IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 3909 of 2014(O&M)
Date of decision : October 11, 2017

Tejinder Goyal

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Vikas Mehsempuri, Advocate
for the petitioner.

Ms. Sunint Kaur, AAG., Punjab.

***

RAKESH KUMAR JAIN, J (oral).

The petitioner is aggrieved against the order passed by the Collector, Sangrur and the Commissioner, Patiala Division Patiala by which the petitioner has been asked to pay deficiency in the stamp duty, appended on the sale deed dated 29.12.2008, on the ground that the land falls within the Municipal limits and the Collector rate has to be determined in terms of Code ERRI-22 and not Code SSA-19 (referred to as Code E-22 & S-19 respectively).

In short, the petitioner had purchased agricultural land measuring 1 Kanal 16 Marla (Chahi) vide sale deed dated 29.12.2008. On 18.5.2011, a reference was made by the Registrar to the Collector on the basis of an enquiry that value of the land assessed in terms of Code S-19 @ Rs. 10 lacs per acre is inadequate as it should have been assessed in terms of Code E-22 as per which the Collector rate was Rs.700/- per sq. yard. The Collector, vide the impugned order dated 4.7.2012 held that the land in question falling in Khasra No.346 is in the residential colony and within the Municipal limits and therefore asked the petitioner to pay the deficient stamp duty of Rs. 42480/- and Rs. 5310/- registration charges.

Aggrieved against the said order, the petitioner filed an appeal under Section 47-A (4) of the Stamp Act, 1899 (applicable to the State of Punjab) before the Divisional Commissioner which was dismissed on the same ground on which the Collector had passed the order.

Learned counsel for the petitioner has submitted that his brother Sahil Goyal had also purchased the land at the same time in the same area after appending stamp duty in terms of Code S-19. His sale deed was also impounded by the Collector, Sangrur but on appeal the Divisional Commissioner remanded the case back after setting aside the order of the Collector to pass a fresh order but in his case, the appeal has been dismissed.

Learned counsel for the petitioner has further submitted that the petitioner had purchased agricultural land and has appended the stamp duty accordingly. It is further submitted that the value of the land is not to be assessed on the ground that in future it could be put to commercial or residential use but has to be assessed on the basis of its nature existing at the time when it was purchased. In this regard he has relied upon a decision of the Supreme Court in the case of **State of Uttar Pradesh Vs. Ambrish Tandon (2012) 5 SCC 566** followed in the case of **M/s Inder Industries Vs. The Commissioner, Jalandhar Division, Jalandhar and another 2017 (169) AIC 675.**

It is also submitted that the Collector had to hold an enquiry and could not have relied upon his personal inspection for the purpose of determining the value of the property in question for the purpose of seeking recovery of the deficient stamp duty and has relied upon a judgment of the Division Bench of this Court in **Madan Lal Vs. State of Punjab and others 2008 (3) RCR (Civil) 462.**

On the other hand, learned State counsel has argued that the Collector has himself found after the spot inspection, that the land in question does not fall within the revenue estate but is in the Municipal limits, therefore, it has been found to be more valuable than the agricultural land and as such the Collector had applied Code E-22 instead of Code S-19 for the assessment of stamp duty on the transaction.

I have heard learned counsel for the parties and perused the record and am of the considered opinion that there is no merit in the present writ petition because Section 47-A (3) of the Indian Stamp Act, 1899 provide for an enquiry before holding that there is a deficiency of the stamp duty appended on the sale deed. In the case of **Madan Lal (supra),** it is held that the Collector cannot adopt his own opinion by visiting the spot without considering any comparative material to support his opinion. In the present case, the Collector has not referred to any comparative material for the purpose of deciding as to whether the land in question would attract Code S-19 or Code E-22. Moreover, in the case of **M/s Inder Industries (supra)** this Court has already held that the nature of the land has to be seen at the time of sale and not its future use for the purpose of assessing the stamp duty on the transaction.

Consequently, the impugned orders are found to be patently erroneous and illegal and the same are hereby set aside especially in view of the fact that the Commissioner, Patiala has used a different yard stick in the case of the petitioner while dealing with the case of his brother Sahil Goyal in which he had set aside the orders of the Collector and remanded the case for fresh decision.

With these observations the present petition is allowed.

(RAKESH KUMAR JAIN)
JUDGE

October 11, 2017
archana

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