202 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10130-2018(O&M)
Date of decision-01.04.2019

M/s Ekta Coloniser

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Dr. Anand Kumar Bishnoi, Advocate for
Mr. Jasbir Rattan, Advocate
for the petitioner.

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

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JITENDRA CHAUHAN, J.

The petitioner seeks quashing of the impugned orders dated 15.11.2013 and 23.02.2017 passed by Collector, Sangrur and Divisional Commissioner, Patiala Division whereby petitioner was directed to deposit the deficient stamp duty of ₹3,51,000/- along with interest @ of 12%.

Learned counsel for the petitioner submits that sale deed dated 30.01.2007 was registered for 5 kanals of land which was purchased for total sale consideration amount for ₹15 lakh. For the first time, notice was received from District Collector, Sangrur for initiating proceedings under Section 47 A of the Indian Stamp Act, 1899 (for short 'the Act') as applicable in State of Punjab was issued on 13.01.2012. He submits that as per Section 47 A of the Act limitation provided is three years and notice received after three years would be bad in law and no proceedings under the Act for recovery of deficient stamp fee could be initiated. He further submitted that the land was purchased for agricultural purposes.

Learned counsel for the petitioner further relies upon ***'Iqbal Singh and others Vs. State of Haryana and others 2011(3) R.C.R. (Civil) 365 (P&H)'*** and ***'Sharmila Rani and others Vs. State of Punjab and others 2016(3) R.C.R. (Civil) 166 (P&H)'***.

On the other hand, learned State counsel submits that the petitioner is a colonizer who had purchased the land not for agricultural purposes but for commercial purposes. He further submits that as per complaint received by District Collector, notices were issued under Section 47 A of the Act regarding the deficient stamp duty and the registration fee. Sub Registrar, Sangrur also conducted independent inquiry who reported that property situated on Nankiana Road, Sangrur and is a residential property. The petitioner has played fraud upon the State on account of which lessor stamp duty was paid by mentioning the wrong Code of the area under which it was to be registered. He further submits that the correct code under which such sale deed was to be got registered was E-122, wherein minimum collector rate was ₹1800 per Sq yards, but the petitioner by playing fraud wrongly mentioned the code as E-I which is for agricultural purposes. He further submits that once the petitioner has played fraud with the State to defraud, then no limitation would come in the way for the State to recover the deficient stamp duty. He further submits that in view of law laid down by Hon'ble the Supreme Court in ***'State of Punjab and others Vs. Mahajan Sabha, Gurdaspur and others 1996 (1) SSC 538'***, the present case would not be barred by limitation.

Heard.

In Mahajan Sabha, Gurdaspur's case, Hon'ble the Supreme

Court has observed as under:-

> "*By operation of sub-section (3) which envisages that "the Collector may suo motu or ...." (emphasis supplied) call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and after such examination, he has to believe that the value of 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 procedure provided in sub-section (2) and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty." The limitation of two years prescribed in sub-section (3) would apply only in a case where the Collector takes action either suo motu or on receipt of reference from the Inspector General of Registration or the Registrar of the District appointed under the Registration Act, 1908 (Central Act 16 of 1908) in whose jurisdiction the property or any portion thereof, which is the subject matter of the instrument, is situated. In case of initiation of the action by the aforesaid officers, the limitation of two years from the date of the registration of any instrument would arise. In other words, the limitation prescribed in sub-section (3) of Section 47-A has no application to the case when a reference was made by the Registering Authority, namely, the primary authority under sub-section (1) of Section 47-A. If all the three sub- sections are conjointly read, the inevitable conclusion would be that the action of the Collector taken under sub- sections (2) and (3) on reference under sub-section (1) is not controlled by the limitation of two years prescribed under sub-section (3). Accordingly, we hold that the action initiated by the Collector was not barred by limitation."*

The facts of the present case are squarely covered by the ratio of law laid down in Mahajan Sabha's case (supra) and as such the initiation of proceedings by the respondents is not barred by limitation.

The petitioner, a colonizer purchased the land in question and got the same registered against incorrect head/code E-1, i.e. for agricultural purposes, whereas the land ought to have been registered against Code E-122 for residential area, therefore, the Court feels that the fee against Code E-122 deserves to be paid in this case as the land was not purchased for agricultural purposes but was purchased for constructing a colony. This fact is further proved from the location of the land which is situated on a road which falls under the residential area where minimum collector rate is ₹1800/- per sq yards. The ratio of law laid down in the case law cited by learned counsel appearing for the petitioner is distinguishable on the facts of the present case.

In view of the above, the Court feels that the action taken by the authorities is clearly consistent with the provisions of the Act.

Consequently, the present petition fails and is hereby dismissed.

01.04.2019 **(JITENDRA CHAUHAN)**
ps-I **JUDGE**

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