

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

CWP No.6396 of 2014 (O&M)  
Decided on 08.02.2016

Nirmala Devi

.... Petitioner

versus

State of Punjab & ors.

.... Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Present: Mr. Sherry K.Singla, Advocate  
for the petitioner.

Mr. V.Ramaswaroop, Addl. AG, Punjab.

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**Rakesh Kumar Jain, J.(Oral)**

The petitioner has challenged the validity of order dated 11.02.2013 (Annexure P-2) passed by District Collector-cum-Addl. Deputy Commissioner, Mansa and order dated 15.01.2014 (Annexure P-3) passed by Commissioner, Faridkot Division, Faridkot.

In short, the petitioner purchased a plot measuring 278 sq. yards at Mansa on 02.04.2008 by way of a registered sale deed. Respondent No.3 served a notice upon the petitioner under Rule 4(1) of the Punjab Stamp Dealing of under Valued Instruments Rules, 1983 read with Section 47-A of the Indian Stamp Act, 1899 as applicable in the State of Punjab asking the petitioner to deposit a sum of Rs.2,10,980/- towards deficient stamp duty and Rs.24,000/- towards deficient registration fee. The said notice was served upon the petitioner on 08.02.2012. The petitioner filed a reply to the notice on 30.04.2012 but respondent No.3, on the basis report dated 04.10.2012 issued by Sub Registrar, Mansa passed the impugned order dated 11.02.2013 (Annexure P-2) upholding the payment of

deficient stamp duty and registration fee. The petitioner challenged the order of respondent No.3 before the Commissioner, Faridkot Division, Faridkot who also upheld the same on 15.01.2014.

After the notice issued in the writ petition, the respondents filed their reply in which it is averred that in the audit report dated 29.03.2011 it was detected that the sale deed was executed at lesser rate by mentioning the wrong serial number of the Collector rate list. The Sub Registrar, Mansa referred the sale deed to the Court of Collector (ADC) Mansa for the purpose of determining the valuation of the sale deed. After receipt of the case from the Sub Registrar, Mansa, the Collector, Mansa – respondent No.3 issued notice dated 08.02.2012 to the petitioner informing that she had evaded the stamp duty while executing the sale deed No.37 dated 02.04.2008.

Learned counsel for the petitioner has submitted that the limitation to initiate the action in respect of under valued sale deed is three years under Section 47-A(3) of the Indian Stamp Act (applicable to the State of Punjab). The relevant portion referred to by the counsel for the petitioner is as follows:

*47-A(3) The Collector may, suo moto, or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for and examine any instrument for the purposes of satisfying himself as to the*

*correctness of the value of the property or of the consideration disclosed and of all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if after such examination, he has reason to believe that proper duty has not been paid, he may, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under sub-section (2), determine the value of the property or the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, [if any, along with interest at the rate of 12% per annum on such deficient amount, would 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 3% per annum, if there was an intentional omission or lapse on his part in not setting forth the correct market value of such property]"*

It is further submitted that since the sale deed was executed on 02.04.2008 and the notice was served on 08.02.2012, therefore the period of three years for initiating the proceedings by the respondents was over.

On the other hand, learned counsel for the respondents has submitted that the audit party pointed out the loss caused to the State exchequer due to under valuation in its report dated 29.03.2011 i.e. within three years as sale deed was executed on 02.04.2008 and therefore, it was within limitation.

To counter the argument of the respondent, learned counsel for the petitioner has relied upon a Division Bench Judgment

of this Court passed in ***Vikas vs. State of Haryana & ors., 2008(1) LAR 289*** in which it has been held that real action has been taken only on the issuance of show cause notice, which admittedly was issued on 07.12.2005. It is well settled that communication of the order alone confer on a paper the status of an order as has been postulated by Article 166 of the Constitution. The aforementioned provision was interpreted by a Constitution Bench of Hon'ble the Supreme Court in the case of ***Bachhitar Singh vs. State of Punjab, AIR 1963 SC 395***. In that case, the Constitution Bench had held that till an order is communicated it would not assume the character of executive action. A similar view has been taken by Hon'ble the Supreme Court in the case of ***Laxminarayan R.Bhattad vs. State of Maharashtra, (2003) 5 SCC 413***.

In the aforesaid case also, the issue involved was of limitation of three years. An audit objection was raised vide audit note dated 12.06.2002 on the basis of which it was sought to be contended that the objections had been taken within the period of three years. However, the Division Bench has held that merely an audit objection raised by audit party would not commence the limitation until and unless the audit objection is communicated to the petitioner much less the person affected by it.

In this case, though the audit objection was raised on 29.03.2011 but it was communicated to the petitioner on 08.02.2012 and thus, no limitation has to be considered from the date of audit objection but it has to be considered from the date when communicated to the petitioner by way of a notice and by that time three years had already expired.

Concurring with the view expressed by the Division Bench of this Court, I am of the view that impugned orders passed by the authorities under the Act are beyond the period of three years limitation. Accordingly, the writ petition is allowed and the impugned orders are set aside.

08.02.2016  
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**(Rakesh Kumar Jain)**  
**Judge**