

Court No. – 19

(1)- **Case :-** WRIT - C No. - 8666 of 2024

Petitioner :- Bindu Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue Deptt. Lko.
And 2 Others

Counsel for Petitioner :- Amrendra Nath Tripathi,Sant Prasad Singh

Counsel for Respondent :- C.S.C.,C.S.C.

and

(2) **Case :-** WRIT - C No. - 8680 of 2024

Petitioner :- Bindu Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Revenue Deptt. Lko
And 2 Others

Counsel for Petitioner :- Amrendra Nath Tripathi,Sant Prasad Singh

Counsel for Respondent :- C.S.C.

Hon'ble Subhash Vidyarathi J.

1. Heard Sri Amrendra Nath Tripathi and Sri Sant Prasad Singh Advocates, the learned counsel for the petitioner, Sri Hemant Kumar Pandey, the learned Standing Counsel for the State and perused the records.
2. Writ C No.8666 of 2024 has been filed challenging validity of an order dated 24.01.2024 passed by the Additional District Magistrate (Finance and Revenue), District - Ambedkar Nagar in Case No.1226 of 2022, under Section 47-A of the Indian Stamp Act, 1899, whereby a deficiency of Rs.39,080/- in payment of Stamp Duty and Rs.7,240/- in payment of registration fee has been imposed regarding Document No. 1549/2022. Besides ordering for recovery of the amount of deficiency in payment of Stamp Duty and registration fee, a penalty of Rs.10,000/- has been imposed and the entire amount has been ordered to be recovered from the petitioner along with interest at the rate of

1.5% per month. The petitioner had filed an appeal under Section 56 (1-A) of the Indian Stamp Act, bearing Case No.581 of 2024, which has been dismissed by means of a judgment and order dated 26.07.2024 passed by the Additional Commissioner (Stamp), Ayodhya Division, Ayodhya and the petitioner has challenged validity of the aforesaid order also.

3. Writ C No. 8680 of 2024 has been filed challenging validity of an order dated 24.01.2024 passed by the Additional District Magistrate (Finance and Revenue), District - Ambedkar Nagar in Case No.1228 of 2022, under Section 47-A of the Indian Stamp Act, 1899, whereby a deficiency of Rs.1,81,100/- in payment of Stamp Duty and Rs.36,220/- in payment of registration fee has been imposed regarding document no. 1548/2022. Besides ordering for recovery of the amount of deficiency in payment of Stamp Duty and registration fee, a penalty of Rs.50,000/- has been imposed and the entire amount has been ordered to be recovered from the petitioner along with interest at the rate of 1.5% per month. The petitioner had filed an appeal under Section 56 (1-A) of the Indian Stamp Act, bearing Case No.579 of 2024, which has been dismissed by means of a judgment and order dated 26.07.2024 passed by the Additional Commissioner (Stamp), Ayodhya Division, Ayodhya and the petitioner has challenged validity of the aforesaid order also.
4. Common questions of facts and law are involved in both the Writ Petitions and, therefore, both the petitions are being decided by a common judgment. As the petitions are proposed to be decided without going into the merits of the case, the learned Counsel for the parties have consented for final disposal of the petition without filing of counter affidavits.
5. Case Nos.1226 of 2022 and 1228 of 2022, under Section 47-A of the Indian Stamp Act, 1899 were instituted on the basis of two similarly worded notices dated 07.10.2022 issued by the Additional District Magistrate (Finance and Revenue), Ambedkar Nagar to the petitioner stating that sale deeds have been executed in favour of the petitioner and it had come to light that there is deficiency in payment of the sale

deeds. The petitioner was asked to appear on 14.10.2022 and submit her objections along with evidence.

6. The petitioner submitted detailed objections in response to the aforesaid two notices and thereafter the impugned orders have been passed.
7. Sri. Amrendra Nath Tripathi, the learned counsel for the petitioner, has submitted that the petitioner had purchased three separate plots of land through three separate sale deeds executed on 02.07.2022. Immediately after execution of the sale deeds, the petitioner came to know that the sale deeds had been executed by some impostor. The petitioner filed a First Information Report bearing Case Crime No.0092 of 2022, under Sections 419, 420, 467, 468, 471 and 120-B of the Indian Penal Code in Police Station – Maharua, District – Ambedkar Nagar on 18.07.2022. After investigation, a charge-sheet has been submitted in that case. The petitioner filed a suit for cancellation of the three sale deeds on 15.07.2022. The defendant –the true owner of the property, entered into a compromise with the plaintiff. The suit was decreed in terms of the compromise on 13.08.2022 and the sale deeds were cancelled. After cancellation of the sale deeds, the petitioner applied for return of the stamp duty whereupon the notices dated 07.10.2022 were issued.
8. Assailing the validity of impugned orders, Sri. Amrendra Nath Tripathi, the learned counsel for the petitioner has submitted that the notices merely state that it has come to light that there is a deficiency in payment of Stamp Duty in the sale deeds. Nothing further has been stated in the notices regarding the basis of satisfaction that there is deficiency in payment of stamp duty. The notices even do not mention the amount of deficiency in payment of stamp duty or any other particular. In support of his contention, the learned counsel for the petitioner has relied upon the case of **Gorkha Security Services versus Govt. of NCT of Delhi & others**: (2014) 9 SCC 105.
9. Replying to the aforesaid submissions, Sri. Hemant Kumar Pandey, the learned Standing Counsel for the State of U.P., has submitted that the notice directed the petitioner to submit her reply/objections along

with evidence. He has submitted that the petitioner had full opportunity to raise all the pleas in response to the notice and she has availed that opportunity by submitting three separate detailed replies dated 21.11.2022, all of which were similarly worded. The point of any defect in the notice dated 07.10.2022 was not raised in any of the replies submitted by the petitioner. The learned Standing Counsel has contended that when the petitioner did not raise any objection in her replies regarding any illegality / deficiency in the notices. The validity of the notice was not assailed even in the memo of appeal filed by the petitioner. He has submitted that as the petitioner has failed to take this ground in reply to the notice and in the memo of appeal, she cannot be permitted to raise this ground for the first time before this Court in this petition. In support of his submission, the learned Standing Counsel has relied upon a decision of the Hon'ble Supreme Court in the case of **Deepak Tandon and others verses Rajesh Kumar Gupta** reported in (2019) 5 SCC 537, wherein Hon'ble Supreme Court held that if a plea is not taken in the pleadings by the parties and no issues on such plea was framed and no finding was recorded either by the trial court or the first appellate court, such plea cannot be allowed to be raised by the parties for the first time in third Court in appeal, revision or writ as the case may be, for want of any factual foundation for the finding.

10. The facts in the case of **Deepak Tandon** (Supra) were that an application under Section 21(1) (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 had been filed for eviction of the tenant on the ground of bona fide need. The respondent-tenant filed his reply and the Prescribed Authority allowed the application. The appeal filed against the eviction order was dismissed by the District Judge. However, a petition filed under Section 227 against the appellate order was allowed by this Court and the order passed by the Prescribed Authority and the Appellate Court were set aside on the ground that the application under Section 21(1) (a) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was not maintainable. The Hon'ble Supreme

Court found that the High Court committed a jurisdictional error as the question of maintainability of the application under Section 21 (1) (a) of the Act of 1972 had not been raised in the written statement filed before the Prescribed Authority and, therefore, the Prescribed Authority had rightly did not decide this issue. The issue of maintainability was not raised even before the first appellate court.

11. The Hon'ble Supreme Court had laid down the aforesaid principle in the aforesaid factual background and had further added that

“15. In our considered opinion, the High Court committed jurisdictional error in setting aside the concurrent findings of the two courts below and thereby erred in allowing the respondent's writ appeal and dismissing the appellants' application under Section 21(1)(a) of the 1972 Act as not maintainable. This we say for the following reasons:

15.1. First, it is not in dispute that the respondent (opposite party) had not raised the plea of maintainability of the appellants' application under Section 21(1)(a) of the 1972 Act in his written statement before the Prescribed Authority.

15.2. Second, since the respondent failed to raise the plea of maintainability, the Prescribed Authority rightly did not decide this question either way.

15.3. Third, the respondent again did not raise the plea of maintainability before the first appellate court in his appeal and, therefore, the first appellate court was also right in not deciding this question either way.

15.4. Fourth, it is a settled law that if the plea is not taken in the pleadings by the parties and no issue on such plea was, therefore, framed and no finding was recorded either way by the trial court or the first appellate court, such plea cannot be allowed to be raised by the party for the first time in third court whether in appeal, revision or writ, as the case may be, for want of any factual foundation and finding.

15.5. Fifth, it is more so when such plea is founded on factual pleadings and requires evidence to prove i.e. it is a mixed question of law and fact and not pure jurisdictional legal issue requiring no facts to probe.

15.6. Sixth, the question as to whether the tenancy is solely for residential purpose or for commercial purpose or for composite purpose i.e. for both residential and commercial purpose, is not a pure question of law but is a question of fact, therefore, this question is required to be first pleaded and then proved by

adducing evidence. It is for this reason, such question could not have been decided by the High Court for the first time in third round of litigation in its writ jurisdiction simply by referring to some portions of the pleadings. In any case and without going into much detail, we are of the view that if the tenancy is for composite purpose because some portion of tenanted premises was being used for residence and some portion for commercial purpose i.e. residential and commercial, then the landlord will have a right to seek the tenant's eviction from the tenanted premises for his residential need or commercial need, as the case may be.

15.7. Seventh, the High Court exceeded its jurisdiction in interfering with the concurrent findings of fact of the two courts below while allowing the writ appeal entirely on the new ground of maintainability of the application without examining the legality and correctness of the concurrent findings of the two courts below, which was impugned in the writ appeal.

15.8. Eighth, the High Court should have seen that the concurrent findings of facts of the two courts below were binding on the writ court because these findings were based on appreciation of evidence and, therefore, did not call for any interference in the writ jurisdiction.

(Emphasis added)

12. The aforesaid principles were laid down in the factual background where the tenant had raised a new ground for the first time before the High Court which ground was based on a mixed question of fact and law, which could only be decided after examining the leadings and evidence of the parties and, therefore, in absence of the ground raised in the pleading and evidence having been led in its support, the High Court could not examine the new plea which was raised for the first time. The plea of notices dated 07.10.2022 being vague, is apparent on the face of the record and no question of fact is involved which needs any evidence to enable this Court to examine the validity of the notice dated 07.10.2022. Therefore, the principles of law laid down in the case of **Deepak Tandon and others** (Supra) would not create a bar against this Court examining the validity of the notice dated 07.10.2022.

13. In the case of **Gorkha Security Services versus Govt. of NCT of Delhi & others**: (2014) 9 SCC 105, wherein the Hon'ble Supreme Court held as follows: -

“Contents of the show-cause notice

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

(Emphasis added)

14. As the proceedings have been instituted on the basis of the notices dated 07.10.2022, which do not contain any factual averment to make out a deficiency in payment of Stamp Duty and it does not even disclose the amount of deficiency, the date of sale deed or any other

particular of instrument, it does not serve any purpose, as in absence of the particulars in the notice, the noticee cannot submit a proper reply to the notice.

15. Moreover, the impugned orders refer to an inspection of the property in question having been carried out by the authorities, but there is nothing on record to establish that the inspection was carried out after giving notice to the petitioner.
16. Rule 7 (3) (c) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 provides that the Collector may inspect the property after due notice to parties to the instrument. The report of any inspection which has not been conducted in accordance with the provisions of Rule 7 (3) (c) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997, cannot form the basis of an order for recovery of deficient stamp duty.
17. Further, there appears to be no provision in the Indian Stamp Act, 1899 empowering the authorities to order recovery of any deficiency in payment of registration fee and in absence of any statutory provision, the authorities cannot pass any order for recovery of deficiency of registration fee in proceedings instituted under the Indian Stamp Act.
18. Without going into any further factual details, as this Court has come to a conclusion that the proceedings have been instituted on the basis of the notices, which are not sustainable in law, all the proceedings held in furtherance of the two notices dated 07.10.2022 and the orders passed therein are unsustainable in law and are liable to be set aside.
19. Therefore, the petitions are **allowed**. Both the notices dated 07.10.2022 issued to the petitioner alleging deficiency in the stamp duty on the two sale-deeds executed in favour of the petitioner are set aside. Consequentially, the orders dated 24.01.2024 passed by the Additional District Magistrate (Finance and Revenue), District - Ambedkar Nagar in Case Nos.1226 of 2022 and 1228 of 2022, under Section 47-A of the Indian Stamp Act, 1899, as also the orders dated 26.07.2024 passed by the Additional Commissioner (Stamp), Ayodhya Division, Ayodhya in Case Nos.581 of 2024 and 579 of

2024 under Section 56 (1-A) of the Indian Stamp Act and the recovery certificates issued in furtherance of the aforesaid notices and orders, are also set aside.

20. As the proceedings have been set aside by this Court because of defect in notice, a liberty is granted to the opposite parties to issued fresh notices to the petitioner in accordance with law, keeping in view the observations made in this judgment.

(Subhash Vidyarthi J.)

Order Date: 04.10.2024

KR/Pradeep