

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

CWP No.22624 of 2016
Date of Decision:19.07.2018

Parveen Kumar and another

. Petitioners

Vs.

State of Haryana and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Sandeep Kotla, Advocate,
for the petitioners.

Mr.Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN, J.

The petitioners purchased 3 kanal 4 marla of land in equal share vide sale deed No.3017 dated 18.9.2013. A reference was made by the Sub-Registrar on 13.1.2014 after four months. The Collector had allegedly issued notice to the petitioners about the deficiency of stamp duty and vide his order dated 23.12.2014 held that the land in the hands of each individual is less than 1000 sq. yard and therefore, in view of the instructions issued vide Memo No.6067/State/I/2000 dated 14.11.2000, the property in dispute has to be considered as residential and the stamp duty has to be accordingly paid. Aggrieved against the said order, the petitioners filed appeal which was also dismissed on 11.7.2016.

It is categorically mentioned in the petition that the land was purchased to consolidate the small pieces of land in a big chunk so that it can be utilized for agriculture purpose and even the land in question has not been

partitioned so as to make it less than 1000 sq. yards in the hands of both the petitioners and is still in the joint name and is more than 1000 sq. yards being 1935 sq. yards. It is also submitted that a decision relied upon by the petitioners before the Commissioner reported as *2001(1) RCR (Civil) 91* has been though mentioned in the judgment but has not been discussed later on and that the petitioners were not given due opportunity to lead evidence by the Collector.

Learned counsel for the respondents sought reliance on the instructions to contend that the land in question would be less than 1000 sq. yards in the hands of both the petitioners, who have though purchased it jointly and therefore, it has to be treated as residential.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that the learned Commissioner, while deciding the appeal, has missed 2-3 issues, like he has not discussed about the applicability of decision reported in *2001(1) RCR (Civil) 91*, he has also not taken into consideration the fact that the land has been purchased as agricultural and not residential and for the purpose of consolidating it with the other land of the petitioners for which they would have led evidence but they were not given opportunity by the Collector and thus they have been deprived of their right to prove this fact and lastly the land has not been partitioned. Therefore, am of the considered opinion that the matter requires to be re-considered by the Commissioner, Gurgaon Division, Gurgaon to take into consideration the aforesaid facts and circumstances and to decide the *lis* between the parties again. Accordingly,

the order dated 11.7.2016 is set aside and the matter is remanded back to the Commissioner, Gurgaon Division, Gurgaon/appellate authority to decide the appeal again after giving opportunity of hearing to both the parties.

The parties are directed to appear before the Commissioner, Gurgaon Division, Gurgaon/appellate authority on 20.08.2018.

19.07.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No