

**A.F.R.**

Neutral Citation No.-2024:AHC:89181

**THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

Court No.1

WRIT – C No. 13775 OF 2023

SMT. SHIVANI CHAURASIA AND ANOTHER

V.

STATE OF U.P. AND ANOTHER

**For the Petitioner : Mr. Sanjay Goswami, Advocate**

**For the respondents : Mr. Siddhartha Singh, Standing Counsel**

**Last heard on May 15, 2024**

**Judgment on May 17, 2024**

**HON'BLE SHEKHAR B. SARAFA, J.**

1. In the instant writ petition the order dated February 3, 2023 passed by the District Magistrate/Collector (Stamp), Jaunpur has been assailed on the ground that the Collector (Stamp) lacks the power to recall or review an order by him under Section 47 of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act').

**FACTS**

2. The facts of the instant case have been delineated below: -

- (a) The petitioners purchased an agricultural land measuring 0.216 hectare (Gata No.176 'Aa') situated in Mauza Jagdishpur (Ramnagar Bhadsara), Pargana Haveli, Tahsil Sadar, District Jaunpur, from one Sandeep Kumar, the bhumidhar of the land,

on July 23, 2020 for a sale consideration of Rs.1,20,00,000/- (Circle Rate). Rs.1,25,280/- were paid towards the registration fee. The sale deed was registered on the same day by the Sub Registrar.

- (b) The Sub Registrar submitted a confidential report dated September 14, 2020 to the Assistant Inspector General (Registration), Jaunpur. In the said report, a deficiency of Rs.4,45,790/- in stamp duty and Rs.63,690/- of registration fee was pointed out.
- (c) A stamp case was registered and notice was issued to the petitioners. They appeared before the Collector (Stamp) and agreed to deposit the amount to avoid the imposition of penalty.
- (d) The Collector (Stamp) heard the case, considered the material available on record and after adjudicating the market value of the land, boundary wall and existing trees, it held that there was a deficiency of Rs.4,45,790/- in stamp duty and Rs.63,690/- in registration fee. The Collector also imposed a penalty of Rs.25,000/- vide order dated December 9, 2020. The petitioners deposited the entire amount on December 18, 2020.
- (e) One Shiv Prasad, son of Chauthi Singh, filed a complaint on December 23, 2020 seeking recall of the order dated December 9, 2020. Acting on the complaint of the said private person, another notice dated December 31, 2020 was issued by the Collector (Stamp) to the petitioners.
- (f) The petitioners filed an objection against the aforesaid second notice on the ground that the order dated December 9, 2020 was a final order which was passed after consideration of the

evidence on record and it is not an *ex-parte* order. The petitioners assailed the legality of the second notice issued to them.

- (g) Thereafter, the Collector passed a fresh order on February 3, 2023 which is now under challenge in the instant writ petition.

### **SUBMISSION OF THE PETITIONERS**

3. Counsel on behalf of the petitioners submits that there is no power conferred on the Collector(Stamp) to recall an order passed under Section 47-A of the Act and subsequently reassess/review his earlier order. The petitioners have relied on the judgment of a Division Bench of this Court in the case of *Milap Chandra Jain vs. State of U.P. and others* reported in **1988 All. L.J. 1078** and another judgment of a Coordinate Bench of this Court in the case of *Sunil Kumar vs. State of U.P. and others* reported in **2016(6) AWC 6522**.

### **SUBMISSIONS OF THE RESPONDENTS**

4. Counsel on behalf of the respondents submits that based on the complaint filed by one Shiv Prasad, inquiry has been started against the Sub Registrar wherein a show cause notice was issued to the Sub Registrar to explain the allegations made by the complainant with regards to the forgery of certain documents. He further submits that this inquiry is still underway. An explanation was provided by the Sub Registrar in response to the show cause notice. However, counsel on behalf of the respondents failed to explain to this Court or bring forward any material to indicate as to what steps have been taken subsequent to the receipt of the explanation of the Sub Registrar.

### ANALYSIS AND CONCLUSION

5. Upon a perusal of the documents and after hearing the learned counsel appearing on behalf of the parties, one has to first examine whether the Collector (Stamp) who acts as a quasi-judicial authority possesses any power, inherent or statutory, to recall/review an order passed under Section 47-A of the Act. Upon a perusal of the Act, it is apparent that no such power seems to be made available to the Collector. The Division Bench of this Court in *Milap Chandra Jain's* case (supra) examined this particular issue and made the following observations:-

“6. We have not the slightest doubt that the market value of the property having been adjudicated and determined by the Collector in the exercise of powers expressly conferred upon him under Section 47-A and in accordance with the procedure laid down therein, the same could not be reopened and reviewed except in accordance with law. The powers exercisable by the Collector under S. 47-A are unarguably quasi judicial in nature. There is a procedure laid down for the determination of the valuation which clearly affects the rights of the person who is called upon to pay additional stamp duty in case the adjudication goes against him. That being so, an adjudication made by the Collector under S. 47-A of the Stamp Act could not be disturbed or reopened unless there is an express provision in the enactment conferring power of review by the authority making that order. It is settled law that the power of review on merits is not an inherent power. Such a power must flow from some specific provision in the enactment under which rights of the parties are determined. We are amply fortified here with several decisions of the Supreme Court on this aspect of the controversy. Thus in *Patel Narshi Thakarshi v. Praduman Singhji*, (1971) 3 SCC 844 : AIR 1970 SC 1273 at p. 1275 para 4, their Lordships of the Supreme Court observed as follows:

“It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in

the Act was brought to our notice from which it would be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.”

7. Again in *Chunibhai v. Narayan Rao*, AIR 1965 SC 1457 at pp. 1466-67 para 23, their Lordships reiterated the same view as follows:—

“These orders passed by the Collector in the exercise of his revisional powers were quasi-judicial and were final. The Act does not empower the Collector to review an order passed by him under Section 76-A. In the absence of any power of review, the Collector could not subsequently reconsider his previous decisions and hold that there were grounds for annulling or reversing the Mahalkar's order. The subsequent order dated February 17, 1959 reopening the matter was illegal, ultra vires and without jurisdiction.”

8. It is unnecessary to encumber this decision with other authorities as it is now too late in the day to contest the settled legal position that in the absence of a provision for review an authority or even a tribunal for that matter cannot review orders passed in the exercise of quasi judicial functions. It cannot be seriously challenged that proceedings under Section 47-A of the Stamp Act are quasi judicial in nature.

9. With this legal premise we examine the facts of the present case. As mentioned above, the order dated 28-2-83 was passed upon a reference expressly made under Section 47-A by the Sub-Registrar it was the result of a quasi-judicial determination achieved after hearing both the parties in accordance with the procedure laid down under Section 47-A. The order dated 13-9-83 cancelling the order dated 28-2-83 does not disclose any reasons whatsoever in support thereof. It does not state that the earlier order was obtained by fraud or misrepresentation and the like. It was not suggested that the order was passed under any

misapprehension. The mere fact, therefore, that Sri Nathulal Tanwar Advocate came forward with a higher offer of Rs. 2,50,000/- could not authorise the ADM to reopen the matter. If this procedure is countenanced, no finality would ever attach to the determination made by the Collector under Section 47-A as someone or the other could always be trusted to come forward with a higher offer, the prices of the real properties spiraling the way they have been these days. It would be setting up a dangerous precedent if orders passed under Section 47-A are reopened on the ground on which they have been done in the present case.

10. The learned Standing counsel was unable to point out any provision whether in the Stamp Act or even in the Registration Act which could disclose the existence of such a power of review upon the Collector. The learned Standing Counsel, however, pointed out sub-section (4) of Section 47-A as conferring such a power of review upon the Collector.”

11. The submission cannot be accepted as sub-section (4) comes into play only if the matter had not already been referred to the Collector under sub-section (1) or sub-section (2) of Section 47-A. In the present case, the dispute had already been specifically referred to and answered by the Collector under Section 47-A of the Stamp Act.”

6. A coordinate Bench of this Court in ***Sunil Kumar's*** case (supra) has held as under:-

“10. It cannot be disputed that the impugned order has been passed by a quasi judicial authority and such authority cannot review its order in absence of power of review conferred under the Statute.

11. The power of review of quasi judicial authority in absence of specific provision under the statute has been dealt with in several cases of this Court as well as by the Apex Court. The Apex Court in the case of Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur, U.P. and Ors., reported in MANU/SC/0104/1987 : (1987) 4 Supreme Court Cases 525 : (AIR 1987

SC 2186) has held that unless power of Review is expressly conferred on the authority by any statute under which it derives its' jurisdiction, the authority concerned has no power to Review its' earlier order. In para-11 of the aforesaid judgment following observations has been made:

A quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi-judicial authority. The provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing, his/her earlier order. The review order of the Vice-Chancellor was, therefore, a nullity.

12. In the case of G. Srinivas v. Govt, of A.P. and Ors., reported in MANU/SC/0634/2005 : AIR 2005 SC 4455, Hon'ble Apex Court has observed:

An order passed by mistake and ignorance of the relevant facts indisputably can be reviewed, if inter alia it is found that a fraud was practiced or there was wilful suppression on the part of the appellant.

13. The Full Bench of this Court reported in MANU/UP/1127/1997 : 1997 (31) ALR 680 : (1997 All U 2363) (Smt. Shvraji and Ors. v. Dy. Director of Consolidation, Allahabad and Ors.) has held:

36. Coming to the provisions of the U.P. Consolidation of Holdings Act, it is our considered view that the consolidation authorities, particularly the Deputy Director of Consolidation while deciding a revision petition exercises judicial or quasi judicial power and, therefore his order is final subject to any power of appeal or revision vested in superior authority under the Act. The

consolidation authorities, particularly the Deputy Director of Consolidation, is not vested with any power of review of his order and, therefore, cannot reopen any proceeding and cannot review or revise his earlier order. However, as a judicial or quasi judicial authority he has the power to correct any clerical mistake/arithmetical error, manifest error in his order in exercise of his inherent power as a tribunal.

14. In the case of Syed Madadgar Husain Rizvi and Anr. v. State of U.P. and Ors., reported in MANU/UP/1034/2007 : 2007 (9) ADJ 581 (DB) : (2007 (6) ALJ (NOC) 1097 (All) this Court has held:

A quasi judicial authority is not permitted to review its order unless it is so expressly conferred by the Statute itself. ”

7. From an overview of the judgments cited above, it is clear that the Collector (Stamp) cannot recall and/or review his own order as no such power has been conferred under Section 47-A of the Act. A quasi-judicial authority is limited in its functionality in as much as it has to act within the four corners of the statute from which it derives its authority. If the statute does not provide for a particular act, the same cannot be undertaken by that authority. Any such action taken *de hors* the legislative intent would amount to an overreach and beyond the power of the said authority.

8. Constitutional Courts, such as the High Courts and the Supreme Court, derive their powers and jurisdiction directly from the Constitution of India. These courts are vested with extensive powers, including the authority to interpret the Constitution, adjudicate constitutional matters, and serve as courts of record. On the other hand, quasi-judicial authorities are statutory bodies or officials empowered by specific legislation to adjudicate disputes and make decisions within their defined scope of authority. Unlike constitutional courts, quasi-judicial authorities do not possess inherent



powers derived from the Constitution; rather, their jurisdiction and powers are conferred by statutes or delegated legislation.

9. The distinction between constitutional courts and quasi-judicial authorities is significant, particularly when it comes to the exercise of review or recall powers. Constitutional courts, being courts of record under the Constitution, enjoy inherent powers to review their own orders and correct errors in the interest of justice. This inherent power is derived from the constitutional mandate and is essential for maintaining judicial independence and upholding the rule of law. In contrast, quasi-judicial authorities lack inherent powers and can only exercise those powers which have been expressly conferred upon them by the statutes from which they derive their jurisdiction. The absence of inherent powers means that quasi-judicial authorities cannot arbitrarily review or recall their orders unless such power is specifically conferred upon them by their governing statute.

10. The rationale behind limiting the review powers of quasi-judicial authorities lies in ensuring adherence to the principle of separation of powers and preserving the integrity of the legislative scheme. Quasi-judicial authorities, being creatures of statute, must operate within the boundaries set forth by the legislature and therefore they cannot exceed their statutory mandate. Any attempt by quasi-judicial authorities to exercise the power of review or recall outside the bounds of statutory authorization is inherently flawed and constitutes a usurpation of judicial authority. Such exercises of power are void ab initio, meaning they are null and void from the outset, and cannot be sustained in law.

11. The legislature, in its wisdom, may choose to grant limited review powers to certain quasi-judicial authorities based on the nature of the disputes they adjudicate and the need for effective administration of justice. However, any expansion of review powers beyond what is expressly

provided by statute undermines the principles of legislative supremacy and judicial independence. Given the absence of inherent powers and the statutory limitations on review, quasi-judicial authorities must exercise prudence and restraint in revisiting their earlier decisions.

12. In the instant case, it is clear that no such power was present with the Collector (Stamp), and therefore, the exercise of review carried out by the Collector (Stamp) is bad in law. In light of the same, the impugned order dated February 3, 2023 is quashed and set-aside and this writ petition is allowed.

### **EPILOGUE**

13. During the course of the hearing, an affidavit was filed by the State-respondents indicating that a show cause notice was issued on January 6, 2021 to the Sub Registrar with regards to the alleged fabricated and forged report. In reply to the said show cause notice, an explanation dated January 14, 2021 was provided by the Sub Registrar. However, the affidavit is incomplete and does not contain any mention as to what steps were taken subsequent to the explanation provided by the Sub Registrar. It appears that the matter was put to rest and the inquiry was not taken forward. The allegations made against the Sub Registrar were quite grave in nature, and therefore, the State Government should have ensured that a proper inquiry is carried out.

14. In the realm of legal proceedings, transparency, accountability, and the pursuit of justice are paramount. The allegations made against the Sub Registrar strike at the core of the trust and integrity expected of public officials entrusted with important responsibilities. It is incumbent upon the State Government to diligently investigate these allegations and take appropriate actions to address any wrongdoing. The affidavit submitted to this court raises concerns regarding the adequacy and thoroughness of the

inquiry conducted so far. No individual, regardless of their position or authority, is above scrutiny or immune from accountability. Public officials entrusted with the responsibility of upholding the law and serving the interests of the public must conduct themselves with the utmost integrity and diligence. The State Government, as the custodian of public trust, must demonstrate unwavering commitment to upholding the principles of accountability and transparency. Any laxity or indifference in addressing allegations of misconduct undermines the credibility of the entire administrative machinery and erodes confidence in public institutions.

15. Accordingly, this Courts directs the Principal Secretary, Stamp and Registration, Government of Uttar Pradesh to initiate/continue with the inquiry initiated against the Sub Registrar and bring the same to a logical end. The Principal Secretary is directed to conclude his enquiry within a period of six months from the date of receipt of this order and submit a report to this Court. Registrar (Compliance) is directed to communicate this order to the Principal Secretary, Stamp and Registration, Government of Uttar Pradesh forthwith.

16. There shall be no order as to the costs.

**Order Date :-** 17.5.2024

Rakesh

(Shekhar B. Saraf, J.)