133 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 3083 of 2019(O&M)
Date of decision : 04.02.2019

Ajayvir Sehgal .... **Petitioner**

versus

State of Haryana and others ...... **Respondents**

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

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Present: Mr.Saurabh Singla, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J. (ORAL)

Instant writ petition is directed against the order dated 16.02.2017(Annexure P-2) passed by the District Revenue Officer and Collector, Panchkula and in terms of which the sale deed dated 30.12.2016 pertaining to industrial plot No.382, Phase I, Panchkula has been impounded under Section 47-A of the Indian Stamp(Haryana Amendment)Act, 1973 being undervalued and the petitioner has been called upon to pay the deficiency of stamp duty of Rs. 22,18,300/-. Further challenge is to the order dated 08.08.2018(Annexure P-1) passed by the Commissioner, Ambala Division affirming the order of the Collector, Panchkula.

Learned counsel representing the petitioner would submit that an agreement to sell had been entered into between the petitioner and the original allottee Jagdish Raj dated 03.12.2008 for the plot in question and the entire consideration amount of Rs. 1.50 Crores had been paid up-front. Thereafter it was the allotting authority i.e. HUDA which went into litigation with the original allottee Jagdish Raj and such litigation as also consequent proceedings continued till the year 2016. Finally on 23.11.2016 HUDA granted permission to the original allottee to transfer the said plot in the name of the petitioner and immediately thereafter the sale deed was got executed on 30.12.2016. The precise contention raised is that when delay is on the part of the seller then the market value of the property in question for the purpose of calculating the stamp duty has to be determined in relation to the date when the agreement to sell had been entered into and not on the date of registration of the sale deed. It is urged that in the facts and circumstances of the case the delay in registration of the sale deed was at the end of the seller/original allottee and as such the petitioner is not liable to pay the stamp duty as per Collector rate prevailing at the time of registration of the sale deed. In support of such contention reliance has been placed on judgment of the Apex Court in **M/s Residents Welfare Association, Noida vs. State of U.P. and others, (2009)14 SCC 716.**

Counsel for the petitioner has been heard at length and the pleadings on record have been perused.

Facts in brief which emanate from the pleadings may be noticed at the outset. Industrial plot No.382, Phase I, Panchkula was allotted to Jagdish Raj by HUDA on 28.02.1980. Possession of the plot was delivered on 12.06.1981. Estate Officer, HUDA resumed the plot vide orders dated 19.06.1991. Allottee Jagdish Raj filed an appeal against the order of resumption before the Chief Administrator, HUDA and the same was dismissed on 28.10.1992. Jagdish Raj then filed a Civil Suit No. 69 of 1996 for the relief of declaration to the effect that the resumption order dated 19.06.1991 as also the order passed by the Appellate Authority dismissing the appeal are unlawful, illegal, null and void *ab initio*. Suit filed by the original allottee was decreed by the trial Court on 23.08.2007 and the resumption order was set aside. Thereafter a Civil Appeal was preferred by HUDA against the judgment of the trial Court. In the meanwhile present petitioner entered into an agreement to sell dated 03.12.2008 with the allottee for the plot in question against total sale consideration amount of Rs. 1.5 Crores. Copy of the agreement to sell dated 03.12.2008 stands appended as Annexure P-4 along with the writ petition. The Civil Appeal preferred by HUDA was dismissed by the Lower Appellate Court on 29.04.2009. A period of 22 months was then given to the original allottee to complete the construction on the plot and he was also called upon to deposit the extension fee amounting to Rs.14,33,365/-. The extension fee was deposited on 07.01.2011. Application for approval of the building plans was submitted on 24.12.2012. Such application was initially rejected but upon certain short comings having been made good, building plans were approved by HUDA on 21.06.2013. The construction having been completed, occupation certificate was applied for by the original allottee but the same was declined on the ground that a conveyance deed had not been executed in favour of the allottee. Accordingly on 07.05.2015 an application for execution of conveyance deed was moved to the HUDA authorities and the same was then executed in favour of Jagdish Raj/allottee on 22.09.2015. It is thereafter that an application was moved to the HUDA authorities seeking permission to transfer the plot in question in favour of the petitioner. The same was granted vide letter dated 23.11.2016. Sale deed in question was registered on 30.12.2016 and stamp duty was affixed on the amount of sale consideration i.e. Rs. 1.5 Crores as reflected in the agreement to sell dated 03.12.2008. On 30.12.2016 itself the Sub Registrar, Panchkula made a reference to the District Revenue Officer and Collector, Panchkula that as per Collector rate fixed for the year 2016-17 the plot in question would carry a value of Rs. 4,66,90,000/- and as such a deficiency of stamp duty amounting to Rs. 22,18,300/- has been noticed.

The sequence of facts noticed hereinabove has finally led to the impugned orders dated 16.02.2017(Annexure P-2) and 08.08.2018 (Annexure P-1).

The terms and conditions of the agreement to sell dated 03.12.2008 entered into between the petitioner and the seller/allottee Jagdish Raj would be relevant to the issue at hand. The agreement is reproduced hereunder in its entirety:-

> " *AGREEMENT TO SELL*
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> *THIS AGREEMENT TO SELL IS MADE AT PANCHKULA ONTHIS 3RD DAY OF DECEMBER, 2008*
>
> *BETWEEN*
>
> *SH.JAGDISH RAJ, SON OF SH.HARI CHAND, HOUSE NO. 1873, GALI/STREET NO.2 CHANDER NAGAR HAIBOWAL, LUDHIANA, PUNJAB, 141007, (hereinafter referred to as the SELLER, which term shall where the context so admits include his heirs, assignees, executors, successors, legal representatives and administrators) of the one part;*
>
> *AND*
>
> *SH. AJAY VIR SHEGAL, SON OF LATE SH.S.R.SEHGAL, RESIDENT OF HOUSE NO.39, SECTOR 6, PANCHKULA, 134109, (hereinafter referred to as the PURCHASER, which term shall where the context so admits include his heirs, assignees, executors, successors, legal representatives and administrators) of the other part.*
>
> *WHEREAS the above said Seller is the sole and absolute owner and allottee of* ***Industrial Shed No.382, Phase-I, Industrial***

Area, Panchkula, plot measuring 2000 Sq.Mtrs., *and the said plot underneath is duly allotted to him by the Estate Officer, HUDA, Panchkula on free hold basis and the said Industrial Shed is free from all the sorts of encumbrances i.e. sale, Gift mortgage, will, claims etc. and the said Seller has confirmed that he has not entered or executed any other Sale Agreement/Agreement to Sell previous to this Agreement to Sell.*

AND WHEREAS the said Seller is interested in the sale of above said Industrial Shed and the Purchaser is also interested to purchase the same and both the parties have agreed with each other on the following terms and conditions:-

NOW THIS DEED FURTHER WITNESSETH AS UNDER:-

1. *That the total sale price of the above said fully paid Industrial Shed has been fixed at Rs.1,50,00,000/- (Rupees One Crore Fifty Lacs only).*
2. *That the said Purchaser has paid to the said Seller as sum of Rs. 5,00,000/- (Rupees Five lacs only) in the shape of currency notes, as an earnest money, for which amount the said Seller hereby acknowledges the receipt.*
3. *That above said property was under resumption and the purchaser has agreed and undertaken that the purchaser shall be pursuing the pending litigation in the Court of Ld. District Judge at Panchkula on behalf of the said seller and all the expenses which will be incurred would be borne by the purchaser and the same would be deducted from the balance sale consideration at the time of execution/registration of Sale Deed. The litigation shall be brought to legitimate end by the purchaser and all expenses for the litigation shall be borne by the purchaser which would be subject to adjustment in the total balance sale consideration of the plot.*
4. *That as regarding the amount to be deposited in HUDA, Panchkula it shall be paid by the said purchase on behalf of said Seller and the same shall be deducted from the total sale*

price.

5. *That the building plan for the construction of the Industrial plot will be approved/Re-validated by the seller at the expenses of the purchaser and the same shall also be deducted from the total Sale Price.*
6. *That the maximum expenses for the construction of the said Industrial plot has been fixed by the seller is Rs. 25,00,000/- (Rupees Twenty five Lacs only) and it is mutually agreed between the parties that if the amount exceeds from Rs. 25,00,000/-(Rupees Twenty Five Lacs Only) than the excess amount will not be deducted from the total sale price.*
7. *That the seller has assured the purchaser that immediately upon the end of the litigation with the HUDA, he shall initiate all the necessary steps to ensure speedy Transfer of the plot in favour of the purchaser. That the said Seller shall be bound to complete all the necessary formalities to take the possession of the plot and complete construction thereon at the earliest as completion of construction is a pre-requisite for the transfer of the plot.*
8. *That after deducting the earnest money (Biana), TDS and all other dues/expenses from the above mentioned total sale price, the balance payment will be paid by the Purchaser to the Seller at the time of execution/registration of transfer papers/sale deed.*
9. *That All expenses on the execution/registration of the Transfer Papers/Sale Deed, Administration Charges, permission to Transfer, shall be borne by the said Purchaser, and the conveyance deed charges shall be borne by the said Seller.*
10. *That if the Permission to Transfer is not granted/refused by the Estate Officer, HUDA, Panchkula, due to any reason before the date fixed for final payment then the Seller will have to extend the date as mutually agreed by both the parties.*
11. *That if the said Seller backs out from this bargain then he will pay double of the earnest money received by him to the said*

purchaser and the Purchaser shall has the option either to accept the damages or to get the said Industrial Shed transferred/executed through the sale deed, in his favour through the Court of Law under the Specific Relief Act.

12. *That if any dispute will arise out of this bargain then the same shall be triable by the Panchkula Courts.*
13. *That this deed is made in duplicate, Original have been kept by the Purchaser and copy by the said Seller for their records and ready reference.*

IN WITHNESS WHEREOF both the parties have set their hands on this deed at Panchkula on the day, month and year mentioned above in the presence of marginal witness.

WITNESS NO.1 *SELLER*

WITNESS NO.2 *PURCHASER"*

Perusal of the agreement clearly reveals that the petitioner was aware that the plot in question was under resumption and there was pending litigation in regard thereto. As per clause 3 of the agreement, the purchaser (petitioner herein) had virtually purchased 'litigation rights' and had undertaken that he would pursue the appeal which was pending in the Court of District Judge at Panchkula on behalf of the seller and all the expenses which may be incurred would also be borne by him and would be deducted form the balance sale consideration at the time of execution /registration of the sale deed. It was further agreed that the litigation would be brought to a **'legitimate end'** by the purchaser. Thereafter the building plans for the construction of the industrial plot were to be got approved/re-validated by the seller but at the expenses of the purchaser. The clause pertaining to the construction cost had also been factored in the agreement to sell. There was a clear recital in clause 7 as regards completion of necessary formalities to take possession of the plot and to complete construction thereon as completion of construction was a pre-requisite for the transfer of the plot. The most crucial issue that would require notice is that the agreement to sell dated 03.12.2008 did not fix a target date for execution/registration of the sale deed. In other words it was an 'open ended agreement'.

This Court would have no hesitation in concluding that the purchaser/present petitioner was aware on the date of entering into the agreement to sell dated 03.12.2008 that there was pending litigation as regards resumption of the plot in question. He had taken upon himself the onus to pursue the litigation and to even pay the expenses that may be incurred in relation thereto. As per agreement even the building plans were to be got re-validated by the seller but at the expenses of the purchaser. The purchaser was even aware that construction would have to be completed on the plot prior to seeking permission for transfer of the plot. It is for this reason that no date had been fixed in the agreement for execution/registration of the sale deed. In other words it was well within the knowledge of the petitioner that pursuant to the agreement to sell dated 03.12.2008, there would be a time lapse till the execution/registration of the sale deed and which could not be possibly defined. The purchaser/petitioner was a party to the said arrangement. Contention raised by counsel that the delay in registration/execution of the sale deed being attributable only to the seller is thus not well founded. There would be no infirmity as such in the view taken by the respondent-authorities in determining the stamp duty as per Collector rate prevailing at the time of registration of the sale deed. In the peculiar facts and circumstances of the present case the ratio of the judgment of the Apex Court in ***M/s Residents Welfare Society, Noida(supra)*** cannot enure to the benefit of the petitioner.

There is no merit in the writ petition.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

04.02.2019
sunita

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