IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3461 of 2017
Date of Order: 04.10.2017

Kirti and Another

....Petitioners

Versus

State of Haryana and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Suman Jain, Advocate for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN, J (ORAL)

The petitioners purchased land measuring 2 kanals 8 Marla out of 48/193rd share of 9 Kanals 13 Marla comprised in Khasra No.61//9/2/2 (1-12), 12/1 (6-1), 10/2/1(0-10), 11/2(1-10), Khewat No.117 Kitta 4 from Rajni Devi wife of Rajinder Kumar of Uklana Mandi, District Hisar on 09.05.2013 for a sale consideration of ₹9,00,000/-.

Petitioner paid a sum of ₹45,000/- towards stamp duty and other expenses for registration. The land is allegedly recorded as Nehri as per jamabandi for the year 2012-13. After the sale deed was registered on 09.5.2013, mutation was sanctioned in this regard on 06.06.2013 in favour of the petitioner. It is alleged that at the time of registration of sale deed, the collector rate for the agricultural land of Village Surewala was ₹12,00,000/- per acre, however, the Collector, Barwala without serving any notice on the petitioners passed an order on 20.2.2014 holding that the land falls within the residential area, therefore, the petitioners are liable to pay stamp duty on a sum of ₹29,04,000/-. Said order of the Collector was challenged by the petitioners by way of writ petition bearing CWP No.15792 of 2016, which was withdrawn by the petitioners on finding that they had the remedy to file an appeal against the impugned order. Accordingly, the appeal was filed by the petitioners to the Commissioner, Hisar Division, Hisar, which was dismissed on 23.1.2017. Thus, the present petition has been filed in order to challenge the order of the Collector and the Commissioner respectively.

After notice, the respondents have filed reply today in Court. According to the respondents, the petitioners have been asked to make good the deficiency of stamp duty on the ground that the land in question falls within the municipal limits of Uklana where the collector rate is ₹15 lacs per acre. The whole case of the respondents is based upon the instructions issued in regard to the collector rate for the year 2013-14 (1.04.2013 to 31.03.2014), as per which the collector rate qua the land of village Surewala has been fixed from ₹11 lacs to ₹15 lacs per acre.

Learned counsel for the petitioners has submitted that since the petitioners have purchased the agricultural land, therefore, they are liable to pay the stamp duty accordingly but even if it is presumed that the collector rate of village Surewala has been re-fixed from ₹11 lacs per acre to ₹15 lacs per acre, still the stamp duty paid by the petitioners on a sum of ₹9,00,000/- for a plot of 2 kanal and 8 marla would satisfy the condition imposed by the respondents because had the petitioners purchased 8 kanal of land (one acre), then they would have been required to pay ₹36 lacs whereas they have paid ₹9 lacs for 2 kanal 8 marla of land. It is, thus, submitted that the sale deed executed by the petitioners is not under valued for the purpose of avoiding affixation of the adequate stamp duty. Further, it is also submitted that the action initiated at the instance of Sub Registrar is also not called for because after the sale deed is registered, the Sub Registrar becomes *functus officio*. It is also submitted that even if it is presumed that the action has been taken by the Sub Registrar under Section 47-A(3) of the Indian Stamp Act (for short "the Act") applicable to the State of Haryana, still he has no jurisdiction to make reference in that regard. In support of his submissions, learned counsel for the petitioners cites a judgment of this Court reported as **Zile Singh Vs. Commissioner, Hisar Division Hisar and others, 2016 (3) PLR 492**.

I have heard learned counsel for the parties and after examining the record, am of the opinion that there is merit in this petition because even on the face of it, if the stand taken by the respondents is taken to be correct then the petitioners are liable to pay ₹15 lacs per acre and the sale deed qua the land, which has been purchased by the petitioners has not been under value since the petitioners have paid a sum of ₹9,00,000/- for a plot of 2 kanal and 8 marla, after affixation of the adequate stamp duty. In that manner, total value over one acre of land would be more than ₹15 lacs per acre fixed by the respondents at the collector rate. Besides this, reference made by the Sub Registrar on 25.10.2013 that too on the audit note also under Section 47-A(3) of the Act is not as per law because it is the District Collector or the Registrar of a district, who has jurisdiction to make reference and not the Sub Registrar as has been held by this Court in **Zile Singh's case (supra)**.

In view of these facts and circumstances, present petition succeeds and the impugned orders are set aside.

October 04, 2017 **(RAKESH KUMAR JAIN)**
manoj **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No