IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.2623 of 1999
Date of decision:05.04.2017

Gian Chand ... Petitioner

Vs.

The State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

AMIT RAWAL J. (Oral)

The short point involved in the present writ petition is that as to whether the Registering Officer appointed under the Registration Act, 1908 (Central Act No.16 of 1908) while registering any instrument, sale deed dated 02.06.1998 in the present case relating to transfer of any property, without recording the reason of evaluation, could have referred the matter to the Collector regarding re-evaluation.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Kulwant Singh, learned counsel appearing on behalf of the petitioner, in support of his contention, relies upon three judgments (two Division Bench and one single Bench) of this Court rendered in **Mulakh Raj vs. State of Haryana and others 2001(1) PLJ 364; Rajeev Passi vs. The Commissioner, Rohtak Division, Rohtak and others 2008(2) RCR**

(Civil) 528 and **Krishna Rani vs. State of Haryana and others 2008(2) RCR (Civil) 473** to contend that until and unless, the reference order does not record reasons, the same is bad in law. In this regard, he has drawn the attention of this Court to Annexure P-3 which reads as under:-

> *"Stamp Paper of Rs.3/-*
>
> *This stamp paper is a part of a copy of registered sale deed No.441/1, dated 2.6.1998 regarding the sale deed of land situated in Kasba Nilokheri for a sum of Rs.2,84,000/-*
>
> *Sd/- Sub Registrar,*
> *S.R.Nilokheri Nilokheri*
> *(SEAL) 27.11.1998*
>
> *Impound*
> *47-A*
> *Sent to Collector KNL."*

Reference has been made to Annexure P-8 to contend that only instructions issued by the Deputy Commissioner qua prevailing rate have been relied instead of Collector rate which are Annexures P-4 to P-7. He submits that the instructions would not prevail upon the Collector rate.

Per contra, Mr. Rajbir Singh, learned Assistant Advocate General, Haryana appearing on behalf of the respondents submits that reasons so recorded in the order dated 22.06.1998 (Annexure P-8) are sufficient requirement of law under Section 47-A of Stamp Act.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce Section 47-A of Stamp Act as applicable to the State of Haryana which reads as under:-

"47-A. Instruments under-valued how to be dealt with. -

(I) If the Registrering Officer appointed under the Registration Act, 1908, while registering. instrument transferring any property has reason to believe that the value of 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 Collector for determination of the value or consideration, as the case may be; the proper duty payable thereon.

(2) On receipt of reference under sub-section (I), the Collector shall, after giving the parties a 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 due as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

Explanation: For the purpose of this section, value of any property shall be estimated to be the price which is in opinion of the Collector or Appellate Authority, as the case may be, such property would have fetched, if sold in the open market on the date of execution of the instrument relating to transfer of such property."

A Division Bench of this Court in Mulakh Raj's case (supra) in paragraph 5, 10, and 12 had an occasion to hold that some reasons has to be recorded by the Sub-Registrar regarding evaluation of the property but not in the manner and mode as indicated above, in essence, order of reference Annexure P-8 essentially is on the basis of instructions issued by the Deputy Commissioner. Those instructions cannot be equated with the reasons. It has to be independent, much less, on the basis of the Collector rate.

For the sake of brevity, paragraphs 5, 10 and 12 of Mulakh Raj's case (supra) read as under:-

> *"5. The respondents have contested the prayer made by the petitioners by stating that the value of the land mentioned in the sale deeds is far below the market rate prevailing in the area. They have averred that respondent No. 3 had impounded the sale deeds and made reference to respondent No. 2 after making a detailed enquiry about the correct price of the land in the area. According to them, the scheme of Section 47-A of the 1899 Act does not contemplate hearing at the stage of reference and, therefore, the action taken by respondent No. 3 cannot be nullified on the ground of violation of the rule of audi alteram partem. The respondents have also objected to the maintainability of the writ petitions on the premise that the issue relating to correct determination of the value is pending before respondent No. 2 and the petitioners can produce*

evidence to prove that the value mentioned in the sale deeds is the real market value of the land.

10. The appeals filed by the State Government against the decision of the Division Bench were disposed of by the Supreme Court on 21.11.1995 with the title case of ***State of Punjab v. Mahabir Singh etc.*** *(supra). Some of the observations made in the decision of the Supreme Court, which have direct bearing on the plea raised by the petitioners are as under :*

"Sub-Section (1) of Section 47-A empowers the Registering Officer, while registering any instrument relating to the transfer of any property, if he has reasons to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, after registering such instrument, to refer the same to the Collector for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon. It would, therefore, be clear that the Registering Authority has to satisfy himself that value of the property or the consideration for it has not been truly set forth in the instrument. He may make a reference to the Collector in accordance with the provisions of sub- sections (2) of Section 47-A. Before making reference, he is required to register the document and he is not empowered to withhold the registration. Such a registration, of course, will

be subject to the determination of the true market value prevailing in the locality though the value mentioned in the instrument for such registration under sub-section (1) of Section 47-A was not conclusive.

The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be pre-determined. It would depend on prevaliding prices in the locality in which the land covered by the instrument is situated. It will be only an objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Section 47-A.

It would, thus, be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as *and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself before registering the document, whether true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under sub-section (1) of Section 47-A, he registers the documents. Thereafter, he should make a reference to the Collector for action under sub-sections (2) and (3) of Section 47-A. Accordingly, we hold that the offending instructions are not consistent with sub-section (1) of Section 47-A. It would, therefore, be open to the State Government to revise its guidelines and issue proper directions consistent with law."*

12. We are further of the view that in the absence of a provision like the one contained in the Explanation appended to Section 47-A(4) (as applicable to the State of Punjab), the guide-lines issued by the District Collector for determination of the market value of the properties situated in the concerned district in the State of Haryana cannot be regarded as per se violative of the main section. Moreover, in view of the observations made by the Supreme Court in Mahabir Singh's case (supra) that the guide-lines provided by the State Government could serve as a prima facie material available *before the Registering Authority to alert him regarding the value of the land are sufficient to negate the argument that a mere mention of the market value determined by the Collector would invalidate the order of reference.*

In my view, reference order is not sustainable in the eyes of law, in essence, the same is contrary to the settled proposition of law. The same is hereby set aside with liberty to take action in accordance with law, if permissible.

Accordingly, the writ petition stands allowed.

(AMIT RAWAL)
JUDGE

April 05, 2017
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No