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

CWP-14102-2011

Date of decision : 06.04.2017

Darshan Kumar

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajinder Singla, Advocate
for the petitioner(s).

Mr. Yatinder Sharma, Addl. A.G., Punjab.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 27.02.2009 (Annexure P-3) of the Collector/respondent No.2 and order dated 02.09.2009 (Annexure P-5) passed by the Commissioner/respondent No.3, whereby the petitioner has been called upon to pay the deficiency of the stamp duty in respect of the sale deed dated 28.02.2008.

Mr. Rajinder Singla, learned counsel appearing on behalf of the petitioner submits that the sale deed is between the real brothers and therefore, no stamp duty is required to be paid, though, it was paid, thus, the respondent(s) could not call upon the petitioner to pay the deficiency. Even otherwise, the alleged reasoning given by the authorities regarding nature of the property being commercial is neither here or there as the property situated in Village Dirba, Tehsil Sunam, District Sangrur is within the limits of Gram Panchayat. There is one shop in front of the house, whereas the property sold is behind the same. The aforementioned area has never been declared as commercial and therefore, the demand is totally erroneous,

much less, vague. The authorities below have not also taken any exercise in getting the independent evidence with regard to the valuation of the property, therefore, the impugned orders, under challenge, are not sustainable in the eyes of law and urges this Court for setting aside the same.

Per contra, Mr. Yatinder Sharma, Addl. A.G., Punjab submits that in view of the commercial rate of the shops, the stamp duty was found to be deficient and show cause notice was issued which was ultimately referred to the Collector and its order rightly raising the demand i.e. impugned orders, under challenge, are perfectly legal and justified. The photographs (Annexure P-6) attached with the petition, itself, shows the running of the business in front of the house as commercial i.e. opening of the shop, thus, running of the commercial activity cannot be ruled out and urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is merit and substance in the submissions of Mr. Rajinder Singla, for, the Collector was/is enjoined upon an obligation for the purpose of determination of deficiency in stamp duty to undertake a task of ascertaining or independent evidence for determining the collector rate, much less, as to whether the area, in which house is situated, is a commercial or not.

Be that as it may, it is conceded position on record the sale deed is amongst the real brothers and the State Government from time to time since, 2001 had been promulgating a notification exempting the stamp duty relating to the transactions amongst family members.

The aforementioned view of mine is supported by the *ratio decidendi* culled out by the Division Bench of this Court in “Gauri Singla V/s State of Haryana and others” 2009 (1) RCR (Civil) 293, wherein it has been held that the Commissioner, much less, the Deputy Commissioner has not adverted to any independent evidence to return a finding in respect of the market value of land. Neither there is any reference to any sale instance in the neighbourhood nor any other evidence. For the sake of brevity, the relevant paragraph 7 of the same reads as under:-

"7. In the present case, neither the Collector nor the Commissioner has adverted to any independent evidence to return a finding in respect of the market value of the land. The basis of the order is Collector's rate of the land in dispute as ₹ 9 Lac per acre. Neither there is any reference to any sale instance in the neighbourhood nor any other evidence, which is without any statutory support, cannot be given effect to in view of the judgments referred to above. Thus, the impugned orders passed by the Collector and the Commissioner, suffer from patent illegality and material irregularity."

Keeping in view the aforementioned facts, the impugned orders under challenge are not in conformity with the provisions of the Indian Stamp Act, much less, case law referred to above, therefore, the same are not sustainable in the eyes of law being opaque and arbitrary, much less, vitiated and accordingly, are hereby set aside.

With the aforesaid observations, the present writ petition stands allowed.

06.04.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes**

Whether Reportable **No**