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

CWP No.23923 of 2012
Date of Decision.02.05.2017

Smt. Santosh Garg and another ....Petitioners

Vs

State of Punjab and others ....Respondents

Present: Mr. Vishal Garg, Advocate
for the petitioners.

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

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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<u>AMIT RAWAL J.(ORAL)</u>

The petitioners have challenged the impugned order dated 29.02.2012 (Annexure P-9) passed by Divisional Commissioner, Patiala and 31.03.2009 (Annexure P-7) passed by ADC, Barnala whereby recovery of ₹3,48,460/- has been ordered on account of deficiency of stamp duty.

The petitioners had purchased a plot measuring 142 sq. yards vide two sale deeds bearing Nos.2344 and 2345 dated 13.06.2005, duly registered by Sub-Registrar, Barnala for a total sale consideration of ₹3,12,500/- each for residential purpose in Barnala. However, on 15.10.2005, the District Collector, Sangrur issued a show cause notice vide Annexure P-2 under Section 47-A of Indian Stamp Act, 1989 on the premise that while registering the sale deed Nos.2344 and 2345 dated 13.06.2005, the value of the property has been shown less by ₹18,59,500/-. The petitioners immediately replied to the same vide Annexure P-3 dated 22.12.2005 that the demand raised is incorrect as they purchased the property for constructing residential house and no objection was raised by the Sub Registrar at the time of registration of sale deed. However, the

Collector passed the order dated 09.02.2006 ordering ₹1,74,230/- per sale deed to be recovered from the petitioners. Against the aforementioned order, the petitioners filed appeal before the Commissioner but the same also met with the same fate. The petitioners challenged the aforementioned orders in the writ petition bearing No.18744 of 2007 before this Court and this Court while setting aside the impugned orders directed the District Collector, Sangrur to pass a fresh order.

However, On 31.03.2009, the District Collector Barnala again ordered to recover a sum of ₹1,67,355/- on account of deficiency of Stamp Duty and ₹6875/- towards registration fee, totalling ₹1,74,230/- each on sale deed Nos.2344 and 2345 dated 13.06.2005, in essence, a sum of ₹3,48,760/- was ordered to be recovered. The appeal filed against the same was also dismissed by the Divisional Commissioner, Patiala Division, Patiala vide order dated 29.02.2012 (Anneuxre P-9), hence this writ petition.

The argument of learned counsel for the petitioners is that the authorities failed to take notice of the fact that the property was purchased for construction of residential house as per Collector rate and the stamp duty was paid accordingly. The report prepared by the SDM is totally incorrect and without visiting the spot, as there is no shop of Ram Gopal adjoining to the property of the petitioners whereas there is a vacant plot. The order under challenge are passed in a totally arbitrary manner against the settled principles of law, for, if there is deficiency of stamp duty, the document should be impounded immediately, thus, the orders under challenge are liable to be set aside.

In support of his contention, learned counsel appearing for the petitioner relies upon the judgments of this Court in ***"Chamkaur Singh V/s***

<u>State of Punjab" AIR 1991 Punjab and Hayana 26 and "State of Punjab V/s Mohabir Singh" 1996 (1) RRR 588</u> to contend that independent report cannot be a basis of finding of the Collector as the Collector has to ascertain the price by leading evidence. Moreover, the alleged report of the SDM is prepared at the back of the petitioner without carrying out the spot inspection.

He further submits that the orders under challenge are bereft of any cogent reasoning, much less, compliance of established principles of law.

Per contra, Mr. Yatinder Sharma, Addl. A.G., Punjab appearing on behalf of the respondents submits that the proceedings initiated by the SDM are based upon the market value of the land and by taking into consideration the fact that it is commercial property. The petitioners got the sale deed registered fraudulently in order to avoid payment of stamp duty and registration charges, therefore, the orders under challenge are perfectly legal and justified and do not call for interference.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of learned counsel appearing for the petitioner, for, the Collector could not have taken the report of the SDM as the basis of determining the amount in view of the ratio decidendi culled out from the judgments referred to above. It is the bounden duty cast upon him to ascertain the evidence regarding market value after affording opportunity to rebut the same. In the absence of the same, the enquiry report prepared at the back of the petitioner cannot be relied upon.

The judgment rendered by Division Bench of this Court in

<u>Gauri Singla V/s State of Haryana and others 2009 (1) RCR (Civil) 293</u> has actually laid down the criteria for assessing the market value for ascertaining the deficiency in the stamp duty. No explanation has come forth for taking the action on his own after a period of four months. The authorities are obligated to adopt the procedure prescribed under Section 47-A of the Indian Stamp Act and not in the manner and mode as indicated above.

In view of the aforementioned, the impugned orders under challenge are not sustainable in the eyes of law and the same are hereby set aside. The writ petition stands allowed.

(AMIT RAWAL)
JUDGE

May 02, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No