225 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 24368 of 2016.
Date of Decision: 30.11.2018.

Sukhwinder Singh and another

... Petitioners

Versus

The Commissioner, Faridkot Division, Faridkot and another

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Surinder Garg, Advocate,
for the petitioners.

Mr. Vikas Mohan Gupta, Addl. AG Punjab.

JITENDRA CHAUHAN.J.

The present petition has been filed for quashing of order dated 30.04.2015, (Annexure P-4) passed by District Collector, Faridkot and order dated 03.08.2016 (Annexure P-6) passed by Commissioner, Faridkot vide which the petitioner had been directed to deposit Rs.77,000/- towards deficiency in the stamp duty.

The facts of the case revolves around execution of sale deed no. 2990 dated 06.01.2014, impounded by Sub Registrar, Jaitu at the time of its presentation for registration and sending the same to District Collector for adjudication. Notice was issued by District Collector to the petitioners as to why they have not deposited the necessary stamp duty/registration fee on the sale deed and now why under Section 47 of the Stamp Act the due stamp duty and registration fee along with fine be not recovered from them on the original price. As per the report of Sub Registrar sent to District Collector, it transpired that sale deed was submitted for registration wherein the sale consideration amount was mentioned at Rs 12,30,000/-, whereas, as per the Collector's rate fixed for the area concerned, same would be Rs. 15,000/- per sq feet and thus the sale deed ought to have been registered at Rs. 20,00,000/-. Since the petitioners have not paid the requisite stamp duty and registration charges, therefore there was a deficient payment of stamp duty amount of Rs. 69,300/- and Rs 7700/- as registration fee, thus total amount of Rs. 77,000/- was found to be deficient and petitioners were held liable to pay the same. In response to notice issued, petitioners submitted reply (Annexure P-3) dated 22.03.2014 and after considering the reply filed by the petitioners, Collector directed the petitioners to deposit the deficient amount of Rs 77,000/-. The petitioners filed appeal before Commissioner, Faridkot who vide order dated 03.08.2016 (Annexure P-6) dismissed the same. By way of the present writ petition challenge has been laid to the above referred two orders.

The State has filed reply by way of an affidavit of Sub Registrar, Jaitu, Faridkot wherein an objection has been taken that in terms of Section 47-A of the Indian Stamp Act, 1899 as applicable in State of Punjab, if the market value of any property is less than Collector's rates as determined in accordance with the rule made under the Act, the Registering Authority/Officers after registering the instrument shall refer the same to the Collector for determination of the

Market value. Further, it has been submitted in the reply that petitioners purchased plot No. 29 measuring 15'X80' equivalent to 1200 Sq. feet situated in New Grain Market, Jaitu vide sale deed no. 2990 dated 06.01.2014 for total value of Rs. 12,30,000/-. Whereas, as per prevalent Collector's rate for the year 2013-14 the Collector's rate of the land situated in Grain Market, Jaitu was Rs. 15,000/-per sq yard as is evident from (Annexure R-1). Since petitioners have not affixed the proper stamp duty as per prevalent Collector's rate, therefore said instrument was impounded and was referred to Collector for determination under Section 47-A of the Act. Therefore, a stand was taken that as sale deed was got registered at a lesser rate than the Collector's rate determined under the rules, therefore impugned orders are legal.

Learned counsel for the petitioners has argued that in terms of Section 47-A of the Act, Collector was duty bound to determine the market rate of the area before passing the impugned order. Since that exercise has not been done by the authorities under the Act, therefore impugned orders are liable to be quashed. It has been further argued by him that sale deed was executed on the basis of agreements dated 28.05.2008 and 21.06.2012 and therefore, as per the market value, the sale deed was executed on the prevalent market rates. He further submits that initially property in question was owned by the Mandikarn Board and the vendees of the petitioners had purchased the same from Mandikarn Board on 03.08.2012. Further, the vendees sold the property in question to the petitioners vide agreement to sell dated 21.06.2012. Therefore, vendees executed the sale deed on 06.01.2014 and as there is no evasion of stamp duty, impugned orders are liable to be quashed. In support of the contentions, reliance has been placed on authorities ***M/s Residential Welfare Association, Noida versus State of UP 2009 (14) SCC 716 and judgments rendered by this Court in Raja Ram versus State of Haryana 2014 (3) RCR (Civil) 722, Veena Rani versus State of Haryana 2013 (2) RCR (Civil) 993 and Krishna Rani versus State of Haryana 2008 (2) RCR (Civil) 473.***

On the other hand, learned State counsel submits that Rule 3-A of Punjab Stamp (Dealing of under valued instruments) Rules, 1983 provides the procedure to be adopted for fixation of market value of land/property. Said rule provides that the Collector in consultation with committee of experts may fix the minimum market value of the land/property for the purpose of levying of stamp duty on instruments of transfer of any property. He furthers argued that if a sale deed is presented to be registered on the value which is less than the Collector rates, as fixed under the rules, in that case, the Sub Registrar has the power to impound the said sale deed in terms of Section 47-A of the Stamp Act, 1899 as applicable to Punjab and will send the case for determination of the proper stamp duty to the Collector. In the present case also, since the Collector's rate for the land in question for registration was presented on 06.01.2014 and same was determined at

Rs. 20,000,00/-, whereas same was being got registered at a lessor rate of Rs. 12,30,000/-, therefore, said sale deed was impounded and sent for determination of market value by the Collector. It has also been asserted by him that Collector's rate determined by the Collector shall form the basis for determination of the market rate. In support of the contentions, he relies upon authority ***State of Haryana Versus Manoj Kumar 2010 (4) SCC 350***, wherein it has been held that no sale deed can be registered for an amount lesser than Collector's rate. Similarly, he also relies upon the judgment rendered by a Division Bench of this Court in ***K.S. Jhamb Versus State of Punjab 2009 (2) RCR (Civil) 341*** wherein a plot allotted by PUDA in the year 1997 was ultimately registered in the year 2005, despite the fact that purchaser had applied for registration of conveyance deed in the year 1999 and this Court held that stamp duty will be charged as per market value prevalent at the time of registration of deed in the year 2005 and not on the price as mentioned in allotment letter. Learned State counsel also relies upon another judgment rendered by a Division Bench of this Court in ***State of Punjab versus Marry land Estates 2009 (5) RCR (Civil) 605*** wherein it was held that Collector's rate is admissible to determine the market value on the basis of which stamp duty is payable on the date of registration of the instruments.

Heard.

In the present case, it is an admitted fact that sale deed was submitted for registration on 06.01.2014, wherein petitioners have mentioned the sale consideration amount of Rs. 12,30,000/- for plot situated in New Grain Market, Jaitu. It is also not in dispute that as per Annexure R-1, for the year 2013-2014, the Collector rate for the property situated in New Grain Market was Rs 15,000/- per sq yard. Considering the total area of the property in dispute which is 1200 sq feet, as per Collector's rates, same comes to Rs 20,000,00/-, whereas petitioner wants to get the sale deed registered at a lesser value of Rs. 12,30,000/-. Therefore, the orders passed by Collector Annexure P-4 and order passed by appellate authority Annexure P-6 based upon the determination of Collector's rate, to be a criteria for fixation of the market rate of the property in dispute, cannot be faulted and therefore deserves to be upheld. As far as the contentions of the learned counsel for the petitioners and judgments relied upon are concerned, same are not applicable to the facts and circumstances of the present case as in terms of Rule 3-A of Punjab Stamp (Dealing of Under Valued Instrument), Rules 1983, if the Collector's rates have been determined in accordance with rule then such Collector's rate shall be taken into consideration to determine the market rate of the property.

In ***Residential Welfare Association, Noida Versus State of UP (supra),*** instrument for registration was a lease deed to be executed between sub lessees and the original members of the Housing Society. Hon'ble the Supreme Court after considering Section 54 and Section 105 of Transfer of Property Act 1882 held that a lease is a partial transfer of the rights in the property and the right of reversion remains with the lessor, whereas in a case of sale there is an absolute transfer of ownership. Therefore, as a lease deed is an instrument which was presented for registration amounts to partial transfer, therefore same cannot be considered to be a sale deed, for which different schedule is provided under the Stamp Act. It was held that different stamp duties were prescribed for registration of sale deed and lease deed.

In ***Raja Ram Versus State of Haryana (supra)***, the dispute was with respect to instructions issued by State of Haryana dated 04.08.1988 which provides guidelines to the Registering Authority with respect to consideration of market value and same were held to be not inconsistent with Section 47-A of the Stamp Act as applicable to State of Haryana. It was a case where instructions dated 04.08.1988 issued by State of Haryana were held to be contrary with respect to the powers of the Registering Officers to send the case for determination of market value to the Collector. Apart from it in said case the action was initiated by the authorities after a lapse of three years, which was beyond the period of limitation as prescribed under the Act. Similarly in ***Veena Rani versus State of Haryana (supra) and Krishna Rani versus State of Haryana (supra),*** no question of law was settled as cases were remanded to the Collector for determination of the market value. Even in all the judgments relied upon by the learned counsel for the petitioners there was no similar case where the Collectors have determined the market rate based on the

Collector's rates as fixed under the provisions of Rule 3-A of Punjab Stamp (Dealing of Undervalued Instruments), Rules 1983.

The judgments relied upon by learned State counsel are fully applicable in the present case as the Collector's rates fixed on the date of registration of sale deed have to be considered which would form basis to determine the market rate. Even the rate fixed by two individuals vendor and vendee by way of agreement or by way of getting the sale deed registered at a lesser rate cannot form basis of the market value, where Collector's rate has been determined under rules. Further, the act of two individuals in determination of market rate at a lesser rate cannot defeat the rights of the State to collect the actual stamp duty and registration fee based upon the market rate which is determined in terms of the Collector's rates fixed by the authorities under the Rules.

In view of above, there is no merit in the present writ petition and therefore same is dismissed. The State is at liberty to recover the deficient amount of stamp duty and registration fee in accordance with the procedure prescribed under the law.

30.11.2018. **(JITENDRA CHAUHAN)**
SN **JUDGE**

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