

1

**Smt. Padmawati Vs. State of Rajasthan & Ors.
(S. B. Civil Writ Petition No.1973/10)**

Dated : 10.4.15

HON'BLE MR. JUSTICE SANGEET LODHA



Mr. Ravi Bhansali, for the petitioner.

Mr. N.S. Rajpurohit, Additional Government Counsel, for the respondents no.1 to 3.

1. By way of this writ petition, the petitioner has questioned legality of order dated 26.9.08 passed by the Collector (Stamp), Circle-Bhilwara, under Section 51 of the Rajasthan Stamp Act, 1998 (for short "the Act") creating the demand of Rs.3,61,000/- towards the deficient stamp duty and registration charges. That apart, the order dated 21.1.10 passed by the Collector (Stamp), rejecting the application preferred by the petitioner under Section 52 of the Act, for rectification of the mistake, is also impugned.

2. The relevant facts are that the petitioner purchased agriculture land ad measuring 15 biswa and 15 biswansi comprising Khasra No.4084, situated at village Deogarh, for consideration of Rs.2,40,000/-. The sale deed was presented for registration. The Sub Registrar assessed the market value of the property at Rs.2,64,000/-. The

petitioner deposited the stamp duty and the registration charges as assessed by the Registering Officer and accordingly, the sale deed was returned to her after registration. After lapse of about 2½ years the petitioner



was served with a notice for determination of deficient stamp duty and registration charges, on the reference being made by the Registering Officer to the Collector (Stamp).

After hearing both the parties, taking into consideration the fact that adjacent land converted to the residential use, sold by the petitioner's brother was valued at the residential rate, the Collector (Stamp) proceeded to assess the market value of the land subject matter of the sale deed accordingly and created the demand for deficient stamp duty and the registration charges as aforesaid. Hence, this petition.

3. Learned counsel for the petitioner submitted that the Collector (Stamp) has failed to consider the fact that the land in question purchased by the petitioner at the relevant time was agriculture land and therefore, question of assessing the market value thereof, considering it to be residential land does not arise. Learned counsel submitted that without impounding the document in terms of

provisions of sub-section (2) of Section 51 of the Act, the Registering Officer could not have referred the matter to the Collector (Stamp) for determining the market value of the property. Learned counsel submitted that the market value



assessed by the Collector (Stamp), assuming the residential use of the land is ex facie illegal and without jurisdiction. In support of the contention, learned counsel relied upon a decision of the Hon'ble Supreme Court in the matter of 'State of U.P. & Ors. Vs. Ambrish Tandon & Anr.' 2012 (1) WLC (SC) Civil 402.

4. On the other hand, learned Additional Government Counsel appearing for the respondents submitted that the instrument in question falls within the definition of "conveyance" in terms of Section 2(xi) of the Act and therefore, the stamp duty thereon is leviable on the market value of the property and therefore, the order impugned passed by the Collector (Stamp), creating the demand for deficient stamp duty and the registration charges, cannot be faulted with.

5. I have considered the rival submissions and perused the material on record.

6. In the considered opinion of this court, the market value of the land subject matter of an instrument produced for registration has to be assessed on the basis of the nature of the land as on the date of execution of the instrument and the possible future use of the land for any other purpose is hardly of any relevance and no assessment of the market value of the land can be made keeping in view the intended use of the land by the beneficiary of the instrument. A bare perusal of the order impugned reveals that the market value of the land in question has been assessed by the Collector (Stamp) on the basis of the value of the adjacent land sold after due conversion of the land for residential purpose, whereas indisputably, the land in question was agriculture land as on the date of execution of the sale deed.



7. In Ambrish Tandon's case (supra), where the market value of the property in question a residential house was assessed on the basis of its intended use for commercial purpose in future, the Hon'ble Supreme Court held that merely because the property is being used for commercial purpose at the later point of time may not be relevant criterion for assessing the value for the purpose of stamp

duty.

8. In view of the discussion above, the writ petition preferred by the petitioner deserves to be allowed.

9. Accordingly, the writ petition is allowed. The orders impugned dated 26.9.08 and 21.1.10 passed by the Collector (Stamp), Bhilwara are set aside. No order as to

costs.



(SANGEET LODHA), J.