IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8396 of 2015
Date of Order: 26.07.2016

Smt. Harbans Kaur and Anr.

....Petitioner(s)

Versus

State of Haryana and Ors.

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. N.P. Bhardwaj, Advocate for the petitioners.

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

RAKESH KUMAR JAIN, J (ORAL)

Petitioner No.1 purchased 89/516 share whereas petitioner No.2 purchased 40/516 share of land admeasuring 3 kanal 4 marla 4 Sarsai out of 129/516 share of Smt. Lajwanti w/o Janak Raj out of land measuring 12 kanal 18 marla falling in Khewat No.443, Khasra No.236//2(4-18), 9 (8-0) by way of a registered sale bearing Vasika No.1921 dated 07.7.2011 for a sum of ₹16,52,850/-. The Sub Registrar, Ratia made a reference to the SDO (C) exercising the powers of Collector, Ratia for recovery of stamp and registration charges alleging that the land is commercial in nature to which collector rate (code No.33) of the year 2011-12 is applicable, which would come to ₹46,46,400/- and the stamp duty of ₹1,39,392/- and registration charges of ₹15,000/- are liable to be paid but the purchaser/petitioners have paid stamp duty of ₹49,600/- and registration fee of ₹10,000/- and thus there is deficiency of stamp duty of an amount of ₹89,792/- and registration fee of ₹5,000/- totalling ₹94,792/-. The SDO (C) -cum-Collector, Ratia served a notice to the purchasers/petitioners and vide its order dated 08.2.2012 held that out of land 3 kanal 4 marla 4 Sarsai, 1 kanal 4 marla has to be assessed as per Code No.33 and 2 kanal 0 marla as per code No.55 and thus directed the petitioners to deposit ₹1,20,565/- towards stamp duty and ₹5000/- as registration fees, total ₹1,25,565/-. This order was challenged by the petitioners by way of an appeal before the Commissioner of the Division. The appeal was dismissed on 01.7.2014 on the ground that part of the land abuts the road and has thus potentiality of being developed as commercial property. Accordingly, no error was found in the order of the Collector. Still aggrieved, the petitioners filed a revision petition before the Financial Commissioner (Revenue), which was dismissed on 27.1.2015 adopting the same reasoning recorded by the courts below. Petitioners have thus challenged all the orders before this Court in this petition submitting that the value of the land has to be assessed on the basis of it being used at the time of its sale and in this regard, they have referred to report dated 19.1.2012 (Annexure P.5) of the Patwari, which has been appended after translation, and read as under:

> *"As per the spot inspection, the area of 3 kanal 4 marla 4 sarsai of 12 kanal-18 marla of Lajwanti w/o Janak Raj falls within the Khasra No.236//2 (4-18), 9 (8-0). The wheat crop is in the spot. This is far from the city. Report is submitted."*

It is submitted by the petitioners that the land in question was being used for agricultural purposes and thus it cannot be equated with commercial property on the ground that it can be used for commercial purposes later on. In this regard, learned counsel for the petitioners relies on a judgment of Hon'ble Supreme Court reported as **State of U.P and**

others vs. Ambrish Tandon and another, 2012 (1) RCR (Civil) 865, which has already been followed by this Court in CWP No.17444 of 2013, decided on 21.8.2015. Learned counsel for the petitioners has also submitted that no inquiry was held by the Collector and relies on a judgment of this Court reported as **Lalita Devi Vs. The Commissioner, Gurgaon Division, Gurgaon 2001 (3) RCR (Civil) 653**.

On the other hand, learned counsel for the respondent has submitted that there is no error in the orders passed by the Authorities under the Act because part of the property in question abuts the road and has potentiality of being developed as a commercial property though it may have been used as agricultural land at the time of sale.

After hearing learned counsel for the parties and perusing the available record, I am of the considered opinion that the respondents have committed an error in passing the impugned orders because the nature of land in dispute, as a whole, has to be seen at the time of its sale and also the purpose for which it was being used and not for the purpose to which it could be put to use in future as held by Hon'ble Supreme Court in **Ambrish Tandon's case (supra)**. The respondents have thus committed an error in applying code No.33 of the year 2011-12 to a part of property in question only on the ground that it abuts the road and code No.55 to the remaining land.

In view of the aforesaid discussion, present writ petition is found to be meritorious and the same is accordingly allowed. All the impugned orders passed by the Authorities below are set aside.

July 26, 2016 **(RAKESH KUMAR JAIN)**
manoj **JUDGE**