

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.26931 of 2014
Date of Decision: 22.09.2015

M/s Palace Infratech Pvt. Limited

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.M.L. Saggar, Sr. Advocate, with
Mr.Gaurav Grover, Advocate,
for the petitioner.

Mr.Vinod S. Bhardwaj, Addl. A.G. Punjab.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has prayed for a writ in the nature of certiorari to quash the order dated 14.5.2013 passed by respondent No.3 and order dated 21.5.2014 passed by respondent No.2.

In short, the petitioner-company purchased land measuring 17 kanal 7-2/3 marlas as Khalas Chahi from Pritpal Singh for a consideration of ₹48,95,000/- and affixed the Stamp duty of ₹3,91,600/-. The sale deed No.63, registered on 4.4.2013, was impounded by the Sub Registrar, Jagraon on the ground that the land in question, situated near main road has foundations filled, passage left and sewerage laid down, therefore, it has the trapping of an urban land. The Collector (ADC), Ludhiana, passed the impugned order dated 14.5.2013, on the basis of the said report, that the said land was required to be registered with the market

value of ₹2,07,13,700/- which was assessed for its registration at ₹48,95,000/-, therefore, the sale deed was registered on less price of ₹2,21,18,700/- and the petitioner was found liable to pay Stamp duty @ 8% i.e. ₹17,69,496/- and the registration fee of ₹1,51,050/-, total amounting to ₹19,20,546/-.

Aggrieved against that order, petitioner filed the statutory appeal under Section 47-A of the Indian Stamp Act, 1899 (as applicable to the State of Punjab) [for short 'the Act'] before the Divisional Commissioner. Its appeal was dismissed on 21.5.2014 only because of the nature of the land and hence, the present petition has been filed.

Learned counsel for the petitioner has submitted that the instructions of the State Government for treating the land, abutting the road, sold even for the agricultural purposes, as commercial/residential land and recovery of Stamp duty and Registration charges, has been withdrawn by the State Government vide instructions dated 3.4.2014. In this regard, he has referred to an order passed by the Division Bench of this Court on 7.4.2014 in CWP No.24156 of 2013 titled as "*The Confederation of Real Estate Developers Association of India Vs. State of Punjab and others*". It is also submitted that the land in question is recorded in the jamabandi as Chahi and is away from the main road. The petitioner has referred to an *aks sijra* prepared by it (Annexure P-11), in which the land in question is shown in green colour.

Learned counsel for the petitioner has submitted that the Supreme Court in the case of "*State of UP and others Vs. Ambrish Tandon and another*" 2012(1) RCR (Civil) 865 has held that in case of an immoveable property, Stamp duty is payable on the user of the

property, at the time of sale and not for its subsequent user, meaning thereby, the nature of land is to be seen at the time of its purchase and the Stamp duty and Registration charges cannot be asked to be paid on account of its future use. It is also argued that the land shown in brown colour in the *aks sijra* (Annexure P-11) was purchased earlier by the petitioner and after depositing necessary charges, change of land use has been obtained from the Punjab Urban Development Authority.

Learned counsel for the State, however, submits that even if the instructions, as alleged, have been withdrawn, the user of the land has to be considered and in this regard he has referred to certain photographs, attached as Annexures R1 to R7 with this record. It is contended that the petitioner is a developer, who has purchased the land in question for the purpose of developing the colony and is thus liable to pay more Stamp duty and Registration charges as the sale deed executed in this case is under valued.

I have heard both the learned counsel for the parties and examined the record.

The question in this case is “*as to whether the registration and stamp duty has to be paid on the future use of the property purchased by the petitioner*”?

The land in question was purchased by the petitioner vide sale deed No.63 dated 4.4.2013 and at that time it was recorded in the revenue record as *khalis chahi*. The case set up by the petitioner is that the land in question is situated on the back side of the land for which it has already taken CLU. Insofar as the instructions of the State Government are concerned that the land falling on the main road/highway has to be assessed at a higher

rate, has already been withdrawn on 3.4.2014, as recorded in the order passed in the aforesaid writ petition by the Division Bench.

In the case of ***State of UP and others (Supra)***, similar issue was involved because in that case property in dispute was sold/purchased when it was being used for residential purpose but later on it was put to commercial use and as a result thereof, the purchaser of the said property was asked to pay more Stamp duty and Registration charges. The Supreme Court has held that the nature/status of the land should be seen at the time of its purchase and not its use in future.

In view of the law laid down by the Supreme Court, which is squarely applicable to the present case, the impugned orders are found to be patently illegal. The present writ petition is, thus, allowed and the impugned orders are set aside.

Any amount deposited by the petitioner under the order of this Court shall be refunded to the petitioner.

22.09.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**