

Neutral Citation No. - 2024:AHC:165092

AFR

Reserved on 02.09.2024

Delivered on 17.10.2024

Case :- WRIT - C No. - 26449 of 2022

Petitioner :- M/S Young Style Overseas

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sanjay Goswami, Shreyas
Srivastava, Sudhanshu Kumar

Counsel for Respondent :- Chandan Kumar, Swapnil Kumar

Hon'ble Saral Srivastava, J.

1. Heard Sri Shashi Nandan, learned Senior Counsel assisted by Sri Sanjay Goswami and Sri Shreyas Srivastava, learned counsel for the petitioner and Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Chandan Kumar, learned counsel for the respondents.

2. The petitioner in the instant writ petition has assailed two orders dated 17.08.2022 and 02.08.2017 passed by the District Magistrate/Collector (Stamp), Agra (hereinafter referred to as 'respondent no.2') in Stamp Case No.94 of 2013-14. Respondent no.2 by order dated 02.08.2017 decided the issue no.1 formulated by the Chief Controlling Revenue Authority vide order dated 16.12.2011, and by order dated 17.08.2022, he determined the deficiency in stamp duty to the tune of Rs.1,45,35,270/-

3. The brief facts of the case are that the petitioner is a partnership firm having its registered office in Agra and is primarily dealing in the export of shoes.

4. As per the petition, one M/s. Wasan Shoes Limited was the owner of Khasra No.191 (old) having an area of 2 Bigha, 5 Biswa, and 16 Biswansi, and Khasra No.192 (old) having an area of 3 Bigha, 11 Biswa, and 8 Biswansi situated at Mauja Mangtai, Bodhla, Bichpuri Road, Tehsil and District Agra (hereinafter referred to as 'property').

5. The aforesaid properties are bounded on the North by Nala/Bichpuri Road, and on the South, East, and West by agricultural land. M/s Wasan Shoes Limited was running a factory over the aforesaid properties. It had taken financial assistance from the Canara Bank, Overseas Branch Sanjay Place, Agra to run the factory. The aforesaid property and one other property had been mortgaged by M/s. Wasan Shoes Limited with the Canara Bank as a security for the financial assistance. M/s. Wasan Shoes Limited defaulted in repayment of the loan amount of **Rs.4,57,04,195.24/-**. Consequently, a proceeding under Section 13 and Rules 8 and 9 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as '**SARFAESI Act, 2002**') and the SARFAESI Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as '**Rules, 2002**') was drawn against M/s. Wasan Shoes Limited by the Canara Bank (hereinafter referred to as 'Bank') for the default in repayment of the loan amount. Accordingly, the Bank took possession of the aforesaid property. The Bank published a notice of possession in two daily newspapers namely, Dainik Jagran and I-Next on 21-12-2008.

6. Before proceeding with the auction of the property, the Bank had obtained a valuation report from a Government Approved Valuer as mandated under Rule 8(5) of the Rules, 2002. Further case of the petitioner is that as per the report of the valuer, the realisable value of the property was ascertained at Rs.1,95,00,000/-. Accordingly, the Bank kept the reserved price of the mortgaged property at Rs.2,00,00,000/- (Rupees Two Crores) in the auction notice.

7. The Bank, thereafter, invited tenders for the sale of the property by publishing notice in two newspapers notifying the date of the auction of the property. It transpires from the record that there was only a single bid by the petitioner. According to the petitioner, the petitioner offered a bid of Rs.2,02,00,000/- which was accepted by the Bank, and after depositing the aforesaid amount, the sale was confirmed in favour of the petitioner. Consequently, a sale certificate was issued to the petitioner

by the Bank in the exercise of power under Rule 9 (6) of the Rules, 2002.

8. It appears that an inspection of the property was conducted by the Additional District Magistrate (Finance & Revenue), Agra on 04.08.2009. On inspection, it was found that a factory is being run over the property, and construction over 4000 square meters has been raised on the property. The report further stated that the aforesaid property has been sold out for Rs.2,02,00,000/-, and the stamp duty has been paid as per Article 18 of Schedule 1-B of the Stamp Act, 1899. The report further stated that in the said instrument, it is not stated that the aforesaid property had been sold out in public auction, therefore, the said sale did not come within the periphery of Schedule 1-B of Article 18, and said instrument comes within the ambit of Article 23 of Schedule 1-B. Thus, there was a deficiency in payment of stamp duty. The report further stated that about 4000 square meters of the land was constructed and this fact had not been disclosed in the sale certificate, thus, the instrument has been deliberately undervalued and the petitioner has deliberately evaded the payment of correct stamp duty.

9. Consequent to the said report, a notice dated 15.12.2009 was issued by the respondent no.2 to the petitioner on the allegation that the sale deed was executed on 21.07.2009 between the petitioner and the Bank in which the valuation of the property was shown as Rs.2,02,00,000/- whereas as per the market rate, the valuation of the property is Rs.39,91,31,180/-. Thus, the instrument had been undervalued to the tune of Rs.37,89,31,180/- and accordingly, there was a deficiency in payment of stamp duty of Rs.2,65,24,240/-. By the said notice, the petitioner was called upon to show cause as to why the deficiency in stamp duty alongwith interest be not recovered from the petitioner and penalty be not imposed upon the petitioner.

10. The petitioner feeling aggrieved by the notice dated 15.12.2009 preferred writ petition bearing Writ-C No.10013 of 2010 which was disposed off by this Court by judgement and order dated 24.02.2010

observing that the Collector has jurisdiction to consider the issue that since the sale has been made by inviting tenders, therefore, the market value of the property essentially has to be considered in terms of the actual sale consideration.

11. After the order of this Court in the aforesaid writ petition, respondent no.2 passed an order dated 30.05.2011 determining deficiency in stamp duty to the tune of Rs.2,65,24,240/-. Respondent no.2 by the said order imposed interest @ 1.5% per month from the date of execution of the instrument and a penalty of Rs.2,00,000/-.

12. The said order was assailed by the petitioner in statutory appeal under Section 56(1-A) of the Indian Stamp Act, 1899 (hereinafter referred to as 'Act, 1899') registered as Stamp Appeal No.54 of 2011-12. The main ground of attack by the petitioner in the appeal before the Chief Controlling Revenue Authority was that since the property had been sold out in a public sale by inviting tenders from the public under Rule 8(5) (b) of the Rules, 2002, therefore, the instrument is covered under Article 18 of Schedule 1-B and thus, petitioner is liable to pay stamp duty on the sale consideration shown in the sale certificate.

13. The Chief Controlling Revenue Authority by order dated 16.12.2011 remanded the matter to respondent no.2 to consider the three issues formulated by it in para 9 of the order, which reads as under:-

“01- क्या विवादित सम्पत्ति सार्वजनिक नीलामी द्वारा विक्रय की गयी और निर्गत प्रमाण-पत्र अनुसूची 1 ख के अनुच्छेद 18 के अन्तर्गत मान्य विलेख होगा अथवा बाजारू मूल्य पर स्टाम्प शुल्क प्रभार्य होगा?

02- क्या विवादित सम्पत्ति औद्योगिक प्रतिष्ठान है ? यदि हाँ तो व्यवसायिक दर पर मूल्यांकन करते हुए स्टाम्प शुल्क क्यों प्रभार्य किया जा सकता है? जो कि दुकान एवं वाणिज्यिक अधिनियम-1962 की धारा-4 की उपधारा (2) के अन्तर्गत व्यवसायिक प्रतिष्ठान की निम्न परिभाषा के अनुसार नहीं हो सकता है:-

“Commercial establishment means any premises, not being the premises of a factory or a shop wherein any trade, business, manufacture or any work in connection with or incidental or ancillary thereto, is carried on for profit and includes a premises wherein journalistic or printing work, or business of banking insurance, stocks and shares brokerage or produce exchange is carried on or which is used as theater, cinema or for any other public amusement or entertainment or where the clerical and other establishment of a factory to whom the provisions of the Factories Act, 1948 do not apply work”

03- यदि विवादित स्थल के लिए सर्किल रेट में औद्योगिक दर निर्धारित नहीं है तो किस दर पर मूल्यांकन किस प्रकार किया जाएगा।”

14. After the remand by the Chief Controlling Revenue Authority to respondent no.2, the case was renumbered as Case No.94 of 2013.

15. It appears that after the remand, a Committee consisting of (i) Executive Engineer, Public Works Department, Agra, (ii) Sub-Registrar-II, (iii) Tehsildar, Sadar Agra, (iv) Assistant Inspector General (Registration), Agra and (v) Additional District Magistrate (Finance & Revenue) was constituted, which conducted a spot inspection of the property to assess the valuation of the property as per Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 (hereinafter referred to as 'Rules, 1997'). Respondent no.2, thereafter, proceeded to decide Case No.94 of 2013-14 (Computerised Case No.D-201301100810) by recording the following finding:-

“मैंने पत्रावली का अवलोकन तथा पत्रावली पर उपलब्ध समस्त तथ्यों का परिशीलन किया। पत्रावली पर उपलब्ध तथ्यों एवं जिला शासकीय अधिवक्ता (राजस्व) एवं प्रतिपक्षी अधिवक्ता के तर्क सुनने के उपरान्त मैं इस निष्कर्ष पर पहुंचा हूँ कि:-

1. बैंक द्वारा प्रश्नगत सम्पत्ति का सार्वजनिक नीलाम न कर, एक ही समाचार पत्र फाइनेंशियल एक्सप्रेस में मुहरबंद निविदायें आमंत्रित किये जाने की सूचना प्रकाशित कराकर टेण्डर की कार्यवाही की गयी है, जिसमें एक ही टेण्डर प्राप्त हुआ है, जिसे बैंक द्वारा स्वीकार कर लिया गया है, जब कि सरफेसी एक्ट के नियम 8(2) में दिये गये प्राविधानों के अनुसार दो प्रमुख स्थानीय क्षेत्रीय भाषा के समाचार पत्रों में प्रकाशन किया जाना चाहिये था, स्पष्ट है कि बैंक द्वारा सार्वजनिक नीलामी की निर्धारित प्रक्रिया का पालन नहीं किया है। यहां यह भी उल्लेखनीय है कि प्रश्नगत सम्पत्ति 4,57,04,195/- रुपये में बंधक रखी गयी थी जब कि सम्पत्ति केवल 2,02,00,000/- रुपये में विक्रय कर दी गयी है। बैंक द्वारा एक ही टेण्डर को बिना प्रतिस्पर्धा के स्वीकार कर लिया गया है और न ही शेष धनराशि प्राप्त करने हेतु कोई प्रयास किया गया। स्टाम्प अधिनियम की अनुसूची-1 ख के अनुच्छेद-18 में मात्र सार्वजनिक नीलामी को ही उल्लिखित किया गया है। बैंक द्वारा प्रश्नगत सम्पत्ति की नीलामी हेतु सार्वजनिक नीलामी की प्रक्रिया नहीं अपनाई गई है तथा मुहरबंद निविदा में प्राप्त एक ही टेण्डर को स्वीकार किया गया, जो सार्वजनिक नीलामी नहीं मानी जा सकती। बल्कि प्रश्नगत विलेख स्टाम्प अधिनियम की अनुसूची-1 ख क अनुच्छेद 23 की परिधि में आता है, ऐसी स्थिति में प्रश्नगत विलेख पर बाजारू मूल्यांकन पर स्टाम्प देय है, जो विलेख पर अदा नहीं किया गया है, इससे स्पष्ट है कि प्रश्नगत विलेख पर स्टाम्प अपवंचना की गयी है।

2. पत्रावली पर उपलब्ध यंग स्टाइल ओवरसीज द्वारा अपने पत्र दिनांक 13.6.2009 में स्वयं यह स्वीकार किया है कि प्रश्नगत सम्पत्ति में फैक्ट्री संचालित है, जिसकी पुष्टि संयुक्त जाँच

टीम की रिपोर्ट दिनांक 19.3.2012 से भी होती है। उपरोक्त तथ्यों से स्पष्ट है कि प्रश्नगत सम्पत्ति औद्योगिक है। चूंकि संयुक्त जाँच टीम की रिपोर्ट दिनांक 19.3.2012 में प्रश्नगत सम्पत्ति का मूल्यांकन व्यवसायिक एवं आवासीय दर से किया गया है, जो न्यायोचित नहीं है। ऐसी स्थिति में प्रश्नगत सम्पत्ति पर औद्योगिक दर से मूल्यांकन करते हुये स्टाम्प शुल्क लिया जाना उचित एवं न्याय संगत है।

आदेश

प्रश्नगत सम्पत्ति औद्योगिक की श्रेणी में आती है, ऐसी स्थिति में विलेख संख्या 6017 दिनांक 21.7.2009 द्वारा अन्तर्गत सम्पत्ति (फैक्ट्री) का सहायक महानिरीक्षक (निबन्धन)/ सहायक आयुक्त स्टाम्प आगरा एवं अपर जिलाधिकारी (वि०रा०) आगरा औद्योगिक दर से मूल्यांकन का आंकलन करके एक सप्ताह में मूल्यांकन आख्या प्रस्तुत करें। मूल्यांकन आख्या प्राप्त होने पर प्रश्नगत विलेख पर स्टाम्प कमी का निर्धारण कर अन्तिम आदेश पारित किया जायेगा तथा यह आदेश अन्तिम आदेश का भाग रहेगा।

ह०अप०

(गौरव दयाल)

जिलाधिकारी/ कलेक्टर स्टाम्प,

आगरा

02.08.2017”

16. Respondent no.2 by order dated 02.08.2017 held that the property is situated in the industrial area and accordingly, it directed the Assistant Inspector General (Registration)/Assistant Commissioner (Stamp), Agra and Additional District Magistrate (Finance & Revenue), Agra to submit valuation report of the property as per the rates applicable to the industrial area. Accordingly, he deferred the matter of determination of deficiency in the stamp duty till the report is obtained.

17. Subsequently, respondent no.2 by order dated 06.10.2017 constituted a Committee of five members to assess the valuation of the property as per the rates applicable to the industrial area. The details of the five members of the Committee are given below:-

- “1. Deputy Inspector General (Registration), Agra Division, Agra (Chairman)
2. Additional District Magistrate (Finance & Revenue), Agra (Member)
3. Assistant Inspector General (Registration), Agra (Member)
4. Tehsildar Sadar, Agra (Member)
5. Sub-Registrar (II), Agra (Member)”

18. It transpires from the record that though the five member Committee was constituted in compliance with the order of respondent no.2 dated 02.08.2017 for determining the valuation of the property as per the circle rate applicable to the industrial area, the Committee did not submit any report. Consequently, the Additional District Magistrate (Finance & Revenue) wrote a letter dated 17.01.2022 asking the Assistant Inspector General (Registration), Agra to submit a report with respect to the valuation of the property on the basis of rates applicable to the industrial area. The Assistant Inspector General (Registration), Agra replied to the aforesaid letter by letter dated 29.01.2022 showing its inability to calculate the valuation of the property on the basis of industrial rates inasmuch as no circle rate with regard to industrial area was prescribed in the list of circle rates published in the year 2009 in District Agra.

19. The Additional District Magistrate (Finance & Revenue), Agra again by letter dated 05.02.2022 directed the Assistant Inspector General (Registration), Agra to submit a report in the light of the direction contained in the order dated 02.08.2017 of respondent no.2. Thereafter, the Sub-Registrar-II, Agra submitted a report dated 26.02.2022 stating therein that the Committee constituted by the District Magistrate on 20.01.2012 of which Additional District Magistrate (Finance & Revenue), Agra was Chairman and Executive Engineer, Public Works Department, Sub-Registrar-II Agra, Tehsildar, Agra and Assistant Inspector General (Registration), Agra were members of the Committee assessed the valuation of the property @ 15,000/- square meter.

20. The petitioner, thereafter, submitted an objection on 27.04.2022 contending *inter alia* that since the sale in the present case is a public sale by inviting tenders from the public under Rule 8(5)(b) of Rules, 2002, therefore, said sale would fall under Article 18 of Schedule 1-B of the Act, 1899, and the petitioner is liable to pay stamp duty on the sale consideration i.e. **Rs.2,02,00,000/-** mentioned in the sale certificate

which was above the reserved price. Accordingly, it prayed that the report of the Committee be rejected.

21. Respondent no.2 held that a detailed order dated 02.08.2017 had been passed by his predecessor in the present case whereby it was directed that the valuation of the property be calculated as per the rates applicable to the industrial area, and the Committee constituted for the said purpose recommended for calculating the valuation of the property by applying the rates of Rs.15,000/- per square meter. Accordingly, respondent no.2 by order dated 17.08.2022 held the deficiency of Rs.1,45,35,270/- and imposed interest @ 1.5% per month from 21.07.2009 till the payment of deficient stamp duty and also imposed the penalty of Rs.36,33,818/- under Section 40(b) of the Act, 1899.

22. Challenging the aforesaid orders, Sri Shashi Nandan, learned Senior Counsel for the petitioner submitted that it is not in dispute that the property was mortgaged to the Bank by M/s. Wasan Shoes Limited, and on default in repayment of loan amount by M/s. Wasan Shoes Limited, the possession of the property was taken over by the Bank under Rule 8 (1) of the Rules, 2002, and a possession notice was published by the Bank in two daily newspapers, namely, Dainik Jagran and I-Next. It is submitted that after taking over the possession under Rules 2002, the Authorized Officer of the Bank obtained the valuation of the property from an approved valuer and according to the valuation report of the approved valuer, the valuation of the property was Rs.1,97,00,000/-. Accordingly, the Authorized Officer fixed the reserved price of the property at Rs.2,00,00,000/- and published a notice for sale of the property by inviting tenders from the public as provided under Rule 8(5)(b) of the Rules, 2002. The petitioner offered a bid of Rs. 2,02,00,000/- for the purchase of the property in response to notice published by the Bank for auction of the property, and the Bank accepted the bid of the petitioner being the highest bid, and on complying with the terms and conditions of the payment, the Authorized Officer issued a sale certificate contemplated under Rule

9(6) of the Rules, 2002. It is contended that since it was a public sale, therefore, it was open to the public to participate in the sale proceeding pursuant to the sale notice published in the newspaper, and the bid of the petitioner of Rs. 2,02,00,000/- being the highest bid was maximum price, which in the opinion of the Bank, the property could fetch in the market, therefore, the sale consideration mentioned in the sale certificate is the market value of the property, and petitioner has paid stamp duty on the market value of the property, therefore, there was no deficiency in payment of stamp duty.

23. It is submitted that the aforesaid fact demonstrates that there was no deliberate intention on the part of the petitioner to evade the stamp duty. Thus, it is submitted that there was no material on record based on which respondent no.2 could have formed an opinion that the petitioner has deliberately evaded the payment of correct stamp duty. Consequently, it is submitted that in the absence of any material on record based on which respondent no.2 could form an opinion that evasion of stamp duty by the petitioner was deliberate, the proceeding under Section 47-A of the Act, 1899 could not have been drawn against the petitioner. Thus, it is submitted that the proceeding being without jurisdiction is *void ab initio*, therefore, the orders impugned cannot be sustained in law.

24. He further submits that since it is a public sale, the sale consideration is the market value of the property and there was no jurisdiction with respondent no.2 to reassess the market value of the property inasmuch as in the case of public sale, the market value mentioned in the sale certificate is the market value of the property. In this respect, he has placed reliance upon the judgement of the Apex Court in the case of **V.N. Devadoss Vs. Chief Revenue Control Officer-cum-Inspector and Others, (2009) 7 SCC 438** and the judgement of the Calcutta High Court in the case of **Ballyfabs International Limited Vs. The State of West Bengal and Others in W.P.A. No.7006 of 2020** decided on 22.04.2022.

25. In other words, it is contended that the sale conducted by an Authorized Officer under the SARFAESI Act, 2002 is an open market sale and thus excluded from the scrutiny contemplated under Section 47-A of the Act, 1899 (as amended in State of Uttar Pradesh).

26. It is further submitted by Sri Shashi Nandan that if the correct description of the property is not set forth in the instrument of sale and there is loss of revenue to the State, the remedy to the State is to approach Debt Recovery Tribunal under Section 17 of the SARFAESI Act, 2002, and till any order is passed under Section 17 of the SARFAESI Act, 2002 accepting the contention of the State that the correct description of the property is not set forth in the instrument and the State has suffered loss, the power is not vested with the respondent no.2 to draw any proceeding under Section 47-A of the Act, 1899 and to make any inquiry with respect to sale consideration of the property.

27. He further contends that it is admitted on record that on the date of execution of the sale deed, there was no circle rate for the industrial area, and to determine the value of the property as per industrial area, setting up a Committee is beyond the competence of the respondent no.2. In pith and substance, the argument of Sri Shashi Nandan, learned Senior Counsel is that on the date of execution of the sale deed, there was no circle rate in respect to industrial area in District- Agra and that lacuna cannot be cured by setting up a Committee to determine the circle rate for industrial area.

28. Per contra, Sri M.C. Chaturvedi, learned Additional Advocate General submits that the petitioner has an alternative remedy of statutory appeal under Section 56(1-A) of the Act, 1899, therefore, the writ petition is not maintainable.

29. He further contends that the case of the petitioner right from the initiation of the proceeding under Section 47-A of the Act, 1899 was that the sale deed would fall under Article 18 of Schedule 1-B and the petitioner treating the instrument to be a document falling under Article 18 of Schedule 1-B of the Act, 1899 paid the stamp duty and got it

registered, therefore, the petitioner cannot be permitted to take a somersault and urge the ground to assail impugned order that the instrument would fall under Article 23 of Schedule 1-B of the Act, 1899, and since it was a public sale, therefore, the sale consideration mentioned in the sale certificate is the market value of the property, and since there was no concealment and deliberate intention of the petitioner to evade payment of stamp duty, the proceeding under Section 47-A of the Act, 1899 could not be drawn against the petitioner. It is also contended that the sale by tender cannot be equated with sale by auction. He has placed reliance upon the judgement of this Court in the case of *Vishwanath Agarwal Vs. State of U.P. and Others 2004 (96) RD 635, Secretary of State Vs. Sunderji Shivaji & Company & Others AIR 1938 Privy Council 12* and judgement of the Apex Court in the case of *Purushottam Ramanata Quenim Vs. Makan Kalyan Tandel and Others in Civil Appeal No.844 of 1973* on the point that there is difference between the sale by inviting tender and by public auction.

30. It is further submitted that had the petitioner treated the said instrument being one falling under Article 23 of Schedule 1-B of the Act, 1899 and submitted the same for registration treating it to be under Article 23 of Schedule 1-B of the Act, 1899, the Sub-Registrar would have exercised the power under Section 33 of the Act, 1899 and would have impounded the instrument.

31. He further submits that the Act, 1899 is a fiscal statute, therefore, the provision of the said Act has to be construed strictly. He further submits that applying the said principle, there can be no fetter to the power of the Collector to invoke power under Section 47-A (3) of the Act, 1899, and if he finds that the correct description of the property has not been set forth in the instrument and there has been deliberate evasion of stamp duty, he can draw proceeding under Section 47-A (3) of the Act, 1899 to determine the correct market value of the property and the stamp duty payable thereon.

32. He submits that in the instant case, the correct details of the property had not been set forth in the instrument, therefore, there was ample material before respondent no.2 to form an opinion that there is deliberate evasion of the stamp duty to draw proceeding under Section 47-A (3) of the Act, 1899. In this respect, he has placed reliance upon Rules 3 & 6 of the Rules, 1997.

33. He submits that it is admitted on record that a factory is established over the property and there was construction over the property, details of which have not been disclosed in the instrument whereas in view of Rules 3 & 6 of Rules, 1997, a duty is cast upon the petitioner to disclose all the details contemplated under the aforesaid Rules in the instrument of sale. It is contended that since the correct description of the property has not been set forth in the instrument affecting the market value of the property, there was adequate material before respondent no.2 to invoke power under Section 47-A (3) of the Act, 1899 and draw proceeding against the petitioner.

34. It is submitted that respondent no.2 under Rule 7 of the Rules 1997 has the power to constitute a Committee to ascertain the correct market value of the property.

35. It is submitted that the powers conferred upon respondent no.2 under the Act, 1899 are independent powers of respondent no.2 and are not circumscribed by SARFAESI Act, 2002, therefore, the submission of the learned counsel for the petitioner that if the correct description of the property is not set forth in the instrument of sale, the remedy of the State is to approach under Section 17 of the SARFAESI Act, 2002 is misconceived.

36. I have considered the rival submissions of learned counsels of parties and perused the record.

37. With respect to the preliminary objection by the learned Additional Advocate General that the petitioner has statutory alternative remedy of appeal, this Court may note that this Court in the case of ***Sumati Nath Jain Vs. State of U.P and Others (2016) ILR 1 All 132***

has held that an increase of eight times over the initial stamp duty which was paid on the instrument is one of the exceptional circumstances that were envisaged by the Apex Court in Smt. P. Laxmi Devi and Har Devi Asnani as an instance where the petitioner is not liable to be relegated to the alternative remedy of appeal or revision under Section 56 of the Act. Thus, applying the law laid down by this Court in the case of **Sumati Nath Jain (supra)**, this Court is of the view that the present case also falls in the category of exceptional cases where deficiency in stamp duty has been assessed manifold than the initial stamp duty paid on the instrument. Accordingly, the argument of the learned Additional Advocate General for relegating the petitioner to alternative remedy is devoid of merits and cannot be sustained.

38. In order to appreciate the submission advanced by Sri Shashi Nandan, learned Senior Counsel for the petitioner, it would be beneficial to have a glance at Section 47-A of the Act, 1899 and a few precedents of this Court elaborating the object behind inducting Section 47-A in the Act, 1899. Section 47-A of the Act, 1899 reads as under:-

Section 47-A Under-valuation of the instrument – [(1) (a) If the market value of any property which is the subject of any instrument, on which duty is chargeable on market value of the property as set forth in such instrument, is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908 shall, notwithstanding anything contained in the said Act, immediately after presentation of such instrument and before accepting it for registration and taking any action under Section 52 of the said Act, require the person liable to pay stamp duty under Section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with Section 23 of the Registration Act, 1908.

(b) When the deficit stamp duty required to be paid under clause (a), is paid in respect of any instrument and the instrument is presented again for registration, the registering officer shall certify by endorsement thereon, that the deficit stamp duty has been paid in respect thereof and the name and the residence of the person paying them and register the same.

(c) Notwithstanding anything contained in any other provisions of this Act, the deficit stamp duty may be paid under clause (a) in the form of impressed stamps containing such declaration as may be prescribed.

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in clause (a) and presents the instrument again for registration, the registering officer shall, before registering the instrument, refer the same to the Collector, for determination of the

market value of the property and the proper duty payable thereon].

(2) On receipt of a reference under sub-section (1) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject of such instrument and the proper duty payable thereon.

(3) The Collector may, suo motu, or on a reference from any Court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the State Government in that behalf, within four years from the date of registration of any instrument on which duty is chargeable on the market value of the property, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value, of the property which is the subject for such instrument, and the duty payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in such instrument, he may determine the market value of such property and the duty payable thereon:

Provided that, with the prior permission of the State Government, an action under this sub-section may be taken after a period of four years but before a period of eight years from the date of registration of the instrument on which duty is chargeable on the market value of the property.

[Explanation.- The payment of deficit stamp duty by any person under any order of registering officer under sub-section (1) shall not prevent the Collector from initiating proceedings on any instrument under sub-section (3).]

(4) If on enquiry under sub-section (2) and examination under sub-section (3), the Collector finds the market value of the property-

(i) truly set forth and the instrument duly stamped, he shall certify by endorsement that it is duly stamped and return it to the person who made the reference;

(ii) not truly set forth and the instrument not duly stamped, he shall require the payment of proper duty or the amount required to make up the deficiency in the same, together with a penalty of an amount not exceeding four times the amount of the proper duty or the deficient portion thereof.

[(4-A)...

(4-B)...

(4-C)...

(4-D)...

(5)...

(6)..."

39. In the case of *Kaka Singh Vs. The Additional Collector and District Magistrate (Finance & Revenue), Bulandshahr AIR 1986 All 107* the vires of Rule 341 of the Rules framed by the State of U.P. under

Section 75 of the Stamp Act, 1899 was challenged. This Court while answering the said question elaborated the object and reason for inserting Section 47-A in the Act, 1899 by means of an amendment. In this respect, paragraphs 6 & 7 of the judgement are reproduced herein below:-

“6. Section 47-A was inserted by means of an amendment. The scheme of Section 47-A of the Act is to deal with those cases where private parties by arrangement clandestinely or fraudulently undervalued the property which is the subject matter of transfer with a view to deprive the government of legitimate revenue by way of Stamp duty. Before addition of Section 47-A, there was no provision in the Stamp Act empowering the revenue authorities to make an enquiry of the value of the property conveyed for determining the duty chargeable. Section 27 of the Stamp Act laid down that the consideration if any and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. In case a person did not set forth true amount for which the transaction had taken place, the revenue authorities had no power to proceed with the defaulter, Himalaya House Co. Ltd. v. The Chief Controlling Revenue Authority, AIR 1972 SC 899. The Supreme Court held that for the purpose of Article 23, the value of consideration must be taken to be one as set forth in the conveyance deed. The question whether the purpose of determining the value of the consideration to revenue must have regard to what the parties to the instrument have elected to state the consideration to be.

7. In order to meet such a difficulty and to empower the revenue authority to determine the market value of the property, which is the subject of the conveyance, exchange, gift, settlement, award, or trust, and the duty as payable by the person liable to pay the same that Section 47-A was inserted.”

40. Under the scheme of the Act, 1899, Section 47-A is in two parts. Section 47-A(1) envisages a case where reference is made by the registering officer before registration if the market value of the property as set forth in the instrument is less than even the minimum value determined in accordance with rules made under the Act, 1899.

41. The other part of Section 47-A viz Section 47-A (3) contemplates a situation where the Collector *suo moto* or on a reference by a Court or by the authorities on examination of the instrument has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the correct market value of the property and duty payable thereon. The expression ‘reason to believe’

has been elaborated by this Court in the case of ***Hajari Lal Sahu Vs. State of U.P. and Others 2004 (1) AWC 899*** wherein this Court in considering the expression 'reason to believe' held that it has to be an honest belief based upon the constructive material on record and should not be based upon conjectures or on flimsy grounds.

42. In the case of ***Vijay Kumar and Another Vs. Commissioner, Meerut Division, Meerut and Another 2008 (7) ADJ 293*** this Court explained the expression 'belief'. Paragraphs no.7 to 9 of the said judgement are reproduced herein below:-

“7. The Stamp Act is a fiscal statute and it has to be interpreted strictly and construction of hardship or equity has no role to play in its construction. It is a taxing statute and has to be read as it is. In other words, the literal rule of interpretation applies to it. See—State of Rajasthan v. Khandaka Jain Jewellers, AIR 2008 SC 509. In this case the Supreme Court has referred its earlier judgment in the case of A.V. Fernandez v. State of Kerala, AIR 1957 SC 657. Also Government of A.P. and others v. Smt. P. Laxmi Devi, 2008 AIR SCW 1826.

8. In the above background the phrase 'reason to believe' occurring in sub-section (3) of Section 47-A has to be considered. Identical phrases have been placed in almost every fiscal statutes such as Income Tax Act, Sales Tax Act etc. With reference to the expression 'reason to believe' used in Section 34 of the Old Income Tax Act it has been held that they do not mean purely subjective satisfaction on the part of the Income Tax Officer. The 'belief' must have been held in good faith, it cannot be merely a pretence. To put it differently it is open to Court to examine the question whether the reasons to believe have a rational connection or a relevant bearing to the formation of belief and are not extraneous or irrelevant to the purpose of Section, as held in S. Narayanappa and others v. CIT Bangalore, AIR 1967 SC 523. The words 'reason to believe' are stronger than the expression 'for satisfaction' Belief must not be arbitrary or irrational. It must be reasonable or must be based on reasons which are relevant and material.

9. In view of the fact that expression 'reason to believe' has been used in sub-section (3) of Section 47-A of the Act, the power conferred under this Section though is wide but they are not plenary. The power cannot be exercised when the Collector has reason to suspect that there is evasion of proper stamp duty.”

43. So, the *sine qua non* for invoking the power under Section 47-A(3) is that if the Collector on the basis of material on record forms an opinion that “he has reason to believe” that true market value has not been set forth by the party in the instrument, he can determine the correct market value of said property and stamp duty payable thereon. The belief of the Collector must not be arbitrary or irrational and the

formation of such belief must reflect that it is based on material on record and has been held in good faith.

44. At this stage, it would be apposite to refer to the relevant paragraphs of the judgment of Apex court in the case of **V.N. Devadoss (*supra*)** relied upon by Sri Shashi Nandan, learned Senior Counsel for the petitioner to contend that the sale contemplated under Rule 8 (5) (b) by tender is a public sale and consideration set forth in the sale certificate and in the instrument of sale is excluded from the jurisdiction of the Collector to draw any proceeding under Section 47-A (3) since there is no fraudulent intention to evade the proper stamp duty.

45. In the V.N. Devadoss case, the Apex court was considering a fact situation where the appellant V.N. Devadoss in order to rehabilitate the sick company decided to dispose of the land by statutory authority such as the Board for Industrial and Financial Reconstruction (BIFR) and Appellate Authority for Industrial and Financial Reconstruction (AIFR) under the Sick Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'Act, 1985') by forming an Asset Sales Committee (ASC) consisting of members such as representatives of IDBI, Debenture Holders, Government of West Bengal and Special Director of BIFR. The ASC in compliance with the guidelines issued by the statutory authorities (BIFR & AIFR), published in the newspaper about its proposal to sell the land and invited tenders in sealed covers from interested persons. In the said sale, the appellant submitted his tender along with others and the appellant's offer of Rs.24,34,40,000/- being the highest was accepted by the ASC as well as by the statutory authorities. Consequently, the company was granted permission to execute the sale deed in favour of the appellant.

46. A reference was made by Sub-Registrar, Ambattur to the second respondent District Revenue Officer (DRO) in respect to the sale transaction. The second respondent based on the said reference initiated proceeding under Section 47-A of the Act, 1899 applicable in the State of Tamil Nadu.

47. It appears that the Collector without giving any opportunity of hearing determined the market value of the land and called upon the appellant to pay additional stamp duty. The appellant being aggrieved by the order of Collector preferred an appeal which was also dismissed by the Appellate Authority. Thereafter, the appellant took the matter to the High Court contending *inter alia* that the sale was not between two private individuals, but it was a sale in consonance with the conditions laid down under the Act, 1985, therefore, there could not be any possibility of undervaluation of the property warranting proceeding under Section 47-A of the Act, 1899. The High Court did not agree with the aforesaid contention and held that it was not a sale by Government or a transaction between Government organisations/bodies. It further held that statutory authorities like BIFR and AIFR acted as facilitator and thus, there was scope for taking a different view regarding the market value.

48. The appellant being aggrieved by the aforesaid order preferred an appeal before the Apex Court. The Apex Court in paragraphs 12, 13 and 16 detailed the reasons for allowing the appeal. Paragraphs 12, 13 and 16 of the aforesaid judgement are reproduced herein below:-

“12....A bare perusal of the Rules make the position clear that sub-rule (4) enumerates “procedure on receipt of reference under Section 47-A”. Rule 5 speaks about the “principles for determination of market value”. Sub-clause (a) refers to land; (b) house sites; (c) buildings, and (d) properties other than lands, house sites and buildings.

13. Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

16. Market value is a changing concept. The Explanation to sub-rule (5) makes the position clear that (sic market) value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale in the open market and bids were invited. That being so, there is

no question of any intention to defraud the revenue or non-disclosure of the correct price. The factual scenario as indicated above goes to show that the properties were disposed of by the orders of BIFR and AAIFR and that too on the basis of value fixed by Assets Sales Committee. The view was expressed by the Assets Sales Committee which consisted of members such as representatives of IDBI, debenture-holders, Government of West Bengal and Special Director of BIFR. That being so, there is no possibility of any undervaluation and therefore, Section 47-A of the Act has no application. It is not correct as observed by the High Court that BIFR was only a mediator.”

49. The Calcutta High Court also in the case of **Ballyfabs (supra)** applying the principles laid down by the Apex Court held that a sale conducted by the Authorized Officer under the SARFAESI Act, 2002 is an open market sale and thus, is excluded from the scrutiny under Section 47-A of the Act, 1899 subject to conditions laid down in paragraph 16 (1) & (2) of the said judgement.

50. In the light of the aforesaid principle, this Court proceeds to analyse the facts of the present case to ascertain whether the aforesaid two judgements i.e. judgement of Apex Court in the case of **V.N. Devadoss (supra)** & judgement of Calcutta High Court in the case of **Ballyfabs (supra)** relied upon by the learned Senior Counsel for the petitioner would come to the aid of the petitioner.

51. In the instant case, the facts as emanate from the record are that the property was mortgaged by M/s. Wasan Shoes Limited to the Bank on account of default of repayment of loan. The bank took possession of the property and published notice of possession in two newspapers namely, Dainik Jagaran and I-Next on 21.12.2008. The contents of the possession notice as published by the bank are reproduced herein below:-

“कब्जा सूचना (अचल संपत्ति)

जबकि, अधोहस्ताक्षरी ने केनरा बैंक, ओवरसीज शाखा, आगरा का प्राधिकृत अधिकारी होते हुए वित्तीय आस्तियों को प्रतिभूतिकरण एवं पुनर्गठन और प्रतिभूति हित प्रवर्तन अधिनियम-2002 (संक्षिप्त में, सारफेसी अधिनियम) की धारा 13(12) और प्रतिभूतिहित (प्रवर्तन) नियम 2002 का सपठित नियम 3 के तहत प्रदत्त शक्तियों के अनुप्रयोग में ऋणगृहिता मैं वासन शूज लिमिटेड पार्टनर्स श्री प्रदीप वासन, श्री जितेन्द्र वासन से मांग करते हुए मांग सूचना पत्र दिनांकित 30.09.2005 उक्त सूचना पत्र की उक्त दिनांक से 60 दिनों

के भीतर रू० 45704195.24/- (चार करोड सत्तावन लाख चार हजार एक सौ पिचानवे और चौबीस पैसे मात्र) एवं 1.4.1998 से ब्याज और पिनल ब्याज तथा विधियक शुल्क, सूचना पत्र में उल्लिखित राशि को लौटाने के लिए निर्गमित किया।

ऋणगृहिता के यह राशि लौटाने में विफल होने पर ऋणगृहिता/बंधककर्ता और सर्वसाधारण को एतद्द्वारा सूचना दी जाती है कि अधोहस्ताक्षरकर्ता ने उक्त अधिनियम की धारा 13(4) सपठित उक्त नियम के नियम 8 एवं 9 के तहत उसको प्रदत्त शक्तियों के अनुप्रयोग में एतद्द्वारा नीचे वर्णित संपत्ति का आधिपत्य दिनांक 16.12.08 को ग्रहण कर लिया है। ऋणगृहिता को विशिष्ट रूप से और सर्वसाधारण को सामान्य रूप से एतद्द्वारा संपत्ति के साथ व्यवहार (क्रय-विक्रय) न करने की चेतावनी दी जाती है और उक्त संपत्ति का किसी भी प्रकार से क्रय-विक्रय केनरा बैंक ओवरसीज शाखा, संजय प्लेस, आगरा के प्रभार के तहत रू० 45704195.24/- और उस पर ब्याज के अध्यक्षीन होगा।

अचल सम्पत्ति का विवरण:-

फैक्ट्री, जमीन व भवन जोकि वासन शूज लिमिटेड के नाम पर है तथा खसरा नं-191 एण्ड 192 मौजा मंगटई, बोदला बिचपुरी रोड, आगरा पर स्थित है।

चौहद्दी: पूरब में: दूसरे की सम्पत्ति,

पश्चिम में: खड्डर कोल्ड स्टोरेज

उत्तर में: रोड़

दक्षिण में:दूसरे की सम्पत्ति

स्थान: आगरा, दिनांक 16.12.2008

प्राधिकृत अधिकारी”

52. Thereafter, a valuation report with respect to the property was obtained by the Bank. The valuation report enclosed with the writ petition discloses that the property consisted of land and buildings. The summary of the valuation of the property as stated in the valuation report is reproduced below:

“Summary of Valuation-

Part I Land	:	Rs.2,05,72,500/-
Part II Building	:	Rs.21,49,544/-
Part III Proposed Construction	:	Nil
Total	:	Rs.2,27,22,044/-

The overall fair market value of the property is Rs.227.00 Lacs.

The realisable sale value of property may reduce to Rs.195.00 Lacs.

I certify that:

- The right property has been inspected by me personally.
- There is no direct/indirect interest in the property valued.
- I have not been found guilty of misconduct in my professional capacity.
- The information furnished in my report is correct to the best of my knowledge and belief.

- *The facts mentioned in the above report are based on the photocopies of the original documents made available to me by the bank.*
- *Genuineness of the title, Chains of title as well as agreement, Sell, mortgage etc. if any should be confirmed by the legal advisers of the bank.*
- *The extent of boundaries of the property under subject are considered on the basis of the local enquiry made on the site and as per owner indication.*

The value arrived above is based on market enquiries however further change of circumstances, government policies and market trend may effect the said fair market value.

53. The valuer certified certain facts, and one of facts under the heading “I certify” in the valuation report stated “the value arrived above is based on market enquiries, however, further change of circumstances, government policies and market trend may effect the said fair market value.

54. The valuation certificate alongwith the valuation report dated 16.12.2008 enclosed with the writ petition is also relevant in the facts of the present case which is being reproduced herein-below:-

“VALUATION CERTIFICATE

Property in name of M/s. Wasan Shoes (Pvt) Ltd.

Located at-Plot No. 91 & 192, Village Maghtai, Bichpuri Road Tehsil

Agra.

The undersigned being an Approved & Charter Valuer does hereby states & certify as under:

On invitation by Bank the said property located as above was inspected. The premises belongs to above owners. Based on information gathered by me and fed by the owners in my most unbiased opinion the value of the property is Rs.227.00 Lacs only. The Realizable Sale-Value may reduce to Rs.195.00 Lacs.

(Rupees: Two Crore Twenty-Seven Lacs only).

It is further certified that the undersigned is no way is connected with any of the parties interested for valuation. This certificate is being issued by me in capacity as a Charter Valuer having Regn. No.F-3101.

Date of Valuation : 16/12/2008.

55. Now, based upon the said valuation report, the Authorized Officer under Rule, 2002 fixed the reserved price of Rs.2,00,00,000/- (Two Crores) for affecting the sale of the property and published a notice in the newspaper for the sale of the property by inviting tender from the public as provided under Rule 8 (5) (b) of the Rules, 2002. The tender notice published by the Bank is reproduced below:-

“अचल सम्पत्ति की नीलामी

वित्तीय आस्तियों का प्रतिभूतिकरण व पुर्ननिर्माण तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 की धारा 13(4) (क) तथा सपठित प्रतिभूति हित (प्रवर्तन) नियम के नियम 9 के अधीन निहित अधिकारों का प्रयोग करते हुए निम्नांकित अचल सम्पत्ति को सर्वसाधारण से मुहरबंद निविदाओं द्वारा निम्न अनुसूची अनुसार विक्रय किया जायेगा।

उधारकर्ता का पुरा नाम व पता	वसूली के लिए प्रतिभूति ऋण राशि	सम्पत्ति का पूरा विवरण	आरक्षित मूल्य	अग्रिम धनराशि	निविदा की अंतिम तिथि	सार्वजनिक नीलामी की तिथि समय एवं स्थान
मै० वासन शू लिमिटेड	रु० 4,57,04, 195.24 + दि० 1.04.98 से ब्याज व अन्य खर्चें	1. प्लाट नं० 191 व 192 मॉ मंघटई बिचपुरी रोड आगरा। पूर्व-कृषि भूमि, पश्चिम-कृषि उत्तर-नाला /बिचपुरी रोड, दक्षिण-कृषि भूमि 2.....	रु० 2.00 करोड़	रु० 20.00 लाख	16.06.09 सांय 5 बजे तक	16.06.09 सांय 4 बजे कैनरा बैंक, ओवरसीज शाखा संजय प्लेस, एल०आई०सी० बिल्डिंग आगरा।

टिप्पणी:- 1. अचल सम्पत्ति 'जहां है जैसी है' (As is where is basis) की पद्धति के आधार पर विक्रय की जाएगी। 2. सबसे पहले प्राधिकृत अधिकारी द्वारा सार्वजनिक रूप से मुहरबंद निविदायें निर्धारित समय तक प्राप्त की जायेगी। प्राप्त मुहरबंद निविदायें केनरा बैंक की ओवरसीज शाखा, संजय प्लेस, एल०आई०सी० बिल्डिंग, आगरा में दिनांक 16.06.09 सांय 3 बजे खोली जायेगी। यदि आरक्षित धनराशि से कम धनराशि की निविदायें प्राप्त होती हैं या कोई भी निविदा प्राप्त नहीं होती है तो उपरोक्त अचल सम्पत्ति का विक्रय सार्वजनिक नीलामी द्वारा निर्धारित तिथि को किया जायेगा। अन्य नियम एवं शर्तें कैनरा बैंक की ओवरसीज शाखा, संजय प्लेस, एल०आई०सी० बिल्डिंग, आगरा से प्राप्त की जा सकती हैं।

स्थान- आगरा, दिनांक 15.05.09

प्राधिकृत अधिकारी”

56. After the publication of the notice for the sale of the property, the petitioner submitted a tender offering the purchase of the property for a

sale consideration of Rs. 2,02,00,000/-. It is also admitted on record that the petitioner alone had submitted his tender and except the petitioner no party had submitted tender, so the tender of the petitioner being the single tender was accepted by the Authorized Officer. On receiving the sale consideration, he issued a sale certificate on 16.07.2009. The sale certificate issued by the Bank is reproduced herein-below:-.

Canara Bank
SALE CERTIFICATE
(For Immovable Property)

Where as,

The undersigned being the Authorized Officer of Canara Bank, under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, (Act 54 of 2002) and in exercise of the Powers conferred under Section 13(12) read with Rule 9 (6) of the Security Interest (Enforcement) Rules 2002, has in consideration of the payment of Rs.2,02,00,000.00 (Rs. Two Crores, two lacs only), sold on behalf of Canara Bank, Overseas, Branch, Agra, in favour of M/s. Young Style Overseas, C-2/52, Beside Shree Ram Mandir Cinema, Kamla Nagar, Agra. (Purchaser), the Immovable Property shown in the Schedule below secured in favour of the Canara Bank, Overseas Branch, Agra, by M/s. Wasan Shoes Ltd, Factory at No.191-192, Village Mangtai, Old Bodla- Bichpuri Road, Agra towards the financial facilities, Packing Credit, FDB/FBE, FLC/ILC, over drawings in current account, offered by Canara Bank, Overseas Branch, Agra, to M/s. Wasan Shoes Ltd.

The undersigned acknowledges the receipt of the Sale Price in full and handed over the delivery and possession of the Schedule Property to M/s. Young Style Overseas, C-2/52, Beside Shree Ram Mandir Cinema, Kamla Nagar, Agra. The Sale of the Scheduled Property was made free from all encumbrances known to the Secured Creditor, on deposit of the money demanded by the undersigned.

SCHEDULE

Description of the Property

All that part the parcel of the property consisting of Plot No.... in Sy. No/City or Town Survey No. Khasra No. (old) 191, area 2, Bigha, 5 Biswa, 16 Biswansi, and Khasra No (Old) 192 area 3 Bigha, 11 Biswa, 8 Biswansi, at Mauza Mangtai, Bodhla, Bichpuri Road, Agra within the Sub District/Tehsil, Agra and District Agra.

Bounded by:

On the North by: Nala/Bichpuri Road, South: Agricultural Land,

On the East: Agricultural Land, West: Agricultural Land.

Place: Agra

Date: 16th July 2009

Sd./illegible
(AUTHORIZED OFFICER)
CANARA BANK, OVERSEAS,
BRANCH AGRA (U.P.)”

57. After issuance of the sale certificate, the sale deed was presented for registration before the office of Sub-Registrar II, Agra, executed

between the secured creditor i.e. the Bank and M/s. Shahroo Monsin which was registered on 21.07.2009.

58. To appreciate the controversy, it would be necessary to appreciate the scheme of the Stamp Act, 1899. The Stamp Act is a fiscal statute and being a fiscal statute the provisions therein have to be construed strictly by giving literal meaning to the expression employed by the legislature. The Apex Court in the case of ***Shanti Bhushan (D) Thr. Lr. and Others Vs. State of U.P. & Others 2023 SCC Online SC 489*** in paragraph 20 observed as under:

“20. At this stage, we may note that the Stamp Act is a taxing statute. In interpreting such a statute, equitable considerations cannot be applied. A taxing statute has to be interpreted in accordance with what is clearly expressed therein. While interpreting such a statute and determining the liability to pay tax, the provisions are required to be construed strictly. In other words, the rule of literal construction must be applied while interpreting a taxing statute. It must be interpreted in terms of the natural construction of the words used. There is no scope to imply anything which is not expressly provided.”

59. Similar proposition was laid down by the Apex court in the case of ***State of Rajasthan and Others Vs. Khandaka Jain Jewellers (2007) 14 SCC 339*** wherein the Apex Court was invited to consider a controversy whether the valuation should be assessed on the market rate prevailing at the time of registration of the sale deed or when the parties entered into an agreement to sell. The Apex Court while dealing with the aforesaid issue held that the taxing statute has to be construed strictly and consideration of hardship or equity has no role in interpreting the taxing statute. Paragraphs 20 to 23 are reproduced herein-below:-

“20. The expression "execution" read with Section 17 leaves no manner of doubt that the current valuation is to be seen when the instrument is sought to be registered. The Stamp Act is in the nature of a taxing statute, and a taxing statute is not dependant on any contingency. Since the word "execution" read with Section 17 clearly says that the instrument has to be seen at the time when it is sought to be registered and in that if it is found that the instrument has been undervalued then it is open for the registering authority to enquire into its correct market value. The learned Single Judge as well as the Division Bench in the present case had taken into consideration that the agreement to sell was entered into but it was not executed. Therefore, the incumbent had to file a suit for seeking a decree for execution of the agreement and that took a long time. Therefore, the courts below concluded that the valuation which was in the instrument should be taken into account.

In our opinion this is not a correct approach. Even the valuation at the time of the decree is also not relevant. What is relevant in fact is the actual valuation of the property at the time of the sale. The crucial expression used in Section 17 is "at the time of execution". Therefore, the market value of the instrument has to be seen at the time of the execution of the sale deed, and not at the time when agreement to sale was entered into. An agreement to sell is not a sale. An agreement to sell becomes a sale after both the parties signed the sale deed. A taxing statute is not contingent on the inconvenience of the parties. It is needless to emphasize that a taxing statute has to be construed strictly and considerations of hardship or equity have no role to play in its construction. Viscount Simon quoted with approval a passage from Rowlatt, J. expressing the principle in the following words:

" In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

21. *The same view was expressed by Hon'ble Bhagwati, J. in the case of A.V. Fernandez v. State of Kerala AIR 1957 SC 657. The principle is as follows:*

"29...in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

Hon'ble Shah, J. has formulated the principle thus:

"11...In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

Therefore, a taxing statute has to be read as it is. In other words, the literal rule of interpretation applies to it.

22. *In this background, if we construe Section 17 read with Section 2(12) then there is no manner of doubt that at the time of registration, the registering authority is under an obligation to ascertain the correct market value at that time, and should not go by the value mentioned in the instrument.*

23. *Learned counsel for the respondent submitted that if we construe Section 3 read with Section 27 of the Act then the registering authority is under an obligation to only see the value mentioned in the instrument. In our opinion Section 3 which is the charging section cannot be read in isolation but has to be read along with Section 17 of the Act. From a composite reading of Sections 3, 17 and 27, it becomes abundantly clear that the valuation given in an instrument is not conclusive. If any doubt arises in the mind of the registering authority that the instrument is undervalued then as per Section 47-A of the Rajasthan (Amendment) Act the instrument can be sent to the Collector for determination of the correct market value. Under Section 47-A*

read with Sections 3, 17 and 27, it becomes clear that the registering authority has to ascertain the correct valuation given in the instrument regarding market value of the property at the time of the sale.”

60. It is pertinent to note that the object of the two Acts i.e. Stamp Act, 1899 and object of SARFAESI Act, 2002 are different and they operate in different domain inasmuch as the Stamp Act, 1899 is a fiscal statute laying down the law relating to the tax levied in the form of stamp duty on instruments recording transactions whereas SARFAESI Act, 2002 has been enacted to arm the banks to recover loans from defaulting borrowers by auctioning their residential or commercial properties that were used as collateral (security) during the loan process.

61. In the case of *M/s. Saya Traders Vs. State of U.P. in Writ-C No.31061 of 2010* decided on 16.09.2010, this Court has succinctly explained the difference between the auction held under Companies Act and the levy of stamp under the Stamp Act. In the said case, the Court was called upon to consider whether in a sale by the Official Liquidator of a Company property in a winding-up proceeding after permission of sale by the Court, the sale consideration is treated to be the market value and the Registering Authority under Section 47-A (1) of the Act is not empowered to determine the market value of the property. This Court held that the two Acts i.e. the Companies Act and the Stamp Act operate in different spheres and what may be good under one Act may not be true/correct for the purposes of other Act. In the said judgement, the Court has also noted the distinction between the value of the property and the upset price or the reserved price. Paragraphs 27, 28, 36, 37, 38, 39, 40 and 41 of the aforesaid judgement are reproduced herein-below:

27. This brings me to the next point as to whether the authorities under the Act are empowered to determine market value of the property and the stamp duty payable thereon when the sale took place under the authority of the Court at a price approved by it.

28. There is no dispute to the fact that the deed in question is an instrument of conveyance as defined under Section 2 (14) read with Section 2(10) of the Act and is chargeable to stamp duty under Section 3 of the Act. The levy of stamp duty is not dependant upon the parties to the deed so long as the instrument is not exempt from the payment of stamp duty. In such a situation every instrument chargeable to stamp duty is

required to be dealt with in accordance with the provisions of Section 47-A of the Act so that the Government is not deprived of its legitimate revenue by way of stamp duty. Thus the question as to on whose behalf or under whose direction the transfer is made is of no significance.

36. It may be worth noting that the "value of the property" and the "reserve price" of a property may vary and may not be the same. In State of U.P. Vs. Shiv Charan Sharma AIR 1981 SC 1722 the Supreme Court explaining the meaning of reserve price observed that it is a price with which the public auction starts and below which the bidders are not permitted to give bid. In other words, the true market value can always be on the higher side than the reserved price. The Apex Court in the case of Anil Kumar Srivastava Vs. State of U.P. AIR 2004 SC 4299 as such observed that the concept of reserve price is different from the valuation of the property and the two are not synonymous. The two terms operate in different spheres.

37. In the end, it may also be noted that even though the Court while making a sale of any property ensures to fetch the best possible price but that may not necessarily be the prevailing market price.

38. The Apex Court in *Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd.*, AIR 1974 SC 1331 has observed as under:

"Court sale is a forced sale and notwithstanding the competitive element of a public auction, the best price is not often forthcoming."

39. In *Anil Kumar Srivastava (supra)* the Supreme Court while dealing with the tender price has examined the concept of valuation and upset/reserved price and held as under:

"In the case of *McManus Vs. Fortescue* (1907) 2 KB 1, it has been held by Court of Appeal that in a sale by auction, subject to reserve, every offer/bid and its acceptance is conditional. That the public is informed by the fact, that the sale is subject to a reserve that the auctioneer has agreed to sell for the amount which the bidder is prepared to give only in case that amount is equal to or higher than the reserve. That the reserve puts a limit on the authority of the auctioneer. He cannot accept a price below the upset/reserve price . . . The concept of reserve price is not synonyms with 'valuation of the property'. These two terms operate in different spheres. An invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin. (see : *Pollock and Mulla on Indian Contract and Specific Relief Acts* (2001) 12th edition, page 50).

Valuation is a question of fact. That court is reluctant to interfere where valuation is based on relevant material (see : *Duncans Industries Ltd. v. State of U.P.* [1999] 9 JT SC 421. The difference between valuation and upset price has been explained in the case of *B. Susila v. Saraswathi Ammal*, AIR 1970 Mad 357, in which it has been held that fixation of an upset price may be an indication of the probable price which the land may fetch from the point of view of intending bidders. However, notwithstanding the fixation of upset price and notwithstanding the fact that a bidder has offered an amount higher than the reserve/upset price, the sale is still open to challenge on the ground that the property has not fetched the proper price and that the sale be set aside. That the fixation of the reserve price does not affect the rights of the parties. Similarly, in the case of *Dr. A.U. Natarajan v. Indian Bank*, AIR 1981 Mad 151, it has been held that the expressions 'value of a property' and 'upset price' are not synonymous but have different meanings. That the term 'upset price' means lowest selling price or reserve price. That unfortunately in many cases the word 'value' has been used with reference to upset price. That the sale has to commence at the higher price and in the absence of

bidder, the price will have to be progressively brought down till it reaches the upset price. . ."

40. In view of above legal position, it is clear that the upset price or the reserve price of any property fixed by the Court may not be the true market value of the property. The market value of the property is generally higher and at times lessor than the reserve price so fixed and as such it can always be subject to determination.

41. Moreover the fixation of reserve price/upset price by the Court while granting permission to sell the property on that price under the Companies Act is to safeguard the interest of the person to whom the property belongs and the creditors. It is not determined or fixed considering the interest of the revenue. The two Acts i.e. the Companies Act and the Stamp Act operate in different spheres and what may be good under the one Act may not be true/correct for the purposes of the other Act. Therefore, also from the angle of protecting the revenue it is necessary that the market value of any property which is subject matter of transfer under an instrument chargeable to stamp duty ought to be determined in accordance with the provisions of the Act."

62. Thus, it is evident that applying the aforesaid principles propounded by the Apex Court as well as by this Court, the powers conferred upon the Collector under Section 47-A(3) are independent and cannot be curtailed or restricted on the pretext that since the sale is a public sale by inviting tender, and it is open to the public to participate in the said sale, therefore, the sale consideration on which the property is sold is final and excludes the domain of the Collector to invoke its power under Section 47-A(3) of the Act, 1899 even in those cases where he has reason to believe based on the tangible material on record that the true market value has not been set forth in the instrument.

63. At this stage, it would also be relevant to refer to the judgements relied upon by Sri M.C. Chaturvedi, learned Additional Advocate General laying down a distinction between a sale by tender and by public auction.

64. In the case of **Vishwanath Agarwal (supra)**, the issue before the Court was whether a sale by the Official Liquidator under the Companies Act by inviting tender is a sale by public auction, and thus, is covered under Article 18 of Schedule 1-B of the Act, 1899. This Court held that the sale by inviting tender is not a sale by public auction. Paragraphs 10, 14, 15, 16, 17 of the said judgement are reproduced

herein-below:-

"10. There is one more aspect of the matter, Article 18 would apply only if the sale is made by public auction. Section 457 of the Companies Act gives power to the official liquidator to sell the property by public auction or by private sale. It is not in dispute between counsel for the parties that the mode adopted in the present case was a sale by inviting tenders and the only submission of Sri. R. N. Singh, learned counsel for the petitioner on this point is that a sale by inviting tenders is a sale by public auction, I do not agree with the contention advanced.

14. The question was considered by the Bombay High Court in Gulabsingh v. Chandrapal Singh and Ors., AIR 1987 Bombay 90. In that case distinction between sale by public auction and sale by tender has been noticed. It was held that (18) "I may usefully refer in this regard to the Halsbury's Laws of England Volume 2 Fourth Edition for what an auction means. Para 701 on page 360 is relevant. According to Halsbury's Laws of England, "the auction is a manner of selling or letting property by bids, usually to the highest bidder by public competition. The prices which the public was asked to pay are the highest which those who bid can be tempted to offer by the skill and tact of the auctioneer under the excitement of open competition." It is thus clear that an auction is held by public competition wherein every bidder has right to raise his own bid. It is also clear that in public auction; the atmosphere herein created by open bidding can tempt the bidder to raise his bid and thus enhanced price can be fetched by the said mode. (19) "In a sale by tender, however, no such opportunity is available to the tenderer. Once he gives his offer that is final and cannot be raised, whereas in public auction each bidder knows the bid of the other person. In the mode of sale by calling for offers or tenders, none of the persons or tenderers know the price offered by the other. In regard to the tenders, it is observed in Halsbury's Laws of England, Volume 9, Fourth Edition para 230 on page 101 that an advertisement that good or services are to be bought or said by tender is not, prima facie, an offer to sell to the person making the highest tender". It is, therefore, clear that by sale by tender or by calling for offers, the highest bid need not be accepted."

15. The dictionary meaning of public auction given in Black's Law Dictionary, revised Fourth Edition is:

"Auction. - A public sale of land or goods, at public outcry to the highest bidder. **Perry Trading Co. v. City of Tallahassee 128 Fla 424, 111 ALR 463.**

*A sale by auction is a sale by public outcry to the highest bidder on the post. **Barber Lumber Co. v. Gifford, 25 Idaho, 645, 1396P. 557, 560.***

While auction is very generally defined as a sale to the higher bidder, and this is the usual meaning, there may be a sale to the lowest bidder, as where land is sold for non-payment of taxes to whomsoever will take it for the shortest term; or where a contract is offered to the one who will perform it at the lowest price. And these appear fairly included in the term "auction" Abbott.

Dutch Auction-

*A method of sale by auction which consists in the public offer of the property at a price beyond its value and when gradually lowering the price until some one becomes the purchaser. **Crandall v. State 28 Ohio 482.***

Public Auction-

A sale of property at auction, where any and all persons who choose are permitted to attend and offer bids. The phrase imports a sale to the highest and best bidder with absolute freedom for competitive bidding. State v. Millider 52 Mont 515.

16. *Though this phrase is frequently used, it is doubtful whether the word "public" adds anything to the force of the expression, since "auction" itself imports publicity. If there can be such a thing as a private auction, it must be one where the property is sold to the highest bidder, but only certain persons, or a certain class of persons, are permitted to be present or to offer bids.*

17. *For what has already been discussed I am of the view that in this case there was no sale by public auction and the instrument is not covered by Article 18 of Schedule IB but is a conveyance under Article 23."*

65. Though, it is not disputed by Sri Shashi Nandan, learned Senior Counsel that the sale by tender is not covered under Article 18 of Schedule 1-B, the aforesaid judgement is referred only for the purpose that the legislature considering the difference between the public auction and a sale by tender did not think it appropriate to include the sale by tender by an Authorized Officer in Article 18 of Schedule 1-B under the Stamp Act, 1899 entitling the party to pay the stamp duty on sale consideration in the sale certificate.

66. It is true that the Courts have elaborated that the market value is a changing concept depending upon various factors, but it cannot be lost sight of the fact that the reserved price/upset price fixed by the authority for inviting tender under SARFAESI Act, 2002 is to safeguard the interest of the secured creditors but it is not fixed considering the interest of the revenue.

67. At this stage, it would be relevant to reproduce Articles 18 and 23 of Schedule 1-B of the Act, 1899:-

Description of Instrument	Proper Stamp-duty
[18. Certificate of sale (in respect of each property put up as a separate lot and sold), granted to the purchaser of any property sold by public auction by a Court or by an officer, authority or body empowered under any law for the time being in force to sell such property by public auction and to grant such certificate.]	[The same duty as a Conveyance [(No.23 clause (a)], for a consideration equal to the amount of the purchase money only]
23. Conveyance [as defined by Section 2	

<p>(10) not being a Transfer charged or exempted under No.62-</p> <p>(a) if relating to immovable property where the amount or value of the consideration of such conveyance as set forth therein or the market value of the immovable property which is the subject of such conveyance, whichever is greater does not exceed Rs.500,</p> <p>where it exceeds Rs.500 but does not exceed Rs.1,000.</p> <p>and for every Rs.1,000 or part thereof in excess of Rs.1,000</p> <p>(b) if relating to movable property where the amount or value of the consideration of such conveyance as set forth therein does not exceed Rs.1,000</p> <p>and for every Rs.1,000 or part thereof in excess of Rs.1,000</p>	<p>Sixty rupees</p> <p>One hundred and twenty-five rupees.</p> <p>One hundred and twenty-five rupees: Provided that the duty payable shall be rounded off to the next multiple of ten rupees.</p> <p>Twenty rupees</p> <p>Twenty rupees</p>
<p style="text-align: center;"><i>Exemption</i></p> <p>Assignment of copyright in musical works by resident of, or first published in India.</p> <p style="text-align: center;"><i>Explanation</i></p> <p>For the purposes of this Article, in the case of an agreement to sell an immovable property, where possession is delivered before the execution or at the time of execution, or is agreed to be delivered without executing the conveyance, the agreement shall be deemed to be a conveyance and stamp duty thereon shall be payable accordingly: Provided that the provisions of Section 47-A shall mutatis mutandis apply to such agreement: Provided further that when conveyance in pursuance of such agreement is executed, the stamp duty paid on the agreement shall be adjusted towards the total duty payable on the conveyance.]</p>	

68. Under Article 18 of Schedule 1-B, a party is liable to pay stamp duty for a consideration equal to the amount of purchase money only in a case where the certificate of sale is granted to the purchaser of any property sold by public auction by a Court or by any officer, authority or

body empowered under any law to sell such property by auction and to grant such certificate.

69. The Courts have held the distinction between public auction and sale by inviting tenders from the public. In a sale by public auction, each bidder offers an increase upon the price offered by the preceding bidder, the article put up for auction being sold to the highest bidder. This process involves the auction being held in public and open to all members of the public having a right to attend and participate in the auction and the valuable element being the competition between the persons who are openly bidding for the subject matter of the sale.

70. The market value of the property would always be on the higher side than the upset price/reserved price in a sale by tender, the reason for saying so is that the Courts have laid a distinction between a sale by tender and a sale by public auction. In a case of sale by public auction, the bidder can tempt to or can be tempted to increase the offer because of the atmosphere created by open bidding, thus, the property may fetch the maximum price which may not be possible in the case of a sale by tender inasmuch as the bidder in a sale by tender does not know the bid of the other bidder participating in the tender and he does not have opportunity to enhance the bid late. Perhaps keeping in view the said distinction between a sale by public auction and a sale by tender, the Legislature did not think it appropriate to include sale by tender under Article 18 of Schedule 1-B while bringing a sale by public auction under Article 18 of Schedule 1-B.

71. So to say that the sale by tender by inviting offers from public is a public sale, and sale consideration would be the market value of the property, and the Collector is denuded of its power under Section 47-A(3) of the Act, 1899 to invoke such power to draw a proceeding against a party despite there being constructive material on record based on which he has reason to believe that true description of the property has not been set forth in the instrument would render the object of inducting Section 47-A(3) by amendment in the Act, 1899 otiose. Thus, to say that

sale consideration in a sale by tender is the market price of the property does not appeal to the logic.

72. A glance at Section 17 of the Act reflects that the market value of the property in relation to an instrument chargeable to stamp duty is determinable on the date of 'execution' irrespective of the date of its registration, if any.

73. A glance at Section 27 of the Act, 1899 is also relevant in the facts of the present case. Section 27 of the Act cast a duty upon the party to disclose all the facts and circumstances affecting the chargeability of the instrument with duty. Section 27 (1) & (2) are reproduced herein-below:-

“27. Facts affecting duty to be set forth in instrument.- (1) *The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.*

(2) *In the case of instruments relating to immovable property chargeable with an ad valorem duty on the value of the property, and not on the value set forth, the instrument shall fully and truly set forth the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property, the local rates, Municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act.”*

74. Rule 3 of the Rules, 1997 prescribes 'Facts' which are to be set forth in an instrument. The present is a case relating to a building as the factory is established on the property, therefore, Rule 3 (3) of the Rules 1997 being relevant in the context of the present case is reproduced herein-below:-

“Rule 3. Facts to be set forth in an instrument.- *In case of an instrument relating to immovable property chargeable with an ad valorem duty, the following particulars shall also be fully and truly stated in the instrument in addition to the market value of the property-*

(3) *in case of buildings-*

(a) *total covered area and open land, if any, in square metres;*

(b) *number of storeys, area and covered area of each storey in square metres;*

(c) *whether pucca or katchha construction;*

(d) *year of construction;*

(e) *actual annual rent;*

(f) annual value assessed by any local body and the amount of house tax payable thereon, if any;

(g) nature of building, whether non-commercial or commercial; and

(i) in case the building is non-commercial, its minimum value of construction as fixed by the Collector of the district; and

(ii) in case of single unit shop and commercial establishment, its minimum land rate per square metre and minimum construction rate per square metre of single unit shop and commercial building as fixed by the Collector of the district. In case of shops and commercial establishments situated in buildings, other than single unit commercial building, carpet area rate per square metre as fixed by the Collector of the district, and,

(h) location (whether lies in urban area, semi-urban area or country side).”

75. It is also relevant to have a glance at Rule 6 (1) of Rules, 1997 which states that the party is under obligation to submit along with the instrument a statement in duplicate in the Form appended to these Rules where the instrument is in relation to an immovable property chargeable with an *ad valorem* duty. The form prescribed under Rule 6 envisages various information which is to be supplied by the party at the time of submitting the instrument for registration and below the form, a verification clause is also given which is to be signed by the transferor.

76. In the context of the present case, the information required to be submitted by the party at serial nos.6, 7, 8, 11 & 12 in the Form under Rule 6 (1) of Rules, 1997 contemplated in the Rules, 1997, and the declaration in the form of verification is being reproduced herein-below:-

6. Approximate distance (in kilometres of natures) of property from railway station, bus-station, public offices, hospitals, factories and educational institution, etc. Mention any one which is nearest to the property under transfer....

7. Nature of economic, industrial, developmental activity, if any, prevailing in the locality in which property is situate.....

8. Any other special feature affecting the value of the property....

11. Fair market value of the property:

12. Other information-

In case of Agricultural land-...

Non-agricultural land-...

In case of grove of garden-...

In case of non-commercial building-

- (i) type of building, i.e., whether tiled, R.C.C., R.B.C. or otherwise;*
- (ii) total covered and open area (in square metres);*
- (iii) the number of storeys in the building;*
- (iv) the covered and open area of each floor or storey in the building;*
- (v) whether the walls of the building have been built in brick and cement, brick time, mortar or otherwise;*
- (vi) the year of construction of the building;*
- (vii) brief description of the quality of the sanitary wares, woodworks, electrical and other fittings and their respective quantities (with brand names if possible);*
- (viii) the size and the depth of the well, if any, in the property;*
- (ix) minimum value of land per acre/per square metre and fixed by the Collector of the district.”*

77. A combined reading of Section 27 of the Act, 1899, and Rule 6(1) of Rules, 1997 and the perusal of the form prescribed under Rule 6 suggest that a duty is cast upon the parties to furnish all the information fully and correctly affecting the chargeability of the instrument, and the details of the information sought in the form should be duly verified by the transferee and transferor and are also to be enclosed along with the instrument of transfer.

78. In the light of the various provisions referred to above, it can safely be said that if there is violation of Section 27 of the Act by not disclosing all the facts fully and correctly affecting the chargeability of the instrument, it is obvious that the correct market value has not been set forth in the instrument, and if the Collector finds that there is violation of Section 27 of the Act and all the facts affecting the chargeability of the instrument have not been set forth in the instrument, in such case, belief of the Collector contemplated under Section 47-A of the Act, 1899 is based upon the material on record, and the scrutiny of such instrument cannot be excluded on the pretext that it was a public sale and there was no deliberate intention to evade the payment of proper stamp duty so as to exclude such sale from the domain of Section 47-A of the Act, 1899. Any other interpretation of Section 47-A (3) in reference to a public sale by tender where it does not conform to the requirements of Act, 1899 and does not set forth all the details in the

instrument affecting the chargeability of the instrument would be against the principles of interpretation of taxing statute and would render the object of inducting Section 47-A by the amendment in the Act, 1899 otiose.

79. Therefore, if a presumption is raised that the price on which the property has been sold in a sale by tender is the market value of the property which the property would have fetched and the party is liable to pay the stamp duty on the sale consideration mentioned in the sale certificate issued by the Authorized Officer on receiving the amount that would be against the spirit of the Stamp Act and the various Rules casting a duty upon the party to disclose fully and correctly the description of the properties.

80. Now coming to the facts of the present case, after the execution of the sale deed, a spot inspection was conducted by the Additional District Magistrate (Finance & Revenue), Agra on 04.08.2009. He submitted a report that the instrument was presented for registration treating it to be under Article 18 of Schedule 1-B whereas the said instrument does not fall within the purview of Article 18 of Schedule 1-B.

81. The report further states that 4000 Sq. Meters is constructed area which has not been disclosed in the sale certificate and it has been undervalued as it was assessed treating it to be agricultural land. On the said report, a proceeding under Section 47-A (3) was drawn against the petitioner and a notice was issued, which came to be challenged by the petitioner by filing writ petition bearing Writ-C No. 10013 of 2010 which was disposed of by this Court relegating the petitioner to the respondent no.2.

82. Respondent no.2, thereafter, passed an order dated 30.05.2011 holding the deficiency of Rs.2,65,24,240/- in payment of stamp duty and also imposed the penalty of Rs. 2,00,000/-under Section 40 (b) of the Act, 1899.

83. The petitioner preferred an appeal which was allowed and the order of respondent no.2 was set aside and the matter was remanded by

the Chief Revenue Authority to the Collector by formulating three issues which have already been extracted above.

84. The Collector again by order dated 02.08.2017 held that the instrument is not covered under Article 18 of Schedule 1-B. He further held that since a factory is being run over the property, therefore, the circle rate applicable to the industrial area be applied, accordingly, he constituted a Committee to determine the circle rate with respect to the industrial area. The Committee submitted a report, and on the basis of the said report, the Collector calculated the market value of the property by applying the circle rate of Rs.15,000/- in reference to the land and also calculated the value of the constructed area. Thereafter, he determined the market value of the property and held deficiency of Rs.1,45,35,270/- on which interest @ 1.5% per month was also imposed. He also imposed the penalty of Rs.36,33,818/- under Section 40(b) of the Act, 1899.

85. In view of the law discussed above, the question which invites the attention of the Court in the facts of the present case is 'whether the sale by tender in the facts of the present case is a public sale and the sale consideration mentioned in the sale certificate shall be treated to be a market value in reference to the Act, 1899 for payment of stamp duty.'

86. It is admitted that the factory is established on the property and as per the valuation report of the valuer, the fair market value of the land is assessed to Rs.2,05,72,500/- and the value of the building standing on the land is assessed as Rs.21,49,545/-. The valuer also stated in the report that the fair market value arrived at is based on market enquiries but the further change of circumstances, Government policies, and market trends may affect the said fair market value. So, the valuation report of the authorised valuer giving the fair market value of the property is only an assessment of the valuation of the property based upon the market enquiries, but it is not conclusive and may vary depending upon the market policies and market trends. The Valuer in his report has stated that the reliable sale value of the property may

reduce to Rs.1,95,00,000/-. The Valuer has not given any reason or basis in the report for the reduction of realisable value of a property to Rs.1,95,00,000/- whereas the fair market value assessed by him is Rs.2,27,00,000/-.

87. The Authorised Officer under the SARFAESI Act, 2002 is only an independent person. It appears that treating the realisable sale value of the property to be Rs.1,95,00,000/- though the fair market value of the property as per the valuation report is Rs.2,27,00,000/-, the Authorised Officer fixed the upset price or reserved price Rs.2,00,00,000/- and published tender inviting offers from the public for the sale of the property.

88. Perusal of the tender notice published in the newspaper on 15.05.2009 discloses the details of the property which are as follows:-

<u>संपत्ति का पूरा विवरण</u>
1. प्लाट नं० 191 व 192 मॉ मंगटर्ड बिचपुरी रोड आगरा। पूर्व-कृषि भूमि, पश्चिम-कृषि उत्तर-नाला/ बिचपुरी रोड, दक्षिण-कृषि भूमि

89. From the aforesaid facts, it is evident that only the number of plots has been given, but no further details regarding the area of the plot and details of the building standing thereon were given. Even the boundaries of the property have not been properly described inasmuch as vague description of the boundaries has been given by stating that East agricultural land, West agricultural land, North Nala/Bicchpuri Road and South agricultural land. The reserved price of the land was Rs.2,00,00,000/-.

90. The tender notice enclosed with the writ petition on page 71 does not disclose that there is any mention in the notice that anybody willing to submit a tender pursuant to public notice may enquire from the bank with regard to property under sale by the tender notice.

91. In view of the aforesaid facts, it is manifest that details of the property under sale were not mentioned in the tender. At this stage, it is

also relevant to point out that in the possession notice published in the newspaper, the boundaries of the properties are different than what has been shown in the tender. A table showing the boundaries in the possession memo and auction notice is as follows:-

	<i>Possession Memo</i>	<i>Auction Notice</i>
<i>North</i>	<i>Road</i>	<i>Nala/Bijpuri Road</i>
<i>South</i>	<i>Property of other</i>	<i>Agricultural Land</i>
<i>East</i>	<i>Property of other</i>	<i>Agricultural Land</i>
<i>West</i>	<i>Khattar Cold Storage</i>	<i>Agricultural Land</i>

92. A man of normal prudence would not like to go for a purchase of a property details of which are not disclosed in the tender notice, since, it cannot be gathered from the tender notice what property is put to sale. In other words, unless the description of the property is detailed correctly and with clarity, one cannot expect that a man of reasonable prudence would take the risk to invest huge amount to purchase a property worth crores. It is human behaviour that to purchase a property, the purchaser would like to have all the details of the property viz location of the property, area of the land, any structure or any building standing on the property etc. so that he is confident that his investment in the purchase of such property is worth and such purchase would not be a disadvantage to him or loss to him.

93. It is undisputed that the shoe factory was running over the property, but in the tender notice, no description of the activity which is being run over the property has been mentioned. Though in literal meaning, it is a public sale by inviting tender, but it cannot be termed as public sale in the true sense for the discrepancies pointed out above in the publication of the tender notice. Even in the sale certificate, one more interesting fact can be pointed out that in the tender notice, the area of the plot which was put to auction has not been mentioned whereas in the sale certificate, under the heading ‘description of property’ the area of both khasra numbers i.e. Khasra no.191 and 192 has been mentioned.

94. It is also admitted on record that building has been constructed over about 4000 square meters of land, but no details of the building have been mentioned in the sale certificate. The sale certificate indicates that the property under sale was an immovable property. Therefore, the building standing on the property was also part of the property and was sold.

95. In this respect, it would be useful to refer to the judgement of this Court in the case of ***Ashok Kumar and Others Vs. Chief Controlling Revenue Authority and Others AIR 2011 All 142***. This Court after noticing the definition of 'Sale' defined in Section 54 of the Transfer of Property Act, 1882 and Section 3(26) of the General Clauses Act, 1897 in paragraph 24 held as under:-

“24. Thus, ordinarily immovable property in the nature of land includes within its fold the building standing over it. Therefore, where a land is transferred any building standing on it normally forms part of such transfer unless a different intention is expressed or necessarily implied. Transfer of land, thus carries with it the structure existing over it unless excluded expressly or impliedly.”

96. The construction over 4000 square meters of the property has not been disputed by the petitioner before the authorities and even before this Court in writ petition. Non- disclosure of details of the construction over 4000 square meters standing on the property in the sale certificate as well as sale deed definitely affects the chargeability of the instrument, thus, amounts to non-compliance with the requirement of Section 27 of the Act, 1899 which cast a duty upon the parties to disclose all the details in the sale deed.

97. In the present case, details of the property put to auction was not mentioned in the tender notice and the boundaries have not been correctly mentioned in the tender notice, and further, the sale certificate as well as the sale deed do not detail the description of the property as contemplated under the Stamp Act, 1899, therefore, this Court is of the view that the facts of the present case are distinguishable from the facts of the cases of ***V.N. Devadoss (supra)*** and ***Ballyfabs (supra)***, therefore,

this Court believes that the aforesaid two judgements relied upon by the learned counsel for the petitioner are of no help to the petitioner in the present case.

98. The Collector is conferred with the power under Section 47-A (3) of the Act, 1899 to examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is subject to such instrument and duty payable thereon, and if on examination, he has reason to believe on the basis of constructive material on record that the true market value has not been set forth in the instrument, he may determine the market value of the property and the duty payable thereon. The examination made by the Collector under Section 47-A (3) of the Act, 1899 is only limited to the exercise of power under the Act, 1899 to find out whether the true market value of the property has been set out in the instrument and such investigation has no relation with the legality of the sale by the tender which can only be looked into by the competent authority or Tribunal vested with the jurisdiction to try the legality of the sale by inviting a tender and the investigation made by the Collector in the exercise of power under Section 47-A (3) of the Act, 1899 cannot be used to challenge the public auction as the domain of two Acts i.e. Stamp Act and the Act under which the sale is affected by inviting tenders from public.

99. At this stage, it is also pertinent to mention that the learned Additional Advocate General has objected to the contention advanced by the learned counsel for the petitioner by contending that it was never the case of the petitioner before the authority and even in the writ petition that the sale by inviting tender from the public in the present case falls within the ambit of Article 23 of Schedule 1-B, therefore, it is not open to the petitioner to set up a new ground which is neither pleaded in writ petition nor was raised before the authority.

100. However, the said submission was countered by Sri Shashi Nandan, learned Senior Counsel by placing reliance upon the argument raised by him in Writ C No.10013 of 2010 to submit that right from the

inception when the notice under Section 47-A (3) of the Act, 1899 was challenged by the petitioner in the writ petition, the stand of the petitioner was that the sale consideration mentioned in the sale certificate is the market value of the property, and there is no deliberate intention to evade the payment of stamp duty, therefore, the *sine qua non* to invoke power under Section 47-A (3) of the Act, 1899 was not present, therefore, the proceeding under Section 47-A (3) of the Act, 1899 was bad in the eye of law.

101. Sri Shashi Nandan, learned Senior Counsel for the petitioner has fairly conceded that the sale by inviting tender from the public does not come within the periphery of Article 18 of Schedule 1-B. This Court has summoned the copy of the Writ-C No. 10013 of 2010 and perusal of the aforesaid writ petition reveals that the petitioner has placed reliance upon Article 18 of Schedule 1-B which is evident from perusal of paragraphs 6, 7, & 8 of the said writ petition.

102. However, since Sri Shashi Nandan, learned Senior Counsel has fairly conceded that Article 18 of Schedule 1-B has no application in the present case and the question raised by Sri Shashi Nandan herein above is a pure question of law considering the fact that the facts on record are not disputed, therefore, this Court has proceeded to consider the said question and does not agree with the submission of learned Additional Advocate General that the petitioner cannot be allowed to raise the aforesaid issue for the first time in the writ petition.

103. At this juncture, it is also relevant to point out that Sri Shashi Nandan, learned Senior Counsel has submitted that if the correct description of the property has not been disclosed in the sale certificate and the sale deed, the remedy of the State Government to approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, 2002 for correction in the sale certificate based on which the sale deed was executed since the State Government is an aggrieved person by non-disclosure of the correct description of the property and till the same is done, the Collector lacks jurisdiction to invoke Section 47-A of the Act,

1899 is concerned, this Court is of the view that the submission of the learned Senior Counsel for the petitioner is devoid of merits for the reason that the scope and enquiry and the issues to be considered under Section 17 of the SARFAESI Act, 2002 are different and do not contemplate a situation like in the present case whereas the power conferred upon the Collector under Section 47-A (3) of the Act, 1899 is independent power and is conferred upon the Collector with a purpose to carry out the object of the Stamp Act, 1899 and to safeguard the revenue interest of the State so that the State may not suffer loss of revenue.

104. Now, coming to the last limb of the argument of Sri Shashi Nandan, learned Senior Counsel that the Collector has no power to constitute a Committee to enquire about the market value of the property. The said argument is also devoid of merits in view of the judgement of the Apex court in the case of ***Duncans Industries Ltd. Vs. State of U.P. & Others AIR 2000 (1) SCC 633***. Paragraph 15 of the said judgement is reproduced herein-below:-

“15. The question of valuation is basically a question of fact and this Court is normally reluctant to interfere with the finding on such a question of fact if it is based on relevant material on record. The main objection of the appellant in regard to the valuation arrived at by the authorities is that the Collector originally constituted an Enquiry Committee consisting of the Assistant Inspector General (Registration), General Manager, District Industries Centre, Sub-Registrar and the Tehsildar. After the report was submitted by the Sub-Committee for the reasons of its own, the Collector reconstituted the said Enquiry Committee by substituting the Additional City Magistrate in place of Sub-Registrar. This substitution of the Enquiry Committee, according to the appellant, is without authority of law. We are unable to accept this contention. Constitution of an Enquiry Committee by the Collector is for the purpose of finding out the true market value of the property conveyed under the deed. In this process, the Collector has every authority in law to take assistance from such source as is available, even if it amounts to constituting or reconstituting more than one Committee. That apart, the appellant has not been able to establish any prejudice that is caused to it by reconstitution of the Expert/Enquiry Committee. We have perused that part of the report of the Collector in which he has discussed in extenso the various materials that were available before the Committee and also the report of the valuers appointed for the purpose of finding out the value of the plant and machinery. These valuers are technical persons who have while valuing the plant and machinery taken into consideration all aspects of valuation including the life of the plant and machinery. The valuations made both by the Enquiry Committee as well as the valuers are mostly based on the documents produced by the appellant itself.

Hence, we cannot accept the argument that the valuation accepted by the Collector and confirmed by the revisional authority is either not based on any material or a finding arrived at arbitrarily. Once we are convinced that the method adopted by the authorities for the purpose of valuation is based on relevant materials then this Court will not interfere with such a finding of fact. That apart, as observed above, even the counsel for the appellant before the High Court did not seriously challenge the valuation and as emphasised by the High Court, rightly so. Therefore, we do not find any force in the last contention of the appellant also.”

105. Now, coming to the facts of the present case, the Collector by order dated 02.08.2017 held that the rates applicable to the industrial area are applicable as the property is an industrial unit, and thereafter, he constituted a Committee for the purpose of finding out the rate applicable to industrial plots. The Collector by order dated 02.08.2017 did not record any reason as to how he came to the conclusion that the property comes within the industrial area, therefore, the rates applicable to the industrial area be applied. The Committee constituted for the purpose showed its inability to find out the rates applicable to the industrial area as the circle rate at the relevant time did not provide the rate applicable to the industrial area as in the circle rate. The rates are provided with respect to non-agricultural land and commercial land, and accordingly, it applied the rates applicable to the non-agricultural land on the basis of a recommendation dated 26.02.2022 of the Sub Registrar II, Sadar, Agra. The order of the Collector dated 02.08.2017 is bad for the reason that the Collector in concluding that the rates corresponding to the industrial area would be applicable is not supported by any reason.

106. The order of the Collector reveals that the detailed objection had been raised by the petitioner enclosed as Annexure-19 to the writ petition, but the objection of the petitioner was not considered by the Collector. In such view of the fact, the order of the Collector cannot be sustained being non-speaking. Accordingly, both the orders i.e. order dated 17.08.2022 and 02.08.2017 are hereby set aside and the matter is remanded to the Collector to decide the matter afresh after giving due notice and opportunity of hearing to the petitioner.

107. However, the Collector in order to ascertain the correct market value of the property, may constitute a Committee chaired by the Collector within one month who may make such enquiry as it may deem fit and proper and shall submit its report to the Collector expeditiously within two months from the date of its constitution. The Collector after obtaining report from the Committee determining the market value of the property shall supply a copy of the same to the petitioner, and shall give opportunity of hearing to the petitioner, and thereafter, shall proceed to determine the stamp duty payable on the instrument in accordance with law under Section 47-A of the Stamp Act, 1899 expeditiously, preferably within a period of six months from the date he received the report of Committee.

108. Thus, for the reasons given above, the writ petition is ***disposed off*** subject to the observations made above. There shall be no order as to costs.

Order Date :- 17.10.2024
N.S/Sattyarth