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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP No.24818 of 2014
Date of decision:17.10.2016

Gurjit Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

(2) CWP No.24857 of 2014
Date of decision:17.10.2016

Karanjit Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. G.S.Punia, Senior Advocate, with
Ms. Harveen Kaur, Advocate, for the petitioner.

Mr. Anant Kataria, DAG, Punjab.

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Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CWP Nos.24818 and 24857 of 2014 as the issue involved in both the petitions is the same. However, for the sake of convenience, the facts are being extracted from CWP No.24818 of 2014.

The petitioner is aggrieved against the order dated 02.05.2012 passed by the Collector under Section 47-A of the Indian Stamp Act, 1899, as applicable to Punjab, (hereinafter referred to as the “Act”) and the order dated 18.03.2014 passed by the Divisional Commissioner, Patiala, dismissing his appeal.

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In short, the petitioner through his General Power of Attorney Inderjit Singh executed a vasika/deed No.8321 dated 07.10.2009 in favour of his son Gurjeet Singh, out of love and affection, without consideration, of land measuring 12 Kanal 16 Marlas falling in Khewat/Khatauni No.331/875, Khasra No.31//17 (8-0), 18min (4-16), situated in the revenue estate of village Jhill, Tehsil and District Patiala. The stamp duty of ₹1,44,000/- was affixed and reference was made in the said vasika/deed to the notification No.S.O.20/C.A. 2/1899/S. 9/2007 dated 27.04.2007 for seeking exemption from paying the stamp duty to certain extent. The Sub Registrar, Samana, vide his letter No.1544/RC dated 29.09.2011, sent the aforesaid deed to the Collector, mentioning therein that the Chief Stamp Auditor, during the audit, has found the deficiency of stamp duty to the tune of ₹2,40,000/-. The Collector accepted the reference vide his impugned order dated 02.05.2012, which was unsuccessfully challenged by the petitioner before the Divisional Commissioner in appeal as it was dismissed on 18.03.2014, holding that the notification dated 27.04.2007 is not applicable as it would apply if the transfer is of the urban residential property and not the urban agricultural land.

Learned senior counsel appearing on behalf of the petitioner has very fairly stated at the threshold that the notification dated 27.04.2007 is not applicable. However, for the sake of ready reference, as to what is provided in the said notification, the same is hereby reproduced as under:-

> "No.S.O. 20/C.A.2/1899/S.9/2007.- 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

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> remit with effect from the date of publication of this Order in the Official Gazette, the stamp duty chargeable in case of transaction of transfer by an owner of urban residential property to his or her heirs, as the case may be, which have respectively been specified in S.O. 43/C.A.2/1899/S.9/2006, dated the 3rd November, 2006 and S.O. 1/C.A. 2/1899/S.9/2004, dated the 8th January, 2004:
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> Explanation:- Urban residential property means the residential property which is situated within the municipal limits of Municipal Committee or Municipal Corporation as the case may be, as constituted under the Punjab Municipal Act, 1911 and the Punjab Municipal Corporation Act, 1976, respectively:
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> Provided further that the Registering Officers shall also ensure that the factum of relation of the transferor with the person to whom the property is transferred, is fully described in the transfer deed itself so that the transferor is duly made liable for concealment of facts, if any. Besides this, the pedigree table, clearly reflecting the said heirs of the owner of the property shall also be got attached to the sale deed fully certified by the Municipal Councillor:
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> Provided further that where mutation of urban property is to be sanctioned, the same will be sanctioned by the Revenue Officer concerned after following the procedure, prescribed for this purpose."

However, counsel for the petitioner has submitted that the stamp duty @ 3% of the assessed value of the transferred land @ ₹48,00,000/- has already been paid but on the basis of the audit report, another sum of ₹2,40,000/- as stamp duty and ₹30,000/- towards registration charges has been asked for. It is submitted that the reference was made after registration of the instrument in terms of Section 47-A(1) of the Act and the Collector passed the order solely relying upon the audit report. In this regard, he has relied upon a decision of this Court in the case of **Iqbal Singh and others vs. State of Haryana and others,** 2011(3) R.C.R. (Civil)

365, in which the following observations have been made:-

> "9. The Sub Registrar and the Collector both acted only on the report of the audit party. Audit party's opinion is not a final and sacrosanct word on the question of determination of the stamp duty payable under law. Under Section 47-A of the Indian Stamp Act, it is the duty of the Sub Registrar i.e. the Registering Officer appointed under the Registration Act and the Collector to determine and assess the stamp duty payable under law. The audit party is not authorized under any of the provisions of the Indian Stamp Act to assess and determine either nature of any of the document or stamp duty payable therein."

It is further submitted that as per Section 47-A(1) of the Act, the Registering Officer, after registration of the instrument, may refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. As per Section 47-A(2) of the Act, the Collector, after receipt of the reference under Section 47-A(1) of the Act, has to give reasonable opportunity and after holding an inquiry in the manner as may be prescribed under the rules, determine the value or consideration and the duty. It is further submitted that no such inquiry was held by the Collector rather the order has been passed in the absence of the petitioner who, for some reasons, could not put his case before the Collector. It is further submitted that even otherwise, the documents executed by the petitioner is not a conveyance deed but a settlement. In this regard, he has referred to the definition of "conveyance" provided under Section 2(10) of the Act and of the "settlement" provided under Section 2(24) of the Act, which are as under:-

> "(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 1 or by Schedule 1-A or Schedule 1-B or by Schedule 1-C, as the case may be;"

"(24) **"settlement". -** "Settlement" means any non-testamentary disposition in writing of movable or immovable property made-

(a) in consideration of marriage;

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose;

and includes an agreement in writing to make such a disposition and whereby any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise the terms of any such disposition;"

It is further submitted that different duty is payable on the documents of "conveyance" and "settlement". Insofar as the "conveyance" is concerned, the duty payable is mentioned in Schedule-1 at Item No.23. It is further submitted that the sale deed is a part of conveyance. The "sale" is defined under Section 54 of the Transfer of Property Act, 1952 as transfer of ownership in exchange of price paid or promised or part-paid or part-promised, whereas the duty payable on "settlement" is provided in Schedule 1-A (for Punjab), which has to be the same as paid for transfer of a bond provided at item No.15 in Schedule 1-A (for Punjab).

It is further submitted that if the transfer is a settlement, the petitioner is then liable to pay 4% stamp duty on the value of the land, out of which 3% has already been paid by the petitioner and the remaining 1% shall be paid, as ordered by the Court, but insofar as the amount claimed by the respondents is concerned, the same is not payable.

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On the other hand, counsel for the respondents has submitted that once the notification dated 24.07.2007 is not applicable to the property transferred by the petitioner, the stamp duty has rightly been assessed by the audit party which is liable to be paid by the petitioner and as regards the question as to whether the Collector had not held the inquiry, the petitioner himself did not appear and file his reply after having appeared once. It is further submitted that the issue as to whether the transfer deed is a "conveyance" or a "settlement" was not raised by the petitioner even before the Divisional Commissioner and, thus, it cannot be raised in this petition for the first time.

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

In order to appreciate the respective submissions, it would be relevant to refer to Sections 47-A(1) and (2) of the Act, which reads as under:-

> "**47-A. Instruments under-valued how to be dealt with.** - (1) If the market value of any property, which is the subject of any instrument on which duty is chargeable on market value as set forth in such instrument, is less than even the minimum value as determined in accordance with the rules made under this Act, the Registering Officer appointed under the Registration Act, 1908, shall, after registering the instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon; and
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> (2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules under this Act, determine the value or consideration and the duty as aforesaid, and the deficient amount of duty, if any, along with interest at the rate of twelve per cent per annum on such

deficient amount, shall be payable by the person liable to pay the duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty;

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum, if there was an intentional omission or lapse on his part in not setting forth the correct market value of such property.

xxx xxx xxx xxx xxx"

Insofar as the duty payable on "settlement" is concerned, the same is reproduced as under:-

"58. Settlement-	
A- Instrument of (including a deed of dower)	The same duty as a Bond (No.15) for a sum equal to the amount or value of property settled as set forth in such settlement.
Exemptions Deed of dower executed on the occasion of a marriage between Muhammadans.	
B- Revocation of- See also Trust (No.64)	The same duty as a Bond (No.15) for a sum equal to the amount or value of the property concerned as set forth in the instrument of revocation but no exceeding thirty rupees."

Whereas the duty payable on a Bond is as under:-

"15. **Bond** as defined by section 2(5), not being a **Debenture** (No.27), and not being otherwise provided for by this Act or by the Court-fees Act, 1870-,

where the amount of value secured does not exceed Rs.500; Ten rupees.

where it exceeds Rs.500 and does not exceed Rs.1,000; Twenty rupees.

and for every Rs.500 or part thereof in excess of Rs.1,000; Ten rupees.

See Administration Bond (No.2), Bottomry Bond (No.16), Customs Bond (No.26), Indemnity Bond (No.34), Respondentia Bond (No.5), Security Bond(No.57).

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Exemptions

Bond when executed by any person for the purpose of guaranteeing that the local income derived from private subscription to a charitable dispensary or hospital or to any other object of public utility, shall not be less than a specified sum per mensum."

Insofar as the conveyance is concerned, it includes "conveyance of sale" and includes "instrument of transfer inter vivos" i.e. the transfer by a person during his life time of his movable and immovable property, whereas the "settlement" is for distributing the property of the settler amongst his family members. There is a different yardstick for charging the duty in the case of "conveyance" and "settlement", as according to the petitioner, the instrument in question is a settlement and he is only liable to pay 4% duty on the value of the land in question mentioned in the instrument and out of which he has already paid 3% duty and whether the Collector has erred in relying upon the report of the audit party is again a question to be decided?

The very fact that the petitioner was not present for some reasons after having appeared for once and the fact that all these questions are to be decided by the Collector, I deem it appropriate to set aside the orders of the Collector and the Divisional Commissioner in order to remand the case back to the Collector so that he should decide as to whether the instrument is "conveyance" or a "settlement" and as to what amount is chargeable towards duty.

Consequently, both the writ petitions are hereby allowed, impugned orders therein are set aside and both the cases are remanded back to the Collector, Patiala, with a direction to decide all the issues involved in this case, as have been raised by the petitioner(s) before this Court, after giving an opportunity of hearing to both the parties and by passing a well reasoned order.

The parties in both the cases are directed to appear before the Collector, Patiala on 07.11.2016.

October 17, 2016 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No
Whether Reportable: Yes/No