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

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1. *CWP No.26986 of 2014*
Date of Decision:25.07.2018

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Kusum Jagota and others
. . . . . Petitioners

Vs.

The State of Punjab and others
. . . . . Respondents

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2. *CWP No.27001 of 2014*

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Mohinder Kaur
. . . . . Petitioner

Vs.

The State of Punjab and others
. . . . . Respondents

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3. *CWP No.5748 of 2015*

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Meenakshi and others
. . . . . Petitioners

Vs.

The State of Punjab and others
. . . . . Respondents

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4. *CWP No.5750 of 2015*

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Jasbir Kaur and others
. . . . . Petitioners

Vs.

The State of Punjab and others
. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Sanjay Tangri, Advocate,
for the petitioners.

Mr.Sahil Sharma, DAG, Punjab.

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RAKESH KUMAR JAIN, J.

This order shall dispose of four petitions bearing CWP Nos.26986 & 27001 of 2014 and 5748 & 5750 of 2015 as the issue involved in all these petitions is identical. However, for the sake of convenience, the facts are being extracted from CWP No.26986 of 2014.

In brief, four sale deeds bearing Nos.415 dated 23.6.2008, 416 dated 23.6.2008, 433 dated 26.6.2008 and 651 dated 18.8.2008 were registered in the office of Joint Sub Registrar, Adampur which were executed by the same vendors in favour of different vendees, including sale deed No.416 dated 23.6.2008 executed in favour of the present petitioners. The total land sold by the vendors, by way of four sale deeds, is 25 kanal 10 marla out of the land measuring 31 kanal 19 marla, comprised in different khasra numbers, falling in 'single tuck', situated in village Kala Bakra, Tehsil and District Jalandhar. The petitioners had purchased 4 kanals of agricultural land. After about four months of the date of registration of the sale deed, the petitioners received a notice to appear before the Collector because a reference was made by the Sub Registrar alleging deficiency in the payment of stamp duty and registration charges. The Collector, vide his order dated 10.9.2010, directed the petitioners to pay ₹22,500/- towards the deficient stamp duty, ₹2500/- towards registration fee and ₹6750/- towards interest, calculated @ 12%, total amounting to ₹31,750/-. The order of the Collector dated 10.9.2010, was challenged by the petitioners by way of an appeal, which was allowed on 6.12.2010 and the case was remanded back to the Collector. After remand, the Collector visited the spot and determined the value of the land at ₹1.25 lac per marla and vide order dated 14.2.2012, directed the petitioners to deposit ₹5,50,800/-. The appeal filed by the petitioners against the said order was allowed on 14.6.2012 and the matter was again remanded back to the Collector. The Collector, vide his order dated 7.6.2013, upheld his earlier order dated 14.2.2012 and directed the petitioners to deposit ₹6,38,928/- and this time, the appeal filed by the petitioners against the order dated 7.6.2013 was dismissed by the appellate authority, vide its order dated 28.3.2014. The petitioners have, thus challenged the said impugned orders in this petition, *inter alia,* on the ground that the nature of the use of the land is relatable to the date of purchase which is relevant for the purpose of calculation of stamp duty and the subsequent use of the property for the commercial purpose cannot be looked into. In this regard, learned counsel for the petitioners has relied upon a decision of the Supreme Court rendered in the case of *"State of UP and others Vs. Ambrish Tandon and another" 2012 (1) RCR (Civil) 865.*

On the other hand, learned counsel for the respondents has submitted that the land in question was in two segments. 1 acre of land was falling in the first segment and 3 acres of land in the second segment. It is sought to be argued that since one acre of land is abutting the highway, therefore, it is more valuable as it can be put to commercial use in future.

Learned counsel for the petitioners has submitted that the Collector had summoned the report from the Naib Tehsildar, Adampur, who has submitted his report No.1011/Reader/dated 1.7.2010 in which he had mentioned that as per the revenue record, the nature of the land is agriculture. The land is situated on the Pathankot GT Road and is in 'V' shape. It is quite below the G.T. road and is outside the municipal limits. It is further submitted that there was a round of litigation before the authorities below because order of the Collector was time and again set aside by the Commissioner, Jalandhar and the matter was remanded back to him for fresh decision, the ultimate decision taken by the Collector is that he had visited the spot along with the Kanungo, Halqa Patwari of Kala Bakra, Sarpanch Palwinder Singh, Nambardar Sohan Singh and Chowkidar Om Parkash and had found that the land mentioned in the sale deed abuts the NH-1A and therefore, it can be used for commercial purposes but at the spot, the land was lying vacant. Against the decision of the Collector dated 14.2.2012 in which he had referred to his spot inspection, the Commissioner, in his order passed in appeal, noticed the contention of the petitioners that the land in question is chahi and deep to the level of 10 ft. to 15 ft. from road level. It is about 15 kms. away from Jalandhar and 10 Kms. Away from Bhogpur. It does not fall near any commercial area/building etc. and the area adjoining to it is a brick kiln and 'Sem Nala' (drain). The Commissioner, vide his order dated 14.6.2012, observed that the remand order was not implemented in its letter and spirit and therefore, the case was again remanded back to him but after the remand, the Collector passed the same order on 7.6.2013 as he was of the view that the land may be purchased as agricultural but it can be used in future for commercial purpose. This time, the appellate authority agreed with the Collector.

I have heard learned counsel for the parties and after perusal of the record, am of the considered opinion that the impugned orders are patently erroneous, illegal and are liable to be side aside because it is an admitted fact that the petitioners had purchased agricultural land, situated outside the municipal limits of Jalandhar though touching the national highway. There is no finding recorded by the Collector or the Commissioner that there was any commercial activity near the land in question at the time of its purchase as it has been found to be totally agricultural in nature and of inferior quality because it is found to be 10 to 15 ft. deep, below road level and simply because some portion of the purchased land is abutting the national highway would not make it commercial for the purpose of assessing the stamp duty on the basis of the Collector rates pertaining to the commercial property. In this regard, the judgment relied upon by the petitioners in the case of ***Ambrish Tandon (Supra)*** applies to his case with full force because in that case also it was held that merely because the property is being used for commercial purpose at the later point of time cannot be a relevant criteria for assessing the value for the purpose of stamp duty. The nature of the user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty.

Learned counsel for the respondents did not cite any decision to the contrary.

Thus, the writ petitions are hereby allowed and the impugned orders are set aside. No costs.

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

(RAKESH KUMAR JAIN)
JUDGE

25.07.2018
Vivek

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