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

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CWP No.2222 of 2017 (O&M)
Date of Decision:11.09.2018

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Gian Chand

. . . . . Petitioner

Vs.

State of Haryana and others

. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Rajinder Kumar Singla, Advocate,
for the petitioner.

Mr.Saurabh Mohunta, DAG, Haryana.

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RAKESH KUMAR JAIN, J.

The petitioner has challenged the orders dated 14.07.2014 passed by the Collector and dated 02.11.2016 passed by the Commissioner directing him to pay the deficient stamp duty and registration charges in respect of sale deed dated 2.1.2014.

In brief, the petitioner entered into an agreement to sell/purchase the land measuring 8 kanal 0 marla i.e. 160/244 share out of total land measuring 112 kanal 4 marla comprising in Khewat No.66 Khatoni No.232 Kitta 15 situated at Village Karandi, Tehsil Tohana, District Fatehabad for a total sale consideration of ₹1,50,000/- on 05.01.2004 with respondent No.5-Mehar Chand, who accepted an advance of ₹50,000/- as earnest money to execute the sale deed on 02.01.2005. Since the sale deed was not executed, therefore, the petitioner filed a Civil Suit No.154 dated 31.8.2006 for specific performance of the agreement to sell which was decreed by the trial Court on 1.09.2009. The appeal filed by respondent No.5 against the judgment and decree of the trial Court was dismissed on

18.5.2012 and the Regular Second Appeal No.3132 of 2012 filed by him was also dismissed on 24.9.2013. The sale deed was executed through judgment writer of the trial Court vide Vasika No.1044 on 2.01.2014 on behalf of respondent No.5 in favour of the petitioner in the office of Sub Registrar, Jakhal, which was impounded by him on account of non-payment of proper stamp duty and made the reference to the Collector on which he had passed the order on 14.7.2014 asking the petitioner to pay the deficient stamp duty of ₹72,500/- and registration charges of ₹9000/- as per the Collector Rate of the year 2013-2014 and the appeal against the order dated 14.7.2014, filed by the petitioner, was dismissed by the Commissioner, Hisar Division, Hisar vide his order dated 02.11.2016.

Learned counsel for the petitioner has submitted that there is no delay caused by the petitioner in execution of the registration of sale deed. The agreement was executed on 5.1.2014 and because of the litigation, which had to be initiated by the petitioner being the purchaser on account of refusal on the part of the vendor/respondent No.5 in execution and registration of the sale deed as per the terms and conditions of the agreement which culminated with the dismissal of the Regular Second Appeal, filed by the vendor, on 24.9.2013 by this Court and sale deed was executed on 22.1.2014 through the process of the Court, therefore, market value should be determined which was prevalent at the time of agreement to sell and not at the time when the sale deed was executed and registered. In this regard, the petitioner has relied upon a decision of the Supreme Court rendered in the case of ***"M/s Residents Welfare Association, Noida** Vs. **State of U.P. and others" 2009(3) RCR (Civil) 87,*** a decision of this Court rendered in the case of ***"Sushil Kumar Vs. State of Haryana and another" 1991 (1) PLR 33,*** a decision of the Patna High Court rendered in the case of ***"Smt. Shanti Devi***

Prasad and another** Vs. **The State of Bihar and others" 2001(1) PLJR 671, a decision of the Allahabad High Court rendered in the case of ***"Avdhesh Tyagi and another** Vs. **Commissioner Meerut Division and others"** 2013 AIR (Allahabad) 31* and a decision of the Madras High Court rendered in the case of ***"S.P. Padmavathi Vs. State of T.N. and others"** 1997 AIR (Madras) 296.*

On the other hand, learned counsel for the respondents has submitted that the State is not concerned as to how the sale deed has been executed but it is concerned about the date on which the document is presented for registration. It is submitted that the matter has already been settled by the Supreme Court in the cases of ***"State of Rajasthan** Vs. **M/s Khandaka Jain Jewellers"** 2008(1) RCR (Civil) 91* and ***"State of Haryana and others** Vs. **Manoj Kumar"** 2010(4) SCC 350* and by this Court in ***CWP No.18508 of 2016*** titled as ***"Rajdeep Singh and another** Vs. **State of Haryana and others"*** decided on 04.09.2017.

I have heard learned counsel for the parties and perused the record.

It is pertinent to mention here that before the introduction of Section 47A in the Indian Stamp Act, 1899 [for short 'the Act'], there was no provision in the Act for the revenue authorities to make any enquiry about the valuation of the property sold to determine the duty chargeable even if the registering authority has a suspicion that the document was under valued but after the decision of the Supreme Court, rendered in the case of ***"Himalaya House Company** Vs. **Chief Controlling Authority"** AIR 1972 Supreme Court 898* various States amended the Act as Section 47A was added in the Act by way of State amendment.

The decision in the case of the ***Sushil Kumar (Supra),*** relied upon by the petitioner, is not applicable because in the said case, the agreement to sell was entered into in the year 1981 and the sale deed was executed of the land in question therein, which was low lying land being under pond on 19.11.1983. The Collector initiated proceedings under Section 47A of the Act and came to a conclusion that the market value was about ₹1,10,000 per acre at that time. It was ultimately decided by the Appellate Court, relying upon an award of the Land Acquisition Collector, in regard to the acquisition dated 31.12.1992 in the same village that the compensation of the chahi land was awarded to the tune of ₹60,000/- per acre and for gair mumkin land to the tune of ₹40,000/- per acre. It was also held in the said case that the value cannot be assessed for the purpose of payment of stamp duty on the basis of the acquisition of the land in the year 1982. It was also observed that low lying land is of lesser value than the gair mumkin land. In the case of ***Smt. Shanti Devi Prasad and another*** *(Supra),* it was held that the amended provision of Section 47-A of the Act shall have no application in respect of a document presented for registration pursuant to a decree for specific performance of an agreement which was executed prior to coming into force of the amended provision of the Act. In the case of ***Avdesh Tyagi (Supra)***, it was held that liability to pay stamp duty is for the consideration equal to amount of purchase money specified in the sale certificate, which are not the facts of the present case. In the case of ***S.P. Padmavathi (Supra)***, it was held that merely because of lapse of time between agreement of sale and date of execution of sale deed, payment of stamp duty on the market value of the property as on the date the document is executed and presented for registration cannot be directed but this decision is of the year 1996 after which the judgments of the Supreme Court in the cases of ***M/s Khandaka Jain Jewellers (Supra)*** and ***Manoj Kumar (Supra)*** had come.

Lastly, the decision in the case of ***M/s Residents Welfare Association, Noida (Supra)*** is not in respect of an agreement to sell, litigation before the Civil Court and a suit for specific performance and ultimately and the execution and registration of the sale deed rather it was a case of deed of assignment whereas the judgment relied upon by the respondents in the case of ***M/s Khandaka Jain Jewellers (Supra)*** is pertaining to a suit for specific performance in which a specific question was framed by the Supreme Court as to whether the valuation should be assessed on the market rate prevailing at the time of registration of the sale deed or when the parties entered into the agreement to sell. It was held by the Supreme Court that the Collector shall determine the valuation of the instrument on the basis of the market value of the property at the rate when the document was tendered by the respondent for registration. The same view has been expressed by the Supreme Court in the case of ***Manoj Kumar (Supra)*** which was again a case pertaining to a suit for specific performance.

Thus in view of the aforesaid law laid down by the Supreme Court in the cases of ***M/s Khandaka Jain Jewellers (Supra)*** and ***Manoj Kumar (Supra)*** , I am of the considered opinion that there is no error on the part of the respondents in passing the impugned order. The writ petition is thus found to be without any merit and the same is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

11.09.2018
Vivek

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