IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP 10266 of 2017

Date of Decision: May 26, 2017

Jai Kishan and another

…..Petitioners

Vs.

State of Haryana and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Divya Sarup, Advocate for the petitioners.

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M.M.S. BEDI, J. (ORAL)

Vide order annexure P-7 dated December 24, 2014, passed by Collector, Hissar, the petitioners have been required to pay the stamp duty as per the Collector's rate as on the date of execution of the sale deed dated March 25, 2014.

A perusal of the order annexure P-7 indicates that after publication of notice, the buyer/ petitioners were proceeded against ex-parte and the petitioners have been required to pay a sum of Rs.3,38,100/- as stamp duty and Rs.14000/- as registration fee, determined as the deficient amount of duty payable by the petitioners. Petitioners preferred an appeal before the Commissioner. The said appeal has been dismissed observing that the Collector had correctly applied the Collector's rate while calculating the valuation of the covered area.

Counsel for the petitioners has raised two arguments (i) that it is not mandatory that the stamp duty should be calculated on the date of the purchase as in the present case, transaction of transfer had already taken place in 1989, through an agreement but formal sale deed was registered on March 25, 2014; and (ii) that it is not mandatory that the valuation of the sale deed for the purpose of stamp duty should be determined on the basis of the market value of the land on the basis of the rates fixed by the Collector ignoring the evidence produced by the parties and that such an order would be vitiated being violative of rules of natural justice.

Notice of motion to Advocate General, Haryana.

On the asking of the Court, Mr.A.K. Singla, AAG, Haryana, accepts notice. Copy given.

I have considered both the contentions of learned counsel for the petitioners. So far as the controversy whether the value of the property for the purpose of stamp duty is to be calculated on the date of agreement of sale or on the date of registration is concerned, the controversy stands settled by the Apex Court in **State of Haryana Vs. Manoj Kumar**, (2010) 4 SCC 350 wherein it has been laid down that no sale deed less than the Collector's rate should be registered.

So far as the second contention of learned counsel for the petitioners that while determination of market value of the land, the rates fixed by the Collector would not be the sole criteria, he has referred to judgment of Division Bench of this Court in **Naresh Kumar and others Vs.**

State of Haryana and others, 2004 (4) RCR (Civil) 217 wherein it has been observed that Collector rates may be used only as a prima facie material to alert the authority regarding the value of the land. It cannot in itself be sole determining factor and that the competent authority must hold an independent enquiry in accordance with the procedure prescribed for that purpose.

I have considered the said contention of learned counsel for the petitioners in the light of the judgment in **Manoj Kumar's** case (supra) and I am of the opinion that the market value of the land purchased by the petitioners has to be based upon the rates fixed by the Collector as in 2014 but simultaneously the other material produced by a party which is available on the record, has also not to be ignored while determining the valuation of the sale deeds for the purpose of stamp duty as held in **Naresh Kumar's** case (supra). A perusal of the order passed by the Collector reflects that the petitioners had opted not to appear before the Collector to produce any material to contest for determination of the market value of the land in context to the rates fixed by the Collector.

Without expression of any opinion whether there exists any material sufficient enough to enable the Collector to arrive at a conclusion that the market value of the land in the year 2014 is less than the Collector's rate on the basis of other transactions and other relevant factors pertaining to the land, the petitioners having not availed the opportunity to produce any material, it is debatable whether they can get the benefit of the observations of the judgment in **Naresh Kumar's** case (supra).

Be that as it may, striking a balance between the rights of the State to recover the stamp duty on the basis of the determination of the market value of the land and the rules of natural justice which are available to the petitioners, I am of the considered opinion that the petitioners can be given an opportunity to produce relevant material before the Collector to satisfy the Collector that the circumstances of the present case warrant the determination of the market value of the land less than the Collector rate, by taking into consideration the Collector's rate as the guiding factor, as per the judgment in **Naresh Kumar's** case (supra). Being aware of the availability of remedy of revision under Section 56 of the Indian Stamp Act, instead of relegating the petitioners to the said remedy, finding violation of rules of natural justice and petitioners having been denied an opportunity to prove the market value of the land on the basis of the material available with them, order passed by the Collector Annexures P-7 and the order passed by Commissioner annexure P-9 are ordered to be deferred till the adjudication of the claim of the petitioners against the demand of recovery of Rs.3,52,100/- as stamp and registration duty by the Collector afresh subject to the conditions that the petitioners will deposit a sum of Rs.2 lacs with the Sub-Registrar as amount of security within a period of one month. In case of petitioners doing so, they will be given an opportunity to produce the evidence to substantiate their claim that the market value of the land for the purpose of stamp duty, in the present case, by taking into consideration Collector's rate, would be less then the amount determined as per the value of the property in the year 2014. Such an inquiry will be taken in hand by the Collector, Hissar only after the petitioners deposit sum of Rs.2 lacs as amount of security towards the payment of the stamp duty. It is further directed that the inquiry may be conducted within a period of 2 months thereafter. The implementation of the order passed by the Collector and the Commissioner will be kept in abeyance till the determination of the market value of the land, as mentioned hereinabove.

Disposed of with the above observations.

May 26, 2017 (M.M.S.BEDI)
sanjay JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.