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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16235 of 2015
Date of decision:18.09.2017

Kamla Joshi and another ...Petitioners

Versus

Financial Commissioner (Revenue) and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sarju Puri, Advocate,
for the petitioners.

Ms. Sunint Kaur, AAG, Punjab.

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Rakesh Kumar Jain, J.

The petitioners are aggrieved against the order passed by the Financial Commissioner dated 24.03.2015.

In brief, petitioner no.2 transferred the land measuring 1 Kanal 19 Marla 7- ½ square yards, being ½ share out of area measuring 3 Kanal 18 Marla 15 square yards, being property No.BIX/2-2859-A/485/I, situated in the Abadi of Garha Road, Jalandhar, in favour of petitioner no.1, his mother, vide registered sale deed dated 01.09.2005 for a consideration @ ₹1,50,000/- per marla and affixed the stamp duty considering the property as residential. Petitioner no.1 received a notice under Section 47-A of the Indian Stamp Act, 1899, applicable to the State of Punjab (hereinafter referred to as the “Act”) and vide order dated 22.11.2006, the amount of ₹18,05,535/- was determined as payable by petitioner no.1 towards the deficient stamp duty. The said order was challenged by petitioner no.1 in appeal before the Divisional

Commissioner. The Appellate Court accepted the appeal on 28.08.2007, set aside the order of the Collector and determined the market value of the land in question @ ₹1,75,000/- per marla and the total value of the land in dispute was calculated at ₹68,77,500/-, on which petitioner no.1 was asked to pay the stamp duty and registration fee, as determined. The petitioners have alleged that they have no objection to comply with the order of the Divisional Commissioner dated 28.08.2007. The Collector filed a review petition on 17.04.2008 before the Divisional Commissioner, after about 8 months of the order dated 28.08.2007, which was allowed by the Divisional Commissioner on 07.10.2009. The petitioners challenged the said orders by way of CWP No.19784 of 2010. During the pendency of the writ petition, an interim order was passed, directing the Tehsildar-cum-Sub Registrar, Jalandhar to calculate and inform petitioner no.1 regarding the details of the amount to be deposited by her as per the order dated 28.08.2007 passed by the Divisional Commissioner. Accordingly, an amount of ₹5,46,700/- was calculated and deposited by petitioner no.1 on 23.12.2010. The said writ petition was ultimately allowed on 02.08.2012 on the ground that the power of review is a creation of statute and in the absence of any such specific power conferred by the statute upon an authority, it cannot be exercised and the order of the Divisional Commissioner of review was set aside on the ground of lack of jurisdiction. Thereafter, the Collector filed the revision petition under Section 56(1) of the Act before the Financial Commissioner on 11.06.2013 against the order of the Divisional Commissioner dated 28.08.2007 along with an application for condonation of delay and also with an application for stay. The revision petition has been allowed by the Financial Commissioner vide the impugned order dated 24.03.2015, with the following observations:-

> "4. I have perused the record. The question in this case is entirely of fact. However, the site reports on the file do not specify clearly whether this property was used for residential or commercial purpose and also whether, given the location of this property, its value was to be assessed as residential or commercial rates. Admittedly, Garha Road is an area in which both such kind of properties exist. Therefore, the exact location of the property is very material for deciding its market value. The case is, therefore, remanded to the Collector, Jalandhar with directions to have the site inspected preferably with a street plan showing exact site location and photographs etc. and based on that report, a valuation as on the date of transaction may be made by the Collector. The case is disposed of accordingly."

Counsel for the petitioners has argued that the procedure adopted by the Financial Commissioner for determining the value of the land in question by way of spot inspection is erroneous and has submitted that it could be only by holding an enquiry. In this regard, he has relied upon a Division Bench judgment of this Court rendered in the case of **Madan Lal vs. State of Punjab and others,** 2008(3) R.C.R. (Civil) 462 and a judgment of the Single Bench of this Court rendered in the case of **Pankaj Gupta and others vs. State of Haryana and others,** 2014(3) R.C.R. (Civil) 590.

Besides this, he has also laid the challenge to the jurisdiction of the Financial Commissioner much-less the maintainability of the revision petition before him filed under Section 56(1) of the Act at the instance of the State Government through Collector against the order of the Divisional Commissioner. It is submitted that no doubt that the Chief Controlling Revenue Authority is the Financial Commissioner but he cannot entertain a revision, as has been done, in terms of Section 56(1) against the order of the

Divisional Commissioner.

On the other hand, counsel for the respondents has submitted that the order of the Financial Commissioner is only a remand order to the Collector, directing him to inspect the site in order to find out exact location of the property in question for deciding its market value because the area of Garha Road, Jalandhar has both types of properties, namely, residential and commercial, for which different rates are there, as in the case of residential property, the Collector rate was ₹1,50,000/- per marla, whereas for the commercial property, the collector rate was ₹5,00,000/- per marla on the date when the transaction took place. It is further submitted that the Collector, vide order dated 22.11.2006, determined the value of the property in question as ₹1,96,69,082/- calculated @ ₹5,00,000/- per marla and directed petitioner no.1 to pay the deficient stamp duty. It is also submitted that the property in question is a part of land measuring 3 Kanal 18 Marla 15 square yards, which was transferred by the then Naib Tehsildar (Sales)-cum-Managing Officer, Rehabilitation Department, Punjab, Jalandhar vide its order dated 06.08.1980 as a commercial property to petitioner no.2 on the basis of his alleged unauthorized possession. Petitioner no.2 made an application on 25.05.1977 to the Rehabilitation Department, Jalandhar for transfer of about 2.5 Kanals of land comprised in Khasra No.31169/21308 on the basis of his unauthorized possession. Petitioner no.2 also furnished an affidavit, duly attested by the Executive Magistrate on 16.03.1978, before the Rehabilitation Authorities during the pendency of the said application for transfer, wherein he deposed that he was in possession of an evacuee site comprising of Khasra No.21308/31169 situated on Garha Road, Jullundur City and was using the said site for commercial purposes. The relevant paragraph nos.1 and 4 of his affidavit have also been referred to in the reply of the respondents, which reads as under:-

> "Para 1. That I am in possession of an evacuee site comprising of Khasra No.21308/31169 situated on Garha Road, Jullundur City."
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> "Para 4. That except the aforesaid site used by me for commercial purposes, I or any dependent of mine have no other site any where in India."

It is also submitted that the Commissioner, Jalandhar Division, Jalandhar, while passing the order dated 28.08.2007, has relied upon a sale deed relating to the property situated at Green Park, Jalandhar, whereas the property in question is situated at Garha Road, Jalandhar. It is also argued that the Divisional Commissioner decided the appeal while relying upon the sale deed dated 02.06.2005 relating to a residential property situated in the adjoining locality and not of the concerned locality.

It is also submitted that there is no error in the order of the Financial Commissioner, who has passed the order being the Chief Controlling Revenue Authority, because there is a provision of stamp duty and registration charges at the instance of the petitioners who had claimed the property in question for the purpose of assessing the stamp duty as residential, whereas petitioner no.2 has specifically sworn an affidavit that the property in question was commercial in nature.

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

Since the proceedings were initiated in terms of Section 47-A of the Act, therefore, it is relevant to refer to the said provision, which reads as under:-

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"**47-A. Instruments under-valued how to be dealt with-** (1) If the market value of any property, which is the subject of any instrument on which duty is chargeable on market value as set forth in such instrument, is less than even the minimum value as determined in accordance with the rules made under this Act, the Registering Officer appointed under the Registration Act, 1908, shall, after registering the instrument, refer the same to the Collector for determination of the market value of such property and the proper duty pay-able thereon; and

(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 under this Act, determine the value or consideration and the duty as aforesaid, and the deficient amount of duty, if any, alongwith interest at the rate of twelve per cent per annum on such deficient amount, shall be payable by the person liable to pay the duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty;

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum, if there was an intentional omission or lapse on his part in not setting forth the correct market value of such property.

(3) The Collector may, suo moto, or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorised by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for and examine any instrument for the purposes of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and of all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if after such examination, he has

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reason to believe that proper duty has not been paid, he may, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under sub-section (2), determine the value of the property or the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, [if any, alongwith interest at the rate of tweleve per cent per annum on such deficient amount, would be payable by the person liable to pay the duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty:

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum, if there was an intentional omission or lapse on his part in not setting forth the correct market value of such property.

(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 that order, prefer an appeal before the Commissioner and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.

Explanation. - For the purpose of this section, value of any property shall be estimated to be the price which in the opinion of the Collector or the 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 the transfer of such property."

The petitioner has also challenged the jurisdiction of the Financial Commissioner acting as the Chief Controlling Revenue Authority, to entertain a revision petition under Section 56(1) of the Act against the order of the Divisional Commissioner on the ground that the order of the Collector has merged in the order of the Divisional Commissioner. In order to appreciate his submissions and arguments, it would also be relevant to refer to Section 56 of the Act, which is reproduced as under:-

"**56. Control of, and statement of case to, Chief Controlling**

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> **Revenue authority. -** (1) The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to section 26 shall in all cases be subject to the control of the Chief Controlling Revenue-authority.
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> (2) If any Collector, acting under section 31, section 40 or section 41 feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refere it, with his own opinion thereon, for the decision of the Chief Controlling Revenue authority.
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> (3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision."

Section 47-A in the Act is a State amendment. Before its incorporation, there was no provision in the Act, empowering the revenue authorities to make an enquiry in respect of valuation of the property conveyed for the purpose of determining the duty chargeable in case the Registering Authorities were of the view that the valuation shown in the document was undervalued. Section 47-A(2) of the Act provides that the Collector, after giving the parties reasonable opportunity of hearing and after holding enquiry in the manner prescribed in the Rules framed under the Act, determine the value or consideration, duty and the deficient amount of duty along with interest @ 12% per annum on such deficient amount. Section 47-A(3) of the Act also give *suo moto* powers to the Collector or on receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908, but the order of the Collector has not been made final as the right of appeal has been provided under Section 47-A(4) of the Act before the Commissioner, if the order is passed by the Collector under Sections 47-A(2) and (3) of the Act.

Section 56 of the Act, contained in Chapter VI, deals with the power of the Chief Controlling revenue Authority, i.e. Financial Commissioner (Revenue). Section 56(1) of the Act empowers the Chief Controlling Revenue Authority to revise the order of the Collector passed under Chapters IV, V and first proviso to Section 26(a) of the Act, whereas the power of reference has also been provided to the Chief Controlling Revenue Authority in case the Collector, while acting under Sections 31, 40 and 41, feels doubt as to the amount of duty chargeable on an instrument. Thus, Section 56(1) deals with the revisional power and Sections 56(2) and 3 deal with the power of reference to the Chief Controlling Revenue Authority.

Since counsel for the petitioner has challenged the power exercised by the Financial Commissioner in revision filed by the State under Section 56(1) of the Act on the ground that the order of the Commissioner has wrongly been set aside, therefore, it is pertinent to mention that Section 56 of the Act is a part of the Central Act, whereas Section 47-A of the Act is the State amendment in the Central Act. Section 47-A was not the part of Chapter IV and V of the original Central Act and has been inserted only by way of amendment after Section 47 of the Act, in which power of enquiry has been given coupled with the right to challenge the imposition of any duty and interest etc. by the Collector, by way of an appeal before the Commissioner, whereas Section 56(1) of the Act provides for a revision against the order of the Collector. In the present case, the Collector passed the order, holding the nature of the land as commercial and fixing its market value @ ₹5 lacs per marla, whereas the petitioners had got the sale deed registered on the ground that the land in question was residential and paid the stamp duty on the market value of the land @ ₹1.5 lacs per marla. The said order was reversed/modified

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by the Divisional Commissioner in appeal filed under Section 47-A(4) of the Act and instead of ₹1.5 lacs per marla, the market value of the land in dispute was assessed @ ₹1.75 lacs per marla, considering it to be residential. The said order of the Divisional Commissioner was accepted by the petitioners. The order of the Collector has merged in the order of the Commissioner as there could not be more than one order in operation on the same subject matter at one point of time because where an appeal or revision is provided against an order passed by a Court or any other authority before the superior forum and such superior forum modifies, reverses or affirms the decision on an issue before it, the decision by the subordinate forum merges in the decision of the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eyes of law.

In this case, the order passed by the Collector has been reversed by the Commissioner and, therefore, the order of the Collector cease to exist as it has merged in the order of the Commissioner. Thus, in such circumstances, the Chief Controlling Revenue Authority, much-less the Financial Commissioner, has no jurisdiction to reverse the order of the Commissioner because as per Section 56(1) of the Act, the Chief Controlling Revenue Authority has the supervisory control only over the power exercised by the Collector under Chapters IV, V and also first proviso to Section 26(a) of the Act and not over the powers exercised by the Commissioner under Section 47-A(4) of the Act.

In view thereof, the impugned order passed by the Financial Commissioner is without jurisdiction and, thus, the same is hereby set aside.

It is pertinent to mention here that since the impugned order itself has been set aside, therefore, the question as to whether the market value can be determined on the basis of spot inspection or by way of an inquiry, as argued by the counsel for the petitioner, has become redundant in the present lis at this stage.

The writ petition is allowed in the aforesaid terms.

September 18, 2017 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No
Whether Reportable: Yes/No