

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

CWP-16658-2016

Date of Decision:30.10.2019

Chunni Lal Khattar

....petitioner

Versus

Financial Commissioner, Chandigarh and others

.....respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Anil Kumar Sharma, Advocate
for the petitioner

Mr.Saurabh Mohunta, DAG Haryana

RAJIV NARAIN RAINA, J. (ORAL):

1. Prayer in this petition is for quashing of the order dated 23.06.2016 (Annex P5) passed by the Collector, Gurgaon, whereby claim of the petitioner for refund of stamp duty of Rs.5,70,900/- was denied due to the application being barred by time.

2. Moti Lal Khattar, father of the petitioner, purchased stamp papers worth Rs.5,70,900/- on 17.09.2015 for execution of a sale deed but before he could register the sale deed he died on 16.10.2015. The deal fell through. Petitioner Chunni Lal Khattar, the legal heir of Moti Lal Khattar, presented an application before the Collector, Gurgaon on 28.10.2015 for refund of the stamp duty purchased for the proposed sale of property. He was informed that he would have to obtain a succession certificate before his claim could be considered. The petitioner applied to court for grant of a succession certificate on 04.01.2016. The proceedings in the succession certificate took time till it was granted on 11.04.2016. The Collector

Gurgaon, took up the matter and vide impugned order dated 23.06.2016, rejected the application of the petitioner by passing a short cryptic order referring to Section 50 of the Indian Stamp Act, 1899 (for short the 'Act').

3. Section 49 of the Act deals with law of 'Allowance for Spoiled Stamps.'

4. Section 49 (d) (3) of the Act deals with the refund of stamp duty by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed.

5. Section 50 of the Act deals with application for relief under Section 49 and fixes time when it is to be made. Sub Section 3 of Section 50 is relevant and lays down that in case of a stamped paper in which an instrument has been executed, by any of the parties thereto, an application can be made within six months and after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed.

6. Proviso (a) and (b) to sub section 3 of Section 50 are also relevant and are reproduced below:

(a) when the spoiled instrument has been for sufficient reasons sent out of India, the application may be made within six months after it has been received back in India;

b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

7. In support of his case, learned counsel for the petitioner has

relied upon a decision of this Court in *“Ishwar Singh vs. Financial Commissioner, Revenue, Haryana and others”* decided on 19.05.2014 passed in CWP No.15420 of 2012, which is also a case involving refund of stamp duty on papers purchased for execution of sale deed. In that case also, the stamp papers remained unused. The Court ordered refund of the amount spent as the stamp duty paid was rendered useless, just as in the present case following the death of the person who purchased the papers.

8. On facts, it comes forth that the death of the father of the petitioner occurred on 17.09.2015 and the application for refund of the stamp duty was filed on 28.10.2015. The succession certificate was applied for on 04.01.2016 within six months of the date of the purchase. The application was decreed on 11.04.2016. Six months starting from 17.09.2015 would expire on 16.03.2016. The short period spilling beyond six months would have to be treated as time spent in litigation in pursuit of succession certificate to establish right to recovery and the short period in excess of six months deserves to be excluded and ignored from the period of six months, as the succession certificate was the demand of the office of Collector, Gurgaon. The impugned order fails to read the import of Section 50 of the Act and therefore contains serious flaw in reasoning, which can be cured only upon a writ of certiorari in order to do substantial justice shorn of mere technicalities. It seems that the Collector, Gurgaon, did not care to read Sections 49 and 50 of the Act before passing the impugned order. The Collector, Gurgaon, has not even deemed it fit to advert to the facts of the case and has passed a non-speaking and cryptic order, which is not legally sustainable in the eyes of law and deserves to be quashed. If the Collector's order is allowed to stand it will unduly benefit the State revenue and suffer

the vice of unjust enrichment. Bar of limitation ought not to have prevailed in the impugned order.

9. As a result of the above discussion, this petition is allowed. The impugned order dated 23.06.2016 is set aside as illegal and arbitrary. A writ of mandamus is issued to the Collector, Gurgaon and the Treasury concerned to complete all formalities for which the petitioner will offer assistance with papers that may be required to be produced after due intimation in writing and the respondents shall refund the amount of Rs.5,70,900/- to the petitioner with interest @ 6% per annum calculated from 11.04.2016 till the payment is made. Let the entire exercise be concluded within two months from today.

30.10.2019*neenu***(RAJIV NARAIN RAINA)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable-

Yes/No