

CWP No.2059 of 2013 (O&M)

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.2059 of 2013 (O&M)
Date of decision: April 17, 2018**

State of Haryana

...Petitioner

Versus

M/s Navuthan Educational Trust and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Saurabh Mohunta, DAG, Haryana,
for the petitioner.

Mr. Ashok Aggarwal, Senior Advocate, with
Mr. Mukul Aggarwal, Advocate, for the respondents.

Rakesh Kumar Jain, J.

This petition is preferred at the instance of the State of Haryana against the order of the Financial Commissioner (Revenue)-cum-Chief Controller Revenue Authority, Haryana, dated 17.12.2010 by which orders passed by the Collector, Gurgaon dated 25.07.2008 and the order passed by the Commissioner, Gurgaon Division, Gurgaon dated 06.04.2010 have been set aside.

Briefly stated, a sale deed no.8572 dated 03.07.2008 was executed in respect of a plot measuring 5.114 acres and the building constructed thereupon of the school, namely, Amadeus High School, having a covered area of 1,00,000 square feet, situated in the residential colony known as Greenwood City, Sector-46, Gurgaon by the Children Academic Association, Dehradun in favour of M/s Navuthan Educational Trust, Faridabad, for a consideration of

₹30 crores. On account of a report of the Stamp Auditor, Gurgaon, the Sub Registrar, Gurgaon, referred the said sale deed, in terms of Section 47-A of the Indian Stamp Act, 1889 (hereinafter referred to as the “Act”) to the Collector, Gurgaon on the ground of being undervalued in view of the collector rate for the year 2007-2008 to the tune of ₹20,900/- per square yard pertaining to “all sector HUDA institution other colonizer builders in private colonizers”.

The value of the property sold was assessed by the auditor to the tune of ₹61,73,17,000/- as a commercial property, calculated @ ₹20,960/- per square yard, out of which ₹51,73,17,000/- were pertaining to the land measuring 24752 square yards and ₹10,00,00,000/- pertaining to the construction cost, calculated @ ₹1,000/- per square feet, and pointed out the deficiency of stamp duty of ₹2,22,12,190/-.

The Collector, Gurgaon, vide his impugned order dated 25.07.2008, after determining the deficiency of ₹2,22,12,190/- towards the stamp duty, returned the reference to the Sub Registrar with a direction to recover the said amount from the purchaser. Respondent no.1 deposited the said stamp duty of ₹2,22,12,190/- vide challan no.760 dated 05.09.2008 and also challenged the order of the Collector dated 25.07.2008 by way of statutory appeal before the Commissioner, Gurgaon Division, Gurgaon. The said appeal was, however, dismissed on 08.04.2010. It was recorded in the order of the Divisional Commissioner that respondent no.1 has allegedly executed the sale deed on the basis of the agreement to sell as per which the seller had agreed to sell the property in dispute for ₹30 crores only, because the District Judge, Dehradun, on a petition filed by the seller under Section 5-A of the Societies Registration Act, 1860 has allowed the sale for a consideration of ₹30 crores

vide his order dated 09.05.2008. The Divisional Commissioner made a reference to the sale of land for the nursery, primary and high school(s) by way of an auction on 24.01.2006 by the Estate Officer, HUDA, Sector-14, Gurgaon, as per which, 5 acres' vacant plot was sold @ ₹40 crores in Sector-43, Gurgaon and on that basis, it was held that if the area of plot in question is more than 5 acres and is sold ₹40 crores in 2008, then the market price of the property in question should have been more as compared to the sale of plots in the year 2006.

Aggrieved against the order passed by both the Collector and the Divisional Commissioner, respondent no.1 preferred a petition under Section 56 of the Act before the Financial Commissioner, which has been allowed by the impugned order dated 17.12.2010, in which reference has been made to the rates of the institutional plots in various urban estates of HUDA, Gurgaon for the year 2010-11, in which the rate in the Gurgaon urban estate in respect of the institutional area has been fixed @ ₹7,500/- square meter, whereas it was observed that respondent no.1 had purchased the land @ ₹9,792/- per square meter in the year 2008, which was much higher than the rate prevailing in the urban estate of Gurgaon in the year 2010-11. It is also observed that the value of the institutional plot cannot be compared with the commercial plot for which the collector rate has been fixed @ ₹20,900/- per sq. yard.

After the order dated 17.12.2010, by which the orders passed by the Collector and the Divisional Commissioner were set aside, the petitioner did not take any action to challenge the said order of the Financial Commissioner, therefore, respondent no.1 made an application on 14.11.2011 to the Collector for refund of the excess stamp duty to the tune of

₹2,22,12,190/- paid by it in terms of the order passed by the Collector, which has since been set aside by the Financial Commissioner. Respondent no.1 sent a reminder on 21.02.2012 and, thereafter, received a letter from the Deputy Commissioner, Gurgaon dated 26.04.2012 whereby it was informed that the Deputy Commissioner, Gurgaon is not the competent authority for refund of the excess amount and respondent no.1 was asked to approach the Chief Controlling Revenue Authority for the purpose of refund of the excess stamp duty.

Accordingly, respondent no.1 made an application to the Chief Controlling Revenue Authority on 30.04.2012 but did not receive any response and at last, filed CWP No.24491 of 2012, which was disposed of on 11.12.2012 with the following order:-

“Learned counsel for the petitioner states that he would be satisfied if the petition is disposed of with a direction to the respondents to consider and decide his reminder (Annexure P-5) in accordance with law.

In view of the limited prayer made by the petitioner, the petition is disposed of with a direction to the respondents to consider the reminder (Annexure P-5) and decide the same in accordance with law as expeditiously as possible, preferably within a period of two months from the date of receipt of a certified copy of this order.

In case the payment is found to be due to the petitioner, the same shall be release to them within one month of the decision.”

It is only thereafter that the present petition has been filed on 25.01.2013 against the impugned order dated 17.12.2010. Although respondent no.1 has referred to the opinion of the Legal Remembrancer, Haryana dated 30.01.2012, in which he has observed that the impugned order dated 17.12.2010 passed by the Financial Commissioner is legal, well founded

and is not fit for filing civil writ petition but the Department may, at its own level, challenge the order but for that matter, it has to comply with para 20.4(C) of the Law Department Manual. According to the petitioner, the necessary sanction from the Governor of Haryana was obtained to challenge the impugned order dated 17.12.2010 in view of para 20.4(C) of the Law Department Manual.

Be that as it may, the petitioner has relied upon revised rates for the agricultural land and plots for the year 2007-2008, which has been given under separate heads like residential, commercial and industrial. According to the petitioner, the land in question falls in Sector-46, Gurgaon and the rates for Sectors 38, 45, 46 and 47 before revision in the year 2007-2008 were ₹12,000/- per sq. yard for residential and ₹27,000/- per sq. yard for commercial/industrial, which were revised to ₹12,600/- and ₹29,700/- respectively. According to the petitioner, before revision, the rates for “all sector HUDA institutions other colonizer builders in private colonizers” were ₹19,000/- per sq. yard, which were revised to ₹20,900/- per sq. yard.

It is sought to be argued that since the property in question is an institution, therefore, the collector rate of ₹20,900/- per sq. yard would be applicable. It is also submitted that even a plot meant for educational institution measuring 5 acres was sold for ₹40 crores in the year 2006, then the land in question, which is more than 5 acres, cannot be sold for ₹30 crores in the year 2008.

On the other hand, learned counsel for respondent no.1 has submitted that the property in question is an educational institution which cannot be compared with the other educational institutions which are meant for

commercial purposes. He also submitted that the use of the property is, thus, restricted for educational purposes only and has also referred to the order of the District Judge, Dehradun dated 09.05.2008, in which he has observed that the land use of the property is for the educational purposes which cannot fetch price equivalent to the other property because the use of this land has been restricted and there are less number of buyers in the market. He has further argued that the Financial Commissioner has dealt with each and every aspect of the matter threadbare in the impugned order while holding that the property in dispute cannot be treated to be commercial in any manner and the Divisional Commissioner has misinterpreted the term “institutional” as “commercial” in order to charge the commercial rates. It is also submitted that the reference to the property sold by way of auction dated 24.01.2006 cannot be made the basis as the value fetched in the auction cannot be termed as the prevailing market rate rather he has referred to the letter of the HUDA dated 20.05.2010, in which the market rate for the institutional plots in the urban estate of Gurgaon has been fixed @ ₹7,500/- per sq. meter.

Learned counsel for respondent no.1 has also submitted that the floor price only serves as a *prima facie* material for the registering authority to alert himself regarding the value but at the time of making reference, there must be material before the Sub Registrar and application of mind to the said material before reaching to the conclusion that the instrument is under valued. In this regard, he has referred to a decision of this Court rendered in the case of **Krishna Rani vs. State of Haryana and others**, 2008(2) RCR (Civil) 473.

I have heard learned counsel for the parties and perused the available record.

The vendor of respondent no.1, before deciding to sell the property in question, filed an application under Section 5-A of the Societies Registration Act, 1860 before the District Judge, Dehradun as the school run by the vendor/society at Gurgaon was running into losses. The District Judge, Dehradun, vide his order dated 09.05.2008, granted permission to sell the property in question for a consideration of ₹30 crores. Thereafter, the vendor of respondent no.1 sold the property in question vide sale deed no.8572 dated 03.07.2008 for a sum of ₹30 crores, on which respondent no.1 affixed the requisite stamp duty and paid the requisite registration charges. After the registration of the sale deed, the Sub Registrar, on the basis of the report of the stamp auditor, made a reference under Section 47-A(1) of the Act. From the perusal of the order of the Collector dated 25.07.2008, it is apparent that he had only perused the report of the stamp auditor and opined that the instrument was undervalued and asked the petitioner to pay the additional stamp duty of ₹2,22,12,190/-. However, the Divisional Commissioner has given two reasons in his order dated 08.04.2010, firstly the collector rate for the land used for institutional purposes was fixed @ ₹20,900/- per sq. yard and secondly, there was a sale by way of auction dated 24.01.2006 of a plot measuring 5 acres for the nursery, primary and high school(s) fetching the price of ₹40 crores. However, the Financial Commissioner, while passing the impugned order, has opined that the rate of the land in question cannot be assessed on the basis of the commercial rates of ₹20,900/- per sq. yard in the name of institution as the property in question is an educational institution which has a restricted use, meaning thereby it cannot be put to any other use except for the prescribed usage and has also referred to the rates fixed in the year 2010-2011, in which

the rates for educational institutions was fixed @ ₹7,500/- per sq. meter, whereas the land in question was purchased by respondent no.1 @ ₹9,762/- per sq. meter in the year 2008, much earlier than the rate fixed by the HUDA @ ₹7,500/- per sq. meter in the year 2010-11.

There is also no dispute about the fact that the petitioner had deposited the amount of deficient stamp duty for the purpose of getting the sale deed released from the Sub Registrar and after the order was passed by the Financial Commissioner on 17.12.2010, made repeated reminders and had even filed the writ petition before this Court for *mandamus*. It is also a matter of concern that the Legal Remembrancer, Haryana, has repeatedly opined that the case is not fit to challenge the impugned order dated 17.12.2010 but since respondent no.1 was pressing hard for refund of the excess stamp duty, therefore, the present petition was filed after two years.

Besides the aforesaid, I am of the considered opinion that the Financial Commissioner has recorded a very sound reasoning in the impugned order which deserves to be reproduced for the ready reference:-

“I have heard both the parties on 15.11.2010 and 06.12.2010 and gone through the facts on record and evidence provided by the parties. During arguments, the petitioner argued that the Children Academy Association, Dehradun agreed to sell the said property in favour of petitioner-Trust for a consideration of Rs.30 Crores vide agreement to sell dated 06.04.2008 (Annexure P-3) and for the purpose it was duly permitted to do by the District Judge, Dehradun vide his order dated 09.05.2008 (Anexure P-4) passed in MSc. Case No.43 of 2008 filed under Section 5-A of the Societies Registration Act keeping in view the report of Registered reputed valuer (Annexure P-7). The instrument of sale was registered in the office of Sub Registrar, Gurgaon vide No.8572 dated 03.07.2008 (Annexure P-5) which was executed by Children Academy building situated in the residential colony known as the

Green Wood City, Sector-46, Gurgaon in favour of M/s Navathan Educational Trust, on stamp paper worth Rs.2,10,00,000/- on amount of consideration of Rs.30 crores.

Further, it was argued that the vendor of the property in question had purchased the said property @ Rs.3,162/- per sq. yard for a sum of Rs.7,82,44,200/- vide conveyance deed dated 16.09.2005 and no objection of undervaluation had been raised there upon till date by the auditor at the time of audit or by the Collector at any stage while the petitioner has purchased the property in question @ Rs.9,792/- per sq. mtr. Just within two years. The property in question would be utilized as an educational establishment and its use as restricted in nature. In this regard, the counsel for the petitioner produced the record for evidence such as the copy of conveyance deed dated 16.09.2005 (Annexure-I) possession certificate dated 14.10.2015 (Annexure -II) issued by Unitech Ltd. in favour of Children Academy Association, Dehradun, approval of building plans for High School approved by the Director Town Country Planning, Haryana, dated 19.08.2005 (Annexure-III), copy of letter dated 20.10.2005 issued by Senior Town Country Planner, Gurgaon, mentioning that the site of High School measuring 5.114 is a part of licensed residential colony, Green Wood City, Gurgaon (Annexure-IV), cop of letter dated 16.10.2007 issued by the Director Town and Country Planning, Haryana, Chandigarh regarding occupancy certificate of High School building (Annexure-V), copy of minutes of the meeting dated 18.07.2005 regarding approval plan for High School (Annexure-VI), copy of approved zoning plan dated 26.04.2005 (Annexure-VII), copy of layout plan of Green Wood City, Gurgaon (Annexure-VIII) and copy of occupancy certificate dated 10.08.2010, issued by the Director, Town and Country Planning, Haryana, mentioning description of the building at High School site in residential colony Green Wood City, Gurgaon (Annexure-IX).

The petitioner further argued that the seller Association as a requirement to sell its asset filed a petition in the Court of District Judge, Dehradun, with the prayer to allow them to sell the immovable property in question. The District Judge, Dehradun in his order dated 09.05.2008 (Annexure P-4) has permitted to sell the

said property for a sale consideration of Rs.30 Crore, taking all the factors into consideration affecting the market value of the immovable property. In reply to the query mentioned in the order of the Divisional Commissioner, Gurgaon and the Counsel of respondents the petitioner's Counsel argued that the said agreement to sell between the Registered Society and the Trust and order of District Judge, Dehradun to allow to sell the immovable property in question cannot be considered as a suit of specific performance and collusive in nature as the transaction was completed within three months after agreement to sell completing all the required formalities of registration of instrument of sale. The District Judge has rightly held that the land use of the property purchased for consideration of school is educational only and this property cannot fetch the price equivalent to other property, the land use of which is not restricted. Its purchasers are also less in number in the market. Objective of an educational institution is missionary and social service. The property in question cannot be treated as commercial in nature. Thus, the Collector as well as Divisional Commissioner have misinterpreted the term institutional as commercial and charged commercial rate in this case. The valuation of property varies from time to time, place to place and its situation and other factors affecting valuation. Moreover, there was a slowdown in economy in the year 2007-2008 and 2008-2009 and 2007-2008. It was also stated by the counsel of the petitioner that the collector rate for transfer of immovable property for Educational institution had not been fixed.

The counsel of the respondent argued that the Sub Registrar, Gurgaon was not a party in the Court of District Judge, Dehradun in the case with the prayer to allow them to sell the immovable property in question. Therefore, Sub-Registrar, Gurgaon was not bound to follow the said order. The Counsel of respondent presented in evidence the report of stamp auditor.

I have heard the arguments and carefully gone through the record. The rates of Institutional plots in various Urban Estates of HUDA for the year 2010-2011 issued by Haryana Urban Development Authority, Panchkula vide their No.HUDA-ccf-Acctt-01-2010/20553-59 dated 20.05.2010 were also seen. The rates in Gurgaon Urban Estate in respect of Educational Institution

plots have been fixed as Rs.7,500/- per sq. mtr. It was found that the M/s Navuthan Educational Trust purchased 5.114 acres plot @ Rs.9,792/- per sq. mtr. in the year 2008 which was much higher than the rate of institutional plots in Urban Estate, Gurgaon for the year 2010-2011 issued by Haryana Institute cannot be termed as commercial and the Commissioner and Collector have erred in valuation an educational institute as commercial rates.

Therefore, in the light of the facts and circumstances mentioned in the preceding paras the impugned orders dated 25.07.2008 passed by the Collector, Gurgaon and order dated 06.04.2010 passed by the Commissioner, Gurgaon Division, respectively are hereby set-aside and the instrument of Sale No.8572 dated 03.07.2008 is declared as properly stamped.”

Neither the petitioner is justified in applying the commercial rates of ₹20,900/- per sq. yard in the name of “all sector HUDA institution other colonizer builders in private colonizers” nor it is justified in applying rates which were fetched in auction of a plot on 24.01.2006.

Thus, looking from many angles, there is hardly any merit in the present petition for the purpose of interference by this Court and hence, the same is hereby dismissed.

April 17, 2018
vinod*

(Rakesh Kumar Jain)
Judge

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