Sr. No.255

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

**CWP NO.22475 of 2010
Date of decision:18.11.2016**

Naresh Aggarwal and others

........Petitioners

versus

Chandigarh Administration and others

.........Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Pankaj Jain, Advocate
for the petitioners.

Mr. Kapil Kakkar, Advocate
for the respondents.

Rakesh Kumar Jain, J.(Oral)

This petition is directed against the order of the Sub-Divisional Magistrate(HQ), Chandigarh exercising the powers of Collector(under the Indian Stamp Act, 1899) dated 29.07.2008(Annexure P-4) and the order of the Commissioner(Revenue), Union Territory, Chandigarh dismissing the statutory appeal of the petitioner vide order dated 09.08.2010.

In brief, the petitioner purchased 30% share of Show Room No. 17, Sector 7-C, Chandigarh total measuring 789.54 sq. yards with covered area of 4268 sq. ft. for a consideration of ₹2,02,00,000/-. The sale deed was presented before the Sub Registrar for registration which was impounded by him on the ground that the market value of the property has not been duly set forth in the said documents. The impounded document was sent by the Sub Registrar to the Collector, who issued notice to the petitioner to which petitioner filed a reply alleging that the sale deed was executed on 8.08.2007 but prior thereto a similar property i.e. 30% share in SCO No.

21, Sector 7-C, Chandigarh was sold for ₹1,30,00,000/- vide vasika no. 3748 dated 28.01.2007. The petitioner has alleged that there is no deficiency in the stamp duty but the Collector vide his impugned order dated 29.07.2008(Annexure P-4) observed that since the collector rate was revised w.e.f 28.05.2002 and the sale deed was registered thereafter on 8.08.2007, therefore, revised collector rate were applicable to the commercial property in Sector 7-C, Chandigarh. Thus, the total value of the property comes to ₹12,42,35,240/-, the cost of 30% share comes to ₹3,72,70,572/- and Stamp duty @5% was to be charged which came to ₹18,63,528.60 p i.e. ₹18,63,600/- whereas the petitioners had paid the stamp duty of ₹10,10,000/- and thus, there was a deficiency of ₹8,53,600/- which was to be recovered from the petitioners.

Counsel for the petitioners has submitted that the Collector did not hold any inquiry in terms of Section 47-A(2) of the Indian Stamp Act, 1899(for short, 'the Act') and that the collector rate is not a final rate of the property. It is further submitted that the Collector has erred in relying solely upon collector rate while holding that the petitioners have affixed deficient stamp duty on the document of sale deed. In support of his submission he has relied upon judgments of the Supreme Court rendered in the cases of *State of Punjab and others vs. Mohabir Singh etc.etc., AIR 1996 Supreme Court 2994*, *Ramesh Chand Bansal and others vs. District Magistrate/Collector, Ghaziabad and others AIR 1999 Supreme Court 2126* and a Division Bench judgment of this Court rendered in the case of *Gauri Singla vs. State of Haryana and others2009(1) R.C.R.(Civil) 293.*

On the other hand, counsel for the respondent has submitted that there was only a difference of seven months between the two sale deeds i.e.the sale deed which is relied upon by the petitioners as an example dated 8.01.2007 and the sale deed which is registered at the instance of the petitioners dated 8.08.2007. It is further argued that the collector rate is sought to be charged from the petitioners which was revised in the year 2008 and the sale deed was registered thereafter. It is also argued that the collector rate has never been challenged by the petitioner and shall prevail in terms of explanation of Section 47-A(3) of the Act.

I have heard learned counsel for the parties and perused the available record. In order to appreciate the rival contentions, it would be relevant to refer to Section 47(A) of the Act which is reproduced as under:-

> ***"47-A.Instruments under-valued how to be dealt with:-***
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> *(1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property has reason to believe that the value of the property or the 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 or consideration, as the case may be, and the proper duty payable thereon.*
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> *(2) On receipt of reference under sub-section(1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made 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 motu, or on receipt of reference from the Inspector-General of Registration*

or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject-matter of the instrument is situate, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, not already referred to him under sub-section(1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reasons to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section(2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty:

Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp(Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.

(4) Any person aggrieved by an order of the Collector under sub-section(2) of sub-section(3) may, within thirty days from the date of the order, prefer an appeal before the [the Commissioner of the Division] and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.]"

Since the facts are not in dispute, therefore, the issue which is to be decided by this Court is *as to whether the collector rate is final for the* *purpose of adjudication in respect of payment of deficient stamp duty or the collector has to consider the evidence led by the purchaser for determining the actual price of the property purchased?*

Section 47-A(1) of the Act provides that while registering any instrument relating to transfer of any property, if the registering officer has a reason to believe that the value of the property or consideration has not been truly set forth in the instrument then he may after registration of the document, refer the same to the Collector for determination of the value of the property. The Collector then, on the receipt of reference under Section 47-A(1) of the Act is required to give the parties reasonable opportunity of hearing and then hold an inquiry in such a manner prescribed by rules and to determine the value or consideration of the duty liable to be paid.

In this case, no doubt that after the reference was received by the Collector, notice was given to the petitioners for the purpose of holding an inquiry to which the petitioners had also filed reply but the Collector did not take into consideration the evidence led by the petitioners of an adjoining property sold seven months prior in the similar manner for far less price than the price on which the petitioners had purchased the property i.e. Sale deed dated 8.01.2007 was sold for ₹1,30,00,000/- whereas on 8.08.2007 the property in question was purchased by the petitioners for ₹2,02,00,000/-. There is a huge difference of 70 lacs between two sale deeds between a period of seven months. The Collector, however, relied upon the revised collector rate for the purpose of assessing the market value of the property in question for the purpose of payment of additional stamp duty and registration charges. In the case of Ramesh Chand Bansal(supra) the

Supreme Court has held that "*the Stamp Duty on sale deed, Circle rate fixed by Collector is not final but prima facie rate of that area concerned and it is open to Registering Authority as well as person seeking registration to prove to the contrary the actual market value of property*". Similar view is taken by the Supreme Court in the case of *State of Punjab and others vs. Mohabir Singh and others* (supra) which has been followed by the Division Bench judgment of this Court in the case of *Gauri Singla*(supra) in which it has been held that "*in the present case, neither the Collector nor the Commissioner has adverted to any independent evidence to return a finding in respect of the market value of the land. The basis of the order is Collector's rate of the land in dispute as Rs. 9 lacs per acre. Neither there is any reference to any sale instance in the neighbourhood nor any other evidence, which is without any statutory support, cannot be given effect to in view of the judgments referred to above, Thus, the impugned orders passed by the Collector and the Commissioner, suffer from patent illegality and material irregularity.*"

I am also of the same view, de hors the explanation for Section 47-A(3) of the Act set up by the respondent in its defence. Consequently, the orders set up by the Collector and the Commissioner respectively are found to be illegal and erroneous and therefor, set aside and the matter is remanded back to the Collector to decide it again by giving an opportunity of hearing to the petitioners and taking into consideration the evidence led by the petitioners about the sale deed of the adjoining SCO and any other evidence which may be led by the petitioners.

Parties are directed to be appear before the Collector on

12.12.2016.

[Rakesh Kumar Jain]
Judge

18th November, 2016
Shivani Kaushik

Whether Speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*