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

201 **CWP No. 824 of 2018 (O&M)**
Date of Decision : 05.12.2019

Amandeep Singh

... Petitioner

Versus

The State of Punjab and others

...Respondents

(2) **CWP No.825 of 2018 (O&M)**

Beant Kaur and others

... Petitioners

Versus

State of Punjab and others

...Respondents

(3) **CWP No. 826 of 2018 (O&M)**

Pee Jay Promoters Private Limited

... Petitioner

Versus

The State of Punjab and others

... Respondents

(4) **CWP No. 18312 of 2018 (O&M)**

Sukhminder Singh and others

.... Petitioners

Versus

The State of Punjab and others

... Respondents

CORAM:HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Jagjit Singh, Advocate for the petitioner(s)

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

SUVIR SEHGAL, J.

This order will dispose of bunch of four writ petition bearing No. 824 of 2018, ***Amandeep Singh Versus State of Punjab and others*** CWP No. 825 of 2018, ***Beant Kaur and others Versus The State of Punjab and others,*** CWP No. 826 of 2018, ***Pee Jay Promoters Private Limited Versus The State of Punjab and others,*** and CWP No. 18312 of 2018, ***Sukhminder Singh and others Versus The State of Punjab and others.*** It is submitted by the counsel for the parties that the issues involved in these petitions are common and therefore for the sake of convenience facts are being taken from CWP No.824 of 2018.

The petitioner has prayed for issuance of writ in the nature of certiorari quashing the impugned notice dated 01.08.2016 (Annexure P-2) issued by respondent No.2 whereby the recovery of Rs.2,69,340/- is being sought to be effected from the petitioner under Section 47-A of the Indian Stamp Act, 1899 (for short 'the Act').

Facts, in brief, are that grand-father of the petitioner had transferred agricultural land measuring 81 kanals 1/6 marlas in the name of the petitioner vide Vasika No.7019 for an amount of Rs.1,75,00,000/-. The Transfer Deed was registered in the office of respondent No.3 on 07.03.2012 (Annexure P-1) and a stamp duty of Rs.5,25,000/- was paid thereon. After more than four years, respondent No.2 sent the impugned notice to the petitioner seeking to recover deficient stamp duty under Section 47-A of the Act.

Upon notice being issued, reply has been filed on behalf of the respondents wherein it has been submitted that during the course of audit in the office of respondent No.3, it came to the notice of the audit party that the petitioner was required to pay a stamp duty of Rs.7,94,340/- whereas, he had paid stamp duty of Rs.5,25,000/-. As such, he had evaded the duty of Rs.2,69,340/- On the basis of the details (Annexure R-1/T) given by the audit party, a letter dated 02.12.2014 from the office of the Deputy Controller (Finance and Account) was received in the office of respondent No.3 on 15.12.2014. Acting thereon, respondent No.3 intimated, respondent No.2 vide letter dated 10.02.2015 and notice was issued to the petitioner for appearance on 28.04.2015 and thereafter, the matter was adjourned from time to time. The petitioner has filed replication denying the receipt of any notice for appearance on 28.04.2015 and has reasserted that no notice in the proceedings had been issued to him prior to 01.08.2016 i.e. after more than four years of registration of the document (Annexure P-1).

Counsels for the parties have been heard and record has been perused with their able assistance.

The petitioner has challenged the impugned notice on the sole ground that the action has been initiated after more than four years of the registration of the transfer document on 07.03.2012 and the same was beyond the period of limitation prescribed under Section 47-A of the

Act. On the other hand, learned counsel for the State has raised two fold arguments. He has firstly submitted that the action has been initiated within a period of three years and secondly, that the impugned letter was merely a show cause notice and the petitioner was yet to appear and respond to it.

Before adverting to the factual aspect, Section 47-A of the Indian Stamp Act, 1889 "*as applicable to the State of Punjab*" may be noticed. Same is reproduced as under:-

> "*47-A.* ***Instruments under-valued how to be dealt with.****(1) If the market value of any property, which is 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 reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules under this Act, determine the value or consideration and the duty as aforesaid, and the deficient amount of duty, if any, alongwith interest at the rate of twelve percent 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 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 whereof 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 percent per annum on such deficient amount, would 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 percent per annum, if there was an intentional omission or 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 or 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."

Taking up the first argument raised by the State regarding limitation, it needs to be noticed that the State had initiated action on the basis of an audit which had been conducted in the office of respondent No.3 for the period from 03.04.2012 to 10.05.2012. An intimation alongwith an audit note had been sent by the Deputy Controller to respondent No.3 vide letter dated 02.12.2014. On that basis, the respondent No.3 allegedly issued a notice dated 15.04.2015 (Annexure

P-2) to the petitioner for appearance on 28.04.2015. All the proceedings relating to the conduct of the audit were internal proceedings. At no stage, the petitioner was ever associated nor any intimation had been sent to the petitioner in this regard. Not only this, even the alleged notice dated 15.04.2015 (Annexure P-2) issued to the petitioner for appearance does not help the respondents as it had been issued after more than three years of the registration of the Transfer Deed. Therefore, it cannot be said that the proceedings had been initiated within the prescribed period of three years. As such, issuance of impugned notice dated 01.08.2016 (Annexure P-2) is clearly beyond the period of three years stipulated in Section 47-A of the Act.

In a similar situation, where the action had been sought to justified by the State on the basis of an audit note, a Division Bench of this Hon'ble Court in ***Vikas Versus State of Haryana and others***, 2008 (2) RCR (Civil) 526 observed as under:-

> "4. *The only argument raised by the respondents is that an audit objection was raised vide Audit Note dated 12.6.2002 and on the basis of the audit objection it was sought to be contended that within the period of three years objections have been taken (R-1). Therefore, the period of three years would not come in the way of the respondents as audit objection was raised on 12.6.2002. We find that the argument is totally absurd because there was no communication of the audit objection to the petitioner so as to constitute a basis for argument that the action was taken within period of three years. The real action was initiated only on the issuance of show cause notice, which admittedly was issued on 7.12.2005. It is well settled that the*

communication of the order alone confer on a paper the status of an order as has been postulated by Article 166 of the Constitution. The aforementioned provision was interpreted by a Constitution Bench of Hon'ble the Supreme Court in the case of ***Bachhitar Singh v. State of Punjab, AIR 1963 SC 395****. In that case the Constitution Bench had held that till an order is communicated it would not assume the character of executive action. A similar view has been taken by Hon'ble the Supreme Court in the case of* ***Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413****. Therefore, we have no hesitation to reject the argument".*

In ***Raghbir and others Versus State of Haryana and others,*** 2004(1) PLR 545, another Division Bench of this Court held that no action can be taken by a Collector under sub-Section (3) of Section 47-A of the Act after expiry of three years from the date of registration of the instrument. Consequently, the argument of the State that the action had been initiated within the prescribed period is without any merit.

Coming to the second argument raised by the State, it deserves to be mentioned that once the very initiation of the proceedings is beyond the prescribed period and the result of the proceedings is a foregone conclusion, no useful purpose would be served in forcing the petitioner to file reply to the show cause notice and face the proceedings before the authorities. Accordingly, the second argument of the State also does not survive.

It may further be noticed that this Court had in a number of decisions interfered and quashed the show cause notices where it found that the notices had been issued in violation of the provisions of Section

47-A of the Act. Reference in this regard may be made to the Division bench judgments in ***Smt. Chand Kaur and others versus State of Haryana and others***, 2008(3) R.C.R. (Civil) 776; ***Sub Registrar, Nuh and another Versus Mahipal and others,*** 2012(5) R.C.R.(Civil) 475; ***Atam Praksh Pasricha Versus State of Haryana and others,*** 2015(8) R.C.R. (Civil) 834 and ***Eshbeen Kaur Versus State of Punjab and others,*** 2016(4) R.C.R. (Civil) 673.

In the light of the clear enunciation of the law, in the above referred judgments, the writ petitions deserve to succeed and the impugned show cause notice dated 01.08.2016 (Annexure P-2) issued by respondent No.2 is therefore, quashed.

Writ petitions are accordingly allowed.

(SUVIR SEHGAL)
JUDGE

05.12.2019
pooja saini

Whether speaking/reasoned? *Yes/No*

Whether reportable? *Yes/No*