IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9319 of 2013 (O&M)

Date of decision : 8.1.2016

Sunita .... Petitioner

vs

State of Punjab and others ... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Amit Jhanji, Advocate, for the petitioner.

Mr. Nilesh Bhardwaj, Deputy Advocate General, Punjab.

Rajesh Bindal, J.

1. The petitioner has approached this Court impugning the order dated 17.9.2012 (Annexure P-2) passed by the Collector, whereby the petitioner was directed to deposit stamp duty of ₹ 12,39,024/- and further the order dated 21.1.2013 (Annexure P-4) passed by the Commissioner, whereby the appeal filed against the order of the Collector, was dismissed.

2. Learned counsel for the petitioner submitted that the petitioner purchased a residential house in the year 2007 for a total sale consideration of ₹ 32,70,000/- in Jalandhar. At the time of registration of sale-deed, the petitioner paid stamp duty of ₹ 2,61,600/-. After five years of execution of sale-deed on 25.4.2007, on a complaint filed by Kamal Kapoor stating that the property in question was commercial and not residential and the sale transaction has been undervalued, the Sub Registrar sent a reference to the Collector. The Collector without affording any opportunity of hearing vide order dated 17.9.2012 (Annexure P-2), opined that there was evasion of stamp duty to the tune of ₹ 7,46,000/-. Adding interest of ₹ 4,92,624/- thereon, demand of ₹ 12,39,024/- was raised vide order dated 17.9.2012. After the demand notice was served upon the petitioner, she preferred statutory appeal before the Commissioner, who vide order dated 21.1.2013, dismissed the same. The orders passed by the authorities were sought to be impugned in the present petition raising pleas of limitation and denial of opportunity of hearing.

3. As far as the plea of limitation is concerned, learned counsel for the petitioner fairly submitted that in view of judgment of Hon'ble the Supreme Court in *State of Punjab and others vs Mahajan Sabha, Gurdaspur and others* 1996 (1) Supreme Court Cases 538, the ground does not survive as in the case in hand, it was not a *suo-moto* power exercised by the Collector, where the limitation of two years from the date of registration was applicable. It was a case where reference was made by the Sub Registrar to the Collector.

4. Regarding denial of opportunity of hearing, learned counsel for the petitioner submitted that Section 47-A of the Indian Stamp (Punjab Amendment) Act, 1982, clearly provides that on receipt of a reference under sub-section (1) thereof, the Collector shall determine the issue after holding enquiry and affording opportunity of hearing to the person effected. In this case no opportunity of hearing was afforded, hence, the order deserves to be set aside and the matter be remitted back to the authorities for fresh determination.

5. On the other hand, learned counsel for the State submitted that it is a case where the petitioner has tried to defraud the State. The petitioner declared the property in the sale-deed as residential, whereas the same was commercial and the stamp duty was required to be paid accordingly. The matter came to the notice of the registering authority. It was found that the petitioner had misstated the facts in the sale-deed. The matter was referred by the Sub Registrar to the Collector, who after affording opportunity to the petitioner, determined the amount of duty evaded and raised the demand along with interest thereon. Hence, to state that opportunity was not granted is neither here nor there. He further submitted that in reply to para 5 of the petition it has been so stated to which no replication has been filed.

6. Learned counsel for the State further argued that even if for arguments sake it is considered that the petitioner was not granted opportunity of hearing by the Collector, she had a statutory remedy of appeal against the order passed by the Collector, which was availed of by her. No issue regarding non grant of opportunity of hearing was raised as nothing is evident from the impugned order passed by the Commissioner. She had sought to contest the order passed by the Collector only on the ground of limitation. Referring to a judgment of this Court, which could not

be considered a good law in terms of judgment of Hon'ble the Supreme Court in *Mahajan Sabha's* case (supra), which even learned counsel for the petitioner has not disputed. No other issue was raised by the petitioner before the Commissioner. Hence, she cannot be permitted to raise the issue of violation of principles of natural justice at this stage before this Court for the first time, especially when the basic facts are not in dispute.

7. In response to the contention raised by learned counsel for the State, learned counsel for the petitioner submitted that a perusal of the order passed by the Collector itself shows that no opportunity of hearing was afforded to the petitioner. Hence, learned counsel for the State is not right in saying that opportunity was afforded to the petitioner.

8. Heard learned counsel for the parties and perused the paper book.

9. The petitioner purchased property in Jalandhar in the year 2007. The sale consideration shown in the sale-deed was ₹ 32,70,000/-, mentioning the same to be residential property. She paid stamp duty of ₹ 2,61,600/-. On a complaint filed by Kamal Kapoor after five years of execution of sale-deed dated 25.4.2007, with the allegations that the sale transaction was undervalued as the property in question was commercial and not residential, the Sub Registrar sent a reference to the Collector. The Collector on receipt of reference from the Sub Registrar made enquiry through the Halqa Patwari, who reported that the property in dispute is located in commercial area. The sale-deed was got registered by mentioning as residential area and the stamp duty was also paid accordingly. The Collector calculated the difference in the stamp duty and raised demand of ₹ 12,39,024/- including interest thereon vide order dated 17.9.2012.

10. Aggrieved against the order passed by the Collector, the petitioner preferred appeal before the Commissioner. The only issue raised was regarding jurisdiction of the authorities to take up the issue more than three years after the registration of sale-deed. The Commissioner dismissed the appeal while recording that counsel appearing for the petitioner did not deny the fact that the area where the sale-deed was got registered by showing the same as residential was, in fact, commercial. Accordingly, the order passed by the Collector was upheld. Relevant part of the order passed by the Commissioner is extracted hereunder:-

"I have considered the arguments advanced by the counsel for the appellant. The counsel for the appellant has not denied the fact that the area, which was got registered by the appellant in the year 2007 by showing a residential a commercial one and the Collector rate at that time was Rs. 7,00,000/- per Marla, whereas the appellant had executed sale deed for the 18 Marla of land for a consideration of Rs. 32,70,000/- and paid the stamp duty 2,61,600/- whereas he had to pay stamp duty of Rs. 7,46,400/-. It appears that the appellant had suppressed the material facts while executing the sale deed. So, the order of the Collector is self speaking and needs no interference. The appeal is without any merit and it is dismissed." (emphasis supplied)

11. Once the fact that property in the sale-deed got registered by the petitioner was undervalued by showing the same to be located in a residential area, whereas it was admittedly in a commercial area, even if the Collector had not afforded any opportunity of hearing, the petitioner had opportunity to raise that issue before the Commissioner in the statutory appeal but the same was never raised. She was afforded due opportunity by the Commissioner. The issue was examined on merits and still the appeal was dismissed.

12. Keeping in view the aforesaid facts and circumstances, even if the contention raised by learned counsel for the petitioner that the petitioner was not afforded opportunity of hearing by the Collector is taken on its face value, the same does not come to the rescue of the petitioner to claim that the impugned orders passed by the authorities be set aside.

13. For the reasons mentioned above, I do not find any merit in the present petition. The same is accordingly dismissed.

8.1.2016 (Rajesh Bindal)
vs Judge

(Refer to Reporter)