRA 1499**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 20.04.2023**

**BEFORE**

**THE HON'BLE ALOK MATHUR, J.**

Writ-C No. 45294 of 2010

**Anil Kumar Gupta @ Rajendra Gupta & Ors.** ...Petitioners

**Versus**

**State of U.P. & Ors.** ...Respondents

**Counsel for the Petitioners:**

Sri R.K. Gupta

**Counsel for the Respondents:**

C.S.C.

**Civil Laws – Constitution of India, 1950 - Article – 226 – Stamp Act, 1899 – Sections 47, 47-A, 47(a)(3), 47-A/33, 48-A, 56(1-A) & 56(2) - UP Stamp Valuation of Property Rules, 1997- Rule 7, 7(2)(c), 7(3)(C) - Sale deed of an agricultural land – notice for deficiency in Stamp duty while accepting a complaint that, agricultural plot was purchased but with two storied house, valuation of which was not included - recovery citation – Appeal - with a specific plea that no any independent inquiry or inspection was conducted before issuing impugned recovery**

order – appeal rejected – writ petition – undoubtedly, as recorded in order of Commissioner himself such a request was made by the petitioner in appeal preferred by him - When such a request is made then, it is mandatory upon authorities concerned to exercise powers conferred under Section 7(3)(c) of Rules and inspect property after giving due notice to parties and only then proceed with matter - in case aforesaid exercise has not been conducted valuable right vested in person who is put under notice is lost and valuable right cannot be exercised by him and procedure as prescribed is required to be followed in letter and spirit - and not inspecting property even after application made by petitioner is clearly arbitrary and illegal – hence, matter is remitted back to the Additional District Magistrate who shall proceed in the matter afresh in accordance with law – direction issued - accordingly, writ petition is allowed. (Para – 13, 15, 16)

**Writ Petition Dismissed.** (E-11)

**List of Cases cited:**

1. Wasi Ur Rehman & anr. Vs Commissioner Moradabad Division & ors., (writ - C No. 47533 of 2010 decide don dated 26.2.2015),
2. Chiranji Lal (Dr.) Vs Hari Das (2005) 10 SCC 746,
3. Ramesh Chand Bansal Vs District Magistrate/Collector, 4(1999) 5 SCC 62,
4. Agra City Real St. Development Organisation, Agra Vs St. of U.P & ors.) 2003 (2) SAC 361,
5. Vijay Kumar & anr. Vs Commissioner, 2008(3) AWC 299 All.,
6. Ratna Shankar Dwivedi Vs St. of U.P., AIR 2012 ALL 100,

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri R. K. Gupta, learned counsel for the petitioners as well as learned Standing counsel for respondent No.s 1 to 4.

2. The petitioner has challenged the order dated 5.3.2008 passed by Assistant Stamp Commissioner/ Collector, Stamp, Fatehpur as well as the order dated 30.11.2009 passed by Additional Commissioner (Administration), Allahabad Divisions, Allahabad thereby dismissing the appeal preferred by the petitioner under Section 56 (1-A) of the Indian Stamp Act, 1899. He has also challenged the consequential orders wherein recovery citation dated 26.7.2010 has been issued for realization of the deficient stamp duty.

3. It has been submitted on behalf of the petitioner that respondent No.5 had sold a land measuring 0.0405 square meters of gata No.863 through registered sale deed dated 21st February, 2007 and he has further paid the sufficient court fee on consideration which was agreed between the parties as mentioned in the sale deed. Assistant Stamp Commissioner / Collector Stamp Duty issued notice to the petitioner after registering a case on the ground that the petitioner had not paid adequate stamp duty for registration of the said plot and notices were issued as to why the deficit amount be not recovered from the petitioner. The petitioner had responded to the said notice and submitted his reply to the Sub Divisional Magistrate, Sadar, Fatehpur.

4. It is further submitted that the petitioner has purchased the agricultural land standing in the name of Phool Singh and proceedings have been initiated on the basis of a false complaint at the behest of one Ram Sajiwan. He further submits that adequate consideration of stamp duty has been paid and, hence, prayed that the notice issued to him may be discharged. Additional District Magistrate (Finance and Revenue) considered the response of the

petitioner rejected his defence and upheld the fact that the petitioner had not paid adequate consideration of stamp duty. He took into account the fact that according to the sale deed the agricultural plot was purchased but on the spot two storied house was existing the valuation of which was not included in the sale deed and accordingly there was deficiency in the stamp duty paid by the petitioner.

5. The petitioner being aggrieved by the order dated 5.3.2008 passed by Additional District Magistrate (F & R), Fatehpur preferred an appeal before the Commissioner, Allahabad under Section 56(2) of the Stamp Act. The Commissioner also did not find any merit in the plea taken by the petitioner and affirmed the order of Additional District Magistrate (F & R), Fatehpur by dismissing the appeal by means of order dated 30.11.2009.

6. Assailing both the orders of the authorities learned counsel for the petitioner has submitted that both the authorities concerned have not followed the procedure established under Section 47-A of U.P. Stamp Act as well as Uttar Pradesh Stamp (Valuation of Properties), Rules, 1997 (hereinafter referred to as the Rules of 1997). He submits that entire proceedings were initiated only on the basis of a complaint made by one Ram Sajiwan and without ascertaining any of the facts the respondents have proceeded on the ground that a two story house was existing on the plot purchased by the petitioner and consequently there was deficiency in the court fee. He has further submitted that the petitioner had requested the respondents to inspect the property after due notice to the parties in exercise of the powers under Section 7(2) (c) of the Rules of 1997 but no

such inspection was conducted and the respondents proceeded to reject the contention of the petitioner and upheld the deficiency in stamp fee in the said instrument sought to be registered by the petitioner. In support of his submissions, learned counsel for the petitioner has submitted that he had taken specific plea before the Commissioner in his appeal where this aspect of the matter has been duly recorded by him that the petitioner has sought an independent inquiry /inspection of the said plot and only then the appellate authority should proceed in the matter. Without considering the pleas raised by the petitioner the Commissioner proceeded to uphold the order of Additional District Magistrate (F & R), Fatehpur and misconducted himself and has proceeded contrary to the procedure prescribed under the Rules of 1997.

7. Learned Standing counsel, on the other hand, has opposed the writ petition. He submits that there is no infirmity in the orders passed by the authorities concerned. He has further submitted that there is no dispute with regard to the fact that a two story building was existing on the plot purchased by the petitioner which was not disclosed in the sale deed and consequently when the same was noticed by the authorities concerned the petitioner was put under notice and proceedings were initiated and concluded strictly in accordance with the provisions under Section 48 (A) of the Stamps Act and, hence, supported the order passed by the respondents.

8. Learned counsel for the petitioner while assailing the assessment order as well as the appellate order passed under Section 47 A of the Stamp Act and has submitted that no inspection was ever made at the property and that in case the inspection

would have been made in presence of the petitioner he would have been in a position to demonstrate that there was no building existing on the plot purchased by him and in this regard he submits that the respondents have proceeded in violation of the procedure prescribed under the Rules of 1997. Rule 7 ( C) of the Rules of 1997 provides the procedure on receipt of a reference or when suo motu action is proposed under Section 47-A of the Stamp Act. The Rule 7(2) (c) provides that the Collector may inspect the property after due notice to parties to the instrument.

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

10. In the light of the above objections raised by the petitioner it was necessary for the Collector to exercise the powers under Rule 7 (3) (c) of the Rules of 1997 and conducted spot inspection in presence of the petitioner and there upon proceeded under Section 47 A to assess the valuation of the land.

11. This Court in WRIT - C No. - 47533 of 2010 (**Wasi Ur Rehman And Another Vs. Commissioner Moradabad Division And Others**) decided on 26.2.2015 has held as under:-

*"The Indian Stamp Act, 1899 is a law relating to revenue/stamps. Its applicability thus stands restricted to the scheme of the Act. The Stamp Act is a fiscal measure enacted with an object to secure revenue for the State on certain classes of instrument.*

*It is not enacted to arm a litigant with a weapon of technicality to defect the case of the Revenue. The stringent provisions of the Act are conceived in the interest of the Revenue.*

*It is a matter of common knowledge that in order to escape such duty by unfair practice, many a time under valuation of a property or lower consideration is mentioned in a sale deed. (**Chiranji Lal (Dr.) v. Hari Das (2005) 10 SCC 746; Ramesh Chand Bansal versus District Magistrate/Collector, 4(1999) 5 SCC 62.** A Stamp Act is a taxing statute and as regards a taxing statute, it is well settled that equity has no place in it. There is no presumption as to a tax, nothing is to be read in, nothing is to be implied, (**Agra City Real State Development Organisation, Agra versus State of U.P & others**) 2003 (2) SAC 361.*

*Market value has not been defined under the Act, in proceedings under section 47-A (3) refers "to instrument on which duty is chargeable on the market value of the property", Article 23 provides for stamp duty payable on conveyance which refers to market value of immovable*

*property which is subject of such conveyance.*

*Market value as referred to in the expression conveyance is the price which a willing purchaser would pay to a willing seller for the property. The court in **Vijay Kumar and another Versus Commissioner, 2008(3) AWC 299 All**, explained the expression "market value":*

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

*Again in **Ratna Shankar Dwivedi versus State of U.P., AIR 2012 ALL 100** the Court held that:*

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

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

*that burden. (Vijay Kumar Vs. Commissioner, Meerut Division) AIR 2008 All 176.*

*The expression "reason to believe" is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith, it cannot be merely a pretence. It is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not irrelevant or extraneous to the purpose of the section. "*

12. In the instant case, the Collector has relied solely upon the spot inspection report while the petitioner, on the other hand, had questioned the said report and filed objection but the objections raised by the petitioner were not even dealt with by the Collector and he proceeded to ascertain the valuation of the land solely on the basis of the spot inspection report which was duly challenged by the petitioner. While assessing the stamp valuation of the land it was open in the present set of circumstances for the Collector to have exercised the powers so vested in him under Rule 7 sub clause 3 (c) of the Rules of 1997 and get the land inspected as requested by the petitioner in his application.

13. It is noticed that according to Rule 7 when reference is received by the Collector after issuance of notice to the parties be directing them to show cause as to why the stamp fee of the property cited in the instrument be not realized in exercise of the powers conferred in sub clause 3 of Rule 7 (3) and inspect the property after due notice to the parties to the instrument. Undoubtedly, as recorded in the order of the Commissioner himself such a request

was made by the petitioner in the appeal preferred by him. When such a request is made then it is mandatory upon the authorities concerned to exercise the powers conferred under Section 7 (3) (c) of the Rules of 1997 and inspect the property after giving due notice to the parties and only then proceed with the matter. In case aforesaid exercise has not been conducted valuable right vested in the person who is put under notice is lost and valuable right cannot be exercised by him and the procedure as prescribed is required to be followed in letter and spirit and not inspecting the property even after the application made by the petitioner is clearly arbitrary and illegal and proceeding with the matter without exercising the power conferred under Section 7 (3) (C) the respondents have clearly proceeded in illegal and arbitrary manner while holding that the petitioner was liable to pay stamp duty even for the double story house which was standing on the said plot.

14. Without even entering into the merits of the other aspects as raised by the petitioner, this Court is of the considered opinion that the impugned orders are illegal and arbitrary having been passed without following the provisions prescribed under the Rules of 1997 and accordingly the orders dated 5.3.2008 passed by respondent No.2 in case No.12 of 2007-08, under Section 47-A/33 of Stamp Act and the order dated 30.11.2009 passed by respondent No.3 in Appeal No.7/21 of 2008 under Section 56 (1-A) of Indian Stamp Act as well as recovery citation dated 26.7.2010 are set aside.

15. The matter is remitted back to Additional District Magistrate (F & R), Fatehpur, who shall proceed afresh in the matter after inspecting the property as

provided under Rule 7 of the Rules of 1997 in accordance with law. He is directed to conclude the proceedings expeditiously after giving due opportunity of hearing to the parties concerned. Let such an exercise be concluded within a period of two months from the date a certified copy of this order is placed before him.

16. Learned counsel for the petitioner submits that in pursuance of earlier direction of this Court the 1/3rd deficient amount of the stamp duty has already been deposited by him before Tahsildar, Fatehpur. It is, therefore, provided that the the said deposited amount shall be adjusted in the order to be passed by Additional District Magistrate (F & R), Fatehpur in pursuance of the directions of this Court.

17. The writ petition is **allowed**.

-----  
**(2023) 5 ILRA 1504**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 09.05.2023**

**BEFORE**

**THE HON'BLE KSHITIJ SHAILENDRA, J.**

Writ-C No. 58632 of 2017

**Bharat Heavy Electricals Ltd. ...Petitioner**  
**Versus**  
**Deepak Kumar & Ors. ...Respondents**

**Counsel for the Petitioner:**  
 Sri Tarun Varma, Sri Ashish Mishra

**Counsel for the Respondents:**  
 Sri Rahul Jain

**Civil Laws – Constitution of India, 1950 - Article – 226, 227 – Public Premises Eviction of Unauthorized Occupants Act, 1971 - Sections 9 & 83(9) - Application to issue appropriate direction permitting the**

petitioner to get the premises vacated from the respondents who have attained age of superannuation and no longer associated with petitioner – by placing reliance upon a judgment of the Apex Court in case of '*LIC vs Nandini J. Shah*' respondents pleaded that writ petition under Article 226 is not maintainable – court finds that, either sitting in jurisdiction under Article 226 or under 227 court cannot ignore the fact that respondents are occupying official accommodations, which they claim to be associated with their services and therefore, admittedly, those who have attained the age of superannuation, cannot be allowed to remain in occupation in the accommodations, irrespective of the nature of their services or even on the ground that certain sums allegedly payable to them remain unpaid to them – held, the High court, in whatever jurisdiction it sits, always functions on the basic principles of equity, fairness and reasonableness, and therefore, the stand of the petitioner needs consideration and cannot be ignored merely on the ground that the writ petition finally has to be heard either under Article 226 or Article 227 – hence, writ petition allowed – directions issued to vacate the premises and hand over peacefully.(Para – 20, 21, 22)

**Writ Petition Dismissed.** (E-11)

**List of Cases cited:**

1. Life Insurance Corporation of India Vs Nandini J. Shah reported in (2018) 15 SCC 356,
2. Kiran Devi Vs Bihar St. Suni Wakf Board & ors. (2021 SCC Online SC 280,
3. M/s Hindustan Auto Agency Vs Steel Authority of India Ltd. (2021) 4 JBCJ 653,

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Sri Ashish Mishra, learned counsel for the petitioner, Sri Rahul Jain, learned counsel for the respondent nos.1 to 8 and learned Standing Counsel for the respondent no.9.

2. The instant application has been filed with a prayer to issue appropriate