IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 23956 of 2011
Date of decision : 23.08.2018

Sunder Lal Aggarwal ....Petitioner

versus

State of Punjab and others ..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Bansal, Advocate
for the petitioner.

Ms.Ambika Sood, DAG, Punjab

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RITU BAHRI , J.

C.M. No. 2361-2018

The present application seeking disposal of the petition is allowed as prayed for and the main case is taken up for disposal by today itself

CWP No. 23956-2011

Petitioner has approached this Court by way of instant writ petition filed under Article 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing letter/order dated 03.12.2007 (P-5), order dated 13.05.2008 (P-7) and order dated 16.09.2011 (P-9).

Brief facts of the case are that petitioner was re-alloted the residential plot No. 1090, Sector 70, measuring 301.70 sq yards situated in Urban Estate, SAS Nagar,Mohali by the Punjab Urban Development Authority, SAS Nagar Mohali (now Greater Mohali Area Development Authority in short 'GMADA'), vide allotment letter dated 12.02.1998 (P-1).

The installments were payable upto 16.03.2002. The consideration value of the plot was Rs.3,60,000/-. Thereafter, the Estate Officer, PUDA vide memo dated 30.11.1998 gave permission to mortgage the aforesaid plot. The petitioner then requested the concerned authorities to disclose amount required for purchase of the stamp duty and thereafter, the Accounts Officer, PUDA, Mohali issued a No Due Certificate verifying the payment of Rs.3,60,000/- i.e total cost of the plot vide memo date 29.04.2002 (P-2). The petitioner then approached the GMADA authorities for executing the conveyance deed in his favour of the aforesaid plot. On this, he was informed that the stamp duty of Rs.1,62,000/- is required to be paid by him. The petitioner informed the authorities that the total cost of the plot was Rs.3,60,000/- and the stamp duty be assessed accordingly. The petitioner then served a notice dated 12.12.2006 (P-3) to charge stamp duty in terms of value of the plot on Rs.3,60,000/-. Finding no alternative, the petitioner purchased stamp paper of Rs.1,62,000/- vide No. 1082 dated 31.08.2007 (P-4) and submitted the same to GMADA after executing the conveyance deed/mutation letter as per procedure. The deed was executed on the stamp papers as rate applicable on that date. Thereafter, GMADA authorities instead of appearing before respondent No. 4 on the same day, referred the conveyance deed before the Sub Registrar, SAS Nagar, Mohali on 29.10.2007 and the same was registered on 29.10.2007. In the meantime, the collector's rate stood increased from Rs.6000/- to Rs.10,000/- per square yard. Vide letter dated 03.12.2007 (P-5), proceedings were initiated under Section 47-A of the Stamp Act on the ground that the value of the property is Rs.10,000/- per sq yards and the petitioner is thus required to deposit

Rs.78,280/- extra stamp duty. The petitioner gave his objections/reply to the show cause notice under Section 47-A of the Stamp Act and thereafter, the impugned order dated 13.05.2008 (P-7) was passed against the petitioner requiring the petitioner to pay Rs.78,760/- along with interest @ 12 annual w.e.f. date of registration of deed. An appeal (P-8) filed against the above said order was also dismissed on 16.09.2011 (P-9)

On notice, a written reply by way of affidavit has been filed on behalf of respondent Nos. 1 to 5 taking a stand that the petitioner is liable to pay stamp duty as on the date of registration of the document. Similar stand has been taken by respondent No. 6 in the written statement filed by respondent No. 6.

Learned counsel has relied upon notification dated 15.12.2009 which has been discussed in ***CWP No. 4109-2010 titled as Kamlesh Rani and another v. Commissioner Faridkot Division, Faridkot and others, decided on 11.07.2011.*** In this case as well, the petitioner was allotted property by a State Functionary in the year 1984 and the last date of installment was 17.02.2005 when the document of sale was also executed. It was subsequently brought for registration on 24.06.2005 on the value as stated in the document worked on the basis of installments paid by the petitioner to the owner of the property. The petitioner was challenging the recovery of stamp duty collected on the value of the property at the time of registration and not the value as fixed when the original payment was made. The writ petition was allowed in view of instruction dated 15.12.2009. The relevant portion of the judgment reads as under:-

What saves the day for the petitioner is that there has been a notification which is issued by the State on 15.12.2009 that reads as follows:-

"In exercise of the powers conferred by Section 47-A and 75 of the Indian Stamp Act, 1899 (Central Act NO.2 of 1989) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules further to amend the Punjab Stamp (dealing of Under-Valued Instruments) Rules, 1983, namely Rules

1. These rules may be called the Punjab Stamp (dealing of Under-Valued Instruments) (fifth amendment)Rules 2009.

2. In the notification issued - vide No.16/1/2009 mentioned as 31st December, 2009 may be substituted as 31st March, 2009."

Notification dated 28.5.2009 In exercise of the powers conferred by Section 47- A and 75 of the Indian Stamp Act, 1899 (Central Act No.2 of 1899) and all other powers enabling him in this behalf, the Government of Punjab is pleased to make the following rules further to emend the Punjab Stamp (Dealing of Under-Valued Instruments) Rules, 1983, namely

1. These rules may be called the Punjab Stamp (dealing of Under-Valued Instruments) (second amendment)Rules 2009.

2. In the Punjab Stamp ((Dealing of Under-Valued Instruments) Rules, 1983, in rule 3-A for the existing explanation inserted vide notification No. 16/1/2009-STH1872 dated 2nd March, 2009, the following explantion shall be deemed to have been substituted with effect from 2nd March, 2009

Explanation:- The consideration amount fixed at the rate of allotment of immovable property any Government, Semi Government Organization may be deemed to be Collector's rate and stamp duty shall be charged for registration of document upon the consideration amount fixed by the Government/Semi Government Organization, provided that document is got registered by the original allottee up to 2nd September, 2009 from issue of this notification or within three months from the payment of last regular instalment as per schedule of payment of such allotment."

3. This benefit obtains to all instruments which could have been brought for registration and considered within three months from the payment of last regular *installment or registrations made upto 2.9.2009. This document was presented for registration before 2.9.2009 and therefore the petitioner is entitled to the benefit of this notification. The action for recovery on the basis of valuation at the time of registration shall stand quashed and the respondent shall register the document on the valuation as found in the instrument being the value of the property that was determined at the time of allotment.*

The above said judgment is directly applicable to the facts of the present case, as in the present case as well, petitioner was re-alloted the residential plot No. 1090, vide allotment letter dated 12.02.1998 (P-1). The installments were payable upto 16.03.2002. The consideration value of the plot was Rs.3,60,000/-. The Accounts Officer, PUDA, Mohali issued a No Due Certificate verifying the payment of Rs.3,60,000/- i.e total cost of the plot vide memo date 29.04.2002 (P-2).

It is not in dispute that the petitioner was given permission to mortgage the aforesaid plot for raising loan vide memo dated 29.04.2002 and was also given No Due Certificate verifying that the entire payment of Rs.3,60,000/- have been received. The petitioner was then informed that he had to pay Rs.1,62,000/- as stamp duty for executing the conveyance deed on the ground that the petitioner has to pay stamp duty on the present market rate, which was also not in accordance with notification dated dated 15.12.2009 but still the petitioner affixed the stamp of Rs.1,62,000/- but vide letter dated 03.12.2007 (P-5), proceedings were initiated under Section 47-A of the Stamp Act on the ground that the value of the property is Rs.10,000/- per sq yards and the petitioner is thus required to deposit Rs.78,280/- extra stamp duty.

Keeping in view the notification dated 15.12.2009 and apply the ratio of law laid down in ***Kamlesh Rani's case (supra)***, letter/order dated

03.12.2007 (P-5), order dated 13.05.2008 (P-7) and order dated 16.09.2011 (P-9) are set aside. The respondents are directed to release the conveyance deed of the property i.e residential plot No. 1090, Sector 70, measuring 301.70 sq yards situated in Urban Estate, SAS Nagar,Mohali

The writ petition is allowed.

(RITU BAHRI)
JUDGE

23.08.2018
G Arora