

CWP No.2256 of 2017

[1]

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

**CWP No.2256 of 2017
Date of decision:21.08.2017**

Narender Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Deepak Jindal, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner has averred that Kaur Singh, father of his vendor, was the owner of 24 Kanals of land, comprised in Rectangle No.114, Killa No.20 and Rectangle No.115, Killa No.25, situated at village Gangwa, Tehsil and District Hissar and out of the said 24 Kanals of land, Kaur Singh sold land measuring 15 Kanals to M/s Lahoria Ceramics Ltd., Gangwa for a consideration of ₹1,80,000/- by executing a sale deed on 12.12.1994. It is alleged that the petitioner is one of the Director of M/s Lahoria Ceramics Ltd. It is further alleged that Kaur Singh also handed over possession of the remaining land measuring 9 Kanals falling in Khasra No.114, Killa No.20 and 21 to M/s Lahoria Ceramics Ltd. without sale and it constructed factory building on the entire 24 Kanals of land. Since Kaur Singh had also given possession of the land measuring 9 Kanals which was not sold, therefore, the petitioner entered into an agreement to sell with Pawan Kumar S/o Kaur Singh to purchase the said land measuring 9 Kanals comprised in Khewat

No.403min, Khatauni No.556, Khasra No.114/20 (8-0) and 21/2 (1-0) and paid ₹1,00,000/- as earnest money. The sale deed was to be registered on 31.12.2006. It is alleged that the said date was a holiday and on 01.01.2007, the office of Sub Registrar was closed, therefore, the petitioner reached the office of the Sub Registrar on 02.01.2007 but his vendor Pawan Kumar did not come. Thereafter, the petitioner served a legal notice dated 25.01.2007 upon Pawan Kumar for the purpose of registration of sale deed. Later on, the petitioner came to know that Pawan Kumar has prepared a false sale deed bearing No.10572 dated 25.01.2007 in favour of one Rajesh Kumar S/o Umed Singh just to frustrate the agreement entered into by him with the petitioner. Ultimately, the petitioner filed a suit for specific performance of the agreement to sell and for the purpose of getting the sale deed of land measuring 9 Kanals registered. The said suit was decreed by the Additional Civil Judge (Senior Division), Hisar on 16.08.2013. It is also averred that Rajesh Kumar S/o Umed Singh, who was the alleged buyer of land measuring 9 Kanals from Pawan Kumar, tried to take possession of the said land from M/s Lahoria Ceramics Ltd., resulting into filing of a suit for permanent injunction against Rajesh Kumar in the Court of Additional Civil Judge (Senior Division), Hisar, which was also decreed in favour of M/s Lahoria Ceramics Ltd. on 09.10.2013. Finally, Pawan Kumar got the sale deed No.6228 dated 19.09.2013 registered in favour of M/s Lahoria Ceramics Ltd. in compliance of the Civil Court decree dated 16.10.2013. The sale deed was registered for ₹15 lacs only in terms of the agreement to sell dated 24.10.2006 but the Sub Registrar raised objection that the collector rate of the land measuring 9 Kanals is ₹45 lacs per acre. Accordingly, it was ordered that the petitioner should get the sale deed

registered for a sum of ₹50,62,500/- as per the collector rate and on the balance amount, stamp duty of ₹1,78,125/- and registration fees of ₹5,000/- have to be paid.

The petitioner made a representation that possession of the land in question i.e. 9 Kanals was of a third party from 1995 onwards, therefore, only 1/3rd of the stamp duty is payable. However, vide order dated 25.07.2014, the Collector directed the petitioner to pay the stamp duty and registration fee, as required by the Registrar. Aggrieved against the order of the Collector, the petitioner filed an appeal before the Divisional Commissioner, which was dismissed on 30.08.2016. Thus, the present petition has been filed by the petitioner to challenge the order dated 25.07.2014 passed by the Collector and order dated 30.08.2016 passed by the Divisional Commissioner.

Learned counsel for the petitioner has submitted that the petitioner is liable to pay the stamp duty and registration fee on the basis of the price fixed between the parties at the time of agreement to sell and has relied upon a decision of the Supreme Court rendered in the case of **M/s. Residents Welfare Association, Noida vs. State of U.P. & Ors.**, 2009(14) SCC 716.

However, this Court had found a subsequent decision of the Supreme Court, rendered in the case of **State of Haryana & Ors. vs. Manoj Kumar**, 2010(4) SCC 350, in which it has been held that no sale deed can be registered for an amount lesser than the collector rate prevailing at the time of execution of the sale deed.

In this regard, this Court passed an order also on 03.05.2017, which reads as under:-

“Learned counsel for the petitioner has contended that the stamp duty is required to be paid on the sale deed on the basis of

agreement of sale of the year 2006 as the sale deed was executed pursuant to the civil Court decree and there is no intentional delay to execute the sale deed on the basis of the agreement of sale on the part of the petitioner. The petitioner would be required to pay the stamp duty as on the date of agreement.

Learned counsel for the petitioner relies upon judgment in ***M/s Residents Welfare Association Vs. State of U.P. and others, 2009 (14) SCC 716.***

Perusal of said judgment indicates that it is not absolutely in favour of the petitioner. Moreover, the Supreme Court in a subsequent judgment in ***State of Haryana and others Vs. Manoj Kumar, 2010 (4) SCC 350*** has taken a view that no sale deed lesser than at the Collector's rate should be permitted to be registered as determined on the date of execution of the said sale deed.

Learned counsel for the petitioner seeks time to satisfy this Court that the petitioner will not be covered by the ratio of judgment in ***Manoj Kumar's case (supra)***.

For arguments, adjourned to 11.07.2017.”

Learned counsel for the petitioner has submitted that the decision rendered in ***M/s. Residents Welfare Association's case (supra)*** is applicable in this case and has referred to para no.27 of the said judgment, which read as under:-

27. Having decided the aforesaid questions raised in this case, we now proceed to deal with the question as to the date of determination of the consideration mentioned in the document. The respondents contended that the consideration mentioned should be the market value of the property on the date of execution of the deed and not on the date when the agreement to sell the land was executed. The appellants on the contrary argued that the relevant date in order to calculate the consideration would be the market value on the date when the agreement to transfer the land was entered and registered. We have heard the argument of the parties and referred to various cases dealing with this matter. In this regard, we would like to observe that there cannot be a straightjacket formula devised for determining the same. It would

depend on the various facts and circumstances of a particular case. In situations where the delay is caused on the part of a party intentionally while executing a deed after entering into an agreement of sale or lease as the case may be, the market value should be determined on the date when the deed is executed and not when an agreement to sale the property or lease the property had been registered. But in cases where a person is not at fault and the delay is caused due to the lessor as in this case, the market value should be determined on the date when the agreement to lease the property was entered. The lessee or the sub lessee should not suffer due to the inability of the lessor in handing over transfer memorandums as is required under the lease. For this, a reference can be made to the case of **S.P. Padmavati v. State of Tamil Nadu & Others**, [AIR 1997 Mad 296], which is similar to the present case and to which we are in respectful agreement where the property could not be registered due to no fault of the transferee and where the consideration was frozen earlier, as in the current case. The Madras High Court held that the relevant date for calculation of market value and the stamp duty is the date on which the consideration was frozen.”

It is also submitted that the decision rendered in **Manoj Kumar's case (supra)** is not applicable because in the said case, at the time of execution of agreement to sell, entire sale consideration was paid and only the sale deed was not executed.

I have heard learned counsel for the petitioner and examined the available record with his able assistance.

The petitioner has relied upon the decision of the Supreme Court rendered in **M/s. Residents Welfare Association's case (supra)**. The facts of this case are that the New Okhla Industrial Development Area (in short “Noida”) allotted lands to several Co-operative Housing Societies by execution of lease deeds with such Co-operative Group Housing Societies in respect of the lands allotted to them. The said lease deeds contain various restrictions on

the transfer of leasehold rights which, *inter alia* include: (1) restrictions on the transfer without prior consent of the Noida authorities by transfer memorandum and (2) construction of buildings on such leasehold lands had to be made within a stipulated period from the date of allotment failing which the leases of the respective co-operative housing societies were liable to be resumed by the Noida authorities. There was another clause which provided for compulsory registration of the lease deeds with the Sub Registrar. The Noida was the lessor and the co-operative societies were the lessees, members of the cooperative societies were sub-lessees and the members of the Residents Welfare Association were the assignees. There was a stay by the Civil Court from 1984 to June 1997 against Noida for issuance of transfer memorandums for grant of permission for transfer of leasehold rights. The said order remained operative throughout the State of UP till July 1997. The agreement for transfer of leasehold rights were denoted as agreements of sale. On 01.07.1997, a public notice was issued advertising that Noida authorities shall issue transfer memorandums with respect to the transfer of plots in question upon terms and conditions including payment of transfer premium. Upon issuance of the said notice, various members of the association applied for and obtained transfer memorandums from Noida authorities after complying with the conditions thereof and making payments of the prescribed premium. The transfer memorandum was required to be registered with the Sub Registrar. In compliance with the above stated condition of the transfer memorandum, some of the members of the association executed the relevant transfer deeds with the lessees. The Sub Registrar asked for the stamp duty on the basis of the current market value of the plot in question. The decision of the Sub Registrar was

challenged before the Allahabad High Court. The Division Bench of the Allahabad High Court decided that the market value cannot be calculated on the date of agreement of sale but the same can be calculated on the date of execution of the conveyance deed. The matter then reached before the Apex Court. The Apex Court basically made its observations in para 27 of the judgment, which has already been reproduced above. In the said paragraph, the Supreme Court has held that there cannot be a straightjacket formula devised for determining of the consideration and it would depend on the various facts and circumstances of a particular case. It was held that in situations where the delay is caused on the part of a party intentionally while executing a deed after entering into an agreement of sale or lease as the case may be, the market value should be determined on the date when the deed is executed and not when an agreement to sell the property or lease the property had been registered but in cases where a person is not at fault and the delay is caused due to the lessor, the market value should be determined on the date when the agreement to lease the property was entered. It is further held that the lessee or the sub lessee should not suffer due to the inability of the lessor in handing over transfer memorandums, as is required under the lease.

Inssofar as the facts of **Manoj Kumar's case (supra)** are concerned, in that case an agreement to sell was entered into between Smt. Manjula Gulati and Manoj Kumar on 10.11.1999 in respect of a commercial plot measuring 788 sq. yards located on Delhi-Mathura Mewla Maharajpur, Faridabad. The purchaser paid the entire sale consideration and the seller handed over the actual possession but the sale deed was not executed till 09.02.2001. The purchaser then filed the suit for specific performance on

14.09.2000, which was decreed on 09.02.2001 and no further appeal was filed. The sale deed was got registered by the Reader of the Court in favour of the purchaser for a consideration of ₹2,00,000/- as the agreement was of ₹1,95,000/-. The Joint Sub Registrar, Faridabad reported that the sale deed was under valued as no sale deed can be registered for an amount which is less than the amount fixed by the collector or the circle rate. Thus, the value of the land was assessed @ ₹33,09,600/-, on which the registration charges payable were ₹5,13,050/- but the purchaser had paid only ₹31,000/- towards the stamp duty. Thus, the District Collector, Faridabad directed the purchaser to pay the additional stamp duty of ₹4,82,050/-. After approaching the Divisional Commissioner unsuccessfully, the purchaser came to this Court in the writ petition, which was allowed by this Court by observing that where the specific performance of contract in respect of immovable property has been granted, the ostensible sale price given in the transfer deed is to be accepted by the Registering Authority. The finding of this Court was based on two grounds, firstly because the court has accepted that price and has decreed the suit for specific performance and secondly there cannot be any opportunity with the vendee to fabricate an agreement of sale for showing the incorrect sale price because litigating parties would not ordinarily reach such an agreement and sign the fabricated document. However, the Supreme Court made the following observations:-

“36. We have heard the learned counsel for the parties at length. We are clearly of the opinion that the High Court, in the impugned judgment, has erred in interfering with the concurrent findings of fact of the courts below under its limited jurisdiction under Article 227 of the Constitution. The High Court erroneously observed that the “the authenticity of the decree passed by the court cannot be

questioned. Therefore, the genuineness of the sale price has to be presumed.” This finding of the High Court cannot be sustained. It would have far reaching ramifications and consequences. If the genuineness of the sale price entered into by the buyer and the seller cannot be questioned, then in majority of the cases it is unlikely that the State would ever receive the stamp duty according to the circle rate or the collector rate. The approach of the High Court is totally unrealistic.

37. The High Court in the impugned judgment has also erroneously observed that “there cannot be any opportunity with the vendee to fabricate an agreement of sale for showing the incorrect sale price because the litigating parties would not ordinarily reach such an agreement and sign the fabricated document.”

The decision of **M/s. Residents Welfare Association's case (supra)** is not referred in the decision of **Manoj Kumar's case (supra)** but in any case, in the case in hand, the possession was already with the purchaser who had already raised construction over the land in question, therefore, there was no occasion for giving the land back to the son of Kaur Singh. Besides that, the State was not a party in the suit to contest the real value of the property in question, which was allegedly frozen by the parties in the year 2006 by way of an agreement to sell. The Supreme Court has held in **Manoj Kumar's case (supra)** that if the observation of the High Court that the authenticity of the decree passed by the court cannot be questioned and, therefore, the genuineness of the sale price has to be presumed is accepted, then it would have far reaching ramifications and consequences as in the majority of cases, it is unlikely that the State would ever receive the stamp duty according to the circle rate or the collector rate and held that the High Court view was totally unrealistic. The Supreme Court also did not accept the observations of the High Court that there cannot be any opportunity with the

vendee to fabricate an agreement of sale for showing the incorrect sale price because the litigating parties would not ordinarily reach such an agreement and sign the fabricated document.

Thus, the decision rendered by the Supreme Court in **M/s. Residents Welfare Association's case (supra)** is not applicable to the facts of this case as it has been held in that case that in situations where the delay is caused on the part of a party intentionally while executing a deed after entering into an agreement of sale or lease as the case may be, the market value should be determined on the date when the deed is executed and not when an agreement to sell the property or lease the property had been registered.

In these facts and circumstances, I am of the considered opinion that the price, which was agreed between the parties at the time of agreement of sale, would not be the basis for assessing the stamp duty but it is the collector rate/circle rate prevalent at the time when the sale deed is registered.

Thus, in view of the aforesaid facts and circumstances, I do not find any merit in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

August 21, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No