IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3754-2017 (O&M)
Date of decision : 18.09.2018

Ruchi Gupta

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Arora, Advocate,
for the petitioner.

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

JITENDRA CHAUHAN, J.

The petitioner seeks quashing of order dated 02.11.2015 (Annexure P-3) passed by respondent No.3-District Revenue Officer-cum-Collector, Gurgaon, whereby, an additional stamp duty of Rs.6,46,800/- on the sale deed dated 15.12.2014 has been imposed; and order dated 04.08.2016 (Annexure P-5), whereby the appeal preferred by the petitioner against impugned order Annexure P-3, has been dismissed.

It is contended that the petitioner purchased land measuring 3 Kanal 6 Marlas having a covered area of 7000 sq.ft. situated in Village Dhumaspur, Tehsil and District Gurgaon, vide registered sale deed dated 15.12.2014 (Annexure P-1). On 04.01.2016, the petitioner received letter dated 24.12.2015 (Annexure P-2), whereby, she came to know about the impugned order Annexure P-3, imposing deficient stamp duty to the tune of Rs.6,46,800/-. The appeal preferred against impugned order Annexure P-3 also stands dismissed. It is contended that at the time of registration of the sale deed, no objection with regard to deficiency in stamp duty was raised. The document, after registration, was duly handed over to the petitioner. Therefore, there was no occasion for the respondents to subsequently point out any deficiency in stamp duty. The impugned order has been passed without affording any opportunity of hearing to the petitioner, nor any notice or summons were issued to her.

On the other hand, learned State counsel submits that after the registration of the sale deed, deficiency in stamp duty was pointed out by the auditor appointed by the Government for the purpose. The petitioner was summoned by respondent No.3 but she did not appear on the date fixed, whereas, the Stamp Auditor appeared and stated that the land in question having 7000 sq. ft covered area is *Gair Mumkin Makaan,* therefore, the valuation of this land was to be carried out as per residential rates. The Appellate authority has affirmed the findings recorded by the Collector-cum-DRO.

Heard.

Section 47-A of Indian Stamp (Haryana Amendment) Act, 1973, in support of his contention, which reads 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: -*
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> *"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.

(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.*
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> *(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.

A perusal of the impugned order (Annexure P-3) reveals that on receipt of the case from Stamp Auditory, the petitioner-vendee was summoned through notice, however, none caused representation on her behalf. Whereas, the Stamp Auditor appeared and stated that the covered area of 7000 sq.ft. out of the land under sale was Gair Mumkin Makaan, therefore, the valuation of this land was to be carried out as per residential rates.

Since, the sale deed was in respect of a residential area, therefore, the rates applicable to the residential property are liable to be applied notwithstanding that the house was constructed on *gair mumkin* land.

Finding no illegality in the impugned orders, the same are hereby affirmed.

Consequently, the writ petition is dismissed.

18.09.2018 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No