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

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1. *CWP No.21643 of 2018*
Date of Decision: 07.09.2018

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Balwinder Singh and another

. . . . . Petitioners

Vs.

State of Punjab and others

. . . . . Respondents

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2. *CWP No.21628 of 2018*

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Manjit Kaur

. . . . . Petitioner

Vs.

State of Punjab and others

. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Sukhandeep Singh, Advocate,
for the petitioners.

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RAKESH KUMAR JAIN, J.

This order shall dispose of two petitions bearing ***CWP No.21643 of 2018*** titled as ***"Balwinder Singh and another*** Vs. ***State of Punjab and others"*** [for short 'the 1st petition] and ***CWP No.21628 of 2018*** titled as ***"Manjit Kaur** Vs. **State of Punjab and others"*** [for short 'the 2nd petition] as the issue involved in both the petitions is common. However, for the sake of convenience, the facts are being extracted from the 1st petition.

The petitioners have challenged the order dated 25.7.2018 passed by respondent No.3 by which their request for refund of the stamp duty to the tune of ₹1,08,520/- has been rejected.

The brief facts of the case are that the petitioners entered into a buyer's agreement on 15.2.2007 with M/s Tewari & Gangahar Infrastructure

Pvt. Ltd. for the purchase of Plot No.244 measuring 220.17 sq. mtrs situated at Global City, Amritsar for a consideration of ₹11,84,985/-. On 04.06.2015, the petitioners purchased stamp papers of ₹1,08,520/-, in which Plot No.244 is specifically mentioned, for the purpose of the conveyance deed. However, the conveyance deed could not be executed because the land in which plot No.244 was carved out was not shown to be in the name of the vendor i.e. M/s Tewari & Gangahar Infrastructure Pvt. Ltd. The vendor of the petitioners drafted another conveyance deed on 18.4.2018 in respect of the same plot in question but it was again found that the land in which the plot was carved was not in the ownership of the vendor. The vendor of the petitioners then offered plot No.717 measuring 214.04 sq. mts in lieu of plot No.244 and they entered into a fresh buyer's agreement on 21.4.2018 on the same sale consideration of ₹11,84,985/-. Since, the petitioners could not have used the stamp papers dated 4.6.2015 because plot No.244 was mentioned in the said stamp papers which has now been changed to plot No.717, therefore, the petitioners purchased fresh stamp papers on 23.4.2018 by paying the requisite stamp duty to the tune of ₹59,250/- and the conveyance deed was duly executed and registered on 24.4.2018. The petitioner thereafter, moved an application to respondent No.3 for refund of the amount of the stamp duty of ₹1,08,520/- which was purchased by them on 4.6.2015 but their application has been rejected on 25.7.2018 by the impugned order on the ground that the limitation to seek refund is of six months.

Learned counsel for the petitioners has argued that the impugned order is patently illegal and has referred to Section 50(b) of the Indian Stamp Act, 1899 [for short 'the Act'].

I have heard learned counsel for the petitioners in detail and perused the record with his able assistance.

Section 49 of the Act provides that the Collector may, on application, made with the period prescribed in section 50 of the Act, make allowance for impressed stamps, after having been satisfied, in certain cases and Section 50 of the Act specifically provides that the relief can be given under Section 49 of the Act in a case of a stamped papers not executed by any of the parties after six months of the stamp paper having been spoiled. Section 50(b) of the Act provides that when from unavoidable circumstances any instrument for which another instrument has not been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

In the present case, the petitioners had purchased the stamp papers on 4.6.2015 to the tune of ₹1,08,520/- on which plot No.244 was specifically mentioned. These stamp papers could have been used within a period of six months by the petitioners whereas the conveyance deed was drafted on 18.4.2018 but still it could not be got registered because Plot No.244 was not owned by the vendor. Thus, there was no unavoidable circumstance before the petitioners, who had been in slumber for continuously three years and when they got the new buyer's agreement executed with their vendor for their new plot and purchased the same by way of conveyance deed, decided to seek the refund.

In this regard, decision of this Court rendered in the case of *"M/s P.C. Jain Textile Pvt. Ltd. Vs. State of Haryana and others" 2017(3) RCR (Civil) 711* can be referred to in which it has been held that if no special circumstance mentioned for not moving the application well within the period of limitation except for alleging that the vendor was delaying the matter on one pretext or the other then it would not be a reason for setting aside the order of the Collector for declining the refund. Thus in view thereof, I do not find any reason to interfere in these petitions and hence, the same are hereby dismissed though without any order as to costs.

A photocopy of this order be placed on the file of connected case.

(RAKESH KUMAR JAIN)
JUDGE

07.09.2018
Vivek

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