IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7976-2014
Date of Decision:07.12.2015

Gurjant Singh

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment ?.
2) To be referred to the Reporters or not ?.
3) Whether the judgment should be reported in the Digest ?

Present: Mr. Sherry K. Singla, Advocate,
for the petitioner.

Mr. S.S.Chandumajra, Addl. A. G. Punjab.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226 and 227 of the Constitution of India for setting aside the order dated 20.12.2012 (Annexure P-5) passed by respondent No.3-District Collector whereby the petitioner has been ordered to affix the additional stamp duty and registration fee on the sale deed dated 21.10.2008 and the order dated 05.02.2014 (Annexure P-6) passed by respondent No.2-Commissioner, Faridkot Division, Faridkot whereby appeal preferred by the petitioner against the order dated 20.12.2012 has been dismissed.

Brief facts of the present case are to the effect that one Surjit Singh son of Kartar Singh, resident of Talwandi Sabo submitted one complaint to the Deputy Commissioner, Bathinda for under-valuation of the sale deed dated 21.10.2008, executed in favour of the petitioner, in respect of land measuring 10 marlas, comprised in khasra no.325//4, situated opposite the Court Complex, Talwandi Sabo. It is further averred that actually the agreement to sell was executed on 23.09.2008 for a sale consideration of ₹36 lacs. In pursuance of the complaint, proceedings under Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as 'the 1899 Act') were initiated and notice under Rule 4 of the Punjab Stamp (Dealing of Under Valued Instruments) Rules 1983 (hereinafter referred to as 'the Rule 1983') was issued to the parties. After considering the record, the Collector assessed the value of land at ₹36 lacs and thereby ordered for the recovery of ₹2,40,400/- i.e. ₹2,36,800/- on account of deficiency of in the stamp duty and ₹3,600/- as registration fee, along with interest @ 12% per annum from the date of registration of sale deed till the date of recovery from the petitioner, vide impugned order dated 20.12.2012 (Annexure P-5). Against that, the petitioner preferred appeal before the Commissioner, Faridkot Division, Faridkot which has been dismissed vide impugned order dated 05.02.2014 (Annexure P-6). Hence, this writ petition.

In pursuance of notice of motion, respondents put in appearance and filed reply with the averments that the agreement to sell dated 23.09.2008 was executed for ₹36 lacs and, therefore, proceedings have been rightly initiated against the petitioner in accordance with law. Earlier, the Sub Divisional Magistrate, Talwandi Sabo was also asked to file status report with regard to land mentioned in the sale deed, who reported that the collector's rate of land was ₹1,10,000/- per marla and market value was ₹1,10,000/- per marla, but the petitioner did not affix the stamp duty and registration charges on the said rate also. However, Surjit Singh submitted a complaint that agreement to sell dated 23.09.2008 was executed between the parties for sale consideration of ₹36 lacs and ₹9 lacs were received from the petitioner by the seller in his presence as well as of other witness. It is the prerogative of the Government to recover the loss caused to its exchequer as and when is detected and the same can be recovered from the persons causing loss within a period of three years of execution of the deed as per rules framed by the Government.

I have heard learned counsel for the parties and perused the record.

The sale deed dated 21.10.2008 has been executed by the seller in favour of the petitioner which is stated to be under-valued and insufficiently stamped. Besides the stamp duty, registration fee is also to be charged over the total sale consideration of the property in question. The respondent Nos.2 and 3 have relied upon the photocopy of the agreement to sell dated 23.09.2008 which has been seriously disputed and has not been proved in accordance with law. As such, the impugned orders dated 20.12.2012 (Annexure P-5) and 05.02.2014 (Annexure P-6) apparently appear to be erroneous under the provisions of Section 47-A of the 1899 Act and Rule 3-A of the 1983 Rules. A fact finding inquiry is required to be conducted by affording reasonable opportunity of hearing to the party before determining the market value of a property in regard to which instrument is presented. It is the categoric stand of the respondent that Sub Divisional Magistrate, Talwandi Sabo reported that the Collector's rate of the disputed land was ₹1,00,00/- per marla and market rate was ₹1,10,000/- per marla. However, the impugned orders have been passed on the basis of the agreement to sell dated 23.09.2008 (Annexure R-1). In such circumstances, reliance cannot be placed upon the agreement to sell which has not been proved in accordance with law. It cannot be basis for making liable the petitioner for affixing additional stamp duty as ordered by respondent No.3 which has been confirmed by respondent No.2.

In view of above discussion, the instant petition is allowed and the impugned orders dated 20.12.2012 (Annexure P-5) and 05.02.2014 (Annexure P-6) are set aside, being not sustainable in the eyes of law.

However, it will not preclude the respondents from making appropriate enquiry with regard to the collector's rate/market rate of the property in dispute as fixed/prevalent in the relevant year as State exchequer is involved. The authorities will be at liberty to proceed in accordance with law.

07.12.2015 **(Paramjeet Singh)**
parveen kumar **Judge**