Commissioner (Commercial Tax), holding charge of the Deputy Commissioner (Administration), Commercial NOIDA, to the extent it punishes the petitioner, is hereby quashed. The respondents may pass a fresh order awarding such punishment as the changed status of the petitioner on account of his supervening retirement from service may admit under the Rules, bearing in mind the guidance in this judgment. The respondents shall also pass further orders regarding the petitioner's entitlement to receive emoluments for the period of suspension from service, after putting him to notice for the limited purpose as aforesaid and affording him due opportunity. The petitioner shall, however, be entitled to the benefit of continuity in service, which shall reckon towards the determination of his post retiral benefits. The question of earning increments while the petitioner was in service and arrears, if any, payable on that account, would be subject to the penalty that is ultimately awarded by the respondents.

36. There shall be no order as to costs.

(2025) 2 ILRA 704
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.02.2025

BEFORE

THE HON'BLE PIYUSH AGRAWAL, J.

Writ C No. 9298 of 2021

Birjesh AggarwalPetitioner

Versus
State of U.P. & Ors.Respondents

Counsel for the Petitioner: Brajesh Shukla, Krishna Dutt Tiwari

Counsel for the Respondents: C.S.C.

Civil Law - Indian Stamp Act, 1899 -Section 47-A - Deficiency of Stamp Duty -A big chunk of land was sub-divided into 37 small plots, having a common passage of 9 meters, which was duly approved by the Development Authority. The exit of the colony joined the main road. Petitioner purchased a residential plot situated on the 9-meter-wide internal road, but deficiency of stamp duty was imposed, treating the plot as if situated on the main road, merely because the larger chunk of land abutted the main road, and that too without anv spot inspection. Held: Once а colony approved by the Development Authority, the internal roads therein are also deemed approved and are to be maintained by the Authority thereafter. Once the subdivision and the common road have been approved by the Development Authority, the inference drawn that the petitioner's plot is situated on the main road has no legs to stand on. Merely because the road of the colony joins the main road, as stated above, will not entitle the authorities to charge the deficiency of stamp duty on the petitioner as compared to the first plot, which is adjacent to the main road. (Paras 8, 9)

Allowed. (E-5)

(Delivered by Hon'ble Piyush Agrawal, J.)

- 1. Heard learned counsel for the petitioner and learned ACSC for the State respondents.
- 2. The instant writ petition has been filed challenging the impugned order dated 04.11.2020 passed by the respondent no. 2 in Case No. 03364/2019 as well as the impugned order dated 08.02.2021 passed by the respondent no. 3 in Appeal No. 00018/2021.

- 3. Learned counsel for petitioner submits that vide sale deed dated 25.07.2019, the petitioner purchased residential plot in question after paying requisite stamp duty. He further submits that the big chunk of the land was divided in small plots, which was duly approved by the Saharanpur Development Authority. Thereafter. the Deputy Registrar, Saharanpur submitted a report with regard to deficiency of stamp duty, pursuant to which proceedings under section 47-A of the Indian Stamp Act were initiated against the petitioner and a notice was issued, to which the petitioner submitted his reply. Thereafter, the respondent no. 2, vide impugned order dated 04.11.2020, imposed deficiency of stamp duty, together with interest and penalty. Aggrieved by the said order, the petitioner preferred appeal, which has been dismissed vide impugned order dated 08.02.2021. Hence, this writ petition.
- 4. Learned counsel for the further submits that petitioner the impugned order has been passed without considering the case of the petitioner that the plot in question is situated at 9 meters wide road, but the same has been passed treating the plot to be on main road. He further submits that the Deputy Registrar has submitted its report without there being any spot inspection of the plot in question. He further submits that before passing the impugned order, the Collector has neither made any spot inspection, nor called for a report.
- 5. He further submits that since the big chunk of the land has been sub-divided showing a common passage of 9 meters and the plot of the petitioner situated against 9 meters road, it was incorrect on the part of the respondents authorities to hold that the plot of

- the petitioner is situated on the main road. He refers to the sale deed (Annexure No.1 to the writ petition), where this fact is specifically mentioned at internal page no. 3. When the proceedings were initiated against the petitioner, in his reply, the petitioner has taken a specific ground, but though the said fact was noticed in the impugned order, but no weightage was given. In appeal also, the said fact was mentioned in ground no. 12, but no finding was recorded to that effect. He prays for allowing the writ petition.
- 6. Per contra, learned ACSC supports the impugned order and submits that the land in question was a big chunk of land, which is situated on the main road and therefore, the proceedings have rightly been initiated against the petitioner. He further submits that once the plots have been divided, the purchasers will not escape from their liability of payment of due stamp duty to the State.
- 7. After hearing learned counsel for the parties, the Court has perused the records.
- 8. It is not in dispute that the plot in question was a big chunk of land, in which 37 plots were sub-divided and exit of the colony joins the main road, i.e., Bhagat Singh Marg. The record further reveals that the authorities have lost sight of the fact that the colony or sub-division of plots have duly been approved by the Development Authority. Once the sub-division and the common road has been approved by the Development Authority, the inference drawn that the plot in question of the petitioner situated at main road has no legs to stand on.
- 9. The map of sub-division, which is duly approved by the Development Authority has been annexed as Annexure No. 2 to the writ petition. Plot no. 24 has been purchased by the petitioner, which is

not on the main road, but prior to it, plot nos. 21, 22 & 23 exist and thereafter, the plot of the petitioner is there. In front of the plot, there is 9 meters wide road, which is approved by the Development Authority. Once a colony is approved by the Development Authority, it goes without saying that the road thereof has also been approved, which is to be maintained by the Development Authority thereafter. Merely because the road of the colony joins the main road, as stated above, will not entitle the authorities to charge the deficiency of stamp duty on the petitioner as compared to the first plot, which is adjacent to the main road.

- 10. In view of the peculiar facts & circumstances of the case as noted above, the impugned orders passed in these writ petition cannot be sustained in the eyes of law. The matters require reconsideration.
- 11. For the said purpose, the impugned orders passed by the authorities below in the writ petition are hereby quashed.
- 12. The writ petition is, accordingly, allowed.
- 13. The matter is remanded back to the Collector (Stamps)/ Assistant Commissioner of Stamps, Saharanpur, i.e., the respondent no. 2, for deciding the issue de novo after granting due opportunity of hearing to all the stake holders, expeditiously, preferably, within a period of three months from the date of production of a certified copy of this order.
- 14. It is made clear that any amount already deposited by the petitioners shall be subject to the outcome of the order passed by the respondent no. 2.