IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 24941 of 2012
Date of decision:29.02.2016

Jitender Mohan Singh and another
.........Petitioners

versus

Divisional Commissioner Rohtak and others
..........Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. S.S.Kharab, Advocate
for the petitioners.

Mr. P.P.Chahar, DAG, Haryana.

Rakesh Kumar Jain, J

The petitioners purchased 5 Kanal 18 Marlas of land, situated at Patti Insar, Model Town, Panipat for a consideration of ₹ 1,33,000/- by registered sale deed No. 8563/I dated 8.02.2005. The sale deed was impounded. The Sub Divisional Officer (Civil) cum Collector Panipat, District Panipat served a notice on Form 1-A of the Indian Stamp Act, 1899(for short, 'the Act') on 15.09.2008, on the ground that sale deed was executed and registered, showing lesser valuation of the property in question.

The petitioners filed their reply. Thereafter, respondent No. 2 passed an order dated 12.03.2010, relying on the report of Halqa Patwari, who has alleged to have inspected the land, described in the sale deed. In his report, the Halqa Patwari had stated that land bearing Khasra No. 1844, 1845, 1846, 1856, 1857, 1858, 1862, 1864, 1865, 1882 is situated at a distance of 3 KM from Insar, Assandh Road, which fall in between two canals and on enquiry made from the persons present on the spot, he came to know that the market value of cultviable land adjacent to the land in question was ₹ 25,00,000/- per acre. Respondent No. 2 thus, on the basis of the report of the Halqa Patwari held that the sale deed should have been registered at ₹ 14,75,000/- whereas, it has been registered at ₹ 1,33,000/- and thus, the petitioners were required to affix the additional stamp of ₹ 80,520/- on the balance amount of ₹13,42,000/-.

Aggrieved against the order of respondent No. 2, the petitioners filed statutory appeal before the Commissioner, Rohtak Division, Rohtak in which it was averred that the highest Collector rate of Patti Taraf Insar was ₹ 10,50,000/- per acre and even according to the highest rate, the market value of the area of 5 Kanal 18 Marlas comes to ₹ 7,74,366/- and the stamp duty on the same amounts to ₹ 46,470/- minus ₹ 8,000/- already affixed on the sale deed i.e. ₹ 38,470/-.

The said appeal was dismissed by the Commissioner vide its order dated 11.05.2012, however, it was observed by him that the proceedings initiated against the petitioners were barred by limitation because the notice has been given after three years and that the Collector had relied upon the report of Halqa Patwari dated 12.03.2010, based on price of the year 2010 whereas, sale deed was registered in the year 2005 but it was also held that since the petitioners have admitted in their appeal that as per his assessment, there was a deficient stamp duty of ₹38,470/-, therefore, the appeal was allowed and remanded back to the Collector to reconsider the case of the petitioners and decide the same on the basis of price/Collector rate prevailing during the year 2005.

Counsel for the petitioners has submitted that once it has been held by the appellate court that the proceedings initiated by respondent No. 2 were barred by limitation, the proceedings should have been dropped instead of remanding the case back to respondent No. 2. He has relied upon the decision in the case of ***Abhinav Kumar vs. State of Haryana and others*** *2001(1) R.C.R. (Civil) 91*, ***Vikas vs. State of Haryana and others*** *2008(2) PLR (Civil) 724*, ***Raghbir vs. State of Haryana*** *2004(1) PLR 545*.

On the other hand, counsel for the respondents has argued that the proceedings have been carried out by respondent No. 2 under Section 47-A(1) of the Act, as applicable to the State of Haryana, in which no period of limitation has been mentioned, unlike the period of three years mentioned in Section 47-A(3) of the Act. It is also submitted that since the petitioners have themselves admitted that deficient stamp duty has been affixed on the sale deed, the Commissioner has rightly remanded the case back to the Collector. He has relied upon the decision of the Supreme Court in the case of ***State of Punjab and others vs. M/s Mahajan Sabha, Gurdaspur and others*** *1996(1) SCC 538*.

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

In order to appreciate the arguments raised in regard to application of the period of limitation, it would be relevant to refer to the provisions of Section 47-A of the Act which reads as under:-

> *"47A. Instruments undervalued 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 truly set forth in the instrument, he may, after registering such instrument, refer the same of 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.*
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> *(3) The Collector may suo motu, or on receipt or 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 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 reason to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration has not been truly set forth in the instruments, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section(s); and the deficient amount of duty, if any, shall be payable by the person liable to ay the duty:*
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> *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."*

The Appellate Court/Divisional Commissioner has categorically admitted that the limitation is three years to initiate action against the petitioners and the notice has been given after the expiry of that period. Once a categoric finding has been returned by the Divisional Commissioner that the action initiated by the respondents was barred by limitation, no further order could have been passed by him for remanding the case to respondent No. 2 for passing a fresh order on merits on the basis of Collector rate prevailing during the year 2005 because limitation bars the remedy if not the right and once the remedy is over, no proceedings can be initiated thereafter. On this short ground, the writ petition succeeds. Accordingly, impugned notice and the orders passed by respondents No. 1 and 2 are hereby quashed.

[Rakesh Kumar Jain]
Judge

29th February, 2016

Shivani Kaushik