IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20232 of 2010
Date of decision: 04.07.2018

Jasvir Singh and another

...........Petitioners

Versus

The Commissioner, Patiala Division, Patiala and another

..........Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.S. Chauhan, Advocate,
for the petitioners.

Ms. Anu Chatrath, Addl. A.G., Punjab.

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Ritu Bahri, J.

Petitioners are seeking quashing of the order dated 22.09.2009 (Annexure P-5) passed by respondent No.1 and order dated 05.06.2008 (Annexure P-2) passed by the Collector-respondent No.2, whereby they have been directed to deposit additional amount of Rs.5,05,912/- along with interest @ 12% per annum with effect from the date of execution of the sale deed till the date of deposit.

Gurdial Singh, father of petitioner No.1 and grandfather of petitioner No.2, transferred land measuring 14 Kanals 10 Marlas, situated in the area of village Sante Majra, HB No.186, Tehsil Kharar, District Ropar, in favour of petitioners by executing a sale deed dated 22.03.2006 before the office of Sub Registrar, Kharar. Mutation on the basis of sale deed was duly sanctioned and incorporated in the revenue record. However, the Sub Registrar, Kharar, vide letter dated 03.03.2008, sent the matter to the Collector for taking action under Section 47-A of the Indian Stamp Act.

Petitioners submitted their reply (Annexure P-1) explaining that the stamp duty has been affixed as per the Collector's rate. Thereafter, without even summoning the petitioners, the Collector passed an order dated 05.06.2008 (Annexure P-2) directing them to deposit balance deficient stamp duty of Rs.5,05,912/- along with interest at the rate of 12% under Section 47-A of the Indian Stamps Act, 1899. Intimation in this regard was sent to the petitioners vide letter dated 25.06.2008 (Annexure P-3). Against the said order, petitioners filed an appeal (Annexure P-4) before the Commissioner, Patiala Division, Patiala, which was dismissed vide order dated 22.09.2009 (Annexure P-5). Hence, this petition.

Learned counsel for the petitioners has argued that as per judgment passed by this Court in ***M/s Afriq Farm Private Limited New Delhi vs. State of Haryana and others,*** 2010 (14) Punjab Law Reporter 211, it has been held that there is no provision in the Act, where deficient stamp duty can be recovered by the Registering Authority either from the vendor or from the vendees subsequent to and after registration of the sale deed. He has further argued that impugned order has been wrongly passed on the ground that Collector rates for this area were prescribed at Rs.18,00,000/- per acre and Rs.50,000/- per marla. It has been further held in the impugned order(s) that entire area in the vicinity of the said land was residential. Taking into account the above rates, further stamp duty of Rs.3,48,750/- has been wrongly sought to be recovered from the petitioners. He further argued that out of the total land, land measuring 5 Kanals 17 Marlas has been taken to be for residential purposes, for which, Collector rate has been assessed as Rs.50,000/- per marla. Collector rate of remaining land measuring 8 Kanals 13 Marlas, which was cultivable, has been taken as

Rs.18 lakhs per acre. Total price of the land, as per Collector Rate, has been taken as Rs.77,96,250/-, but the vendees have got registered the sale deed for a sale consideration of Rs.33,62,500/- at the rate of Rs18 lakhs per acre. Hence, the additional amount has been wrongly calculated.

Upon notice, reply on behalf of the respondents has been filed, wherein it has been stated that the stamp duty had to be paid at the rate of Rs.18 lakhs per acre for agriculture land and Rs.50,000/- per marla for residential plot, as applicable at the relevant time. Vide separate affidavit dated 07.02.2013 filed by the Tehsildar-cum-Sub Registrar, Kharar, notifications dated 21.12.2001 & 03.11.2006 (Annexures R-1 & R-2) have been placed on record. As per notification dated 21.12.2001 (Annexure R-1), no stamp duty is to be paid, where there is transaction of transfer of residential land in rural area by a person to his Class-I heirs during his life time. Further provision has been made that the factum of relation of the transferor with the person to whom the property is transferred, is fully described in the transfer deed itself so that the transferor is duly made liable for concealment of facts, if any. Besides this, the pedigree table clearly reflecting the said Class-I heirs of the owner of the property will also be got attached to the sale deed duly certified by the village Lambardar. Thereafter, another notification dated 03.11.2006 (Annexure R-2) was issued, whereby Government proceeded to remove payment of stamp duty in case of transaction of transfer by an owner of agricultural land and rural residential property to his son, daughter, wife, mother, son of a pre-deceased son, daughter of a pre-deceased son etc. during his life time. This remission was applicable to rural agricultural land and residential property outside the 'Lal Lakir' only. Respondents have also placed on record notification dated

27.04.2007 (Annexure R-3), where payment of stamp duty in case of transaction of transfer by owner of urban residential property to his legal heirs has also been remitted. It has been explained that the urban residential property would means the property situated within the municipal limits of Municipal Committee or Municipal Corporation as the case may be.

A perusal of above notifications dated 21.12.2001, 03.11.2006 & 27.04.2007 (Annexures R-1 to R-3) makes it abundantly clear that the Department of Revenue and Rehabilitation had initially remitted payment of stamp duty in case of transfer of agricultural as well as residential land in rural areas and subsequently, even in urban residential property, in favour of Class-I heirs as per Hindu Succession Act, 1956.

During the pendency of this petition, CM No.2720-CWP of 2017 was filed for staying the recovery as ordered by the Assistant Collector, Second Grade on 02.01.2017. Reply to the said application was filed stating that there was no stay on recovery and hence, notice/order has been passed in accordance with law. It has been reiterated that the sale deed in question was under value and therefore, impugned orders (Annexures P-2 and P-3) are in accordance with law.

Learned counsel for the petitioner has referred to the notification dated 02.11.2015 (Annexure P-6), whereby Governor of Punjab has remitted the stamp duty levied as Social Security Fund under Schedule I-B and Social Infrastructure Cess under Schedule I-C of the Stamp Act, on instruments pertaining to transfer of immovable property by an owner during his life time to his/her spouse and to any in blood relation, namely son, daughter, father, mother, brother, sister, grandson and grand daughter. He has further referred to the notification dated 05.11.2015 (Annexure P-8), whereby it has been decided that no registration fee shall be chargeable in respect of instruments pertaining to the transfer of immovable property by an owner during his life time to his/her spouse and to any in blood relation, namely son, daughter, father, mother, brother, sister, grandson and grand daughter.

Learned State counsel has not been able to dispute the aforesaid notifications placed on record by the Sub Registrar, Kharar along with his affidavit dated 07.02.2013 and the notifications dated 02.11.2015 & 05.11.2015 (Annexures P-6 & P-8). All these notifications clearly state that no stamp duty is to be paid in case any immovable property (agricultural and residential) in rural area is transferred by a person to his spouse and to any in blood relation i.e. son, daughter, father, mother, brother, sister, grandson and grand daughter, as per Hindu Succession Act, 1956.

The stand taken by the respondents, in their written statement, is that the land, subject matter of this petition, is adjoining to the main Kharar-Landran road and is situated within the limits of Municipal Committee, Kharar. As per revenue record, land measuring 02 Kanals 04 Marlas is cultivable and land measuring 03 Kanals 10 Marlas is *gair mumkin* house. Out of the land bearing Khasra No.30//8 (7-4), land measuring 01 Kanal is *barani* (un-irrigated) and land measuring 06 Kanals 04 Marlas is *gair mumkin* house. There also exists 4-5 shops in the entire land at the spot. Land measuring 02 Kanals has been used for sowing the cattle fodder. Entire area in the vicinity of the said land is residential and Collector rates for this area were prescribed at Rs.18,00,000/- per acre and Rs.50,000/- per marla, but the sale deed was got registered on the rates applicable for agricultural land. Therefore, stamp duty of Rs.5,05,912/- is required to be recovered. Thereafter, pursuant to the order dated 05.09.2012, short affidavit of Tehsildar-cum-Sub Registrar, Kharar was filed. Along with the said affidavit, he had placed on record notification dated 21.12.2001 (Annexure R-1) issued under the Indian Stamp Act, 1899. As per this notification, stamp duty chargeable in case of transaction of transfer by an owner of agricultural land and rural residential property to his Class-I heirs has been remitted, if it is done during his life time. Thereafter, vide notification dated 03.11.2006 (Annexure R-2), same benefit was extended. Further, vide notification dated 27.04.2007 (Annexure R-3), stamp duty chargeable in case of transfer of property by owner of urban residential property to his or her heirs was remitted. It has been explained in this notification that the urban residential property means the residential property, which is situated within the municipal limits of Municipal Committee or Municipal Corporation as the case may be. A perusal of all the above three notifications shows that benefit of exemption from paying stamp duty has been given, where the owner of agricultural/residential property transfers his property (during his/her life time) in favour of his/her son, daughter, wife, mother son of a pre-deceased son, daughter of a pre-deceased son, etc. (legal heirs as defined under Section 8 of the Hindu Succession Act, 1956). Benefit of notifications dated 21.12.2001, 03.11.2006 & 27.04.2007 (Annexures R-1 to R-3) read with notifications dated 02.11.2015 & 05.11.2015 (Annexures P-6 & P-8) has to be given to the petitioners as Gurdial Singh, father of petitioner No.1 and grandfather of petitioner No.2, had transferred land measuring 14 Kanals 10 Marlas in favour of the petitioners by executing sale deed dated 22.03.2006 before the Sub Registrar, Kharar. Thereafter, mutation was also sanctioned and incorporated in the revenue record. After registration of the sale deed, sub Registrar, vide letter dated 03.03.2008, sent the matter to the Collector for taking action under Section 47-A of the Indian Stamp Act. Consequently, without even summoning the petitioners, the Collector passed an order dated 05.06.2008 (Annexure P-2) directing the petitioners to deposit balance deficient stamp duty of Rs.5,05,912/- along with interest at the rate of 12% per annum.

After going through the entire facts and circumstances of this case in the light of notifications dated 21.12.2001, 03.11.2006 & 27.04.2007 (Annexures R-1 to R-3) and notifications dated 02.11.2015 & 05.11.2015 (Annexures P-6 & P-8), this Court is of the view that the sale deed has been rightly registered and respondents cannot insist upon to recover deficient stamp duty from the petitioners.

Resultantly, the present petition is allowed and impugned order dated 22.09.2009 (Annexure P-5) passed by the Commissioner-respondent No.1 & order dated 05.06.2008 (Annexure P-2) passed by the Collector-respondent No.2 are set aside.

(RITU BAHRI)
JUDGE

04.07.2018
ajp

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