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

CWP-23272-2018
Date of decision: 20.8.2019

Mukat Educational Trust

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Rakesh Gupta, Advocate for the petitioner

Mr.Vikas Mohan Gupta, Addl.AG, Punjab

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JITENDRA CHAUHAN, J.

By way of the present writ petition under Articles 226/227 of the Constitution of India, the petitioner is seeking quashing of impugned communication dated 25.4.2018 (Annexure P-2) issued by respondent No.4 vide which the prayer of the petitioner for refund of the excess stamp duty and registration charges paid by it on the sale deeds (Annexures P-5 to P-9), has been declined.

Learned counsel for the petitioner states that the petitioner is a Charitable Trust running in the name and style of "Mukat Educational Trust" since 1996. In order to further develop the infrastructure for running the said educational institution, the petitioner had purchased an additional land vide registered sale deeds dated 15.7.2014, 25.7.2014, 30.7.2014, 5.9.2014 and 10.7.2017 (Annexures P-5 to P-9 respectively) as per the prevailing collector rates in the area. He further submits that the assessee being a Charitable Trust is entitled to exemption from payment of stamp duty and registration charges in terms of Notification dated 20.2.1981 (Annexure P-4) issued by the Government of Punjab. On 12.7.2017, the petitioner moved an application before the Sub Registrar, Rajpura for refund of the excessive stamp duty amount paid at the time of the registration of the sale deeds in question in view of the said Notification and Punjab Govt. Memo dated 29.8.2014 (Annexure P-16). However, the Sub Registrar vide letter dated 25.4.2018 (Annexure P-2) refused to refund the amount on the ground that at the time of registration of the sale deeds, no approval from the Registrar, Patiala with regard to exemption from payment of stamp duty on instruments for transfer of land in favour of the Charitable Trust was obtain nor any document was appended from which it could be ascertained that the sale deeds were pertaining to a Charitable Trust.

On the other hand, learned State counsel submits that out of five sale deeds in question, four sale deeds were got registered in the year 2014 and one sale deed was got registered on 10.7.2017 and for the first time, the petitioner approached the Sub Registrar on 12.7.2017. It is further submitted that the petitioner has failed to show any document to prove the factum of charitable activities carried out by the petitioner. Therefore, the Sub Registrar has rightly rejected the application of the petitioner for grant of exemption from payment of stamp duty.

Heard.

Vide order dated 13.2.2019, this Court had passed the following order:-

> "Learned counsel for the petitioner seeks time to file an affidavit that no fee is charged by the school and 1/3rd of the children enrolled in the school come from the weaker section of the society.
>
> Post again on 27.3.2019."

In pursuance thereto, the petitioner has placed on record statement of the students enrolled in the school for the year 2013-14 relating to only 50 students (Annexure P-18) and second list (Annexure P-19) for the year 2014-15, relating to 55 students, to show the number of students to whom the concession was granted, but no other list for the later period has been placed on record to this effect.

Department of Revenue, Rehabilitation and Disaster, Government of Punjab had issued Memo dated 29.8.2014 (Annexure P-16), whereby certain parameters had been prescribed indicating the circumstances for exemption to the Charitable Institutions could be granted. The relevant part of Memo dated 29.8.2014 (Annexure P-16) is reproduced thus:-

> "3. After this, matter was considered seriously and it was decided hat in future for the purposes of giving exemptions to Charitable Institutions, powers should vest with Sub Registrar/ Joint Sub Registrar. The abovementioned instructions issued by the Government dated 12.02.2014 and directions bearing No. 8/27/03-HKSB-2/ 5784 dated 04.08.2009 be considered superseded to this extent. However, it be ensured that while exercising these powers, Sub Registrar/ Join Sub Registrar

follow the below mentioned guidelines for taking decision/ action.:-

1. In the memorandum and Articles of Association of the Trust, Charitable activities should be included and
2. Institution should have been established at least for a period of three years, out of which at least for a period of two years, Charitable activities should have been done and
3. This Charitable activity should be in operation till the time exemption is being sought, and
4. One-fourth share of the income of the institution should be spent on charitable activities. In this regard, no specific limit can be affixed, however, it is felt that at least $1/3^{rd}$ share should be spent on these activities.

As per the reply filed by the State, it has come on the record that neither the petitioner has mentioned any charitable activities in the MOA nor any such activity has been proved, nor has it come on the record that $1/3^{rd}$ of the total income was spent on the charitable activities. Moreover, it is evident that out of aforementioned five sale deeds in question, four sale deeds were registered in the year 2014 and one of the sale deeds was got registered on 10.7.2017 and after execution of these sale deeds, for the first time, the petitioner approached the authorities for refund of stamp duty and registration charges on 12.7.2017. Moreover, for seeking exemption from payment of stamp duty and registration charges by a charitable institution on the registration of the instrument, it was mandatory that a specific order was required to be passed by Sub Registrar/ Joint Sub Registrar showing the reason on which such exemption could be granted, but in the present case, no such order was ever sought by the petitioner. The petitioner has not produced any document showing fulfilment of the conditions of Memo dated 29.8.2014 (Annexure P-16), issued by the Department of Revenue, Rehabilitation and Disaster, Government of Punjab. The Court feels that the petitioner does not fulfil the conditions for grant of exemption from payment of stamp duty and registration charges on the documents registered by the charitable trust.

In view of the above, the present petition is dismissed being bereft of any merit.

20.8.2019 **(JITENDRA CHAUHAN)**
gsv **JUDGE**

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No