

CWP No.2070 of 2016

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.2070 of 2016
Date of decision:17.10.2016**

Gurdeep Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioners.

Mr. Suresh Singla, Addl. A.G., Punjab.

Rakesh Kumar Jain, J.

The petitioners were the owners in possession of the land measuring 23 Bigha 01 Biswas (Pukhta), situated in village Mangwal, Tehsil and District Sangrur. Out of the aforesaid land, land measuring 2451.32 sq. yards each of petitioners No.1 to 3 and land measuring 612.79 sq. yards each of petitioners No.4 & 5 was acquired by the Government of India for the purpose of widening/four-lanning lane of the National Highway No.64 from 50.700 KM to 209.500 KM on Patiala-Sangrur-Bathinda Section in District Sangrur, vide notification dated 25.05.2012, issued under Section 3-A(1) of the National Highways Act, 1956 (hereinafter referred to as the NH Act), followed by the notification dated 03.05.2013, issued under Section 3-D(1) of the NH Act, for which the

award was announced on 15.01.2014 and the petitioners No.1 to 3 were paid ₹1,13,71,546/- each and petitioners No.4 and 5 were paid ₹28,42,886/- each for their acquired land. The compensation was paid to the petitioners by way of different cheques in the month of November and December, 2014 and separate certificates were issued to each of the petitioners by respondent No.3. One of the certificates dated 25.03.2015 is also attached with this petition.

The petitioners purchased land measuring 27 Bigha 10 Biawa 09 Biswansi in village Punnawal and 41 Bigha 19 Biswa and 00 Biswanasi in village Bugra vide two separate sale deeds dated 06.02.2015 from one Baghail Singh S/o Kaur Singh. A sum of ₹80,40,000/- was paid by the petitioners as sale consideration for the land of village Punnawal, on which they were asked to affix the stamp duty of ₹4,82,400/- and registration fee of ₹80,400/-, and for the land of village Bugra, a sum of ₹1,22,40,000/- was paid as sale consideration, on which they were asked to affix the stamp duty of ₹7,34,400/- and registration fee of ₹1,22,400/- as the petitioners were not in possession of the certificate(s) for seeking exemption from paying the stamp duty and registration fee at that time. The petitioners, compelled by the circumstances in the absence of relevant certificate(s), paid the stamp duty of ₹12,16,800/- and registration fees of ₹2,02,800/- at the time of registration of the sale deeds dated 06.02.2015.

It is alleged that as soon as the certificates were issued to the petitioners on 25.03.2015 by respondent No.3, they approached the respondents for refund of the amount of stamp duty and registration fee in

view of the notification No.S.O.42/C.A.2/1899/S.9/2008 dated 24.06.2008 issued by the department of Revenue and Rehabilitation and notification No.S.O.43/C.A. 16/1908/Ss. 78 and 79/Amd./2008 of the even date issued by the same department. Since respondent No.3 did not take any action on the request of the petitioners for refund of the stamp duty and registration fee, therefore, the petitioners approached respondent No.2, who marked an inquiry to respondent No.4, who further down marked the inquiry to respondent No.5, who vide his reports No.156 & 157 dated 12.06.2015, submitted to respondent No.4 that since the petitioners were not having the requisite certificates on the date of registration of the sale deed, therefore, exemption from payment of stamp duty and registration fee was not granted. Respondent No.2 also called for an independent inquiry from respondent No.3, who reported on 21.08.2015 that there is no such provision for refund of stamp duty and registration fee. Relying upon the reports of respondents No.3 & 4 dated 21.08.2015 and 12.06.2015 respectively, respondent No.2 rejected the claim of the petitioners by a common order dated 18.09.2015, which has been challenged in this petition by the petitioners, *inter alia*, on the ground that the payment of stamp duty and registration fee has been specifically exempted by notifications dated 24.06.2008 on the instruments of conveyance that may be executed or have already been executed for the purchase of land in the State of Punjab by the owner whose land has been acquired for the public purpose but the said remission would be limited to the amount which the owner of the land has received as compensation awarded by the Collector for the acquisition of his land.

Counsel for the petitioners has submitted that as per Section 52 of the Indian Stamp Act, 1899 (hereinafter referred to as the "Act"), if any person has inadvertently used the stamp for an instrument other than that prescribed for such instrument by the rules made under the Act or a stamp of greater value than was necessary or has inadvertently used any stamp for an instrument not chargeable with any duty, the Collector, on an application, can cancel and allow as spoiled the stamp so misused or rendered useless.

On the other hand, the only stand taken by the respondents is that the certificates have been issued to the petitioners after the sale deed was registered on 06.02.2015 but nothing has been mentioned in support of their objection as to why the said certificates cannot be taken into consideration.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The facts are not much in dispute but in order to appreciate the rival contentions, it would be relevant to refer to both the notifications dated 24.06.2008. For the ready reference, the text of both the notifications dated 24.06.2008 is reproduced as under:-

"No.S.O.42/C.A. 2/1899/S. 9/2008.- In exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (Central Act No.2 of 1899), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to remit the duty chargeable under the aforesaid Act on the instruments of conveyance that may be executed or have already been executed for the purchase of land in the

State of Punjab by the owner whose land has been acquired for the public purpose. The remission shall be limited to the amount which the owner of the land has received as compensation awarded by the Collector for the acquisition of his land.”

“No.S.O. 43/C.A. 16/1908/Ss. 78 and 79/Amd./2008.- In exercise of the powers conferred by Section 78 and 79 of the Registration Act, 1908 (Central Act No.16 of 1908), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the Government of Punjab, Department of Revenue and Rehabilitation (Registration), Notification No.S.O.25/C.A. 16/1908/Ss. 78 and 79/80/6056, dated the 15th April, 1980, namely:-

AMENDMENT

In the said Notification, under the heading “Table of Registration Fees”, after the last existing proviso to Article-I, the following proviso shall be added, namely:-

“Provided further that no registration fee shall be chargeable on the instruments of conveyance that may be executed or have already been executed for the purchase of land in the State of Punjab by the owner whose land has been acquired for the public purpose. The remission shall be limited to the amount which the owner of the land has received as compensation awarded by the Collector for the acquisition of his land.”

It would also be relevant to refer to Section 52 of the Act, which reads as under:-

“52. Allowance for misused stamps.- (a) When any person has inadvertently used, for an instrument

chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty; or

(b) When any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13; the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.”

The first notification dated 24.06.2008 was issued in terms of Section 9(1)(a) of the Act with a view to remit the duty chargeable under the Act on the instruments of conveyance that may be executed or have already been executed for the purchase of land in the State of Punjab by the owner whose land has been acquired for the public purpose but the said concession has been made limited to the amount which the owner of the land has received as compensation awarded by the Collector for acquisition of his land, meaning thereby if the owner of the land re-invests the money received on account of compensation of his land, then there would be no stamp duty chargeable but if the money invested is more than the money received from acquisition of his land, then the situation would be different. The amended notification deals with the registration fee which is in the

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same language as that of the remission of stamp duty. Further, Section 52 of the Act specifically provides for the allowance for spoiled or misused stamps, meaning thereby if the stamp duty has been affixed on an instrument inadvertently, which is not chargeable with duty, then allowance can be made.

The stand taken by the respondents is without any basis wherein it is stated that the certificates were issued to the petitioners after the date of sale deed but the fact remains that the petitioners have invested the amount of compensation, which has been received by them on the acquisition of their land and are fully covered by the notifications dated 24.06.2008.

Thus, in view of the aforesaid discussion, the present writ petition is hereby allowed, impugned order dated 18.09.2015 is hereby set aside and direction is issued to the respondents to refund the stamp duty and registration fee to the petitioners within a period of three months from the date of receipt of certified copy of this order.

October 17, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No