

CWP No.18954 of 2014

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

**CWP No.18954 of 2014**

**Date of decision:18.09.2017**

Smt. Vinita

...Petitioner

Versus

Commissioner, Hisar Division, Hisar and others

...Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. S.K.Goyat, Advocate,  
for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

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**Rakesh Kumar Jain, J.**

The petitioner has challenged the order dated 06.09.2013 passed by the Collector and the order dated 03.06.2014 passed by the Divisional Commissioner on a reference made under Section 47-A of the Indian Stamp Act, 1899, as applicable to the State of Haryana (hereinafter referred to as the "Act").

In brief, the petitioner purchased a residential plot from Dinesh Kumar S/o Radheshyam, measuring 31 square feet, vide sale deed dated 17.05.2013. Since the collector rate for the residential plot was ₹10,000/- per square yard, therefore, the petitioner appended the stamp of ₹15,500/- on the sale deed. At the time of registration of sale deed, the Sub Registrar, Hisar did not raise any question/objection. However, he made a reference to the Collector under Section 47-A of the Act on 09.07.2013, in which he mentioned that the category of the land is commercial and the collector rate for it is ₹30,000/- per square yard. The reference was made on the basis of the audit note. After receiving the reference, the Collector sent a notice under Rule 4(1) of the Haryana Stamp (Prevention of Undervaluation of Instruments) Rules,

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1978 to the petitioner on 19.07.2013. The petitioner allegedly received the notice but she did not appear on the date fixed in the notice before the Collector and was proceeded against *ex-parte*. The Collector passed the order on the ground that the property in dispute was not residential but commercial and asked the petitioner to pay the stamp duty of ₹31,000/- and registration fees of ₹9,000/-, total amounting to ₹40,000/-, which was found to be deficient.

Aggrieved against the said order of the Collector, the petitioner filed appeal before the Commissioner, Hisar Division, Hisar. The Divisional Commissioner dismissed the appeal observing that the petitioner was duly served but she did not choose to appear, therefore, she cannot make a grouse that she was not heard and the order was passed *ex-parte*. He also observed that the stamp auditor pointed out the deficiency and made a reference under Section 47-A of the Act for which the time period is three years from the date of registration.

Learned counsel for the petitioner has argued that when the petitioner received the notice, she was in the advanced stage of her pregnancy and forgot about the date of hearing and could not appear before the Collector and has been wrongly proceeded against *ex-parte*. It is also submitted that the land in question was a residential plot which has been wrongly shown as a commercial plot. It is also submitted that the impugned order has been passed behind the back of the petitioner.

On the other hand, counsel for the respondents has submitted that the Collector has not passed *ex-parte* order without issuing notice to the petitioner or without effecting service of the said notice upon her. The petitioner herself has admitted that she had received the notice but forgot about it. Insofar as the nature of the property is concerned, it is the stand of the

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respondents that it has been determined to be commercial property by the auditor during inspection on the basis of the policy of the State Government.

I have heard learned counsel for the parties and examined the available record.

The basic submission of the petitioner is that she has been proceeded against *ex-parte* by the Collector. However, she has been candid enough to admit that she had received the notice from the office of the Collector but she could not appear because she was in advanced stage of her pregnancy. There is no categoric finding also by the authorities about the nature of the property in question as to how it has been determined as residential or commercial.

Thus, in such circumstances, the petitioner deserves an opportunity to lead evidence before the Collector to prove that the nature of the property is residential and not commercial and the Collector would also find out as to whether, after purchasing the plot in question, the petitioner has raised construction of a shop or a house over the plot in question.

In view thereof, the present writ petition is allowed, both the impugned orders are set aside and the matter is remanded back to the Collector to decide the lis between the parties afresh after giving an opportunity of hearing to the petitioner to lead evidence to prove the nature of the property in question. The petitioner is directed to appear before the Collector on 06.11.2017.

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

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No