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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3900 of 2005 (O&M)
Date of decision:23.02.2015

Punjab State through Collector, Gurdaspur ...Petitioner

Versus

Dr. Avtar Singh and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Nilesh Bhardwaj, DAG, Punjab, for the petitioner.

None for the respondents.

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Rakesh Kumar Jain, J.

The petitioner is aggrieved against the order of the Appellate Court dated 02.12.2004 by which order passed by the Additional Deputy Commissioner-cum-Collector, Gurdaspur (here-in-after referred to as the “Collector”) dated 26.12.2000 has been set aside.

Brief facts

A complaint was received by the Collector that a plot measuring 65 marlas, situated on Jail Road, Gurdaspur was purchased by Harjinder Singh S/o Kuldip Singh on 09.03.1998 for a sum of ₹36 lacs, out of which a piece of land measuring 2 marlas was sold by Harjinder Singh to Smt. Renu Mahant @ ₹75,000/- per marla on 21.05.1998 and the remaining 63 marlas of land was agreed to be sold to Dr. Avtar Singh S/o Harbans Singh, resident of Fatehgarh Churrian @ ₹75,000/- per marla but lateron,

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the said land was sold for ₹13,30,000/-, whereas it was earlier agreed to be sold for ₹47,00,000/-. Thus, the complainant has alleged that the vendor had evaded the stamp duty.

On receipt of the complaint, the Collector got conducted an enquiry into the matter through S.D.M, Gurdaspur who, vide his report dated 29.09.2000, concluded that the complaint was correct and the vendor had evaded the stamp duty. Ultimately, the sale deeds no.2011 dated 01.06.1999 for ₹3,50,000/-, 1960 dated 29.06.1999 for ₹4,90,000/- and 1962 dated 29.06.1999 for ₹4,90,000/- were impounded and the proceedings under Section 47-A of the Indian Stamp Act, 1899 (here-in-after referred to as the "Act"), as applicable to the State of Punjab, were initiated.

The vendor Harjinder Singh stated that the land was purchased by him from one Parminder Kumar Soni S/o Mohkam Singh Soni for a sum of ₹33,50,000/-; he sold the malba of the building for ₹12,00,000/-; 2 marlas of land was also sold for a consideration of ₹1,50,000/-; the remaining land measuring 63 marlas was sold for ₹13,30,000/- by way of 3 sale deeds to Dr. Avtar Singh and Dr. Gurdip Kaur; and prior to this deal, no agreement was executed and the sale deeds were registered at the fixed rate. He further stated that the land was sold due to emergent circumstances. The vendees Dr. Avtar Singh and Dr. Gurdip Kaur also stated that they had not entered into any agreement to sell and there is no deficiency in the registration fees or the stamp duty.

The Collector, vide his order dated 26.12.2000, observed that the vendor Harjinder Singh had sold the land for a lessor amount and directed that notice in Form II be issued to the parties for recovery of the deficient amount of stamp duty and registration fees.

Aggrieved against the said order, the vendees, namely, Dr. Avtar Singh and Dr. Gurdeep Kaur, filed the appeal under Section 47-A(4) of the Act which was allowed on 02.12.2004 by the Appellate Court on the ground that the sale deeds were registered on 21.08.1998 and 29.06.1999 but no reference was made at the time of registration of the sale deeds or immediately thereafter and the reliance was placed upon a judgment of this Court in the case of **Abhinav Kumar v. State of Haryana and others,** 2001(1) R.C.R. (Civil) 91 in which the reference was made after 8 days of the registration of the sale deed and it was held to be illegal because after registration of the sale deed, no action can be taken for the purpose of recovery of stamp duty or the registration fee. It was further observed by the Appellate Court that in the present case, there was no reference by the Sub-Registrar or the Registering Officer to the Collector rather a complaint has been filed by one Achhar Singh.

Counsel for the petitioner has submitted that the learned Appellate Court has erred in relying upon the decision of this Court in **Abhinav Kumar's case (supra)** as according to him, the procedure to deal with undervalued instruments is different in Punjab. In Section 47-A of the Act, applicable to Haryana, it is provided that while registering any instrument transferring any property, if the Registering Officer appointed under the Registration Act, 1908 has reason to believe that the value of the

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property or the consideration has not been truly set forth in the instrument, he may refer it to the Collector, whereas no such provision is there in Section 47-A, applicable to Punjab, in which it is simply mentioned that if the market value of the property is found to be less than the minimum value as determined in accordance with the rules made under the Act, the Registering Officer appointed under the Registration Act, 1908, after registering the instrument, can refer the said instrument to the Collector for determination of the market value of such property and the proper duty payable thereon.

In order to appreciate the argument raised by learned counsel for the petitioner, it would be relevant to refer to Section 47-A, as applicable to the States of Punjab and Haryana, which read as under:-

> **Section 47-A, as applicable to the State of Punjab**.
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> "**47-A. Instruments under-valued how to be dealt with. -** (1) If the market value of any property, which is the subject of any instrument on which duty is chargeable on market value as set forth in such instrument, is less than even the minimum value as determined in accordance with the rules made under this Act, the Registering Officer appointed under the Registration Act, 1908, shall, after registering the instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon; and
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> (2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules under this

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Act, determine the value or consideration and the duty as aforesaid, and the deficient amount of duty, if any, alongwith interest at the rate of twelve per cent per annum on such deficient amount, shall be payable by the person liable to pay the duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty;

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum, if there was an intentional omission or lapse on his part in not setting forth the correct market value of such property.

(3) The Collector may, *suo motu*, or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908 (Central Act No.16 of 1908), in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for or examine any instrument for the purposes of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and of all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if after such examination, he has reason to believe that property duty has not been paid, he may, after giving the person concerned reasonable opportunity

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of being heard and after holding an enquiry in the manner provided under sub-section (2), determine the value of the property or the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, if any, alongwith interest at the rate of twelve per cent per annum on such deficient amount, would be payable by the person liable to pay the duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty :

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum, if there was an intentional omission or lapse on his part in not setting forth the correct market value of such property.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of that order, prefer an appeal before the District Judge and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.

Explanation. - For the purpose of this section, value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched, if sold in the open market on the date of execution of the instrument relating to the transfer of such property."

Section 47-A, as applicable to the State of Haryana.

"47-A. Instruments under-valued to be dealt with. --

(1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument

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transferring any property has reason to believe that the value of the property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value or the consideration, as the case may be, and the proper duty payable thereon.

(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may, *suo motu*, or on receipt of reference from the Inspector General of Registration or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situate, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, 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 its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reason to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by

the person liable to pay the duty:

Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of the order, prefer an appeal before the District Judge and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act."

The Appellate Court allowed the appeal filed by the respondents on the sole ground that no reference was made by the Sub Registrar at the time of registration of the sale deeds or immediately thereafter and relied upon the judgment of this Court in **Abhinav Kumar's case (supra)** in which it has been held that there is no provision in the Indian Stamp Act, 1899 wherein deficient stamp duty can be recovered by the Registering Authority either from the vendor or from the vendee subsequent to and after the registration of the sale deed.

As against this, Section 47-A(1) of the Act, as applicable to the State of Punjab, provides in so many words that if the Registering Officer, after registering the instrument, finds that the market value of any property, which is the subject of any instrument on which duty is chargeable, is less than even the minimum value as determined in accordance with the relevant

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rules, he can refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

In Section 47-A of the Act, as applicable to the State of Haryana, the language is "while registering any instrument", which has been interpreted by this Court in **Abhinav Kumar's case (supra)** while holding that the reference could be made by the Sub Registrar to the Collector when he was in the process of registering the document and it cannot be made after registration of the sale deed.

However, the aforesaid words "while registering any instrument" are conspicuous by their absence in Section 47-A(1) of the Act, as applicable to the State of Punjab, therefore, the aforesaid judgment in **Abhinav Kumar's case (supra),** interpreting Section 47-A(1) of the Act, as applicable to the State of Haryana, is not applicable to the facts and circumstances of the present case which pertains to the State of Punjab.

Moreover, it is clearly provided in Section 47-A(3) of the Act, as applicable to the State of Punjab, that the Collector may, *suo motu,* or on the receipt of a reference from the Inspector General of Registration or Registrar of a District, within a period of three years from the date of the registration of an instrument, call for and examine any instrument for the purposes of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and after such examination, if he has reason to believe that the proper duty has not been paid, he may, after giving reasonable opportunity of being heard to the parties, determine the value of the property and the duty to be paid and the deficient amount of

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duty, if any, would be payable by the person concerned along with interest @ 12% per annum on such deficient amount.

Once the Collector has the *suo motu* power under Section 47-A(3) of the Act to call for and examine any instrument for his satisfaction with regard to determination of the market value and the stamp duty to be paid thereon within a period of three years from the date of registration of the instrument, which has been done by the Collector in the present case, the question of reference under Section 47-A(1) of the Act by the Registering Officer pales into insignificance.

In view of the aforesaid discussion, I am of the considered opinion that the impugned order passed by the Appellate Court is patently illegal and is thus hereby set aside. However, the case is remanded back to the Appellate Court to decide it afresh on merits, after hearing both the parties.

The parties are directed to appear before the Appellate Court on 20.03.2015.

February 23, 2015 **(Rakesh Kumar Jain)**
vinod* **Judge**