In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 11235 of 2015
Date of Decision: September 02, 2015

Kanta Rani

... Petitioner

Versus

Divisional Commissioner, Patiala Division, Patiala and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Amit Goyal, Advocate,
for the petitioner.

Paramjeet Singh, J. ***(Oral)***

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing order dated 02.01.2014 (Annexure P/6) passed by respondent no. 2 - Collector-cum-Deputy Commissioner, Barnala, whereby petitioner has been ordered to deposit additional stamp duty of Rs. 2,08,000/-, as well as, order dated 02.07.2014 (Annexure P/8) passed by respondent no.1 - Divisional Commissioner, Patiala whereby appeal preferred by the petitioner has been dismissed.

I have heard learned counsel for the petitioner.

Learned counsel for the petitioner contends that Sub

Registrar should have made a reference under Section 47-A of the Indian Stamp Act (hereinafter referred to as the "Act) at the time of registration of sale deed. Thereafter, the Collector has power to take action within three years from the date of registration of an instrument, but this power does not vest with the Sub Registrar. Learned counsel further contends that inquiry report is at the back of the petitioner, she was not joined in the inquiry proceedings. Learned counsel relies upon a Division Bench judgment of this Court in ***Raghbir vs. State of Haryana, 2003(4) R.C.R. (Civil) 861.***

I have considered the contentions raised by learned counsel for the petitioner and perused the record.

The contention of the petitioner that Sub Registrar has initiated the process, is not acceptable. Notice has been issued to the petitioner by the Collector-cum-Deputy Commissioner, exercising the powers which is covered under Section 47-A(3) of the Act wherein the limitation is provided as three years. The sale deed was executed on 03.06.2013 and show cause notice was given on 27.08.2013 within three years of the alleged execution of sale deed. In view of this, question of applicability of Section 47-A(1) does not arise.

So far as valuation is concerned, under Rule 3-A of the Punjab Stamp (Dealing of under-valued Instruments) Rules, 1983 (hereinafter referred to as the "Rules"), after adopting the process provided, the Collector has fixed the rate with regard to the property. The petitioner is not disputing the rate fixed by the Collector. However, learned counsel for the petitioner submits that the property is an agricultural property and is not commercial. Vide order dated 18.08.2015, this Court directed the petitioner to produce on record khasra girdawari and the nature of the land. As per khasra girdawari for the year 2013-14, shown by the learned counsel for the petitioner in Court, property in question has been shown to be gair mumkin and poultry farm has been constructed over it, meaning thereby the same falls within the definition of commercial property as defined in Section 2(f) of the Rules.

In ***Raghbir's case (supra),*** sale deed was executed in the year 1996. Thereafter, Section 47-A(1) of the Act was substituted vide Punjab Act No. 14 of 2001 which reads as under:-

> "***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."

Sub-section (3) of Section 47-A of the Act reads as under:-

"(3) The Collector may, suo moto, 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 authorised by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of any 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 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 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, along with 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."

Perusal of Section 47-A(1) of the Act makes it clear that since the Collector has considered the matter, after the Sub Registrar impounded the sale deed and sent the sale deed to the Collector under Section 47-A of the Act, the action of the Collector in ordering recovery of the deficient stamp duty is well within the purview of sub-section (3) of Section 47-A of the Act. So, Section 47-A (3) will apply not Section 47-A(1) of the Act. In view of this, ***Raghbir's case (supra),*** would not, at all, be applicable in the present case.

In view of above, I do not find any merit in the instant writ petition.

Dismissed.

September 02, 2015 **[Paramjeet Singh]**
vkd **Judge**