IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.15416 of 2014
Date of Decision:-28.09.2016

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G.S. Builders & Engineers

….. Petitioner

Vs.

State of Punjab and others

….. Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.D.K. Bhatti, Advocate,
for the petitioner.

Mr.Anant Kataria, DAG, Punjab.

Mr.G.S. Attariwala, Advocate,
for respondent No.7.

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RAKESH KUMAR JAIN, J.

This order shall dispose of CWP Nos.15416 to 15427 of 2014 as the issue involved in all the petitions is common. However, for the sake of convenience, the facts are being extracted from CWP No.15416 of 2014.

In brief, the petitioner-firm purchased 69.56 marla of land through 12 sale deeds for the total sale consideration of ₹2,10,00,000/-, paid stamp duty of ₹18,90,000/- i.e. ₹1,57,500/- on each sale deed and ₹1,20,000/- towards registration fee i.e. ₹10,000/- on each sale deed. After the purchase, the petitioner applied for mutation of the said land, i.e. plot No.269, Lajpat Nagar, Jalandhar, in its name, to the Jalandhar Improvement Trust. The Trust vide its letter No.JIT-1898 dated 18.1.2008 informed the petitioner that the land has been transferred in its name in view of the order passed by the Administrator on 9.1.2008. The petitioner then applied for Change of Land Use [for short 'the CLU'] to the Government of Punjab, Department of Local Government, which was allowed vide notification bearing No.9/37/2008/4LG9/4938 dated 6.5.2008. The CLU of plot No.269 was for the area measuring 1600.11 sq. yds. falling in the development scheme of Lajpat Nagar, from residential to commercial and the relevant scheme drawing No.TP269/59 was further ordered to be altered to that extent. Thereafter, the petitioner received a notice bearing No.4444/HRC dated 31.12.2009 issued by respondent No.4 vide which 55 registered documents were sought to be put to scrutiny under Section 47A of the Indian Stamp Act, 1899 [for short 'the Stamp Act'], including the sale deed of the petitioner and vasika No.6413 dated 17.9.2007 against which recovery of ₹3,66,760/- has been shown towards deficiency in Stamp Duty. In pursuance of that notice, a specific notice dated 31.12.2009 under Section 47A(3) of the Stamp Act was issued to the petitioner vide endorsement No.1535ADC/Reader dated 4.2.2010 and the petitioner was ordered to appear before the Collector, Jalandhar on 5.3.2010. According to the petitioner, there were some cuttings in the report of the Revenue Department, sought by the Collector but *de hors* that it is submitted that the petitioner had already paid ₹52,80,370/- for CLU from residential to commercial and if the petitioner was holding the property as commercial property then there was no need for the petitioner to obtain CLU. It is averred that the petitioner had already paid ₹2,83,488/- as composition fee to respondent No.5. It is further averred that the petitioner, in respect of all the 12 sale deeds, has already paid a sum of ₹18,90,000/- as stamp duty, ₹1,20,000/- as registration fee, ₹2,83,488/- as composition fee and ₹52,80,370/- as CLU charges. Thus a total amount of ₹75,73,858/- has been deposited in the Government exchequer but respondent No.3, erred in concluding that at the time of registration of sale deed No.6413 dated

17.9.2007, the property was commercial and hence, the value of land was assessed as ₹64,13,998/-, the proportionate stamp duty on “B” Class construction was calculated as ₹8,33,333/-, value of the total land and building was calculated as ₹72,47,333/- and it is alleged that since the stamp duty of ₹17,50,000/- has been paid, therefore, the petitioner was directed to pay ₹4,94,760/- as deficiency in stamp duty, interest @ 12% amounting to ₹3,47,444/- from the date of registration and penalty @ 3% amounting to ₹86,861/-, total amount of ₹9,89,065/-. The petitioner unsuccessfully challenged the order of respondent No.3 before respondent No.5 in appeal, which was dismissed on 31.3.2014 as he maintained the order of the Collector on the ground that the property in dispute was commercial and the stamp duty and registration fee should have been paid on the basis of nature of the property sold.

Learned counsel for the petitioner has submitted that it has been specifically mentioned in the sale deed that it was an old house bearing Plot No.269 situated in the abadi of Lajpat Nagar, Jalandhar. It has also came in the report of the revenue department that *“it was abadi at the time of registration of sale deed and old house was constructed, now commercial mall Ritu Wear is constructed at the spot.”*

Learned counsel for the petitioner has relied upon a judgment of the Supreme Court rendered in the case of ***“State of U.P. and others*** *Vs.* ***Ambrish Tandon and another”*** *2012(1) RCR (Civil) 865* and the judgment of this Court passed in ***CWP No.7530 of 2015*** titled as ***“The Hisar Shiv Shakti Co-operative House Building Society Limited, Hisar*** *Vs.* ***State of Haryana and others”*** decided on 12.1.2016, to contend that the nature of the land has to be seen at the time of sale on which the stamp duty has to be assessed and not on its subsequent use.

On the other hand, learned counsel for the respondents has submitted that the property in question bearing Plot No.269 situated in Lajpat Nagar, Jalandhar was allowed to be converted from residential to commercial on 11.9.2006, much before the execution of the sale deed, therefore, it has been wrongly mentioned in the sale deed as residential property in order to evade appropriate stamp duty and registration charges. It is also submitted that after the sale deed dated 17.9.2007, application was filed on 24.9.2007 for permission of the CLU of the plot bearing No.269 situated in Lajpat Nagar, Jalandhar from residential to commercial.

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

There is no dispute that on 11.9.2006 as many as 62 properties located within the Municipal Corporation, Jalandhar were permitted to be converted from residential to commercial but subject to the fulfillment of provisions of Section 275(3) of Punjab Municipal Corporation Act, 1976 and other terms and conditions as specified in Govt. Memo. No.9/27/06-5LGI/6761-63, dated 22.8.2006. At the time when the property in question was purchased by the petitioner on 17.9.2007, it was still residential property and was not converted into commercial property by its owner before its sale. Accordingly, the petitioner recorded in the sale deed the nature of the property purchased as residential property because at that time it could not have been mentioned as commercial property because the persons, who were interested in converting their property from residential to commercial were also liable to follow the provisions of the Punjab Municipal Corporation Act, 1976 and other terms and conditions as specified in Govt. Memo. No.9/27/06-5LGI/6761-63, dated 22.8.2006 issued by the Government. However, the petitioner, after purchasing the property, knowingfully well that it can be converted for the commercial purpose, applied for CLU and paid a sum of ₹52,80,370/- as CLU charges. Had it been a commercial property at the time of its purchase, the petitioner would have been saved from spending this amount and was supposed to mention in the sale deed the exact nature of the property purchased i.e. commercial property and would have been liable to pay the stamp duty and registration charges accordingly.

Thus, merely because there is an order by the Government for allowing the 'Change of Land Use' from residential to commercial, which was within the knowledge of the petitioner when it purchased the property in question as residential property would not be a reason for the respondents to ask for the deficiency of stamp duty and registration charges along with penalty. In this regard, the decision of the Supreme Court, in the case of ***Ambrish Tandon and another (Supra),*** covers this case as it has been held therein that if the property, which has been sold, was being used for residential purpose and is subsequently used for commercial purpose, the authorities cannot ask for deficiency of stamp duty for the subsequent use of the said property. The aforesaid judgment has been followed by this Court in the case of ***The Hisar Shiv Shakti Co-operative House Building Society Limited, Hisar (Supra).***

Thus, in view of the aforesaid discussion, I am of the considered opinion that the impugned orders are patently erroneous and illegal and hence, the same are hereby set aside, though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

28.09.2016
Vivek

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*