VINOD KUMAR
2016.08.19 14:51
I attest to the accuracy and
authenticity of this document
Chandigarh

*****

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13840 of 2015
Date of decision:17.08.2016

Darshan Lal . ..Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Naresh Jain, Advocate,
for the petitioner.

Mr. Anant Kataria, DAG, Punjab.

*****

Rakesh Kumar Jain, J.

The petitioner is aggrieved against the orders of the ADC-cum-Collector, Sri Muktsar Sahib dated 13.08.2013 and the Commissioner, Ferozepur Division, Ferozepur, dated 28.05.2015 as well as the notice issued by the Sub Registrar, Gidderbaha, asking the petitioner to pay 3% social security fund on the transfer deed by misreading the notification No.16LEG/2005 dated 16.05.2005 (hereinafter referred to as the "notification").

In brief, father of the petitioner executed a transfer deed in his favour bearing No.3178 dated 11.03.2013 of land measuring 06 Marlas 02 Sarsahies. The Sub Registrar, Gidderbaha impounded the transfer deed and referred it to the Collector for recovery of 3% social security fund in terms of the notification in which additional Section 3-C has been inserted

VINOD KUMAR
2016.08.19 14:51
I attest to the accuracy and
authenticity of this document
Chandigarh

*****

in the Indian Stamp Act, 1899, as applicable to the State of Punjab (hereinafter referred to as the "Act"), which reads as under:-

> "3-C. (1) Every instrument mentioned in entry 23 of Schedule 1-A chargeable with duty under Section 3, shall, in addition to that duty, be also chargeable with such duty, as specified in Schedule 1-B, if such an instrument is executed in the area falling within the jurisdiction of a Municipality or a Corporation or within the area of five kilometers from the outer limit of the Municipality or Corporation, as the case may be, as may be specified by the Collector. This shall be applicable only to Municipal Corporation and Class-1 Municipalities."

The Collector asked the petitioner to pay 3% additional stamp duty, referred to as social security fund, to the tune of ₹1,56,810/- by his order dated 13.08.2013. The said order was challenged by the petitioner in appeal before the Divisional Commissioner, which was dismissed vide his order dated 28.05.2015.

Counsel for the petitioner has submitted that the respondents have misread Section 3-C of the Act as it applies to the Municipal Corporation and Class-I municipalities, whereas Nagar Council, Gidderbaba is a Category-B (Class-II) municipality as per the certificate issued by the Nagar Council, Gidderbaha dated 19.05.2014. It is further submitted that in a similarly situated case, Dwarka Devi had executed a transfer deed in respect of land measuring 02 Marlas 7-½ Sarsahies in favour of his grandson. The said transfer deed was referred by the Sub Registrar, Gidderbaha to the Collector for recovery of 3% additional stamp duty towards social security fund but it was ordered by the Collector that the social security fund would not be chargeable on the said transfer deed

VINOD KUMAR
2016.08.19 14:51
I attest to the accuracy and
authenticity of this document
Chandigarh

because the land in question does not fall within Class-I municipality or the Municipal Corporation.

In the reply filed by the respondents, it is admitted that the land transferred in the name of the petitioner is situated within the municipal limits of Gidderbaha but it is alleged that the petitioner is liable to pay 3% additional stamp duty as social security fund without adverting to the fact that whether Section 3-C, inserted in the Act by way of the notification, is applicable to the Category-B (Class-II) municipalities or not.

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

There is no dispute that the Municipal Council, Gidderbaha is a Category-B (Class-II) municipality as per the certificate issued by none other than the Municipal Council, Gidderbaha dated 19.05.2014. There is also no dispute that 3% additional stamp duty as social security fund is chargeable on transfer of a property within the municipal limits of the Municipal Corporation or Class-I municipalities. The Collector as well as the Commissioner have committed an error in holding that since the land falls within the municipal jurisdiction of Municipal Council, Gidderbaha, therefore, the petitioner would be liable to pay 3% additional stamp duty towards social security fund despite the fact that it has been observed by the Collector that Municipal Council, Gidderbaha is not a Class-I municipality but since the land falls within the radius of 5 Kms. of the Municipal Council, Gidderbaha, therefore, the social security fund is leviable.

There is a complete misreading of Section 3-C of the Act,

VINOD KUMAR
2016.08.19 14:51
I attest to the accuracy and
authenticity of this document
Chandigarh

referred to above, on the part of the statutory authorities because it has been specifically mentioned therein that *"this shall be applicable only to Municipal Corporation and Class-I Municipalities"* and since the Municipal Council, Gidderbaha is not a Class-I municipality or a Municipal Corporation rather it falls within the Category-B (Class-II) municipality, therefore, the duty charged under Section 3-C of the Act to the extent of 3% towards social security fund is patently erroneous and illegal.

In view of the above, the present petition is hereby allowed and the impugned orders are set aside.

August 17, 2016 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No
Whether Reportable: Yes/No