IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2175 of 2015
Date of decision: 14.12.2018

Ghanshyam

..........Petitioner

Versus

State of Haryana and others

.........Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.S. Sahu, Advocate,
for the petitioner.

Ms. Nidhi Garg, A.A.G., Haryana.

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Ritu Bahri, J.

Petitioner is seeking a writ in the nature of certiorari quashing the exparte order dated 21.11.2013 (Annexure P-3) passed by the District Revenue Officer, Fatehabad and order dated 05.08.2014 (Annexure P-4) passed by the Commissioner, Hisar Division, Hisar, whereby he has been directed to deposit Rs.93,275/- as stamp duty and Rs.9000/- as registration fee (total Rs.1,02,275/-).

The petitioner had purchased 2 Marlas 2 Sarsai land out of land comprised in Khasra No.122/14/2 (4-2), 15/1 (4-14), total 9 Kanals 6 Marlas, 10/837 share, situated in village Bhattu Kalan, Tehsil and District Fatehabad from Suman Devi wife of complainant-Sunil Kumar son of Hari Singh, resident of village Manawali, District Fatehabad, vide sale deed No.1256 dated 27.08.2013 (Annexure P-1) for a consideration of Rs.1,34,500/- and paid stamp duty of Rs.6725/-, including Rs.1000/- as registration fee. Possession of the land was delivered to the petitioner on the same day. After more than two months of registration of the sale deed, a complaint was made by Sunil Kumar (husband of Suman Devi-vendor) stating that the value of the land was much more as there was building existing on the plot and the sale deed should have been registered as per the actual value of the land. Pursuant to this complaint, Sub Registrar referred the matter to the Collector under Section 47-A (I) of the Indian Stamp Duty Act, 1899 stating that less stamp duty of Rs.1,02,275/- had been paid by the petitioner. The Collector issued summons to the petitioner on 03.11.2013 under Section 47-A (III) of the Act. However, the summons were returned unserved. Thereafter, the Collector passed an exparte order dated 21.11.2013 assessing the value of the land as Rs.20,00,000/- and directed the petitioner to pay Rs.93,275/- as stamp duty and Rs.9000/- as registration fee, total Rs.1,02,275/-. Consequently, the District Revenue Officer issued a notice dated 03.12.2013 for recovery of said amount as land revenue. The petitioner challenged the said order by filing an appeal before the Commissioner, Hisar Division, Hisar, which was dismissed vide order dated 05.08.2014 (Annexure P-4). Hence, this petition.

Upon notice, written statement on behalf of respondent Nos. 2 to 4 has been filed, wherein it has been stated that vide communication dated 03.11.2013, due opportunity of hearing was afforded to the petitioner to appear and show cause against the assessment. This notice was duly served upon him, copy of which has been annexed as Annexure R-1. However, the petitioner did not appear nor sought extension of time for appearance. It is further stated that the petitioner has committed fraud by presenting a sale deed qua a constructed house, showing it as a vacant plot. The Collector had examined the photographs taken by the District Revenue Officer, which showed that there was a house constructed on the said plot. As the complaint was filed within three months of the registration of the sale deed, such a building could not be constructed within three months. Hence, the deficiency was rightly assessed as per the provisions of the Stamp Act and the recovery, as per land revenue, is rightly being made by the Revenue Officer.

At this stage, Section 47-A (I) to (3) of the Stamp Act is reproduced 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 the 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.
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> (2) On receipt of reference under subsection (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.
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> (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 sub section (I), 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:"

As per the above provision, at the time of registration of the sale deed, if the Registering Officer has reasoning to believe that the value of the property is not truly set forth, he can refer the matter to the Collector immediately and the Collector, after giving notice to the parties, pass an order. However, under Section 47-A (III), after registration of the sale deed, the Collector can sue moto initiate proceedings. Under Section 47-A, once the sale deed is registered, the Sub Registrar cannot refer the sale deed to the Collector. It is the Collector, who can sue moto exercise power to make reference within three years, to examine the sale deed for the purpose of deficient stamp duty and give notice for redetermination of the stamp duty. These provisions had come up for consideration before this Court in ***Sharma Confectioners (P) Ltd. vs. State of Haryana and another,*** 2014 (48) CRC (Civil) 694, ***Vishal Rekhan and others vs. State of Haryana and others,*** 2015 (3) RCR (Civil) 502 and ***Zile Singh vs. Commissioner, Hisar Division, Hisar and others,*** 2016 (3) PLR 492, where a consistent view has been taken that under Section 47-A (III) of Act, after registering a document, the Sub Registrar cannot make reference to the Collector regarding the same being under value. If, on such notice, the Collector proceeds to reassess the stamp duty, the said order is liable to set aside. With respect to the powers, which can be exercised by the Sub Registrar, the provision is abundantly clear that only at the time of registering a document, the Sub Registrar can refer it to the Collector. After registration, there is no power left with the Sub Registrar to refer the matter for reassessment of the stamp duty.

In the facts of the present case, sale deed was registered on 27.08.2013 (Annexure P-1) and thereafter, notice regarding less tamp duty was given by the Sub Registrar on 23.10.2013 i.e. after a gap of almost two months. This notice was entertained by the Collector on 03.11.2013. As per the aforementioned judgments, Sub Registrar had no jurisdiction to refer the sale deed to the Collector after its registration. Therefore, the order passed by the Collector is not sustainable in the eyes of law.

In view of the above discussion, this petition is allowed and the impugned orders dated 21.11.2013 & 05.08.2014 (Annexures P-3 & P-4) are set aside.

(RITU BAHRI)
JUDGE

14.12.2018
ajp

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