IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP 22048 of 2013
Date of Decision: March 9, 2017

Raj Singh

…..Petitioner

Vs.

State of Haryana and others

…..Respondents

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

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Present:- Mr.Mukesh Mittal, Advocate for the petitioner.
Mr. Gaurav Jindal, Addl.A.G., Haryana.

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M.M.S. BEDI, J.

Petitioner had purchased 1 kanal 14 marlas of land situated in village Hussainpur, Tehsil and District Rewari vide sale deed dated March 15, 2010 for Rs.4,46,500/-. The sale deed was got registered by affixing stamp duty of Rs.22,325/-. As per the entries made, at the time of registration of the sale deed, no deficiency in the stamp duty was mentioned. Stamp Auditor while inspecting the sale deed pointed out the deficiency of stamp duty of Rs.16115/-. The Sub Registrar made a reference under Section 47 A (3) of the Indian Stamp Act for initiating the proceedings before the Collector, Rewari but the Collector, Rewari vide order dated December 2, 2011, annexure P-3 fixed the price of the said land as Rs.2300/- per sq. yard and fixed the sale price as Rs.23,65,550/-. The stamp duty on

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the said amount came to be Rs.1,18,278/-. Since the petitioner had affixed a stamp duty of Rs.22325/- at the time of registration of sale deed, the Collector had assessed the deficiency of Rs.95,952/- besides assessing sum of Rs.11500/- as registration fee. On receipt of notice for recovery of the deficiency, the petitioner had approached the Collector. The Collector inspected the site and found that houses have been constructed in the vicinity of the land and the suit land was valuable and no agriculture work was undertaken at the spot. The petitioner had purchased the land for the purpose of residence as such the Collector passed the order on the basis of the relevant documents. The Collector vide order dated December 2, 2011 passed an order for recovery of the deficiency in stamp duty and registration fee against which an appeal was filed. The appeal was dismissed by the Commissioner, Gurgaon Division, on December 13, 2012.

In the reply filed, the respondents have pleaded that the respondents have acted as per the procedure prescribed under Section 47 A (3) of the Indian Stamp Act and the instructions dated May 21, 2003, annexure R-4/1. It is averred in the reply that respondents are duty bound to ensure that no loss is done or caused to the State exchequer as the respondents are further duty bound to work as custodian thereof. It is averred in the reply that no constitutional right of the petitioner stands defeated.

Counsel for the petitioner has submitted that the action on the report of the Auditor is contrary to the procedure under Section 47 A of the

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Indian Stamp Act. Counsel for the petitioner has placed reliance on a Division Bench judgment of this Court in **Naresh Kumar and others Vs. State of Haryana and another**, 2004 (4) RCR (Civil) 217 in which it was held that under Section 47 A (2) of the Indian Stamp Act, there is a mandatory duty of the Collector to hold an inquiry in the manner prescribed in Rule 5 A of the Haryana Stamp (Prevention of Undervaluation of Instruments) Rules, 1978. The Apex Court in **State of Punjab Vs. Mahabir Singh**, 1996 (1) RRR 588 (SC) has interpreted Section 47 A of the Indian Stamp Act, as applicable to the State of Punjab and held as follows:-

> "Sub-section (1) of Section 47-A empowers the Registering Officer, while registering any instrument relating to the transfer of any property, if he has reasons to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, after registering such instrument, to refer the same to the Collector for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon. It would, therefore, be clear that the Registering Authority has to satisfy himself that value of the property or the consideration for it has been truly set forth in the instrument. He may make a reference to the Collector in accordance with the provisions of Sub- sections (2) of Section 47-A. Before

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making reference, he is required to register the document and he is not empowered to withhold the registration. Such a registration, of course, will be subject to the determination of the true market value prevailing in the locality though the value mentioned in the instrument for such registration under sub-section (1) of Section 47-A was not conclusive.

The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be pre-determined. It would (be) dependent on prevailing prices in the locality in which the land covered by the instrument is situated. It will be only an objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has been truly set forth or value or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Section 47-A.

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> It would, thus, be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his *quasi judicial* satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. *The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself before registering the document, whether true price is reflected in the instrument as it prevails in the locality,* if he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under sub-section (1) of Section 47-A, he registers the documents. Thereafter, he should make a reference to the Collector for action under sub-sections (2) and (3) of Section 47-A. Accordingly, we hold that the offending instructions are not consistent with sub-section (1) of Section 47-A. It would, therefore, be open to the State Government to revise its guidelines and issue proper directions consistent with law."

The Division Bench of this Court in **Mulakh Raj Vs. The State of Haryana and others,** 2001 (1) RCR (Civil) 581 (P&H), relying

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upon the judgment in **Mahabir Singh's** case (supra) has observed as follows:-

> "A perusal of Section 47-A, as inserted by the amendments made by the Legislatures of two States, shows that sub-sections (1) and (2) and first part of sub-section (3) thereof are identical. However, proviso appearing below sub-section (3) of Section 47-A, as applicable to the State of Haryana, is not incorporated in the Punjab amendment and Explanation appearing below sub- section (4) of Section 47-A (as applicable to the State of Punjab) is not embodied in the provision applicable to the State of Haryana and as the decision of the Division Bench in Chamkaur Singh's case (supra) is based on the interpretation of the Explanation appearing below sub-section (1) of Section 47-A (as applicable to the State of Punjab), the same cannot be relied upon for granting a declaration that any reference to or reliance upon the market value determined by the Collector would ipso facto invalidate the order of reference made by the Sub-Registrar under Section 47-A(1) of the 1899 Act (as applicable to the State of Haryana).
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> We are further of the view that in the absence of a provision like the one contained in the Explanation

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> appended to Section 47-A(4) (as applicable to the State of Punjab), the guide-lines issued by the District Collector for determination of the market value of the properties situated in the concerned district in the State of Haryana cannot be regarded as per se violative of the main section. Moreover, in view of the observations made by the Supreme Court in Mahabir Singh's case (supra) that the guide-lines provided by the State Government could serve as prima facie material available before the Registering Authority to alert him regarding the value of the land are sufficient to negate the argument that a mere mention of the market value determined by the Collector would invalidate the order of reference."

In **Naresh Kumar and others Vs. State of Haryana and another,** 2004 (4) RCR (Civil) 217, it has been held that before determination of the value of the land, a reasonable opportunity would be required to be given to the effected party.

The respondents determining the rights of the petitioner exercise the powers of quasi judicial authorities. The Administrative authorities charged with the duty to act judicially cannot decide the matters unreasonably. A perusal of the order passed by the Sub Registrar, Rewari, annexure P-1, clearly indicates that the order has been passed without issuing any show cause notice to the petitioner or giving fair opportunity to

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the petitioner. The grant of reasonable opportunity of being heard is sine qua non under Section 47 A (3) of the Act.

Following the judgment in **Naresh Kumar's** case (supra) and finding that the quasi judicial authority i.e. Collector having not given fair opportunity to the petitioner before determining the value of the land for the purpose of stamp duty, I am of the opinion that the writ petition deserves to be allowed.

The petition is allowed. The orders annexures P-1 and P-5 passed under Section 47 A of the Indian Stamp Act are hereby set aside. However, liberty is given to respondent No.3 to pass fresh order after holding a proper inquiry in terms of Section 47 A (2) of the Indian Stamp Act read with Rule 2 of the Haryana Stamp (Prevention of Undervaluation of Instruments) Rules, 1978 and giving a reasonable opportunity of hearing to the petitioner as observed in **Naresh Kumar's** case (supra).

It is not out of place to mention here that the Collector rates may be used only as a prima facie material to alert authority regarding value of the land but it cannot in itself be sufficient enough to arrive at a conclusion that the Collector's value is the sole determining factor for finding value of the land.

March 9, 2017 (M.M.S.BEDI)
sanjay JUDGE

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

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