IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.16283 of 2017
Date of Decision:08.08.2018

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Rajesh Goyal and others

. . . . . Petitioners

Vs.

The State of Haryana and others

. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Ajay Jain, Advocate, for the petitioners.

Mr.Saurabh Mohunta, DAG, Haryana.

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RAKESH KUMAR JAIN, J.

The petitioners have challenged the order of the Collector, Hisar dated 7.11.2014 and of the Commissioner, Hisar dated 18.10.2016 by which they have been directed to pay a sum of ₹4,57,975/- towards the deficient stamp duty and ₹2500/- towards registration charges.

In brief, the petitioners had purchased 1 kanal 16 marla of land situated in New Model Town Extension, Hisar vide Vasika No.6487 dated 3.8.2012 for a sale consideration of ₹21,37,500/- after affixing stamp duty of ₹1,49,625/-. The petitioners received a notice issued under Rule 5(1) of the Haryana Stamp (Prevention of Under Valuation of Instruments) Rules, 1978 [for short 'the Rules'] because the Sub Registrar, Hisar vide his Memo No.180/RC dated 13.3.2014 made a reference to the Collector, on the basis of an audit objection, regarding deficiency of stamp duty to the tune of

₹4,57,975/- and registration charges of ₹2500/- on the ground that the collector rates where the land has been sold was ₹8000/- per sq. yard which has been wrongly assessed by the purchaser @ ₹1089/- per sq. yards. The petitioners filed reply before the Collector but reference was decided against them on 7.11.2014. Aggrieved against the said order, the petitioners filed statutory appeal before the Commissioner, Hisar Division, Hisar which was also dismissed on 18.10.2016.

Learned counsel for the petitioners has submitted that the entire exercise on the part of the Sub Registrar and the Collector is patently illegal and erroneous because reference has been made by the Sub Registrar under Section 47A(3) of the Indian Stamp Act, 1899 [for short 'the Act'] [as applicable to the State of Haryana] for which he has no jurisdiction and has relied upon a decision of this Court rendered in *CWP No.23687 of 2014* titled as ***"Zile Singh Vs. Commissioner, Hisar Divn. Hisar and others"*** decided on 30.3.2016.

On the other hand, learned counsel for the respondents has submitted that the petitioners had wrongly affixed the stamp duty, calculated @ ₹1089/- per sq. yard, whereas the collector rate prevailing in the area where land has been sold was ₹8000/- per sq. yard. It is also submitted that there is no error committed by the respondents as the reference under Section 47A(3) of the Act can be made within three years from the date of registration of the sale deed.

I have heard learned counsel for the parties and perused the record with their able assistance.

In order to appreciate their respective arguments, it would be relevant to mention Section 47A of the Act, which read as under: -

"47-A. Instruments under-valued how to be dealt with. - (I) If the Registering Officer appointed under the Registration Act, 1908, while registering. instrument transferring any property has reason to believe that the value of property Or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to Collector for determination of the value or consideration, as the case may be; the proper duty payable thereon.

(2) On receipt of reference under sub-section (I), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, or on/receipt of reference from the Inspector General of Registration or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject-matter of the instrument is situate, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, not already referred to him under subsection (l), call for and examine the instrument for the purpose of satisfying himself as to the correctness of

> *its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reasons to believe that the value or Consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty:*
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> *Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.*
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> *(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of the order, prefer an appeal before the [the Commissioner of the Division]1 and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.]"*

Undisputedly, the reference in this case has been made by the Sub Registrar, Hisar on the basis of the audit note and the action has been initiated by the respondents under Section 47A(3) of the Act whereas this Court, in the case of ***Zile Singh (Supra),*** while relying upon an earlier decision of this Court rendered in the case of ***"Iqbal Singh and others** Vs. **State of Haryana and others"** 2011 (3) RCR (Civil) 365,* has held as under: -

> *"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.*
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> *In the present case, admittedly, it is not an action initiated by the Collector-cum-District Revenue Officer suo motu rather it has been taken on the reference made by the Sub Registrar vide his memo No.198 dated 5.4.2013, who is not a competent authority under Section 47A(3) of the Act to make even the reference. Thus, the action initiated against the petitioner on the reference made by the Sub Registrar, Jind in terms of Section 47A(3) of the Act is patently illegal."*

Thus, in view thereof, the present petition is allowed and the impugned order passed by the Collector, Hisar dated 7.11.2014 and of the Commissioner, Hisar dated 18.10.2016 are hereby quashed.

(RAKESH KUMAR JAIN)
JUDGE

08.08.2018
Vivek

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No