**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 11686 of 2013(O&M)
Date of decision: 25.04.2016

M/s Lakhanpal Design Pvt. Ltd.
..........Petitioner

versus

State of Punjab and others
............Respondents

CWP No. 11674 of 2013(O&M)

M/s Lakhanpal Design Pvt. Ltd.
..........Petitioner

versus

State of Punjab and others
...........Respondents

CWP No. 12686 of 2013(O&M)

M/s Riar Builders Pvt. Ltd.
.........Petitioner

versus

State of Punjab and others
..........Respondents

CWP No. 12855 of 2013(O&M)

Supreet Kaur and another
...........Petitioners

versus

State of Punjab and others
...........Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Vikram Gupta, Advocate (CWP Nos. 11686, 11674 of 2013)

Mr. Harkesh Manuja, Advocate(CWP No. 12686, 12855 of 2013)
for the petitioners.

Mr. V.Ramswaroop, Addl.AG, Punjab.

Mr. Sandeep Moudgil, Advocate
for respondents No. 1 and 2(CWP No. 12855 of 2013).

Ms. Monica Bahl, Advocate
for the respondents(CWP No. 12686 of 2013).

Rakesh Kumar Jain, J.

This order shall dispose of four writ petitions bearing CWP Nos. 11686, 11674, 12686 and 12855 of 2013 because the issue involved in this case is common.

However, the facts are being extracted from CWP No. 12686 of 2013.

The petitioner purchased land measuring 4 Kanal 8 Marla falling within the area of village Birring, Tehsil and District Jalandhar at the commercial rate of ₹1,30,000/- per marla vide registered sale deed No. 4390 dated 7.08.2008. The petitioner had allegedly mentioned in the sale deed that the land in question is situated on the Jalandhar-Phagwara National Highway. The petitioner was served with a notice issued under Section 47-A(3) of the Indian Stamp Act, 1899(as applicable to the State of Punjab) (for short, 'the Act') on 11.11.2011, alleging therein that there is deficiency of stamp in the sale deed. The Additional Deputy Commissioner-cum-Collector, Jalandhar passed the impugned order dated 21.09.2010 in which he observed that he had inspected the site in question with Halka Patwari on 8.08.2012. The land in question was sold by the Punjab Iron and Steel Company who had a building at the site which was under demolition and since the property in question was falling on the Jalandhar-Phagawara National Highway and has been announced as commercial area, therefore, the petitioner was liable to pay the Collector rate on base price of ₹ 9,60,000/- per marla of the year 2012-2013.

The impugned order dated 21.09.2012 was challenged by the petitioner by way of a statutory appeal filed before the Commissioner, Jalandhar Division, Jalandhar(Commissioner) which was dismissed without even issuing notice and calling for the record. The Commissioner has also observed that the land in question is commercial in nature and therefore, the Collector has rightly passed the order.

The first and foremost argument raised by counsel for the petitioner is on the issue of limitation. It is submitted that under Section 47-A(3) of the Act the respondent can suo motu or on the reference, initiate action to recover the deficient stamp from the purchaser but only within a period of 3 years from the date of sale. In support of his submission, he has relied upon the decisions of this Court rendered in the cases of *Sharmila Rani and others vs. State of Punjab and others CWP NO. 5690 of 2014 decided on 29.02.2016, Jitender Mohan Singh and another vs. Divisional Commissioner Rohtak and others CWP No. 24941 of 2012 decided on 29.02.2016, Rampal vs. State of Punjab and others CWP No. 17840 of 2009 decided on 16.08.2010 and Sanjay Gupta and another vs. State of Haryana and others 2014(24) R.C.R.(Civil) 27.*

On the other hand, counsel for the respondent has submitted that since the land in question was commercial in nature, therefore, it has rightly been assessed by the respondents on the basis of the base price of the year 2011-2012. It is also submitted that appeal has rightly been dismissed as the spot was inspected by the Collector himself for the purpose of assessing the deficiency in stamp. However, it is not denied that the notice under Section 47-A(3) of the Act was issued after a period of three years.

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

In order to appreciate the respective arguments raised by counsel for the parties, it would be relevant to refer to Section 47-A(3) of the Act which is reproduced as under:-

> ***"47-A. Under-valuation of the instrument.-***
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> *(3) the Collector may, suo motu, or on a reference from any Court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or from a Deputy Commissioner of Stamps or from an Assistant Commissioner of Stamps or any officer authorized by the State Government in that behalf, within four years from the date of registration of any instrument on which duty is chargeable on the market value of the property, not already referred to him under sub- section (1), call for an examine the instrument for the purpose of satisfying himself as to the correctness of the market value, of the property which is the subject of such instrument and the duty payable thereon, and if, after such examination, he has reason to believe that market value of*

such property has not been truly set forth in such instrument, he may determine the market value of such property and the duty payable thereon:

Provided that, with the prior permission of the State Government, an action under this sub-section may be taken after a period of four years but before a period of eight years from the date of registration of the instrument on which duty is chargeable on the market value of the property.

Explanation: *The payment of deficit stamp duty by any person under any order of registering officer under sub-section (1) shall not prevent the Collector from initiating proceedings on any instrument under sub-section (3)."*

Section 47-A(3) of the Act deals with the situation where there is a deficiency of the stamp, affixed by the purchaser, at the time of purchase of the immovable property, on which suo motu action can be taken by the Revenue Authorities. However, this Court has rightly mandated that the said exercise has to be done within a period of 3 years and once the said period expires, the respondent loses his power or the jurisdiction to seek the recovery of the deficiency in stamp duty. It is also pertinent to mention that there is an error on the part of the respondents for applying rate of 2012-2013 to the sale deed which was executed in the year 2007-2008.

In this regard, the judgments relied upon by counsel for the petitioner fully supports his case whereas no judgment to the contrary has been cited by the State counsel. In so far as the other petitions are concerned, which are also being disposed of with this petition, notices have been issued after the expiry of three years, therefore, those cases are also covered by the aforesaid decisions rendered by this Court repeatedly.

Thus, in view of the aforesaid facts and circumstances the notices issued under Section 47-A(3) of the Act and the impugned orders passed thereafter by the Collector and the Commissioner are held to be illegal and set aside and the writ petitions are allowed.

[Rakesh Kumar Jain]
Judge

25th April, 2016

Shivani Kaushik