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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17444 of 2013
Date of decision:21.08.2015

Sohna Rocky Realtors Pvt. Ltd. and others ...Petitioners

Versus

State of Haryana and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sudhir Aggarwal, Advocate,
for the petitioners.

Mr. Rajesh Sheoran, Addl. A.G., Haryana.

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Rakesh Kumar Jain, J.

The petitioners purchased 1/5th share of agricultural land bearing Khewat/Khata No.717/765, Rect. No.147, Killa No.1(7-16), 2(8-0), 10(3-18) and Rect. No.128, Killa No.22 (8-0), total measuring 5 Kanal 10 Marla 7 Sarsai, situated within the revenue estate of village Sohna, Tehsil Sohna, District Gurgaon, for a consideration of ₹27,52,000/-, vide registered sale deed No.3461 dated 19.11.2007. The petitioners paid the stamp duty of ₹2,20,000/- at the collector rate prevailing in the year 2007-2008. The Revenue Department also sanctioned the mutation in favour of the petitioners on the basis of the sale deed on 02.01.2008. Thereafter, the Chief Auditor, Haryana, in its audit report for the year 2007-2008, stated that the stamp duty of ₹3,11,890/- was deficient. Respondent No.4, i.e. Sub Registrar, Sohna, referred the matter under Section 47-A of the Indian

Stamp Act, 1899 (hereinafter referred to as the "Act") vide its letter dated 09.03.2009 for taking appropriate action against the petitioners. The petitioners received a notice/order dated 08.06.2010 from respondent No.3, asking them to deposit ₹3,11,890/-. The petitioners filed appeal against the order dated 08.06.2010 before respondent No.2, alleging that they have purchased the agricultural land, as recorded in the jamabandi for the year 2001-2002, and had already paid the required stamp duty. Respondent No.2 set aside the order dated 08.06.2010 and remanded the case back to the Collector to decide it afresh after taking into consideration the provisions of the Act and affording opportunity of hearing to the petitioners. The petitioners, after remand, appeared before respondent no.3, who again passed the order of recovery of the stamp duty of ₹3,11,890/- on the ground that the petitioners sold the land purchased by them by carving out plots. The appeal filed by the petitioners against the order passed by respondent no.3 on 22.09.2011 was dismissed by respondent No.2 on 02.05.2013. Thus, the petitioners have challenged the aforesaid two orders dated 22.09.2011 and 02.05.2013 in the present petition.

Counsel for the petitioners has submitted that the levy of stamp duty is only to be considered at the time when the property is purchased, depending upon its nature and not when the property is sold or likely to be sold by the said purchaser. It is also submitted that even the Collector had become *functus officio* after registration of the document and had no jurisdiction or control over it. Therefore, the reference made by the Sub Registrar under Section 47-A of the Act was inconsequential. In support of his submission, he has relied upon a decision of the Supreme Court in the case of **State of U.P. and others vs. Ambrish Tandon and another,** 2012(1) RCR (Civil) 865 and a judgment of this Court in the case of **Jagdish vs. State of Haryana and others,** 2011(5) RCR (Civil) 486.

On the other hand, counsel for the respondents has submitted that no doubt that the land was purchased by the petitioners for agricultural purposes, but it has been divided into plots for selling, therefore, the respondents have rightly asked the petitioners to make up the deficit in the stamp duty.

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

Insofar as the facts of the case are concerned, the petitioners have admittedly purchased the land measuring 5 Kanal 10 Marla 7 Sarsai on 19.11.2007, being part of the agricultural land as recorded in the jamabandi for the year 2001-2002. The stamp duty of ₹2,20,000/- at the collector rate has already been paid by the petitioners for the agricultural land.

The only issue in this case is as to whether the respondents can ask the petitioners to pay more stamp duty on the ground that after purchasing the agricultural land, they have converted it into plots. In this regard, the judgment of the Supreme Court in **State of U.P.'s case (supra)** would answer this question in which it has been held that if the property is sold for residential purpose and is being consequently used for commercial purpose, the stamp duty cannot be imposed on that account as the nature of the user of the land is relatable to the date of purchase and the same is

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relevant for the purpose of calculation of the stamp duty. No evidence has been brought on record by the respondents that the land was purchased with a specific averment that it is going to be used for residential/commercial purpose, rather the land was purchased as agricultural land by the petitioners.

Further, in **Jagdish's case (supra),** this Court has held that after the sale deed is registered, the Collector becomes *functus officio* and the Sub Registrar has no jurisdiction to refer the matter to the Collector.

Thus, in view of the aforesaid discussion, the present writ petition is hereby allowed and the impugned orders passed by the respondents are quashed being patently illegal and erroneous.

No costs.

August 21, 2015 **(Rakesh Kumar Jain)**
vinod* **Judge**