HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.20872 of 2016
Date of decision:05.10.2016

Smt. Savita Garg

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP No.20909 of 2016

Smt. Savita Garg

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Ajay Jain, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

These two identical writ petitions bearing CWP No.20872 of 2016 and CWP No.20909 of 2016 are proposed to be decided vide this common order, as both these writ petitions are arising out of similar facts and raise common questions for the consideration of this Court. However, for the facility of reference, facts are being culled out from CWP No.20872 of 2016 (Smt. Savita Garg Vs. State of Haryana and others).

These writ petitions are directed against the same impugned order dated 16.8.2016 (Annexure P-4), in both these writ petitions, passed by the Commissioner, Hisar Division, Hisar, whereby two identical appeals against the similar orders dated 9.9.2015 (Annexure P-2) in both the writ petitions, passed by Collector, Hisar, directing the petitioners to pay the deficient stamp duty, were dismissed by the common order.

Heard learned counsel for the petitioner.

Same petitioners in both these writ petitions vide two sale-deeds dated 25.8.2011 and 30.10.2012 (Annexure P-1 in both these writ petitions) purchased two plots claiming them to be residential plots and paid the stamp duty accordingly. However, on a complaint having been received, plots purchased by the petitioners were found to be commercial plots and not the residential plots, as recorded in the impugned order (Annexure P-2) at page 17 of the paper-book. So far as location of the plots purchased by the petitioners is concerned, these were situated in front of Central Ware House-I, Hisar, on Hisar-Delhi Road near Dabra Chowk. It was allegation against the petitioner that by concealing the above-said glaring facts and by claiming the plots to be residential plots situated at Bank Colony, got the sale-deeds registered by paying the collector's rates for residential plots, whereas the plots were commercial in nature. As per the collector's rate approved by District Collector, Hisar, for the area where these plots were situated, the rates of the land was Rs.50,000/- per square yard, pointed out at Sr. No.23 of the list issued by the Office of District Collector, Hisar. This area was from Bus Stand to Dabra Chowk. These plots were situated adjoining Sarvodya Hospital, Razia Hotel etc. which, under no circumstances, could have been said or claimed to be residential area.

Spot inspection was carried out and enquiry was conducted.

The area was found to be commercial. The sale consideration of the plot purchased by the petitioners comes to Rs.1,16,32,000/- and the payable stamp duty was Rs.5,81,600/-, whereas petitioner purchased the plot for Rs.27,80,000/- and paid the stamp amount of Rs.1,39,000/-. Similarly, in the second case i.e. CWP No.20909 of 2016, the sale consideration of the plot was Rs.1,47,70,000/- and the amount of stamp duty comes to Rs.7,38,500/-, whereas the petitioner purchased the plot for a consideration of Rs.36,00,000/- and paid the stamp amount of Rs.1,80,000/-.

On the basis of above-said allegation of concealment and misrepresentation, an enquiry was conducted and the collector proceeded further accordingly. It is not pleaded or argued case on behalf of the petitioner that she was not granted due opportunity of being heard and placing on record the relevant material, before passing the impugned orders. The relevant operative part of the impugned order dated 9.9.2015 passed by the Collector, reads as under:-

> *"Thus, from the facts it is clear that the land mentioned in the Sale Deed is of commercial category situated in front of Central Ware House-1, Hisar on Delhi Hisar Road at the beginning of Dabra Bridge on the left side. Collector rate fixed by the District Collector Hisar for the year 2012-2013 at Serial no. 23 (from Bus Stand to Dabra Chowk) Rs.50,000/- per Sq. Yard and covered area of B category Rs.800/- per Sq. Feet have been fixed. However, the land in question is not situated on the main road, rather, it is located at Debra Chowk beneath Railway over Bridge at the left side and thereafter on account of Bagar Railway Line the road is closed. Keeping in view the above said facts, for the land in question as per Collector rate for the year 2012-2013 instead of Rs.50,000/- per Sq. Yard,*

> *Rs.40,000/- per Sq. Yard is determined. Thus the total sale consideration of the land in question comes to Rs.1,16,32,000/- (280 x 40,000 = 1,12,00,000/- + 540 x 800 = 4,32,000) (total 1,12,00,000 + 4,32,000 = 1,16,32,000) upon which as per law stamp duty of Rs.5,81,600/- (5%) and Rs.15,000/- as registration fee was payable. However, the purchaser got its registered for a consideration of Rs.27,80,000/-, on which stamp duty of Rs.1,39,000/- was paid and registration fee of Rs.15,000/- was also paid."*

Feeling aggrieved, petitioner filed her two similar appeals. It is very pertinent to note the stand taken by the petitioner before the appellate authority. Para 6 of the appeal, which is placed on record as Annexure P-3, reads as under:-

> *"That it is pertinent to mention here that the appellant is going to submit the revised site plan for sanction of commercial building to the Municipal Corporation, Hisar and if the Municipal Corporation, Hisar will sanction the revised site plan for commercial purpose, then the appellant undertakes to deposit the fee on commercial rates. It is submitted that as per Judgment dated 06.08.2008 passed in Civil Writ Petition no.462 of 1992, the Hon'ble High Court held that the Municipal Corporation, Hisar is competent to pass the commercial site plan of this area."*

A bare reading of the above-said specific grounds, taken by the petitioner, shows that how the cat came out of the bag. Petitioner has indirectly admitted that these were commercial plots. This was the reason that petitioner gave an undertaking before the appellate authority by taking the above-said stand in para 6 of the appeal that she was ready to deposit the stamp duty on commercial rates, if her revised site plan for sanction of commercial building is sanctioned by the Municipal Corporation, Hisar. In this view of the stand taken and undertaking given by the petitioner before the appellate authority, nothing much left to be decided on merits by the appellate authority. Accordingly, both the appeals filed by the petitioner were dismissed vide impugned order dated 16.8.2016 (Annexure P-4). The relevant observations made by the appellate authority-Commissioner, Hisar Division, Hisar, in his impugned order dated 16.8.2016, which deserve to be noticed here, read as under:-

> *"Appellant's counsel argued that he is willing to pay the deficient stamp duty but Municipal Corporation should pass the map for commercial building so that his construction is not obstructed.*
>
> *Assistant District Attorney, on behalf of State, argued that this case is admitted by the appellant. He is willing to pay the deficient stamp duty. During registration, he concealed the commercial property and showed that as residential property. There is a complaint from C M Office also. The location is most prime commercial location in Hisar near Dabra chowk, where property is very expensive. Sub Registrar has also noted that the property is on the left hand side from the end of Dabra Bridge. The total deficiency must be paid in both cases. However, Collector has given benefit of applying Rs.40,000/- per Sq. yard and Rs.30,000/- per Sq. Yard while both properties are adjoining and Rs.50,000/- per Sq. Yard should be the appropriate rate. Further he argued that this is not a case of clearance of map. So, no* decision on map clearance is *taken.*
>
> *After hearing both sides and perusing the record, the undervaluation in both cases admitted and appellant is also willing to pay the difference of stamp duty as per commercial*

> *property. Therefore, there is no point in interference with Collector's Order. The Collector has already given partial relief due to location of property, which is more than sufficient and no further relaxation in stamp duty is permissible.*
>
> *However, this is not a case for passing the map by Municip*al Corporation. So, no decision can be taken on that part.
>
> *In the light of above said discussion, both appeals are dismissed.*
>
> *Appellant is directed to pay the deficient amount immediately as he promised before the Court. If said amount is not paid within one month from the date of the Order, then interest at the rate of prime lending rate of State Bank of India should be applied from the date of registration till the date of payment."*

In view of the above-said peculiar fact situation obtaining on the record of the cases in hand, the judgments of this Court, relied upon by the learned counsel for the petitioner in **Abhinav Kumar Vs. State of Haryana and others, 2001 (1) RCR (Civil) 91, Jagdish Vs. State of Haryana and others, 2011 (5) RCR (Civil) 486, Pankaj Gupta and others Vs. State of Haryana and others, 2014 (3) RCR (Civil) 590** and **CWP No.26387 of 2014 (Zile Singh Vs. Commissioner, Hisar Division., Hisar and others)**, decided on 30.3.2016, would not be of any help to the petitioner, being distinguishable on facts, because of the above-said glaring distinguishing features, whereby petitioner herself gave an undertaking to pay the deficient stamp duty at commercial rates, if her revised site plan is sanctioned by the Municipal Corporation. Having said that this Court feels no hesitation to conclude that none of the respondent authorities have committed any error of law, while passing their respective impugned orders and the same deserve to be upheld.

Not only that the petitioner gave an undertaking vide her above-said stand taken in para 6 of the appeal before the appellate authority, even the learned counsel for the petitioner submitted before this Court that the petitioner was ready to pay the deficient stamp duty on commercial rates provided her revised building for raising commercial building on the plots in question is sanctioned by the Municipal Corporation. This clear stand taken by the petitioner before the appellate authority as well as before this Court leaves no manner of doubt that the petitioner was admitting this material fact that the plots purchased by her were commercial in nature and were situated in commercial area. The statement made on behalf of the petitioner, showing her willingness to pay the deficient stamp duty on commercial rates, binds her hand and foot, so far as the commercial nature of plots was concerned.

As far as the issue of getting her revised site plan for raising commercial building on these plots sanctioned by the Municipal Corporation is concerned, it was rightly observed by the Commissioner in his above-said operative part of the impugned order dated 16.8.2016 that it was not the issue before him for decision. Similar is the position before this Court.

As noticed hereinabove, learned counsel for the petitioner made this statement that if revised site plan of the petitioner for raising commercial building on the plots is sanctioned by the Municipal Corporation, Hisar, petitioner would be ready to deposit the deficient stamp duty on commercial rates. Regarding the merits of the case, none of the impugned orders has been found suffering from any patent illegality or perversity. Further, in view of the above-said stand taken by the petitioner herself expressing her willingness to pay the deficient stamp duty at commercial rates, provided her revised site plan is sanctioned by the Municipal Corporation, no prejudice has been caused to the petitioner by passing the impugned orders, which may warrant interference, at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India, thus, the impugned orders deserve to be upheld for this reason also. However, under the above-said peculiar facts and circumstances of the cases, it deserves to be noticed and observed that if after payment of the deficient stamp duty as well as registration fee on commercial rates as per undertaking given by the petitioner in the above-said para 6 of her appeal before the Commissioner, Hisar Division, Hisar, and stated on her behalf by learned counsel before this Court, petitioner submits revised site plan for its sanction before the competent authority of the Municipal Corporation, Hisar, it goes without saying that the said revised site plan shall be considered and an appropriate decision thereon shall be taken at an early date by the Municipal Corporation, in accordance with law.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that so far as the impugned orders Annexures P-2 and P-4 in both these writ petitions are concerned, the same deserve to be upheld and are accordingly upheld. In the peculiar facts and circumstances of the case and taking a holistic view of the matter and also with a view to do complete and substantial justice between the parties, it is directed that after payment of the deficient stamp duty at commercial rates as well as registration fee, if petitioner applies for sanction of her revised building plan for raising commercial building on the plots in question, the competent authority of Municipal Corporation, Hisar, shall consider the request of the petitioner dispassionately by taking an appropriate decision at an early date, in accordance with law.

Resultantly, with the above-said observations made and directions issued, both these writ petitions stand disposed of, however, with no order as to costs.

05.10.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No