202 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 8122 of 2016.
Date of Decision: 20.11.2018.

Rajinder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Vikas Mehsempuri, Advocate, for the petitioner.

Mr. Vikas Mohan Gupta, Addl. AG Punjab.

JITENDRA CHAUHAN.J.

Through the instant civil writ petition, the petitioner seeks quashing of the order dated 21.05.2013 (Annexure P-4) passed by respondent No.2 and the order dated 20.12.2011 (Annexure P-2) passed by respondent No.3 vide which the petitioner had been directed to affix the stamp duty of Rs.1,47,323/- as per collector rate.

It is contended that an agreement to sell dated 24.08.2006 was executed by Gurjit Kaur and others for the sale of land measuring 24 kanals 16 marlas situated in the area of village Nabha for consideration of Rs.40,68,000/-. The sale deed with regard to 16 kanals 11 marlas of land was executed vide registered sale deed dated 13.03.2009 however, as the said Gurjit Kaur failed to perform her part of the contract, the sale deed qua the remaining land could not be executed. Accordingly, the petitioner had to file a civil suit for specific performance of the agreement to sell dated 24.08.2006. During the pendency of the civil suit, the parties entered into a compromise and resolved that Gurjit Kaur would execute the sale deed regarding 8 kanals, 5 marla in favour of the petitioner. Accordingly, the balance sale consideration of Rs.7,31,830/- was paid by the petitioner in the Court and the suit was decreed as per the compromise vide judgment and decree dated 30.04.2011 (Annexure P-1). As per the judgment and decree (Annexure P-1), the sale deed was executed on 18.08.2011. It is contended that the agreement to sell was executed with regard to 24 kanals 16 marlas of land for a total sale consideration of Rs.40,68,000/- which was the prevailing collector rate. However, out of 24 kanals 16 marlas of land, sale deed with regard to 16 kanals 11 marlas was got executed on 13.03.2009 for a sale consideration of Rs.27,14,650/- as per collector rates and stamp duty of Rs.2,89,700/- was affixed. However, the sale deed with regard to remaining 8 kanals 5 marlas executed as per the decree on 18.08.2011 and, therefore, a stamp duty of Rs.1,08,300/- was affixed. The Collector, vide order dated 20.12.2011 (Annexure P-2) ordered to impound the sale deed on the ground that the stamp duty had not been affixed as per collector rates. The petitioner had preferred an appeal before the learned Commissioner, Patiala Division, Patiala which was dismissed vide order dated 21.05.2013 (Annexure P-4).

On the other hand, it is contended that the stamp duty is to be affixed as per the prevailing collector rates fixed for a particular area.

Heard.

The only controversy involved in the present writ petition is whether the stamp duty is to be affixed as per the date of the agreement executed between the parties or as per the collector rates existing on the date of execution of sale deed.

In ***State of Rajasthan vs. M/s Khandaka Jain Jewellers 2008(1) RCR (Civil) SC 91*** it was held as under:-

> *"9...The contention of the learned counsel for the State that as per Section 17 of the Act, the market value has to be taken into consideration because Section 17 stipulates that all the instruments chargeable with duty and executed by person of India shall be stamped before or "at the time of execution". The word "execution" has been defined in Section 2(12) of the Act which says that "Execution" used with reference to the instruments, mean "signed" and "signature". Therefore, it shows that the document which is sought to be registered has to be signed by both the parties. Till that time the document does not become an instrument for registration. A reading of Section 2(12) with Section 17 clearly contemplates that the document should be complete in all respects when both the parties should have signed it with regard to the transfer of the immovable property. It is irrelevant whether the matter had gone in for litigation."*

It was further held as under:-

> *"10......... The crucial expression used in Section 17 is "at the time of execution". Therefore, the market value of the instrument has to be seen at the time of the execution of the sale deed, and not at the time when agreement to sale was entered into.*
> *12.. In this background, if we construe Section 17 read with Section 2(12) then there is no manner of doubt that at the time of registration, the Registering Authority is under an obligation to ascertain the correct market value at that time, and should not go*

by the value mentioned in the instrument."

In view of the proposition of law cited above, the date of registration of sale deed is the relevant date for affixing the stamp duty. Thus, this Court does not find any illegality or irregularity in the impugned orders calling for interference in exercise of writ jurisdiction by this Court.

Dismissed.

20.11.2018. **(JITENDRA CHAUHAN)**
SN **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No