IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25923 of 2018
Date of decision : 3.4.2019

Santosh Devi

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Beant Singh Seemar, Advocate for the petitioner.

Mr.V.M.Gupta, Addl.AG Punjab.

JITENDRA CHAUHAN, J. (ORAL)

By way of filing the present petition, the petitioner has challenged the order dated 17.2.2017 (Annexure P-8) passed by respondent No.4 whereby notice dated 3.12.2014 (Annexure P-5) under Section 47-A of the Indian Stamp Act for recovery of Rs.3,40,560/- as deficient stamp duty has been issued and the order dated 27.4.2018 (Annexure P-10) passed by respondent No.3 dismissing the appeal filed by the petitioner.

Learned counsel for the petitioner contends that the petitioner had purchased a plot measuring 2 *kanals* 4 *marlas* (as detailed in para 2 of the petition) from one Jarnail Singh son of Bishan Singh, Managing Director M/s Bajwa Developers vide sale deed dated 10.6.2010 bearing *wasika* No.2069. As per the record, land is `*Barani*' (non cultivated) and this land was kept for dispensary by the developers M/s Sunny Enclave as per the sanctioned plan. It is further contended that the property in question is situated within the domain of residential locality and it is not commercial. It is also contended that commercial sites of the locality are separate from the said dispensary site.

Learned counsel for the petitioner has relied upon judgments of Hon'ble the Supreme Court in ***State of U.P. and others Versus Ambrish Tandon and another 2012(1)(RCR (Civil) 865 and Dr.Devendra M.Surti Versus The State of Gujarat 1969 AIR (SC) 63*** to contend that private dispensary of doctor is not commercial establishment.

On the other hand, learned State counsel has submitted that plot in question was reserved for a dispensary and the Sub Registrar, Kharar vide its report dated 20.9.2012 reported that *wasika* had been registered in his office as the area sold in this *wasika* is *gair mumkin* plot/dispensary.

Heard.

Section 47-A of the Stamp Act reads as under:

> "Haryana – After Section 47 of the principal Act, the following new section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of November, 1966, namely: - "47-A. Instruments under-valued how to be dealt with- (1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property, has reason to believe that the value of the property or the consideration, as the case may be, has not truly set forth in the instrument, he may, after registering such instrument, refer the same to

> the Collector for determination of the value or consideration, as the case may be and the proper duty payable thereon. (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 value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty. (3) The Collector may suo motu, or on receipt of reference from the Inspector General of Registration or the Registrar of a district, in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situate, appointed under the Registration Act, 1908 shall, within three years from the date of registration of any instrument, not already referred to him under sub-section (1), call for and examine the instrument, for the purpose of satisfying himself as to correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reasons to believe that the value or 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 the procedure provided for in sub-section (2), and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty: Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970. (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 the order, prefer an appeal before the District Judge and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules may under this Act".

In pursuance to the order dated 13.11.2018 passed by the Court, affidavit of respondent No.5-Sub Registrar, Kharar has been filed in Court. The relevant part of para 4 of the affidavit is reproduced as under:

> "During test check of records i.e. deeds of book No.1 of the office of the Sub Registrar, Khara (Mohali), for the year 2010-2011, it was noticed in the deed No.2069 dated 10.6.2010 that the deed

> were executed by levying the minimum Collector rate of residential property of Sunny Enclave. As per deed itself, sold property is the site for dispensary, shops & show rooms will be made on this land, therefore, the minimum rate of commercial property was leviable for the purpose of levy of stamp duty...............”

In the present case, nature of the land was commercial on the date of purchase of the property, therefore, the ratio of law laid down in **State of U.P. and others Versus *Ambrish Tandon and another (supra) and Dr.Devendra M.Surti Versus The State of Gujarat (supra)*** *is* not applicable on the facts of the present case.

In view of the specific report given by the Sub Registrar, Kharar, no case for interference is made out.

Dismissed.

3.4.2019 **(JITENDRA CHAUHAN)**
Meenu **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No