IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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1. CWP No. 4436 of 2014
Date of Decision: 15.2.2018

Central Warehousing Corporation ....Petitioner

v.

State of Punjab and others ....Respondents

2. CWP No. 4451 of 2014

Central Warehousing Corporation ....Petitioner

v.

State of Punjab and others ....Respondents

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Amit Jain, Advocate, for the petitioners

Ms. Bhawna Gupta, DAG, Punjab

RAKESH KUMAR JAIN, J (Oral) :

This order shall dispose of two petitions bearing CWP No. 4436 of 2014 titled as **Central Warehousing Corporation v. State of Punjab and others** (hereinafter called as the 'First Petition') and CWP No. 4451 of 2014 titled as **Central Warehousing Corporation v. State of Punjab and others** (hereinafter called as the 'Second Petition') as the issue involved in both these petitions is common. However, for the sake of convenience, facts are being extracted from the first petition.

The petitioner, in both the cases, is aggrieved against the order passed by the Collector, asking the petitioner to pay the alleged deficiency

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of stamp duty and registration charges in respect of a sale deed dated 11.5.2009. It is submitted by the petitioner that two writ petitions have to be filed because there are two separate demand notices though the sale deed is the same.

In brief, the petitioner is a Public Sector Undertaking for which the land was acquired in Revenue estate of Village Hamayunpur, District Fatehgarh Sahib, for a public purpose, namely; for storage of food grains, in terms of the provisions of Land Acquisition Act, 1894 (for short 'the Act'). The Land Acquisition Collector, Fatehgarh Sahib (for short 'the Collector') announced the award on 27.8.1975 assessing the amount to be paid to the land owners by the beneficiaries i.e. the petitioner and after the award, the acquisition amount was paid by the petitioner.

The Director, Food and Supplies and Joint Secretary to Government of Punjab, vide letter dated 2.4.1981, directed the District Food & Supplies Controller, Patiala to transfer the acquired land in the name of the petitioner. Vide letter dated 22.5.2006, the petitioner had informed the Director, Food & Supplies, Punjab that it had paid the consideration amount and then requested for execution of the sale deed in its favour. Accordingly, sale deed was executed on 11.5.2009 vide Vasika No. 516, for a sale consideration of Rs.3,02,338/- + Rs. 2,62,485/- i.e. total amounting to Rs.5,64,821.57/-.

After the execution of the sale deed, the Sub Registrar, Fatehgarh Sahib, made a reference under Section 47A of the Indian Stamp Act, 1899 to the Collector regarding the deficiency of the stamp duty and registration charges. The Collector served a notice to the petitioner to pay

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the deficient stamp duty and registration charges to the tune of Rs.1,03,08,752/- on the ground that the stamp duty has to be charged on the value of the land as it was prevalent, at the commercial rates, on the date of execution of sale deed and not on the consideration paid by the petitioner at the time of allotment of the land in question. The said notice was though contested but without any success as the Collector found the deficiency, as stated above, vide his order dated 19.7.2012. The petitioner availed the remedy of appeal as provided under Section 47-A(4) of the Act before the Commissioner, Patiala Division, Patiala. The said appeal was also dismissed on 10.7.2013, as it has been observed by the Divisional Commissioner that the petitioner has failed to produce any evidence in regard to allotment of the land to it at the time of execution of sale deed.

Learned counsel for the petitioner has submitted that the issue involved in these cases is 'as to whether the petitioner has to pay the stamp duty and the registration charges in regard to the purchase of the land when it was acquired or it has to be paid on the commercial rates as determined by the respondents, prevalent at the time of execution of the sale deed on 11.5.2009?

It is submitted that once the consideration was paid, the title in the land vested in the petitioner, free from all encumbrances, as the possession was immediately taken in view of Section 16 of the Act. It is further submitted that besides the above, the respondents have issued a notification on 2.3.2009 to bring an amendment in Rule 3A of the Punjab Stamp (Dealing of Under Valued Instruments) Rules, 1983, by inserting the explanation. The said explanation read as under :

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> *"**Explanation –** The consideration amount fixed at the time of allotment of immovable property by any Govt./Semi Govt. Organisation shall be deemed to be the Collector's rate and the Stamp duty shall be charged for registration of document upon the consideration amount fixed by the Govt./Semi Govt. Organisation, provided that document is got registered by the original allottee within three months from the issue of this notification or within three months from the payment of last regular installment as per Schedule of payment of such allotment."*

It is further submitted that there was another insertion of Rule 3B in the aforesaid Rules vide notification dated 31.3.2010 which read as under :

> *"**3-B.** Notwithstanding any thing contained in rule 3A, the rate fixed for allotment or public auction of an immovable property by the Government or a public sector undertaking or a local body, shall be deemed to be the Collector's rate (as fixed under rule 3A) of such property, and the stamp duty shall be charged for registration of the instruments of such property on the rate so fixed, at the time of execution of the first conveyance deed; provided it is got registered up to the 30th day of June, 2010, if whole of the payment of such property has been made or within a period of three months from the date of payment of last installment, as per the schedule, fixed for payment of the allotment or auction price, as the case may be."*

It is submitted that Rule 3B was further amended vide notification issued on 30.9.2011 which read as under :

> *"**3-B.** Notwithstanding anything contained in rule 3-A, the rate fixed for allotment at the fixed price or at the price accepted after public auction of the immovable property by the Government or a Public Sector Undertaking or a Local Body, shall be deemed to be the Collector's rate as fixed under rule 3A of such property and the Stamp Duty shall be charged for registration of instrument of such property at the rate so fixed, at the time of execution of first conveyance deed of such property, provided the conveyance deed has*

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been got registered on or after 3rd June, 2008 or is got registered upto 31st Mrch, 2012 after making full payment of the price or within a period of one year, from the date, the last installment of such price had fallen due as per the Schedule fixed for payment in respect of such property and whose possession has been handed over, as the case may be."

It is submitted by the petitioner that as per Rule 3A, the consideration amount fixed at the time of allotment of immovable property, shall be deemed to be the Collector Rate and the Stamp Duty shall be charged with the registration charges upon the consideration amount, provided the document is registered by the original allottee within 3 months from the date of the notification or within three months from the payment of last instalment. It is submitted that the period of three months was to be counted from 2.3.2009 to 2.6.2009, whereas the sale deed was executed on 11.5.2009 i.e. within three months as prescribed. It is further submitted that Rule 3B which came into effect on 31.3.2010, further provided some more relief for such kind of sale deeds if those were registered upto 30.6.2010. It is further submitted that Rule 3B was further relaxed to give benefit in such type of sale deeds if it were executed after 3.6.2008 or were got registered upto 30.6.2010 after making full payment. Learned counsel for the petitioner has submitted that case of the petitioner falls squarely within the ambit of Rule 3B of the Rules as sale deed was executed on 11.5.2009 i.e. before 30.6.2010.

Continuing with his argument, it is further submitted that similar issue had arisen before this Court in the case of '**Mohali Club, Mohali v. State of Punjab and others, CWP No. 638 of 2009**, which was decided by this Court on 6.5.2010, giving the benefit of Rule 3B, which was

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notified on 31.3.2010. On the basis of the said judgment, the writ petition bearing CWP No. 7784 of 2010 was allowed on 11.11.2011. It is further submitted that the State of Punjab had filed LPA No. 341 of 2012 titled as **State of Punjab and others v. The Central Ware Housing Corporation** as it was not satisfied with the order passed by the learned Single Judge on 11.11.2011. The said LPA was adjourned sine die because of the statement made by the learned State counsel that SLP No. 21505 of 2011 is pending in the matter pertaining to the case decided by a Division Bench of this Court in LPA No. 891 of 2010 titled as **State of Punjab and others v. Parshotam Dass and another** on 2.8.2010. In the case of **Parshotam Dass** (supra), the matter was decided by a Division Bench stating that if the transfer of the property by the State to the public authority and is not under valued, then Section 47A of the Act could not be invoked. Be that as it may, the LPA No. 892 of 2010 titled as **State of Punjab and others v. The Mohali Club** was dismissed by the Division Bench on 2.8.2010 in view of the order passed in LPA No. 891 of 2010 titled as **State of Punjab and others v. Parshotam Dass and another.**

Interestingly, the State of Punjab filed the SLP in both the matters i.e. in **Mohali Club** and **Purshotam Dass** (supra). The SLP filed in the case of **Mohali Club** i.e. SLP (C) No. 21502 of 2011 was dismissed with the following observations :

> *"Heard.*
> *Delay condoned.*
> *In view of Notification issued by the State on 30.9.2011, it is not required to decide the dispute vis-a-vis, State of Punjab-Petitioner and Mohali Club-Mohali-respondent.*

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The special leave petition is dismissed."

However, in the case of **Parshotam** Dass (supra) SLP was granted and it was converted to Civil Appeal No. 8129 of 2014. The said appeal was dismissed by the Hon'ble Supreme Court on 26.8.2015 stating "we have heard learned counsel for the parties to the lis. Having gone through the records of the case and in the peculiar facts and circumstances of the case, we are of the considered opinion that the appeal, being devoid of any merit, deserves to be dismissed and is dismissed accordingly. Ordered accordingly."

The petitioner has, thus, submitted that the effect of Rule 3A and 3B, notified on 31.3.2010 and further amended on 30.9.2011 is the one that if the transaction has been effected by way of execution of a sale deed from 3.6.2008 upto 31.3.2012 then the price fixed at the time of allotment has to be taken into consideration and not the prevailing prices at the time of execution of sale deed.

In reply, learned State counsel has vehemently argued that though there is no dispute about the notifications issued from time to time but no evidence has been brought on record by the petitioner to prove the date of allotment of the land for the purpose of execution of sale deed. She has empathetically submitted that in Explanation to Rule 3A, the word is 'allotment of immovable property' and not 'the execution of the sale deed.'

Learned counsel for the petitioner in reply submitted that even if it is presumed that a portion of the land has been given to the petitioner out of the acquisition but the petitioner has already made the payment of the piece of land which is not denied by the respondent. It is submitted that

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once the amount has been paid, it was only a formal execution of registration of sale deed and for that matter, the law has been relaxed by the State of Punjab by adding explanation to the rules in which it is provided that if the execution of sale deed is effected within 3 months from the issuance of the notification, then the amount fixed at the time of allotment has to be seen and not at the time of registration of the document. Similar is the position with the notification issued on 31.3.2010 by which Rule 3B was added and further amended on 30.9.2011. Therefore, the respondents are at fault in asking the petitioner to pay the amount of more than Rs.one crore towards the deficiency of stamp duty, by assessing the value of the land to the tune of more than Rs.12 crores. The very fact that this Court had already decided this issue in the cases of **Mohali Club** and **Purshotam Das** (supra), which had attained finality upto the Hon'ble Supreme Court, I am of the considered opinion that the order passed by the Collector and the Divisional Commissioner are totally illegal and thus, while allowing both the petitions, the impugned orders are set aside, though without any order as to costs.

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

(RAKESH KUMAR JAIN)
JUDGE

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Speaking/Reasoned Yes/No
Reportable Yes/No

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