IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12291-2017
Date of decision: 30.8.2018

Farjana Bano and another
...Petitioners

Versus

State of Haryana and others
...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Rajesh Gupta, Advocate for the petitioners

Mr.SK Saini, AAG, Haryana

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JITENDRA CHAUHAN, J.

The present writ petition under Articles 226/227 of the Constitution of India has been filed for quashing the Reference dated 24.6.2014/7.8.2014 (Annexure P-1) made by respondent No.4- Sub Registrar, Jagadhari and order dated 22.3.2016 (Annexure P-2) passed by respondent No.3-Collector, Jagadhari and order dated 20.5.2016 (Annexure P-4) passed by respondent No.2- Commissioner, Ambala Division, Ambala.

Learned counsel for the petitioners refers to Section 47A(1) of the Indian Registration Act and submits that the reference made by respondent No.4 for recovery of the deficient stamp duty on the transfer deed amounting to Rs.2,97,500 and registration fee of Rs.5000/- after more than 7 months of the registration of the transfer deed is against the law and it can be made by the Sub Registrar only during the process of the registration of the documents and not afterwards. He cites **Zile Singh vs.**

Commissioner, Hisar Divn., Hisar and others 2016(1) L.A.R. 708 (P&H) and **Abhinav Kumar vs. State of Haryana and others 2001 Civil Court Cases 413 (P&H)**.

Learned counsel for the respondents-States is unable to controvert the submissions made by learned counsel for the petitioners.

Heard.

In the present case, the petitioner exchanged their land measuring 15 kanals 18 marlas situated in Mojja Jodhpur with 4 kanal of land comprised in Mojja Telipur, Tehsil Jagadhari owned by Anil Kumar s/o Jai Narain, r/o village Sarai, Tehsil Gohana, District Sonipat, vide registered transfer deed No.4998 dated 8.11.2013, issued by respondent No.4-Sub Registrar, Jagadhari and the said transfer deed was handed over to the petitioners and mutation had been also sanctioned in their favour. During registration process, no objection regarding deficiency of Court fee/ registration fee was raised. After more than 7 months of the registration of the transfer deed, respondent No.4 – Sub Registrar, Jagadhari made a reference to the Collector- DRO, Yamuna Nagar for recovery of alleged deficient stamp duty on the said transfer deed vide memo dated 24.6.2014/7.8.2014 amounting to Rs.2,97,500/- and registration fee of Rs.5000/-.

In para no.8 in **Zile Singh's case (supra)**, this Court has observed as under:-

> "8. Section 47A(1) of the Act provides that as soon as the Registering Officer register the document and is of the opinion that the value affixed for determining the

> stamp duty is less than the market value, he can make a reference to the Collector. Admittedly, no action has been taken by the Registering Officer much less Sub Registrar under Section 47A(1) of the Act as he had handed over the document after registration to the vendee and thereafter made a reference on 5.4.2013 of the sale deed dated 14.5.2012, almost after the expiry of one year. In this regard, the decision of this Court in the cases of ***Abhinav Kumar (Supra)*** and ***Pankaj Gupta (Supra)*** come to the rescue of the petitioner as in the case of ***Abhinav Kumar (Supra)***, reference was made after eight days and in the case of ***Pankaj Gupta (Supra),*** reference was made after 17 days of the registration of the documents, which was not accepted by the Court as a reference under Section 47A(1) of the Act, on the premise that the Sub Registrar had become *functus officio*, after registration of the said document, which was handed over to the purchaser. Insofar as the applicability of Section 47A(3) of the Act is concerned, it has been held in the case of ***Iqbal Singh and others (Supra)*** that the Collector can initiate proceedings either on the receipt of reference by the Inspector General of Registration or Registrar of a District appointed under Registration Act in whose jurisdiction the property is situated or on receipt of the report of the audit by the Comptroller and Auditor General of India or by any other authority authorised by the State Government or suo motu."

Keeping in view of the facts and the law laid down by this Court in **Zile Singh's case (supra)**, the present petition is allowed and Reference dated 24.6.2014/7.8.2014 (Annexure P-1) made by respondent

No.4- Sub Registrar, Jagadhari and order dated 22.3.2016 (Annexure P-2) passed by respondent No.3-Collector, Jagadhari and order dated 20.5.2016 (Annexure P-4) passed by respondent No.2- Commissioner, Ambala Division, Ambala, are hereby set aside.

30.8.2018 **(JITENDRA CHAUHAN)**
gsv **JUDGE**

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No