IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CWP No.15293 of 2013
Date of Decision:-31.08.2016

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M/s Inder Industries
….. Petitioner

Vs.

The Commissioner, Jalandhar Division, Jalandhar and another
….. Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
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Present: - Mr.A.K. Chopra, Sr. Advocate, with
Mr.Gulsher Singh, Advocate,
for the petitioner.

Mr.Anant Kataria, DAG, Punjab.

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RAKESH KUMAR JAIN, J.

This petition is directed against the order dated 31.1.2013 passed by the Additional Deputy Commissioner-cum-Collector, Jalandhar and order dated 13.3.2013 passed by the Commissioner, Jalandhar Division, Jalandhar directing the petitioner to pay the stamp duty of ₹20,54,400/- along with interest of ₹1,84,896, total ₹22,39,296/-.

In brief, the petitioner purchased a house constructed on residential plot measuring 56 marlas 38 sq. feet on 7.5.2012, situated at Basti Danishmanda, Jalandhar for a sale consideration of ₹48,00,000/-. The petitioner paid the stamp duty as per collector rate as applicable to the residential area. However, it received a notice dated 15.5.2012 under Section 47A(3) of the Indian Stamp Act, 1899 [for short 'the Act']. The petitioner filed reply to the notice but the Additional Deputy Commissioner-cum-Collector, vide his order dated 31.1.2013, held the petitioner liable to pay stamp duty of ₹5,40,000/- per marla, determined for the commercial property, at collector rate, on the basis of the spot inspection report sent by SDM, Jalandhar vide his letter No.28/MC dated 4.1.2013 in which it has been mentioned that a factory is running at the spot and thus the petitioner was asked to pay the stamp duty of ₹20,54,400/- along with ₹1,84,896/- as interest calculated @ 12% from the date of verification of the sale deed, total ₹22,39,296/-. Aggrieved against the said order, the petitioner filed the statutory appeal before the Commissioner, Jalandhar Division, Jalandhar. However, the said appeal was also dismissed on the same analogy by the Commissioner.

Learned counsel for the petitioner has submitted that the purchased property, as mentioned in the sale deed, was a house, built on area of 56 marlas 38 sq. ft., along with electric and water fittings including all rights i.e. passage etc. and the stamp duty was affixed as per collector rate, fixed for the residential property and thus there was no deficiency of the stamp duty, causing loss to the exchequer, rather the respondents have committed an error in asking the petitioner to pay the deficient stamp duty, on the ground that at the time of spot verification by the SDM Jalandhar-2, factory has been found running on the spot, without obtaining Change of Land Use [for short 'CLU'] and the area in which the land in question is situated, ₹5,40,000/- per marla is the collector rate for commercial property.

Learned counsel for the petitioner has relied upon a judgment of the Supreme Court rendered in the case of ***"State of Uttar Pradesh and others Vs. Ambrish Tandon and another" (2012)5 Supreme Court Cases 566 CWP No.15293 of 2013*** in which it has been held that the nature of user is relatable to the date of purchase and is relevant for the purpose of calculating the stamp duty and merely because the property is being used for the commercial purpose at the later point of time would not be a criteria for reassessing the value for the purpose of stamp duty. He has also referred to a decision of the Allahabad High Court rendered in the case of ***"Sarvahitkarini Sahkari Awas Samiti Ltd.*** *Vs.* ***State of Uttar Pradesh and others"*** *2006(1) RCR (Civil) 104,* in which it has been held that the market value for the stamp duty has to be considered as on the date of transaction and not on presumption that it may, in future, be used for residential purpose.

On the other hand, learned counsel for the respondents has submitted that the Punjab Government has issued a notification dated 23.8.2002 to amend the Punjab Stamp (Dealing of Undervalued Instruments) Rules 1983 as per which the Collector has been empowered to fix the rates of properties of different localities of the area for the purpose of fixing the stamp duty. It is further submitted that in the report dated 4.1.2013 of the SDM Jalandhar-2, factory was found running in the area, even if the petitioner had purchased the house as alleged, but it has been put to different use without obtaining the CLU.

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

There is no dispute that the petitioner has purchased a residential house and paid requisite stamp duty as per the collector rate and the registration charges. The dispute arose when the SDM, Jalandhar-2, in his spot inspection, reported that the petitioner is using the purposed property for the industrial purpose for which the collector rate is much higher. The respondents, thus, issued *show cause notice* to the petitioner to which reply was filed and ultimately the Collector took the decision that the petitioner is liable to pay the Stamp Duty on the Collector rate meant for the commercial property and not for the residential property.

In the case of ***Ambrish Tandon and another (Supra)***, it has been held by the Supreme Court that if the nature of the property purchased is residential then merely because it is being used for commercial purpose at the later point of time would not be a criteria for reassessing the value for the purpose of stamp duty as the nature of user is relatable to the date of purchase and it would be irrelevant for the purpose of calculation of the stamp duty if it is later on found to be used for a different purpose.

In my considered opinion, the impugned orders dated 31.1.2013 and 13.3.2013 passed the Collector and the Commissioner, respectively are patently illegal and are hereby quashed. However, in case the petitioner has converted residential property into industrial, without obtaining necessary permission under the relevant provisions of law, the respondents/State may take appropriate action, in accordance with law, against the petitioner, if so advised.

Accordingly, the petition stands allowed.

(RAKESH KUMAR JAIN)
JUDGE

31.08.2016
Vivek

Whether speaking/reasoned *Yes/No*

Whether non speaking *Yes/No*