IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.25496 of 2012
Date of Decision:- 28.04.2016

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Dyal Singh and others

.....Petitioners

Vs.

The State of Punjab and others

..... Respondents

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CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Bhavyadeep Walia, Advocate, for the petitioners.

Mr.V. Ramswaroop, Addl. A.G. Haryana.

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RAKESH KUMAR JAIN, J. (ORAL)

The petitioners are the sons of Ajmer Singh, who executed a transfer/release deed No.9576 dated 27.11.2007 in their favour of his land measuring 41 bighas 15 biswas situated in Village Seona, Tehsil and District Patiala. After the registration of the transfer deed, reference was made by the Sub-Registrar, Patiala on 6.12.2007 to the Collector on the ground that since the land in question is situated within the area of 5 KMs from the Municipal Limits of Patiala, therefore, the petitioners are liable to pay 3% additional Stamp Duty in terms of Section 3-C of the Indian Stamp Act, 1899 [for short 'the Act']. The Collector after hearing the petitioners passed the order on 15.1.2008 which was challenged by the petitioners by way of a statutory appeal before the Divisional Commissioner, Patiala [hereinafter referred to as 'the Commissioner'], which was allowed on 8.7.2008, order of the

Collector was set aside and the matter was remanded back to the Collector to decide the same again. The Collector passed the order on 11.5.2010 holding the petitioners liable to pay additional Stamp Duty in terms of Section 3-C of the Act. Aggrieved against the said order, the petitioners again filed statutory appeal before the Commissioner, which was also dismissed vide order dated 16.2.2012 and hence, the present petition has been filed.

Learned counsel for the petitioners has submitted that the additional Stamp Duty can be charged on an instrument if it is chargeable with duty and the instrument chargeable with duty is defined under Section 3 of the Act, as per which the documents, which are chargeable with duty having exemption contained in Schedule I. The case of the petitioners is that the exemption is granted in terms of Section 9 of the Act as per which the State Government has issued a notification on 21.12.2001 exempting the imposition of Stamp duty in case where the property is transferred to Class-I heirs. It is further submitted that entry No.23 of Schedule 1-A (for Punjab) deals with the conveyance as defined in Section 2(10) of the Act, which includes every instrument by which the property, whether immovable or immovable, is transferred between the inter vivos and which is not otherwise specifically provided by Schedule-I or Schedule I-A.

Learned counsel for the respondents, however, submits that the land in question was situated within 5 KMs of the Municipal Limits, which was of the value of ₹1,73,96,000/-

as mentioned in the deed itself and as per the Government letter No.13/9/2004-ST-II/1233 dated 2.3.2005, the petitioners are liable to pay additional Stamp Duty @ 3% which comes to Rs.5,21,880/-, which was accordingly being charged and the said order has been upheld by the Collector.

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

In order to appreciate the respective arguments raised by both the counsel for the parties, it would be relevant to refer to some provisions of the Act, which are reproduced as under: -

> *"Section 2(10)- "Conveyance" – "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or Schedule 1-A [or y Schedule 1-B], as the case may be."*
>
> *"Section 3 – Instruments chargeable with duty.-Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say-*
>
> *(a) every lnstrument mentioned in that Schedule which, not having been previously executed by any person, is*

executed in India on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

(c) every instrument (other than a bill of exchange or promissory note) mentioned in the Schedule, which, not having been previously executed by any person, is executed out of India on or after that day relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

Provided that, notwithstanding anything contained in clause (a), (b) or (c) of this section or in Schedule I, and subject to the exemptions contained in Schedule 1-A, the following instruments shall be chargeable with duty of the amount indicated in Schedule 1-A, as the proper duty therefore, respectively, that is to say -

(aa) every instrument mentioned in Schedule 1-A as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed in Punjab on

or after the date of commencement of this Act.

(bb) every instrument mentioned in Schedule 1-A as chargeable with duty under that Schedule, which, not having been previously executed by any person is executed out of Punjab on or after the date of the commencement of this act and relates to any property situated, or to any matter or thing done or to be done in Punjab, and is received in Punjab:-

Provided also that no duty shall be chargeable in respect of –

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel; or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act 19 of 1838, or the Indian Registration of Ships Act, 1841 (X of 1841) as amended by subsequent Acts.

"<u>Section 3-C - Instrument chargeable with additional duty</u> – (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.

(2) The Additional duty with which any instrument is chargeable under sub-section (1), shall be paid and such payment shall be indicated on such instrument by means of stamp or stamp paper bearing the inscription "Social Security Fund" whether with or without any other design, picture or inscription.

(3) Except as otherwise provided in sub-section (2), the provisions of this Act shall, so far as may be, apply in relation to the additional duty chargeable under sub-section (1), in respect of the instruments referred to therein as they apply in relation to the duty chargeable under Section 3 in respect of those instruments.

Explanations: - For the purpose of this section, -

(1) The expressions "Municipality" and "the Corporation" shall have the same meaning as assigned to them respectively, under the Punjab Municipal Act, 1911 and the Punjab Municipal Corporation Act, 1976.

(2) The expression "Social Security Fund" means a fund constituted under the Punjab Social Security Fund Regulations, 2005 for providing financial assistance to the needy, deserving and weaker sections of the society in the State of Punjab through the Welfare Schemes.

"<u>Section 9 – Power to reduce, remit or compound duties</u>. The Government may, by rule or order published in the Official Gazzete –

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of [the territories under its administrational], the duties with which any instruments, or any particular class of instruments, or any of the instruments belonging to such class or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class are chargeable :

Provided that with respect to instruments which are chargeable with duty under Schedule 1-A, such

> *reduction or remissions may, by notification be granted by the State Government, and*
>
> *(b) provide for the composition or consolidation of duties [of policies of insurance and] in the case of issuance by any incorporated company or other body corporate or [of transfers (where there is a single transferee, whether incorporated or not)]*
>
> *(2) In this section the expression "the Government" means –*
>
> *(a) in relation to stamp duty in respect of bills of exchange, cheques promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, and in relation to any other stamp duty chargeable under this Act falling within Entry 96, List 1 in the Seventh schedule to the Constitution, the Central Government;*
>
> *(b) Save as aforesaid, the State Government."*

There is no dispute that the land in question is situated within 5KMs from the Municipal Limits, Patiala City. It is also not disputed that the value of the land mentioned in the deed is ₹1,73,96,000/-. The only question thus would arise is as to whether the respondents are justified in asking the petitioners to pay Stamp Duty to the tune of ₹5,21,880/- calculated @ 3% in terms of the letter dated 2.3.2005 issued by the Government in consonance with Section 3-C of the Act?

Section 3-C of the Act specifically provides that every instruments, mentioned in entry 23 of Schedule 1-A chargeable with duty under Section 3 of the Act, shall be liable for charging additional duty if the instrument by which the property is transferred falls within the jurisdiction of Municipality or a Corporation or within the area of 5 KMs of the outer limit of the Municipality or Corporation, as the case may be. The word "Social Security Fund" provided in Section 3-C of the Act is "instrument chargeable with additional duty" but the "instrument chargeable with duty" is provided in Section 3 of the Act, which provides every instruments, which are chargeable with duty but with an exception which is provided in Section 9 of the Act in which the Legislature has provided that the Government may by Rule or order published in the Official Gazette reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments, or any particular class of instruments, or any of the instruments belonging to such class or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class are chargeable. In pursuance of Section 9(1)(a) of the Act, Government of Punjab, Department of Revenue and Rehabilitation issued notification on 21.12.2001, as per which the transfer of immovable property to Class-1 heirs by conveyance deed is not chargeable to the Stamp Duty.

It is not in dispute that the petitioners are the sons of Ajmer Singh and thus are the Class-1 legal heirs in view of

Section 8 of the Hindu Succession Act, 1956. The 'Conveyance Deed' is defined in Section 2(10) of the Act, which is chargeable with duty and thus the exemption is granted to such a document vide notification issued under Section 9(1)(a) of the Act, which is chargeable with duty, even if the land of the petitioners falls within the radius of 5 KMs within the Municipal Limits, Patiala City, the petitioners are not liable to pay the Stamp Duty of Rs.5,21,880/- calculated @ 3%.

In view of the aforesaid, the present petition is meritorious and hence, the same is hereby allowed and the impugned orders are thus set aside. The Stamp Duty, which is alleged to have been already deposited by the petitioners, is hereby ordered to be refunded.

(RAKESH KUMAR JAIN)
JUDGE

28.04.2016
Vivek