IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.23687 of 2014
Date of Decision: 30.03.2016

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Zile Singh

. . . .Petitioner

Versus

Commissioner, Hisar Divn. Hisar and others

. . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: Mr.S.L. Barwala, Advocate, for the petitioner.

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

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RAKESH KUMAR JAIN, J.

The petitioner purchased a residential plot measuring 110 sq. feet vide Vasika No.758 dated 14.5.2012 for a consideration of ₹5 lac, affixing the stamp of the value of ₹35,000/-. After registration of the sale deed, it was handed over to the petitioner without any objection by the Sub-Registrar. However, the Sub-Registrar, Jind vide his memo No.198/RC dated 5.4.2013, sent a reference to the Collector-Cum-District Revenue Officer, Jind that the auditor has found a deficiency of ₹95,900/- towards Stamp Duty and ₹9,000/- towards registration charges in the sale deed No.758 dated 14.5.2012 because the collector rate in the area in which the land has been sold is ₹17,000/- per sq. yards, which has been assessed @ ₹4500/- per sq. yards and thus the amount of registration comes to ₹18,70,000/-. The prayer was made by the Sub Registrar that the amount be taken under Section 47A(3) of the Indian Stamp Act, 1899 (as applicable to the State of Haryana) [for short 'the Act'].

Respondent No.2 served a notice upon the petitioner and decided that the petitioner had to pay ₹1,96,000/- and ₹14,000/- towards Registration Fee, which comes to ₹2,10,000/- and also a sum of ₹5,000/- towards penalty. The petitioner was served with a notice for recovery of deficiency of Stamp Duty of ₹1,04,900/-. The petitioner, being aggrieved against the order of the Collector, preferred a statutory appeal before the Commissioner, Hisar, which was dismissed on 2.7.2014.

The respondents have filed a short reply along with reference memo dated 5.4.2013 issued by the Sub Registrar, Jind to the District Revenue Office-cum-Collector, Jind, for initiating action against the petitioner in terms of Section 47A(3) of the Act.

Learned counsel for the petitioner has submitted that as soon as the sale deed is executed and handed over to the purchaser/vendees, the Sub Registrar become *functus officio* as he can take action either under Section 47A(1) of the Act or under Section 47A(3) of the Act, which could otherwise be initiated either on the receipt of the reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act in whose jurisdiction the property is situated or on receipt of the report of the audit by the Comptroller and Auditor General of India or by any other authority authorised by the State Government or suo motu, within a period of three years from the date of registration. In this regard, he has relied upon decisions of this Court in the case of ***"Iqbal Singh and others*** *Vs.* ***State of***

Haryana and others" *2011 (3) RCR (Civil) 365,* ***"Pankaj Gupta and others*** *Vs.* ***State of Haryana and others"*** *2014(3) RCR (Civil) 590* and ***"Abhinav Kumar*** *Vs.* ***State of Haryana and others"*** *2001(1) LJR 817.*

On the other hand, learned counsel for the respondents has submitted that the action has been initiated by the Collector/Registrar on the basis of audit report, which has been sent by the Sub Registrar along with his reference made by it vide memo No.198 dated 5.4.2013.

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

In order to appreciate the controversy, Section 47A of the Act is reproduced as under: -

> *47-A. Instruments under-valued how to be dealt with. - (I) If the Registering Officer appointed under the Registration Act, 1908, while registering. instrument transferring any property has reason to believe that the value of property Or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to Collector for determination of the value or consideration, as the case may be; the proper duty payable thereon.*
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> *(2) On receipt of reference under sub-section (I), 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.

(3) The Collector may suo motu, or on/receipt of 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 instrument, not already referred to him under subsection (l), call for 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 reasons to believe that the value or Consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section
(2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty:

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.

> *(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of the order, prefer an appeal before the [the Commissioner of the Division]1 and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.]*

Section 47A(1) of the Act provides that as soon as the Registering Officer register the document and is of the opinion that the value affixed for determining the stamp duty is less than the market value, he can make a reference to the Collector. Admittedly, no action has been taken by the Registering Officer much less Sub Registrar under Section 47A(1) of the Act as he had handed over the document after registration to the vendee and thereafter made a reference on 5.4.2013 of the sale deed dated 14.5.2012, almost after the expiry of one year. In this regard, the decision of this Court in the cases of ***Abhinav Kumar (Supra)*** and ***Pankaj Gupta (Supra)*** come to the rescue of the petitioner as in the case of ***Abhinav Kumar (Supra)***, reference was made after eight days and in the case of ***Pankaj Gupta (Supra),*** reference was made after 17 days of the registration of the documents, which was not accepted by the Court as a reference under Section 47A(1) of the Act, on the premise that the Sub Registrar had become *functus officio*, after registration of the said document, which was handed over to the purchaser. Insofar as the applicability of Section 47A(3) of the Act is concerned, it has been held in the case of ***Iqbal Singh and others (Supra)*** that the Collector can initiate proceedings either on the receipt of reference by the Inspector General of

Registration or Registrar of a District appointed under Registration Act in whose jurisdiction the property is situated or on receipt of the report of the audit by the Comptroller and Auditor General of India or by any other authority authorised by the State Government or suo motu.

In the present case, admittedly, it is not an action initiated by the Collector-cum-District Revenue Officer suo motu rather it has been taken on the reference made by the Sub Registrar vide his memo No.198 dated 5.4.2013, who is not a competent authority under Section 47A(3) of the Act to make even the reference. Thus, the action initiated against the petitioner on the reference made by the Sub Registrar, Jind in terms of Section 47A(3) of the Act is patently illegal.

Consequently, the present writ petition is hereby allowed and the impugned orders are set aside.

(RAKESH KUMAR JAIN)
JUDGE

30.03.2016
Vivek