Sr. No.237

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHA cNDIGARH**

**CWP No. 19106 of 2013 (O&M)
Date of decision:17.11.2016**

M/s PPR Developers and Builders and another
.........Petitioners

versus

Punjab State through Secy. to Govt. of Punjab Revenue Deparatment and others
..........Respondents

CWP No. 19111 of 2013

M/s PPR Developers and another
..........Petitioners

versus

Punjab State through Secy. to Govt. of Punjab Revenue Deparatment and others
..........Respondents

CWP No. 19116 of 2013
M/s S.K.Associates and another
...........Petitioners

versus

Punjab State through Secy. to Govt. of Punjab Revenue Deparatment and others
..........Respondents

CWP No. 19129 of 2013
M/s PPR Developers and Builders and another
..........Petitioners

versus

Punjab State through Secy. to Govt. of Punjab Revenue Deparatment and others
..........Respondents

CWP No.19154 of 2013
M/s Saffron Home Developers Pvt. Ltd. and another
............Petitioners

versus

Punjab State through Secy. to Govt. of Punjab Revenue Deparatment

and others

..........Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Amit Jain, Advocate and
Mr. Sudhir Paruthi, Advocate
for the petitioners.

Mr. Suresh Singla, Addl.AG, Punjab.

Rakesh Kumar Jain, J.(Oral)

This order shall dispose of five writ petitions bearing CWP Nos. 19106, 19111, 19116, 19129 and 19154 of 2013 as the issue involved in all the cases is same. However, for the sake of convenience, the facts are being extracted from CWP No. 19106 of 2013.

In brief, residential house bearing No. BX1-B-235-2507 i.e Kothi No. EH-197 having total area of 7 kanals 7 marlas was sold by 8 registered sale deeds. The detail of the sale deeds is as under:-

1. *Wasika No.10778 dated 8.2.2008 area 29.4 marlas*
2. *Wasika No. 7159 dated 12.11.2008 area 29.4 marlas*
3. *Wasika No. 1584 dated 21.5.2008 area 29.4 marlas*
4. *Wasika No. 10779 dated 8.2.2008 area 29.4 marlas*
5. *Wasika No. 7201 dated 14.11.2008 area 58.8 marlas*
6. *Wasika No. 12237 dated 20.3.2008 area 29.4 marlas*
7. *Wasika No. 704 dated 17.4.2008 area 29.4 marlas*
8. *Wasika No. 12236 dated 20.3.2008 area 29.4 marlas*

However, the matter pertaining to five sale deeds is being agitated before this Court by way of the present five writ petitions. It is admitted fact that the purchasers executed the sale deed over and above the Collector rate of ₹2.5 lacs per marla. After purchasing the land, the petitioners started raising construction of commercial property after taking necessary permission from the Municipal Corporation, Jalandhar. They received a notice from the Collector, Jalandhar dated 8.02.2010 asking them to appear on 5.03.2010 on the ground that they have appended deficient stamp duty to the sale deed and were liable to pay not only the deficiency of the stamp duty but also the interest accrued on it and the deficient registration charges. The Collector passed the order on 7.09.2011, observing that "*after considering all the aspects, I have reached at the conclusion that though at the time of sale deed this 7 kanals 7 marlas area was esidential but now area of 58.8 marlas has a frontage of 95 ft. which was sold vide Wasika No. 7201 and the sale deed has been registered by charging residential Collector rate whereas commercial Collector rate of this area Rs. 11,00,000/- per marla is to be charged and in respect of the remaining area of this place, the Collector rate is Rs. 2,50,000/- and charging of Collector rate at Rs. 4,00,000/- per marla was justified because this area is not similar to other ordinary plots because this area having commercial potential can not be treated as purely residential and this fact is proved because on the entire area one commercial building is under construction. Thus, deficiency in stamp duty in all the sale deeds is liable to be recovered. However, for the area measuring 29.4 marlas subject matter of Wasika No. 10778 dated 8.2.2008, the vendee has already got registered the sale deed* *at Rs. 4,00,000/- per marla commercial Collector rate comes to Rs. 1,17,60,000/- and deficiency in stamps(8%) comes to Rs.1,40,800/- _12% from the date of registration of the sale deed till date i.e. Rs.59,136/- and thus, total Rs. 1,99,936/- is ordered to be recovered. Notice in Form-2 be issued to the vendee.* "

Aggrieved against this order of the Collector, Jalandhar dated 7.09.2011, the petitioner filed the statutory appeal before the Divisional Commissioner. The appeal was dismissed by a common order upholding the order of the Collector wherein he decided that the property in question though purchased as residential was thereafter, converted as a commercial complex.

Counsel for the petitioners has submitted that the Sub Divisional Magistrate Jalandhar-I made a report to the Additional Deputy Commissioner, Jalandhar on 23.02.2011 after spot inspection and submitted "*that the original co-sharers in Property No. 197 had sold their respective shares to different owners and firms and only Vasika No. 7201 dated 14.11.2008 in respect of 58.8 marlas whose front appears to be towards G.T.Road. Total 8 sale deeds were registered qua this area Now in the above area three firms PPR firm, Saffron Home Developers and I.J.M. firm are owners and the Mall being constructed by the last three firm who became owners as mutual agreement. The above firms had taken approval from the Municipal Corporation for constructing this project and the receipts of payments in this regard are attached. As a proof of erstwhile Kothi, photographs and the electricity board officers had installed residential meters and letter was submitted at the spot. As per spot* *verification the area of civil lines adjoins G.T.Road(near Kesar Petrol Pump) whose front on the road is about 95 ft. and the remaining is towards rear and in the east and south of this area there is street. At the spot multi-storied building is under construction.*

I, Naib Tehsildar Adampur, after perusing the report, have inspected the disputed site and building is being constructed at the site. From enquiry it was found that earlier to this sale deed there used to be Kothi at this site. I, Naib Tehsildar Adampur, agrees with the report.

Report is submitted to you for further necessary action."

Counsel for the petitioners has further submitted that there is no dispute that the property in question was a kothi(residential) at the time when purchased by the petitioners. Therefore, it is submitted that the petitioners are not liable to pay the deficiency of stamp duty on the ground that the property in future could be used for commercial purposes. In this regard, he has relied upon judgment of the Supreme Court rendered in the case of *State of U.P. And others vs. Ambrish Tandon and another 2012(1) RCR 865.*

On the other hand, counsel for the respondents has submitted that even if the property in question was kothi but the entire land was not part of the kothi and the petitioners themselves have affixed more court fees then required because they knew that they have purchased commercial property. It is also submitted that the action has been taken by the respondents within the prescribed period and the judgment of the Supreme Court is not at all applicable to the facts and circumstances of the case.

I have heard both the learned counsel for the parties and perused the available record with their able assistance. From the perusal of the record, it transpired that the property in question was kothi(residential) at the time when it was purchased by way of 8 separate sale deeds. It is not in dispute that the petitioner had appended more stamp duty then required because the minimum collector rate for the residential property at that time was ₹2.5 lacs per marla whereas the petitioner had appended more stamp duty then ₹2.5 lac per marla. This does not mean that the petitioners have admitted that the property in question was commercial in nature rather property in question has been recorded in the sale deeds as residential only. This fact is also fortified with the evidence on record that the petitioners had taken permission from the Municipal Corporation, Jalandhar to raise construction of commercial property after paying the required fee. The question thus, arise as to whether the nature of the property is to be seen at the time of its purchase or its future use. In this regard, the answer to this question is not far fetched in view of the decision in the case of *Ambrish Tandon's case*(supra) in which it is held that *"it is also demonstrated that at the time of execution of the sale deed, the house in question was used for residential purpose and it is asserted that the stamp duty was paid based on the position and user of the building on the date of the purchase. The impugned order of the High Court shows that it was not seriously disputed about the nature and user of the building, namely, residential purpose on the date of the purchase. Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty."*

Thus, in view of the law laid down by the Supreme Court, there is hardly any reason before the Court to uphold the orders passed by the Collector and Commissioner respectively. Consequently, all the writ petitions are allowed and the impugned orders are set aside.

[Rakesh Kumar Jain]
Judge

17th November, 2016

Shivani Kaushik

Whether Speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*