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

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CWP No.21408 of 2015
Date of Decision:16.05.2018

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M/s Paragon Colonizers, Sirhind

. . . . . Petitioner

Vs.

State of Punjab and others

. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Gitish Bhardwaj, Advocate, for
Mr.Munish Jhanji, Advocate
for the petitioner.

Ms.Bhavna Gupta, DAG, Punjab.

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RAKESH KUMAR JAIN, J. (ORAL)

The petitioner is aggrieved against the order dated 10.4.2013 passed by the Collector, Fatehgarh Sahib by which he has found deficiency of ₹3,44,000/- in the stamp duty on the sale deed dated 01.06.2009 by which the petitioner had purchased 4 kanal of land and the order of the Divisional Commissioner, Patiala Division, Patiala dated 20.3.2014 by which the appeal filed by the petitioner was dismissed.

In brief, the facts of the case are that the petitioner purchased land measuring 4 kanal situated in Attewali, Tehsil and District Fatehgarh Sahib on 1.6.2009 for a consideration of ₹13,00,000/- after appending the stamp duty of ₹1,04,000/-. The Sub Registrar, Fatehgarh Sahib made a reference to the Collector on 30.10.2012 on the basis of the report of audit party, who had found deficiency of stamp duty and registration charges to the tune of ₹24,1600/- on the sale deed. The petitioner was served with a notice dated 18.12.2012 of the Collector, Fatehgarh Sahib which was contested by the petitioner but ultimately, the Collector passed the impugned order on 10.4.2013 asking the petitioner to affix the stamp duty of ₹3,44,000/-. All that has been done by the Collector was on the basis of the notifications dated 28.1.2011 (Annexure P-4) and 12.9.2013 (Annexure P-5) as per which the stamp duty has to be assessed on the land on the basis of the purpose to which it has been put to use after its purchase. The petitioner challenged the order of the Collector by way of an appeal filed under Section 47-A(4) of the Indian Stamp Act, 1899 [for short 'the Act'] but the same was also dismissed vide order dated 20.3.2014.

Learned counsel for the petitioner has submitted that the notifications dated 28.1.2011 and 12.9.2013, on the basis of which the respondents have passed the impugned orders, were withdrawn on 3.4.2014 in view of the decision of the Supreme Court rendered in the case of ***"State of UP Vs. Ambrish Tandon"*** *2012(1) RCR (Civil) 865* in which it has been held that the stamp duty has to be affixed on the nature of land purchased and not on the ground of the purpose for which it can be put to use in future.

Learned counsel for the petitioner has further submitted that even the reference made by the Sub Registrar, Fatehgarh Sahib was not within limitation. In this regard, he has referred to Section 47-A(3) of the Act in which it is provided that limitation for taking action in regard to deficiency of stamp duty, even *suo moto*, is of three years. Whereas in the present case, the reference was made on 30.10.2012 in respect of the sale deed dated 1.6.2009 which was apparently beyond a period of three years. He has also submitted that the petitioner had purchased 4 kanal of land out of total land holding of the vendors measuring 57 kanal 9 marla, out of which 56 kanal 9 marla was described as Chahi by the respondents in para No.2 of their reply on merits. It is further submitted that the petitioner has purchased 4 kanal of land which could not have been Gair Mumkin but Chahi, therefore, it could not be considered to have been purchased by the petitioner for the purpose of carving out a colony which was an act on his part after its purchase that too after fulfilling the due procedure.

Learned counsel for the petitioner has further submitted that the notifications would not apply to the case of the petitioner because both the notifications were issued after the execution of sale deed.

It is an altogether different matter that the respondents have conducted the audit after the issuance of notifications and for the purpose of holding the petitioner liable to pay additional stamp duty learned counsel for the respondents has reiterated the stand taken by them in their reply.

I have heard learned counsel for the parties and after perusal of the record, am of the considered opinion that there is a total fallacy in the approach of the Collector and Commissioner respectively, in passing the orders against the petitioner. Firstly, the reference itself is time barred because it has been issued by the Sub Registrar, Fatehgarh Sahib after a period of 3 years. Secondly, both the notifications dated 28.1.2011 and 12.9.2013 were issued much after the execution of sale deed dated 1.6.2009 and would not be applicable. Thirdly, the said notifications were ultimately withdrawn vide order dated 03.04.2014 in view of the decision of the Supreme Court in the case of ***State of UP (Supra)*** and fourthly the petitioner had not purchased the Gair Mumkin land but Chahi which has been put to use by it after its purchase for carving out the colony.

Thus, keeping in view the totality of facts and circumstances mentioned hereinabove, the present petition succeeds and both the impugned orders are hereby set aside.

(RAKESH KUMAR JAIN)
JUDGE

16.05.2018
Vivek

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