IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-26090-2016 (O&M)
Date of decision : 10.10.2018

Maya Devi

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. S.N. Pillania, Advocate,
for the petitioner.

Mr. S.K. Saini, AAG, Haryana.

JITENDRA CHAUHAN, J.

By way of the instant writ petition filed under Article 226 of the Constitution of India, for issuance of a writ in the nature of Certiorari for quashing impugned order dated 20.04.2012 (Annexure P-1), passed by learned Collector, Jind,whereby, the petitioner was held liable to pay deficiency of ₹37,000/-, towards stamp duty and ₹5,000/-, and registration fee and further order dated 18.08.2016 (Annexure P-2) passed by learned Commissioner, Hisar Division Hisar, whereby, the appeal filed by the petitioner was dismissed.

It is contended that the petitioner got registered sale deed No.2222 dated 25.08.2010, in respect of land measuring 127 square yards situated in undeveloped area for a sale consideration of ₹ 5,65,000/- from the office of respondent No.3. After a period of more than one year and seven months, the deficiency in stamp duty was noticed by the audit report.

No objection was raised at the time of registering the document. Therefore, the impugned action of the respondents is barred by delay and thus, liable to be set aside. Learned counsel further cites ***State of Punjab th. Collector, Bathinda Vs. M/s Merry Land Estates & ors., 2009(5) RCR (Civil) 605 (P&H)(DB)*** to contend that collector's rate is relevant to determine the market value on the basis of which the stamp duty is payable on the date of registration of the instrument.

On the other hand, learned State counsel submits that the husband of the petitioner, namely, Raj Kumar entered into agreement to sell dated 06.03.2010 qua the property in question for a sale consideration of ₹ 13,05,000/- but at the time of registration, stamp duty on ₹ 5,65,000/- was paid. The agreement to sell is recorded at serial No.81 in the register maintained by Deed Writer, Surajmal Saini (Annexure R-2). Thus, the stamp duty being deficient, the petitioner has been asked to make good the deficiency vide the impugned orders.

Heard.

As per agreement dated 06.03.2010, the valuation of the property was ₹13,05,000/-, whereas, it was registered only at ₹ 5,65,000/- as per collector rate. It clearly reveals that the instrument was undervalued. In the audit inspection report prepared by the office of the Accountant General, Haryana, it has been recorded that the consideration amount was mentioned at ₹13,05,000/- in the register of the Deed Writer, therefore, the sale deed ought to have been registered for the same amount. Accordingly, the State has suffered a loss of ₹37,000/- as stamp duty and ₹5,000/- as registration fee which has been rightly ordered to be recovered from the petitioner. During the proceedings before learned Collector, the petitioner was summoned. On appearance, her statement was recorded wherein, she admitted that she did not have the knowledge that the sale deed was to be executed as per agreement to sell and therefore, the same was got executed as per collector's rate. She further stated that she was ready to deposit the deficient stamp duty.

The assertion of learned counsel for the petitioner that the action taken by the authorities is time barred is also misconstrued. The relevant provisions of Section 47-A of Indian Stamp (Haryana Amendment) Act, 1973, in support of his contention, read as under:-

> *"Haryana – After Section 47 of the principal Act, the following new section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of November, 1966, namely: -*
>
> *"47-A. Instruments under-valued how to be dealt with- (1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property, has reason to believe that the value of the property or the consideration, as the case may be, has not truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value or consideration, as the case may be and the proper duty payable thereon.*
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> *(2) On receipt of reference under sub-section (1), 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.

(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 (1), call for and examine the instrument, for the purpose of satisfying himself as to 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:

Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of the order, prefer an appeal before the District Judge and all such appeals shall be

heard and disposed of in such manner as may be prescribed by rules may under this Act".

The language of sub-section (3) of Section 47A (ibid) reveals that the Registering Officer within three years from the date of registration of any instrument, not already referred to him under sub-section (1), call for and examine the instrument, for the purpose of satisfying himself as to correctness of its value or consideration. After such an exercise, if 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 shall be payable by the person liable to pay the duty. The ratio of law laid down in M/s Merry Land Estate's case (supra) is distinguishable on facts of the instant case.

In this view of the matter, this Court does not find any illegality in the impugned orders and the same are hereby affirmed.

Consequently, the writ petition is dismissed.

10.10.2018 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No