IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1330 of 2018 (O&M)
Date of Decision :31.08.2018

Jiwan Kumar and another

......Appellants

Versus

State of Punjab and others

...... Respondents

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present: Mr. Mukand Gupta, Advocate for the appellants.

ARUN PALLI, J.:

This is an *intra court* appeal under clause-X of the Letters Patent, against an order and judgment dated 21.05.2018, rendered by the learned Single Judge, whereby the writ petition preferred by the appellants/petitioners against the order dated 21.03.2016, passed by the Collector, Mansa and affirmed by the Commissioner, Faridkot Division, Faridkot, vide order dated 9.8.2017, requiring the appellants to deposit Rs.6,27,425/- towards deficiency in stamp duty and registration fee, had since been dismissed.

The facts that are required to be noticed are limited.

The appellants vide sale deed No.1823 dated 10.07.2013, purchased a land measuring 2 kanal 0.5 marla, site area: Mansa Kalan from one Ram Singh son of Malkit Singh for a consideration of Rs.10,12,500/-. During the course of audit conducted by the Accountant General, Punjab, Chandigarh, for the year 2013-2014, deficiency in stamps/fee amounting to Rs.6,27,425/- was detected in respect to the sale deed No.1823 dated

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10.07.2013. Accordingly, the Sub Registrar, Mansa required the Collector (ADC), Mansa to initiate the proceedings under Section 47-A of the Indian Stamp Act, 1899, and take suitable action. Resultantly, notice under Rule 4(1) of the Punjab Stamp (Dealing of Undervalued Instruments) Rules, 1983 in Form-I was issued to the appellants. The Sub Divisional Magistrate, Mansa was directed to carry out spot inspection and report as regards the location of the site as also the Collector rates that applied thereto. And, vide report dated 17.12.2015, submitted to the Collector, the Sub Divisional Magistrate clarified that the land that was subject matter of the sale deed was situated in an area that fell under serial No.57/93 and not in serial No.57/133. Thus, the appellants had not paid the requisite stamp duty, for, they had stated in the sale deed that the site in question was *nehri* and fell under serial No.57/133, whereas it actually fell under serial No.57/93 and therefore, the residential rates @ Rs.6,000/- per square yard were applicable. For, the appellants had raised certain objections to the said report the Collector himself inspected the site on 15.03.2016, in the presence of certain respectables of the area, vendees and Patwari who came present with the records. But, since it was found that the land in question was situated about 100 feet away from the road going from Vidya Bharti School towards Canal bridge, it was confirmed that Collector rates as depicted under serial No.57/93 were applicable. And, thus the appellants were under obligation to may good the deficiency in stamp duty as also the registration fee. The appeal preferred by the appellants against the order dated 21.03.2016, was dismissed by the Commissioner vide order dated

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09.08.2017, and the decision of the Collector was affirmed. Being aggrieved by the said two orders the appellants approached this Court vide writ petition, referred to above. However, vide impugned order and judgment even the learned Single Judge declining to interfere in the matter, for, the report dated 15.03.2016 submitted by the Sub Divisional Magistrate, Mansa, which formed basis of the order passed by the Collector as also the Commissioner was not brought on record by the appellants for the reasons best known to them. Further, not only the report dated 17.12.2015, but as even the Collector himself visited the spot on 15.03.2016, and found that the land in question was situated in an area that was covered under serial No.57/93 of the Collector's rate list, the stamp duty was to be paid accordingly. Whereas, the appellants had affixed the stamp papers in terms of the rates prescribed at serial No.57/133 of the Collector rates, therefore, they were required to deposit the deficient amount.

Learned counsel for the appellants submits that in the *jamabandi* for the year 2008-09, the nature of the site in question is depicted as *nehri* and so is the position reflected in the *jamabandi* for the year 2012-13, and, therefore, the said site could not be termed as residential area requiring the appellants to pay stamp duty in terms of the Collector rates prescribed under serial No.57/93 of the Collector's rate list. Thus, the appellants had affixed the appropriate stamp duty in terms of the rates prescribed under serial No.57/133.

We have heard learned counsel for the appellants and perused the records.

Concededly, as per the Collector rates prevalent in Tehsil

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Mansa the area that is situated under boundary of Municipal Council, which is more than 2 kanals and is cultivable, in terms of serial No.57/133, the Collector rate is Rs.40,00,000/- per acre. Whereas the land situated on the road going from Vidya Bharti School towards Canal bridge, up to the depth of 100 feet was categorized as commercial and was covered under serial No.57/92, and the Collector rate prescribed therefor was Rs.30,000/- per square yard. And the land that lay beyond 100 feet from the road was termed as residential area, and being covered under serial No.57/93 the Collector rate prescribed therefore was Rs.6,000/- per square yard. As demonstrated above, the appellants paid the stamp duty in terms of the rate prescribed under serial No.57/133 i.e. @ Rs. 40,00,000/- per acre, whereas, the audit objections and the case of the respondents-authorities has been that the site in question was situated in an area that was covered under serial No.57/93. Significantly, the Sub Divisional Magistrate, Mansa, carried out a spot inspection and found that the site in question was indeed covered under serial No.57/93 of the Collector's rate list, and therefore, the appellants were required to pay the stamp duty @ Rs.6,000/- per square yard. Whereas the sale deed dated 10.07.2013, was got registered in terms of the rate prescribed under serial No.57/133 of the Collector's rate list. Therefore, the appellants had caused a huge financial loss to the Government by evading requisite payment of stamp duty and registration fee. Not just that even the Collector visited the spot on 15.03.2016, and found that the said site was situated in an area that was covered under serial No.57/93 of the Collector rates list and therefore the report submitted by the

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Sub Divisional Magistrate, Mansa, dated 17.12.2015, a relevant extract whereof is being set out hereafter, depicted the correct position.

> **"From**
>
> **The Sub Divisional Magistrate, Mansa.**
> **To**
> **The Collector/A.D.C., Mansa.**
> **Letter No.1953/Reader dated: 17.12.2015**
> **Subject: Copy of the report in case titled State Versus Jiwan Kumar, sale deed No.1823 dated 10.07.2013.**
> **Reference: Refer your letter No.695/A.D.C/Reader dated 2.9.2015.**
> **Refer to the subject mentioned above as report was demanded by your office after spot inspection. Therefore, the report is being prepared as per the below proforma and is being sent to you for further necessary action.**
> **Encls. As above**
>
> **Sub Divisional Magistrate,**
> **Mansa.**

1	**-**	**-**
2	**-**	**-**
3	**-**	**-**
4	**-**	**-**
5	**-**	**-**
6	**Whether property mentioned in the sale deed as per spot is correct or not. If not then whole investigation be done, investigation means that whether the said house is**	**No, as per spot property falls as per Sr. No.57/93 instead of Sr. No.57/133 on the spot it is a residential plot and the land is not cultivable.**

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	constructed/multi-storey/shop/flat/factory/on the main road/commercial etc. which has not been disclosed in the sale deed and whether it is as per collector rates be also mentioned.	
7	**What was Collector Sr. No. and Collector rates at the time when the sale deed was got executed**	**At the time of execution of the sale deed the Collector rate was Rs.30,000/- per square yard as per Sr. No.57/92 of the land upto 100 feet from the road and for the land beyond 100 feet from the road the Collector rate is Rs.6,000/- per square yard as per Sr. No.57/93 for residential land.**
8	**Whether stamp duty has been paid as per Collector rates. If not then give the details.**	**Stamp duty has not been paid as per collector rates. Stamp duty has been paid on the sale deed as per Sr. No.57/133 of the Collector rates in which the land has been shown to be Nehri whereas the said plot is commercial and residential and the Collector rates of which fall under Sr. No.57/92 and 57/93.**
9	**-**	**-**
10	**-**	**-**
11	**-**	**-**
12	**-**	**-**
13	**Whether the seller and purchaser of the sale deed**	**Parties have committed theft of stamp duty because the parties**

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	have intentionally committed theft of stamp duty and registration fee and whether have not disclosed other facts (Note: requested to submit your report on the basis mentioned above in your report).	**have got the sale deed registered by showing the land as Nehri and the sale deed has been registered as per Sr. No.57/133 of Collector rates whereas the said land is situated on the road which runs from Vidya Bharti School and canal and its commercial rate is as per Sr. No.57/92 of the Collector rates is Rs.30,000/- per sq. yard and for residential rate is as per Sr. No.57/93 of the Collector rates is Rs.6,000/- per sq. yard".**

It would be apposite to point out at this juncture that nothing was/is brought on record to question the veracity of the report dated 17.12.2015, as also the spot inspection carried out by the Collector himself on 15.03.2016. It is not the case of the appellants either that the land purchased by them was not situated 100 feet away from the road that goes from Vidya Bharti School towards Canal bridge. That being so, as a necessary consequence the Collector rates prevalent in the area were applicable and accordingly the appellants were required to affix the appropriate stamp duty for registration of the sale deed dated 10.07.2013. The argument that as the nature of the land in the record of rights was depicted as *nehri* and therefore could not be considered as residential area would hardly be of any relevance either. For payment of stamp duty and registration fee was required to be affixed in terms of the Collector rates prevalent in the area. Needless to assert that before the Collector rates are

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finalized, a requisite exercise as regards determination thereof: whether the land situated in a particular area is purely rural, agricultural, urban or has the potential of being developed and used for residential, Commercial or any other purpose along with all relevant factors is duly gone into. And we must point out that this is not a case where determination of the Collector rates or the method that was followed by the authorities to finalize them was in issue.

In short, for the appellants to succeed they were required to show that the site in question actually formed part of an area that was covered under serial No.57/133 of the Collector rates list and, therefore, the stamp duty as also the registration fee that was affixed was appropriate, which they apparently failed to. Thus, the only and the inevitable conclusion that could be reached was that appellants evaded payment of requisite stamp duty and registration fee, which the respondents-authorities were fully entitled to recover.

In conspectus of the above, we too are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge as also the orders dated 21.03.2016 and 9.8.2017, passed by the authorities.

The appeal being devoid of merit is accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.08.2018

Manoj Bhutani

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

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