

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP No.10268 of 2017
Date of Decision:07.05.2019

Subhash Chander Abrol

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Mayank Aggarwal, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against the order dated 05.01.2016 (Annexure P-4) passed by the Additional Deputy Commissioner (Civil)-cum-Collector, SAS Nagar and in terms of which the petitioner had been directed to deposit a sum of Rs.27,49,406/- as deficient stamp duty as also a sum of Rs.1,78,000/- towards registration fee under Section 47-A of the Indian Stamp Act. Further challenge is to the order dated 01.04.2016 (Annexure P-6) passed by the Commissioner, Rupnagar, Division Rupnagar, dismissing the appeal preferred by the petitioner and affirming the order passed by the Collector.

Brief facts that would require notice are that an agreement dated 08.11.2005 was entered into between the son and wife of the petitioner as vendees and Sudesh Kumar, Dilprit Singh and Kanwal Mohan, as vendors in respect of 51 kanals 4 ½ marlas of land situated within the revenue Estate of Village Tangori, Tehsil and District SAS Nagar. The total sale

consideration was reflected as Rs.22,00,000/-. As per agreement the sale-deed could be executed either in favour of son and wife of the petitioner or in favour of any other person as they may desire. Sale-deed was executed on 05.08.2013 in favour of the petitioner as per terms of the agreement. A notice dated 27.08.2013 was received by the petitioner under Section 47-A of the Indian Stamp Act (hereinafter to be referred to as the Act) alleging deficient stamp duty and registration fee. It is such proceedings initiated vide notice dated 27.08.2013 that have culminated in the passing of the impugned order dated 05.01.2016 (Annexure P-4) at the hands of the Collector, calling upon the petitioner to pay Rs.27,49,406/- alongwith 12% interest on account of deficient stamp duty and an amount of Rs.1,78,000/- towards registration charges. Appeal preferred by the petitioner stands declined vide impugned order dated 01.04.2016 (Annexure P-6) passed by the Commissioner.

Learned Senior counsel while assailing the impugned orders has argued that the Collector has relied upon the collector rate in relation to the time when the sale-deed was executed without appreciating that the property had virtually been purchased in the year 2005 itself and it is only on account of certain pressing family circumstances that the sale-deed was not executed in 2005 itself. It is contended that the respondent authorities have not examined the basic issue i.e.the transaction in question being complete for purpose of transfer within the meaning and scope of the provisions of the transfer of property Act as on the date of agreement to sell i.e. 08.11.2005. It has been urged that the Collector as also the Commissioner did not appreciate that the sale was complete at the time of execution of the agreement to sell inasmuch as the entire sale consideration

had been duly paid and even the possession of the property stood delivered on 08.11.2005 itself.

It has further been argued that the impugned orders are in violation of the mandate of Section 47-A of the Act.

Per contra learned State counsel has argued that the proposition in law is well settled that stamp duty of sale of immovable property has to be assessed on the market value at the time of registration of the sale-deed and not at the time of agreement to sell. In support of such contention judgement of the Apex Court in **State of Rajasthan and others Vs. M/s Khandaka Jain Jewellers 2008 (1) RCR (Civil) 91** has been relied upon.

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

Section 47-A of the Act reads as follows:-

[47-A. Instruments under-valued how to be dealt with:-

(1) If the market value of any property, which is the subject of any instrument on which duty is chargeable on market value as set forth in such instrument, is less than even the minimum value as determined in accordance with the rules made under this Act, the Registering Officer appointed under the Registration Act, 1908, shall, after registering the instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon; and

(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 market value or

consideration and the duty as aforesaid and the deficient amount of duty, if any, alongwith interest at the rate of twelve per cent per annum on such deficient amount, shall be payable by the person liable to pay the duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty:

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum if there was an intentional omission or lapse on his part in not setting forth the correct market value of such property.

(3) The Collector may, suo moto, or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for and examine any instrument for the purposes of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and of all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if after such examination, he has reason to believe that proper duty has not been paid, he may, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under sub-section (2), determine the value of the property or

the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, if any, alongwith interest at the rate of twelve per cent per annum on such deficient amount, would be payable by the person liable to pay duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty:

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum, if there was an intentional omission lapse on his part in not setting forth the correct market value of such property.

(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 that order, prefer an appeal before the [Commissioner] and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.

Explanation.-For the purpose of this section, value of any property shall be estimated to be the price which in the opinion of the Collector the appellate authority, as the case may be, such property would have fetched, if sold in the open market on the date of execution of the instrument relating to the transfer of such property.”

As per mandate of the afore-reproduced provision, the Collector is obligated to hold an enquiry in such manner as may be prescribed by the rules under the Act for determining the true value or consideration on which the stamp duty has to be paid. This enquiry and determination of the value has essentially to be an independent, fair and quasi-judicial decision of the Collector in the light of the facts established before him. It

would not be open for the Collector to record any stereotyped or mechanical conclusions. Perusal of the impugned order dated 05.01.2016 (Annexure P-4) passed by the Collector clearly reveals that the recovery of deficient stamp duty/registration charges from the petitioner is based only upon the collector rate prevailing at the time of registration of the sale-deed i.e. 05.8.2013. It is a mechanical order that has been passed. The enquiry as also determination of the true value of the property on which the stamp duty was to be paid and as envisaged under Section 47-A of the Act was not done. This Court would have no hesitation in holding that the order dated 05.01.2016 (Annexure P-4) passed by the Collector does not satisfy the mandate of Section 47-A of the Act.

There would be no quarrel with the proposition that the stamp duty on sale of immovable property requires to be assessed on the market value at the time of registration of the sale-deed under normal circumstances. However, the facts and circumstances of the instant case are peculiar. Placed on record and appended alongwith the instant writ petition at Annexure P-1 (colly) are the agreement to sell dated 08.11.2005, the receipts towards sale consideration amount, copies of the wills, General Power of Attorney as also the affidavits executed by the vendors. Such documents and the contents thereof have not been disputed. A conjoint reading of the documents at Annexure P-1 would reveal that the total sale price of the land in question was settled as Rs.22,00,000/-. The entire sale consideration i.e. Rs.22,00,000/- was made over to the vendors on the date of agreement to sell itself i.e. 08.11.2005. Sale consideration was made vide three instruments i.e.(i) Rs.5,50,000/- vide cheque No. 887530 dated 24.10.2005 drawn at Punjab & Sind Bank, Sector 21-C,

Chandigarh, in favour of Dilprit Singh; (ii) Rs. 5,50,000/- vide cheque No.887529 dated 24.10.2005 drawn at Punjab & Sind Bank, Sector 21-C, Chandigarh in favour of Kanwal Mohan Singh; (iii) Rs. 11,00,000/- vide cheque/draft NO.887535 dated 5.11.2005 payable at Punjab & Sind Bank, Sector 21-C, Chandigarh in favour of Sudesh Kumar. Even the possession of the land in question was handed over by the vendors at the time of agreement dated 08.11.2005. The vendors further executed affidavits in favour of the vendees at the stage of entering into the agreement deposing clearly therein that the sale consideration had been received and the possession of the land stood delivered and that henceforth the vendors are left with no concern or connection with the land and that the entire rights and interest therein stood vested in the vendees.

In law mere execution of an agreement for sale without doing anything more will not create any interest in the property to be sold, but where the vendor has received the sale price and in pursuance of the agreement to sell possession thereof has been delivered to the prospective vendee (s) then it can certainly be urged that on the basis of Section 54 of the Transfer of Property Act interest already stood created in the property. Such vital aspect has been completely overlooked by the Collector as also by the Commissioner while passing the impugned orders. The general proposition laid down in **M/s Khandaka Jain Jewellers's case (supra)** as regards the stamp duty on sale of immovable property to be assessed as per market value at the time of registration of the sale-deed and not at the time of agreement to sell was in the backdrop of a factual premise wherein two agreements to sell dated 20.10.1983 had been entered into and only earnest money had been paid. Since the vendor in the facts of that case had failed

to fulfil the conditions of agreement and to execute the sale-deed consequently the vendee had filed a suit for specific performance of the contract. The facts of the present case are completely distinguishable.

Herein as on the date of agreement dated 08.11.2005 not only was the entire sale consideration amount made over to the vendors but even the possession of the land in question had been delivered. Under such circumstances the view taken by the Collector in terms of mechanically adopting the collector rate prevalent on the date of execution of the sale-deed i.e. 05.08.2013. is erroneous.

There is yet another infirmity at the hands of the respondent authorities. Against the order dated 05.1.2016 (Annexure P-4) passed by the Collector, the petitioner had availed of his statutory remedy of appeal before the Commissioner. Written arguments at Annexure P-5 had been submitted before the Appellate Authority. Contents thereof are not denied. As per appeal it had been stated that the land in question is of an inferior nature and quality inasmuch as a “**Nalla**” is passing through and which inundates the entire patch of land during the rainy season causing damage to the crops. Moreover, a 11000 voltage transformer stands installed in the land and high voltage wires are passing over the entire stretch of land. An attempt had been made by the petitioner to demonstrate that the value of the land in question would be much on the lower side as compared to adjacent/normal land. The Appellate Authority even though has noticed the contents of the written arguments but has rejected the appeal in the following terms

“On perusal of record brought on the file, hearing the arguments led by Ld.counsel for the appellant and examination

of the facts submitted by him, I agree with the order dated 5.1.16 passed by the Additional District Collector, Sahibzada Ajit Singh Nagar and do hereby order to dismiss the present appeal.

*Order pronounced.
Dated 1.4.16*

*Sd/-
Commissioner
Rupnagar Division, Rupnagar”*

Suffice it to observe that the impugned order dated 01.04.2016 (Annexure P-6) passed by the Appellate Authority is completely bereft of reasoning. It is well settled that an Appellate Authority even while affirming an order passed by the Subordinate authority has to record independent reasons so as to reflect application of mind while upholding an order. In the present case the statutory remedy of appeal against the order of the Collector has been reduced to a formality and an eyewash by the Appellate Authority.

For the reasons recorded above, the writ petition is allowed. Impugned orders dated 05.01.2016 (Annexure P-4) passed by the Collector and order dated 01.04.2016 passed by the Commissioner are set aside.

Writ petition is allowed.

**(TEJINDER SINGH DHINDSA)
JUDGE**

07.05.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No