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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7530 of 2015
Date of decision:12.01.2016

The Hisar Shiv Shakti Co-operative
House Building Society Limited Hisar ...Petitioner

Versus

State of Haryana & others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Dalip Kumar Tuteja, Advocate,
for the petitioner.

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

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Rakesh Kumar Jain, J.

The petitioner-society purchased agricultural land measuring 22 Kanals, comprised in Khewat No.4999, Khatauni No.6149, Khasra No.213/3/2 (3-16), 4/2 (5-16), 5/2/2 (2-2), 6/2 (6-6), Khewat No.5000, Khatauni No.6150, Khasra No.213//14 (8-0), situated in the revenue estate of village Hisar, Tehsil and District Hisar, from Rajinder S/o Pat Ram S/o Joga, R/o village Satrod Khurd, Tehsil and District Hisar, for a total consideration of ₹68,75,000/-, by affixing the stamp of ₹3,43,750/-, vide Vasika No.445 dated 22.04.2009. The Joint Sub Registrar/Registering Officer, Hisar, after registering the sale deed, certified that it has been registered vide document No.445 on 22.04.2009 at Bahi No.1, Jild No.727, Page No.168 and a copy of the same has been pasted in Bahi No.1, Jild

No.5767, Pages No.11-12. The original sale deed was returned to the petitioner by the Joint Sub Registrar, Hisar on 22.04.2009 itself.

After a period of 9 months, the Registering Officer sent a reference to the SDO(C)-cum-Collector, Hisar under Section 47-A(2) of the Indian Stamp Act, 1899, as applicable to Haryana (hereinafter referred to as the "Act"), to determine the value of the land covered by the aforesaid sale deed. It was mentioned in that reference that the Circle Stamp Auditor has made an objection about the undervalued registration of the sale deed as according to him, the value of the land was ₹1,99,65,000/- and the stamp duty affixed is deficient to the tune of ₹6,54,500/-. The SDO(C)-cum-Collector, Hisar sent a notice to the petitioner on 21.01.2011 containing the allegations that the true value of the land has not been set forth in the sale deed. The petitioner gave reply to the said notice and the Collector, without holding any inquiry or asking for any evidence, presumed that since the land has been purchased by the society and shall be carved out into plots, therefore, it should have been treated as, for residential purpose and not for agricultural purposes. It was, thus, observed that the value of the land sold should have been assessed @ ₹1500/- per sq. yards, meant for the residential land and on the basis thereof, the sale deed should have been registered for an amount of ₹1,99,65,000/-, on which the petitioner had to pay the deficient stamp duty of ₹6,54,500/-.

Aggrieved against the order of the Collector dated 28.11.2013, the petitioner preferred statutory appeal before the Divisional Commissioner who had also presumed that the land purchased by the petitioner, being a society, shall be used for residential purposes, therefore, the collector rate for the sale of the land meant for the residential purposes should have been applied. Thus, the appeal was dismissed on merits and also on the ground that it was barred by limitation as it has been observed that according to the Haryana Stamp (Prevention of Undervaluation of Instruments) Rules, 1978 (hereinafter referred to as the "Rules"), a period of 30 days is provided, whereas the appeal has been filed after 60 days, without even filing an application for condonation of delay.

Learned counsel for the petitioner has submitted that Rule 9 of the Rules prescribes a period of 30 days for filing of an appeal against the order of the Collector passed under Section 47-A(2) of the Act and Rule 10 further provides that if the appeal is not preferred in time, then the Appellate Authority may reject the appeal summarily after giving a reasonable opportunity of being heard. It is, however, submitted that the Commissioner has erred in dismissing the appeal on the ground of being barred by limitation because the impugned order was passed by the Collector on 28.11.2013, application for obtaining the certified copy of the aforesaid order was filed on 10.12.2013, which was prepared on 13.01.2014 and the appeal was preferred on 27.01.2014. Thus, 33 days were spent in the preparation of the certified copy and after deducting the 33 days spent in the preparation of the certified copy of the impugned order, the appeal was filed within a period of 30 days and was not barred by limitation. A categorical plea is taken by the petitioner in para 13 of its pleadings/petition but no specific reply has been given in this regard. Consequently, agreeing with the submission made by the petitioner about filing of the appeal within time, the finding recorded by the Commissioner/Appellate Authority in the impugned order dated 07.10.2014 is reversed.

Now coming to the merits of the case, counsel for the petitioner has submitted that the land in question was purchased as an agricultural land and the stamp duty has been accordingly affixed. The respondents have erred in presuming that the petitioner would use the land in question for the residential purposes lateron and on that basis, the value of the land in question has been assessed by applying collector rate meant for the residential land, which is illegal and has relied upon a decision of the Supreme Court in the case of **State of U.P. and others v. Ambrish Tandon and another,** 2012(1) R.C.R. (Civil) 865, in which it has been held that the nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of the stamp duty. The subsequent user of the property for commercial purposes cannot be taken into account for calculation of the stamp duty. This judgment has been followed by this Court in the case of **Sohna Rocky Realtors Pvt. Ltd. and others v. State of Haryana and others,** CWP No.17444 of 2013 dated 21.08.2015. In the said case also, the purchase was of the agricultural land but the deficient stamp duty was asked for on the ground that it has been divided into plots. This Court has held that the nature of the land has to be seen at the time of its purchase for calculation of the stamp duty and not lateron. Similar view has been expressed by this Court in the case of **Rajender and others v. State of Haryana and others,** CWP No.17510 of 2013, decided on

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15.12.2015.

Counsel for the petitioner has further argued that the reference has been made by the Joint Sub Registrar, Hisar to the SDO(C)-cum-Collector, Hisar after the sale deed was executed/registered, whereas according to Section 47-A(1) of the Act, the Registering Authority has no such power because only "while registering any instrument", the Registering Officer can refer the case to the Collector for determination of the value of the consideration if it is not truly set forth in the instrument but not thereafter, as the said authority become *functus officio.*

On the other hand, counsel for the respondents has submitted that the action has been taken by the Collector in terms of Section 47-A(3) of the Act, in which it is provided that any document, which is not referred to the Collector under Section 47-A(1) of the Act, may be called for and examined by him for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be.

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

In order to appreciate the contentions raised by both the parties, it would be relevant to refer to Section 47-A of the Act, which reads as under:-

> **"47-A. Instruments under-valued how to be dealt with. --** (1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property, has reason to believe that the value of the 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 the

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Collector for determination of the value or the consideration, as the case may be, and the proper duty payable thereon.

(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 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 the 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 situated, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, not already referred to him under sub-section (1), 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 reason 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 District Commissioner of the Division and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.”

It is clear from the language of Section 47-A(1) of the Act that the Registering Officer, while registering any instrument, if has reason to believe that the value of the property or the consideration has not been truly set forth in the instrument, may send it to the Collector for determination of the value or the consideration and the duty payable thereon. The procedure thereafter is provided in Section 47-A(2) of the Act, to be followed by the Collector, who would give parties a reasonable opportunity of being heard and after holding an enquiry in such manner as prescribed by the Rules, would determine the value or the consideration and the stamp duty payable. Section 47-A(3) of the Act talks of *suo motu* power of the Collector or initiation of an inquiry on the receipt of the reference from the Registrar of the District, provided the instrument has not been handed over to him under Section 47-A(1) of the Act.

The document appended with the writ petition as Annexure P-2 is the reference made by the Joint Sub Registrar, Hisar (Registering Officer) who had registered the sale deed in question on 27.04.2009 and handed over the original thereof to the petitioner. It does not talk of as to whether he has exercised his power as a Register under Section 47-A(3) of the Act or as a Joint Sub Registrar/Registering Officer under Section 47-A(1) of the Act but since the reference has been made by the Registering Officer, therefore, it can be safely presumed that the reference was made under Section 47-A(1) of the Act and not under Section 47-A(3) of the Act, as suggested by counsel for the respondents and observed by the respondents in their impugned orders.

In such a situation, it is evident that the said Registering

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Authority, after registration of the sale deed, became *functus officio* and lost jurisdiction to make the reference to the Collector. In this regard, the reference could also be had to a decision of this Court in the case of **Pankaj Gupta and others v. State of Haryana and others,** 2014(2) PLR 17.

Thus, from the totality of the facts and circumstances mentioned here-in-above, the present writ petition is found to be meritorious and the same is hereby allowed and the impugned orders passed by the respondents are quashed.

January 12, 2016 **(Rakesh Kumar Jain)**
vinod* **Judge**