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STATE OF U.P. & ORS.

v.

AMBRISH TANDON & ANR.

(Civil Appeal No. 735 of 2012)

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JANUARY 20, 2012

**[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]**

*Stamp Act, 1899 – s. 47A/33 – Deficiency in stamp duty – Execution of sale deed in favour of purchaser – Surprise inspection by District Magistrate – Deficiency found in payment of stamp duty – Case registered u/s. 47A/33 – Order passed by the Additional Collector demanding differential stamp duty with interest and penalty – Non-payment of the amount – Issuance of demand notice claiming the said amount plus 10% recovery charges – Writ petition – High Court issuing writ in the nature of certiorari quashing the order passed by the Additional Collector and the demand notice – Interference with – Held: Not called for – Though the Collector made a surprise site inspection, no record to show that all the details such as measurement, extent, boundaries were noted in the presence of the purchasers – At the time of execution of the sale deed, the property was used for residential purpose and the stamp duty was paid based on the position and user of the building on the date of the purchase – Mere use of the property for commercial purpose at a later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty – Nature of user relatable to the date of purchase and relevant for the purpose of calculation of stamp duty – Also, it was the grievance of the purchasers that they were not given adequate opportunity by the Addl. Collector and order was passed on a public holiday – Though the matter could have been considered by the Appellate Authority, since there was no serious objection by the State relating to alternative remedy before the High Court, such objection is not interfered at this juncture.*

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Respondent purchased a property and on execution of sale deed paid stamp duty. The District Magistrate on spot inspection found that there was deficiency in the payment of stamp duty. The Additional Collector passed an order demanding differential stamp duty with interest and penalty but the respondents failed to pay the same. Thereafter, the Additional Collector issued a demand notice under Section 47A/33 of the Stamp Act, to the respondents claiming the amount due with recovery charges. Aggrieved, the respondents filed a writ petition. The Division Bench of the High Court issued a writ in the nature of certiorari quashing the order passed by the Additional Collector (Finance & Revenue) and the demand notice. Therefore, the appellant filed the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1. A perusal of the proceedings before the High Court show that the State was not serious in raising this objection relating to alternative remedy and allowed the High Court to pass orders on merits, thus, such objection is not entertained at this juncture though it is relevant. In fact, on receipt of the notice from the High Court in 2005, the appellants who are respondents before the High Court could have objected the writ petition filed under Article 226 and sought for dismissal of the same for not availing alternative remedy but the fact remains that unfortunately the State or its officers have not resorted to such recourse. [Para 7] [428-F-H]

1.2. It is the grievance of the respondents-purchasers that they were not given adequate opportunity by the Addl. Collector and order was passed on a public holiday. Before the High Court as well as in this Court, the respondents placed the order sheet which contains the various dates and the date on which the ultimate decision was taken by him. It shows that the matter was heard and

A decided on a public holiday. In all fairness, the High Court  
instead of keeping the writ petition pending and deciding  
itself after two years could have remitted the matter to the  
Addl. Collector for fresh orders. However, it had gone into  
the details as to the area of the plot, nature of the building  
B i.e. whether it is residential or non-residential and based  
on the revenue records and after finding that at the time  
of execution of the sale deed, the house was used for  
residential purpose upheld the stand taken by the  
respondents and set aside the order dated 27.09.2004  
C passed by the Addl. Collector. [Para 8, 6] [429-A; 428-B-  
D]

1.3. Regarding the merits though the Collector,  
Lucknow made a surprise site inspection, there is no  
record to show that all the details such as measurement,  
D extent, boundaries were noted in the presence of the  
respondents who purchased the property. It is also  
explained that the plot in question is not a corner plot as  
stated in the impugned order as boundaries of the plot  
mentioned in the freehold deed executed by Nazool  
E Officer and in the sale deed only on one side there is a  
road. It is also demonstrated that at the time of execution  
of the sale deed, the house in question was used for  
residential purpose and it is asserted that the stamp duty  
was paid based on the position and user of the building  
F on the date of the purchase. The impugned order of the  
High Court shows that it was not seriously disputed  
about the nature and user of the building, namely,  
residential purpose on the date of the purchase. Merely  
because the property is being used for commercial  
G purpose at the later point of time may not be a relevant  
criterion for assessing the value for the purpose of stamp  
duty. The nature of user is relatable to the date of  
purchase and it is relevant for the purpose of calculation  
of stamp duty. Though the matter could have been  
H considered by the Appellate Authority in view of the

reasoning that there was no serious objection and in fact the said alternative remedy was not agitated seriously and in view of the factual details based on which the High Court has quashed the order passed by the Additional District Collector, it is not interfered at this juncture. Under these circumstances, there is no valid ground for interference with the impugned order of the High Court. [Paras 8 and 9] [429-B-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 735 of 2012.

From the Judgment and Order dated 25.01.2007 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 732 of 2005.

Shail Kumar Dwivedi, A.A.G. Sanjay Visen, Abhinav Srivastava, Vandana Mishra and Gunnam Venkateswara Rao for the Appellants.

K.V. Viswanathan and Mathew for the Respondents.

The Judgment of the Court of was delivered by

**P. SATHASIVAM, J. 1.** Leave granted.

2. This appeal is filed against the final judgment and order dated 25.01.2007 passed by the Division Bench of the High Court of Judicature at Allahabad in Writ Petition No. 732 (M/B) of 2005 whereby the Division Bench while allowing the petition filed by the respondents herein issued a writ in the nature of certiorari quashing the impugned order dated 27.09.2004 passed by the Additional Collector (Finance & Revenue), Lucknow and the demand notice dated 20.01.2005.

### 3. Brief Facts:

a) A Sale Deed dated 16.04.2003 was executed between Har Charan Singh and the respondents herein in respect of the

A property situated at 17/1 Ashok Marg, Lucknow measuring 11,029 sq. ft. and registered as Sale Deed Document No. 5341 of 2003. The total value of the property was computed as Rs. 1,55,28,860/- for the purposes of Stamp Duty and the respondents herein paid Rs. 15,53,000/- as stamp duty.

B b) The District Magistrate, Lucknow made a spot inspection of the property in question on 21.07.2003. During inspection, the land has been found having an area of 12,099 sq. ft. with a two storey building having an area of 5,646.3 sq. ft. at ground floor and an area of 5192.3 sq. ft. at the first floor. In the inspection report, the property in question has been valued for Rs. 3,87,74,097/- and the stamp duty on the said property has been calculated by the competent authority as Rs. 38,78,000/-. However, at the time of purchase, respondents herein paid Rs. 15,53,000/- as Stamp duty, hence a deficiency of Rs. 23,50,000/- has been pointed out by the authorities. The District Magistrate, vide report dated 26.07.2003, directed to register a case against the respondents herein

C c) On the basis of the aforesaid report, Case No. 653 Stamp-2003 under Sections 47A/33 of the Indian Stamp Act, 1899 (in short 'the Act') was registered. Vide order dated 27.09.2004, the Additional Collector (Finance & Revenue) Lucknow directed the respondents to make good the deficiency in the stamp duty and also imposed a penalty amounting to Rs. 8,46,000/- for such tax evasion. On 20.01.2005, for failure to deposit the aforesaid amount, a demand notice claiming an amount of Rs. 38,30,500/- plus 10% recovery charges was issued and the respondents herein were directed to pay the said amount within a period of seven days.

D d) Being aggrieved by the order dated 27.09.2004 and demand notice dated 20.01.2005, the respondent filed a writ petition being No. 732 of 2005 before the High Court. By order dated 25.01.2007, the High Court, while allowing the petition filed by the respondents herein issued a writ in the nature of

certiorari quashing the impugned order dated 27.09.2004 A  
passed by the Additional Collector (Finance & Revenue),  
Lucknow and the demand notice dated 20.01.2005.

e) Aggrieved by the said decision, the State has preferred  
this appeal by way of special leave petition before this Court. B

4. Heard Mr. Shail Kumar Dwivedi, learned Addl. Advocate  
General for the appellant-State and Mr. K.V. Viswanathan,  
learned senior counsel for the respondents.

5. The only question for consideration in this appeal is C  
whether the High Court is justified in interfering with the order  
dated 27.09.2004 passed by the Additional Collector (Finance  
and Revenue), Lucknow demanding differential stamp duty with  
interest and penalty in respect of the sale deed dated D  
16.04.2003 executed in favour of the respondents herein.  
According to the respondents, through a registered Sale Deed  
dated 16.04.2003 they have purchased the house No. 17/1  
Ashok Marg, Lucknow for a total sale consideration of Rs.1.5  
crores on which required stamp duty of Rs. 15.53 lakhs was  
paid. When the Additional Collector issued a notice under E  
Section 47A/33 of the Act, the respondents submitted objection  
dated 29.08.2003 stating that the extent, area and valuation are  
in accordance with the revenue records and the stamp duty  
paid by them on the sale deed was proper. It is also stated by  
the respondents that before passing the order dated F  
27.09.2004, the Additional Collector (Finance and Revenue)  
Lucknow has not afforded sufficient opportunity to them and the  
impugned order was passed in a most arbitrary manner  
ignoring the objection submitted by them. It is also stated that  
at the time of sale deed the house was a residential property G  
and in order to avoid unnecessary harassment at the hands of  
the revenue and for the purpose of stamp duty and registration  
they had valued the said property at the rate fixed by the  
Collector, Lucknow treating the land as commercial at the rate  
of Rs.11,300 per sq. metre. In other words, for the purpose of H

A stamp duty and registration, according to the respondents, they added additional 10% to the value.

6. In support of the contention that they were not given adequate opportunity by the Addl. Collector and order was passed on a public holiday, before the High Court as well as in this Court, the respondents herein have placed the order sheet which contains the various dates and the date on which the ultimate decision was taken by him. It shows that the matter was heard and decided on a public holiday. In all fairness, the High Court instead of keeping the writ petition pending and deciding itself after two years could have remitted the matter to the Addl. Collector for fresh orders. However, it had gone into the details as to the area of the plot, nature of the building i.e. whether it is residential or non-residential and based on the revenue records and after finding that at the time of execution of the sale deed, the house was used for residential purpose upheld the stand taken by the respondents and set aside the order dated 27.09.2004 passed by the Addl. Collector.

7. Learned counsel appearing for the appellant-State submitted that as per the provisions of the Act and the Rules made therein, there is a provision for appeal and instead of resorting the same, the respondents have straightaway approached the High Court by exercising writ jurisdiction under Article 226 which is not permissible. A perusal of the proceedings before the High Court show that the State was not serious in raising this objection relating to alternative remedy and allowed the High Court to pass orders on merits, hence we are not entertaining such objection at this juncture though it is relevant. In fact, on receipt of the notice from the High Court in 2005, the appellants who are respondents before the High Court could have objected the writ petition filed under Article 226 and sought for dismissal of the same for not availing alternative remedy but the fact remains that unfortunately the State or its officers have not resorted to such recourse.

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ANR. [P. SATHASIVAM, J.]

8. We have already held that it is the grievance of the respondents that the orders were passed by the Additional Collector on a public holiday. Regarding the merits though the Collector, Lucknow made a surprise site inspection, there is no record to show that all the details such as measurement, extent, boundaries were noted in the presence of the respondents who purchased the property. It is also explained that the plot in question is not a corner plot as stated in the impugned order as boundaries of the plot mentioned in the freehold deed executed by Nazool Officer and in the sale deed dated 16.04.2003 only on one side there is a road. It is also demonstrated that at the time of execution of the sale deed, the house in question was used for residential purpose and it is asserted that the stamp duty was paid based on the position and user of the building on the date of the purchase. The impugned order of the High Court shows that it was not seriously disputed about the nature and user of the building, namely, residential purpose on the date of the purchase. Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. Though the matter could have been considered by the Appellate Authority in view of our reasoning that there was no serious objection and in fact the said alternative remedy was not agitated seriously and in view of the factual details based on which the High Court has quashed the order dated 27.09.2004 passed by the Additional District Collector, we are not inclined to interfere at this juncture.

9. Under these circumstances, we find no valid ground for interference with the impugned order of the High Court. Consequently, the appeal fails and the same is dismissed with no order as to costs.

N.J.

Appeal dismissed.

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