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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 30.03.2017

1. **CWP-5458-2014**

Surjit Singh

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

2. **CWP-10714-2015**

Deepak Kumar

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Gupta, Advocate
for the petitioner in CWP-5458-2014 and
for respondent No.5 in CWP-10714-2015.

Mr. A.S. Ahluwalia, Advocate
for the petitioner(s) in CWP-10714-2015 and
for respondent No.7 in CWP-5458-2014.

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

Mr. Deepak Aggarwal, Advocate
for respondent Nos.5 & 6 in CWP-5458-2014 and
for respondent Nos.6 & 7 in CWP-10714-2015.

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AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two writ petitions bearing ***CWP No.5458 of 2014*** titled as ***"Surjit Singh V/s State of Punjab and others"*** and ***CWP No.10714 of 2015*** titled as ***"Deepak Kumar V/s State of***

Punjab and others”, filed against the impugned order dated 11.09.2013 (Annexure P-6) passed by respondent No.2 and order dated 25.03.2013 (Annexure P-4) passed the respondent No.3.

The facts are being taken from the petition bearing CWP No.5458 of 2014.

Mr. Ashish Gupta, learned counsel appearing on behalf of the petitioner(s) in CWP-5458-2014 and Mr. A.S. Ahluwalia, learned counsel appearing on behalf of the petitioner(s) in CWP-10714-2015, submit that the both the petitioners, had vide sale deed dated 11.12.2008, purchased the property and the same was registered by paying the stamp duty @ Collector rate, much less, registration charges. However, a notice dated 12.01.2011 (Annexure P-2), was received with regard to the deficiency in the stamp duty, which was duly replied vide objections dated 06.04.2011. The Deputy Commissioner on the basis of the report of the Sub Divisional Magistrate held the deficiency to be justified and the appeal preferred against the same has also been dismissed. In support of his contentions, they rely upon the *ratio decidendi* culled out by the Division Bench of this Court in ***“Gauri Singla V/s State of Haryana and others” 2009 (1) RCR (Civil) 293***, to contend that the Commissioner, much less, the Deputy Commissioner has not adverted to any independent evidence to return a finding in respect of the market value of land. Neither there is any reference to any sale instance in the neighbourhood nor any other evidence except the report of the Sub Divisional Magistrate, thus, urges this for setting aside the impugned orders under challenge as there is gross illegality and perversity.

Per contra, Mr. Yatinder Sharma, Addl. A.G., Punjab submits that the market value of the area is much higher than the one on which the stamp duty had been paid and therefore, there was a deficiency and rightly so, ordered for recovery of ₹ 19,25,000/- along with interest @ 12% and referred to the inquiry report (Annexure P-7) conducted by the Sub Divisional Magistrate, thus, the proceedings initiated under Section 47-A of the Indian Stamp Act, are perfectly legal and justified and do not call for interference.

I have heard the learned counsel for the parties and appraised the paper book and of the view that so-called inquiry report (Annexure P-7) done by the Sub Divisional Magistrate, it is envisaged that the Collector rate has been believed to on the statement made by one Surjit Singh son of Munshi Singh (Complainant), however, the same could not have been a ground for the purpose of assessing deficiency in stamp duty as the Collector was required to hold an independent inquiry to ascertain the collector rate by taking into consideration any sale instance in the neighbourhood or any other evidence. The relevant para of the inquiry report done by the Sub-Divisional Magistrate is hereby reproduced as under:-

> *"During the hearing of the said complaint, the fact has come to the notice that vide sale deed No.14627 dated 11.12.2008, land measuring 21 Kanals 10 Marlas situated at Village Kartar Singh Wala, Tehsil and District Bathinda was purchased by Deepak Kumar son of Parmanand in 3/4th share and Surjit Singh son of Munshi Singh (Complainant) in 1/4th share for ₹ 28,12,500/-, but as per the facts mentioned in the complaint, the agreement to sell regarding the said land has been executed at ₹ 12,50,000/- per Kanal and in the said manner, the sale consideration of the said sale deed comes out to be ₹ 2,68,75,000/-, but the parties have got this sale deed*

> *executed by showing the total amount as to be ₹ 28,12,500/-. So, it is recommended that the proceedings under Section 47-A of the Indian Stamp Act, 1899 be initiated upon this sale deed"*

Having failed to do so, the findings of the Commissioner and the Deputy Commissioner, are not in consonance with the findings rendered by the Division Bench of this Court in the judgment cited supra. For the sake of brevity, the relevant paragraph 7 of the same reads as under:-

> *"7. In the present case, neither the Collector nor the Commissioner has adverted to any independent evidence to return a finding in respect of the market value of the land. The basis of the order is Collector's rate of the land in dispute as ₹ 9 Lac per acre. Neither there is any reference to any sale instance in the neighbourhood nor any other evidence, which is without any statuary support, cannot be given effect to in view of the judgments referred to above. Thus, the impugned orders passed by the Collector and the Commissioner, suffer from patent illegality and material irregularity."*

Keeping in view the aforementioned facts, the impugned orders under challenge are not inconformity with the provisions of the Indian Stamp Act, much less, case law referred to above, therefore, the same are not sustainable in the eyes of law being opaque and arbitrary, much less, vitiated and accordingly, are hereby set aside.

With the aforesaid observations, the writ petitions are allowed.

(AMIT RAWAL)
JUDGE

30.03.2017
Yogesh Sharma

Whether speaking/reasoned **[✓ Yes]/ No**

Whether Reportable **Yes/ [✓ No]**