In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 7640 of 2013

Date of Decision: 29.03.2016

Surinder Kaur

... Petitioner(s)

Versus

The State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1.	Whether reporters of local newspapers may be allowed to see judgment?	**Yes**
2	To be referred to reporters or not?	
3	Whether the judgment should be reported in the Digest?	**Yes**

Present: Mr. Onkar Singh, Advocate
for the petitioner(s).

Mr. T.N.Sarup, Additional Advocate General,
Punjab, for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 13.3.2008, passed by the Collector (ADC), S.A.S.Nagar and the order dated 8.12.2009, passed by the Commissioner, Patiala Division, Patiala on the ground that the Collector passed *ex parte* order for recovery of deficient stamp duty to the tune of ₹ 3,04,000/- with 12% interest per annum and the Commissioner, Patiala Division, Patiala dismissed the appeal vide order dated 8.12.2009.

Relevant facts of the case that vasika No. 602 dated 12.5.2006 was sent by Sub Registrar vide letter No. 757/RK dated 21.1.2008 to the Collector for initiating proceedings under Section 47A of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act") as per the objections raised by the stamp auditor during the audit for the year 2006-07. The objection was raised that as per jamabandi attached to the vasika, nature of the land was shown as *Gair Mumkin plot, Gair Mumkin Abadi*, and the Sub Registrar registered the vasika by showing the nature of land as *Chahi*, whereas the vasika should have been registered on the basis of the rates determined for the plots. The Collector issued notices to the purchaser but no one could appear and after that, *chaspangi* notice was also issued and still nobody appeared and respondent was proceeded against *ex parte*. The Collector passed the order dated 13.3.2008 that buyer is liable to pay the stamp duty ₹ 3,04,000/- along with interest at the rate of 12% per annum from the date of registration. Present petitioner challenged the said order before the Commissioner, Patiala Division, Patiala by way of appeal, which was dismissed and as such present petition before this Court.

Learned counsel for the petitioner mainly submitted that provisions of Section 47A of the Act are attracted only at the time of registration of the document and not at a later stage. The present vasika was registered on 12.5.2006, whereas reference was made on 21.1.2008; the same was legally not maintainable; the Collector, S.A.S.Nagar as well as the Appellate Authority i.e. Commissioner, Patiala Division, Patiala completely ignored this fact and the impugned orders be set aside.

Learned counsel for the petitioner also submitted that petitioner was neither served nor any notice was issued by the Collector at the time of pendency of proceedings. As such, order dated 13.3.2008, passed by the Collector and the subsequent order, passed in appeal, are liable to be set aside.

While arguing on these points, learned counsel for the respondents submitted the present petitioner was served by way of substituted service and now the petitioner cannot take the plea that she was not issued any notice. As regard to taking note of deficiency of stamp duty, learned State counsel submitted that it had come in the audit report that there was deficiency of stamp duty and as per provisions of Section 47A(3) of the Act, the Collector may take note of the deficiency of stamp duty *suo moto* or on the receipt of reference from the Inspector General of Registration or the Registrar of a District, appointed under the Registration Act, 1908 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 and submitted that there is no illegality in the order under challenge. As such, present petition is liable to be dismissed.

Having considered the submissions made by learned counsel for the parties and perusal of the record, this Court is of the considered view that the Collector had issued notice to the present petitioner during the proceedings on the basis of reference having been made on the receipt of audit report. Petitioner failed to appear before the Collector and thereafter registered notice was issued and as the registered notice was unserved, petitioner was served by way of substituted service i.e. *chaspangi* and it is not a case where no notice was issued to the petitioner, rather she was issued notice by the Collector and she stood served and decided to remain away from the proceedings.

As regard to the fact whether the Collector could take cognizance of deficiency of stamp duty at the time of registration of document only or even at subsequent stage, the relevant provisions are incorporated under Section 47A of the Act and the same are being reproduced as under:

*"**47-A**.**Instruments undervalued how to be dealt with**.-*

(1) If the Registering Officer appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), while registering any instrument relating to the transfer of any property, has reason to believe that the value of the property or 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 of the property 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 reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules 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 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 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 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 proper 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, would be payable by the person liable to pay duty; and

(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."

From the above referred provisions, it is ample clear that the Collector can take note of the deficiency of stamp duty on the basis of report of the audit by the Comptroller and Auditor General of India within a period of three years from the date of registration of the instrument. In the present case, vasika was registered on 12.5.2006 and reference was made to the Collector on 21.1.2008 and thereafter order was passed by the Collector on 13.3.2008. That way, the Collector was legally authorized to take note of the deficiency of stamp duty on the basis of audit report within a period of three years and the same has been done and there is no illegality in the order dated 13.3.2008, passed by the Collector (ADC), S.A.S.Nagar and the subsequent order passed in the appeal by the Commissioner, Patiala Division, Patiala dated 8.12.2009, whereby appeal was dismissed.

In view of above, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

March 29, 2016
"DK"