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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5585-2017
Date of Decision : March 18, 2017

M/S SUNRISE VENEER, YAMUNANAGAR

....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

....Respondents

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

Present: Mr. Rajesh Gupta, Advocate for the petitioner.

M.M.S. BEDI, JUDGE (ORAL)

The petitioner firm has been required to appear before the Collector, Jagadhri for paying the inadequate stamp duty and registration charges required for registration of the compromise decree vide which there has been transfer of property.

Counsel for the petitioner has referred to the contents of the notice (Annexure P-10) wherein it is observed that 1.5% stamp fees has been paid on the property which is subject matter of the compromise decree at the residential property rate. Neither registration fees has been paid nor stamp fee has been entered in the computer. The property of the firm which has been given by one partner to another is a commercial property recorded as Gair Mumkin factory in the revenue record. The stamp duty @ 7% on the sale price is alleged to be liable to be paid by the petitioner firm as per letter of Government dated 24.09.1996 and that the matter was being sent to the Collector for valuation of the property.

Counsel for the petitioner has challenged the said notice in the present writ petition claiming that the respondent authorities are not entitled to summon the petitioner under Section 47A of the Indian Stamp Act, 1899 and that as per the law laid down by Hon'ble Supreme Court in ***S.V. Chandra Pandian and others versus S.V. Sivalinga Nadar and others***, *1993 SCC (1) 589,* when dissolution of partnership takes place, the residue distributed amongst the partners after settlement of the accounts would entail transfer or extinguishment of interest and the said document will not be compulsorily registrable document.

Counsel for the petitioner has vehemently contended that bare reading of the notice indicates that the decision has been taken before issuing notice and the respondents authorities are proceeding with pre-determined mind to impose stamp duty on the consent decree.

I have heard counsel for the petitioner and I am of the opinion that the question of fact and law can be raised by the petitioner before the Collector who is required to consider the valuation of the property. Once the alternative remedy is available to the petitioner it will not be appropriate for this Court to adjudicate the controversies at a stage when petitioner has only been called to show cause before imposition of penalty or to pay the stamp duty at the proposed percentage on the sale consideration. The provisions of Section 47A of the Indian Stamp Act, 1899 cast a statutory obligation upon the revenue authorities to give opportunity of hearing to a person who is likely to be affected by the order. It is the basic principle of rules of natural justice as well that the concerned adjudicatory authority is required to pass the speaking order taking into consideration the pleas of fact and law raised before it. Expecting that the competent authority exercising powers under Section 47A of the Indian Stamp Act, 1899 would take into consideration all the pleas taken by the petitioner and pass a speaking order pursuant to the notice Annexure P10. The present petition deserves to be dismissed being pre-mature.

It is not out of place to mention here that the petitioner has got an alternative remedy of even filing an appeal before the Commissioner in case, any adverse order is passed against him by the Collector.

In view of above said circumstances, this petition is disposed of relegating to the petitioner to appear before the Collector and raise all the pleas of the fact and law taken up in the present petition. It is expected that all the pleas will be taken into consideration and speaking order will be passed by the Collector.

Nothing said/observed in this order will prejudice the right of the petitioner in the proceedings before the Collector.

(M.M.S. BEDI)
JUDGE

March 18, 2017
Rajneesh

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