

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

LPA No. 4981 of 2018 (O&M)

Date of Decision: 11.02.2019

Nripati Bhalla and others

.....Appellants

versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
 HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Pankaj Kundra, Advocate, for the appellants.

KRISHNA MURARI, CHIEF JUSTICE (oral)

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 28.09.2018 passed by the learned Single Judge dismissing the writ petition filed by the appellants herein challenging the order dated 29.08.2013 passed by the Collector, Panchkula, adjudicating deficiency in stamp duty and registration charges as also the Appellate order dated 09.05.2018 passed by the Commissioner, Ambala Division, dismissing the appeal.

2. Facts in brief required to be noticed for the purpose of effective adjudication of the controversy are as under:-

Plot No. 289, Phase-II, Industrial Area, Panchkula, area around 1000 sq. yards was allotted by the Haryana Urban Development Authority (HUDA) to one Jitender Kumar Sangri and Ajay Kumar Sangri on free hold basis. They entered into an agreement to sell the said plot to the appellants-petitioners for a consideration of Rs. 84 lacs. The appellants-petitioners executed a General Power of Attorney dated 10.11.2009 appointing one Akshay Bhalla (son of appellant No.1) as GPA holder authorizing him to deal with all the matters pertaining to the said plot including the power to sell and transfer etc. After completion of the requisite formalities and

permission from the HUDA, a sale deed is said to have been registered on 26.04.2013. The appellants were required to pay the stamp duty on the basis of the rates prevalent at the time of registration of the sale deed and accordingly vide order dated 29.08.2013 passed by the Collector, Panchkula, a demand was raised which was challenged by way of appeal which was also dismissed.

3. Learned Single Judge dismissed the writ petition holding that the valuation of the instrument for the purposes of payment of stamp duty is to be determined on the basis of the market value of the property prevailing when the document was tendered for registration.

4. Learned counsel for the appellants referring to the case of *M/s Residents Welfare Association, Noida v. State of U.P. and others 2009(14) SCC 716*, contends that the value of the property in question for the purposes of stamp duty and registration charges is to be determined as set out in the agreement to sell and not on the date of registration of the sale deed.

5. We are afraid that this argument is based on totally misreading of the pronouncement of the Hon'ble Apex Court in case of *M/s Residents Welfare Association case* (supra). In the said case, the issue was in respect of applicability of Article 23 of the Stamp Act for levy of duty on market value of land under Section 47-A of the Stamp Act in case of assignment of leasehold rights of property merely for enjoyment and not transfer of ownership by sale. It was a case where the parties entered into an agreement for transfer of lease hold plots by assignment. In the aforesaid facts it was held by the Hon'ble Apex Court that since the demised land is merely assignment of leased property for enjoyment and not transfer of ownership by sale, Article 23 of the Stamp Act does not stand attracted and thus

Section 47-A of the Stamp Act is not applicable as the same applies to a outright sale.

6. The case in hand being clearly distinguishable on facts, the ratio of the said judgment is not at all applicable. On the contrary in the case of ***State of Rajasthan and others v. M/s Khandaka Jain Jewellers 2007(14) SCC 339***, it has been held that in case where there is sufficient time gap between the agreement to sell and presentation of instrument for registration, the valuation shall be assessed on the market rate prevalent at the time of registration of sale deed and not when the parties entered into an agreement to sell. It may be relevant to extract the following from the said report:-

“24. Learned counsel for the respondent strenuously urged before us that in fact when the agreement to sell was not executed by the vendor, the respondent had no option but to file a suit and a long time was taken for obtaining a decree for execution of the agreement. He was not at fault and as such the valuation given in the instrument should be taken into consideration because during the litigation the valuation of the property has shot up. In this connection, learned counsel has invited our attention to the principle “actus curiae neminem gravabit” meaning thereby that no person shall suffer on account of litigation. Hence learned counsel submitted that since the matter had been in the litigation for a long time, the respondent cannot be made to suffer. He invited our attention to the decision of the Andhra Pradesh High Court *Sub-Registrar, Kodad Town and Mandal* [AIR 1998 AP 252] . It is true that no one should suffer on account of the pendency of the matter but this consideration does not affect the principles of interpretation of a taxing statute. A taxing statute has to be construed as it is; all these contingencies that the matter was under litigation and the value of the property by that time shot up cannot be taken into account for interpreting the provisions of a taxing statute. As already mentioned above a taxing statute has to be construed strictly and if it is construed strictly then the plea that the incumbent took a long time to get a decree for execution against the vendor that consideration cannot weigh with the court for interpreting the provisions of the taxing statutes. Therefore, simply because the matter has been in the litigation for a long time that cannot be a consideration to accept the market value of the instrument when the agreement to sale was entered. As per Section 17, it clearly says at the time when registration is made, the valuation is to be seen on that basis.

25. In *Sub-Registrar, Kodad Town and Mandal* [AIR 1998 AP 252] the learned Single Judge of the Andhra Pradesh High Court felt persuaded on account of 30 years' long litigation and, therefore, declined to send the papers back to the Collector for valuation at the market value. With great respect, the view taken by the learned Single Judge is against the principles of interpretation of a taxing statute. Therefore, we are of the opinion that the view taken by the learned Single Judge of the Andhra Pradesh High Court is not correct.

26. Accordingly, we are of the opinion that the view taken by the learned Single Judge as well as by the Division Bench cannot be sustained and the same is set aside. The Collector shall determine the valuation of the instrument on the basis of the market value of the property at the date when the document was tendered by the respondent for registration, and the respondent shall pay the stamp duty charges and surcharge, if any, as assessed by the Collector as per the provisions of the Act. The appeal of the State is allowed. No order as to costs.

7. The same view has been reaffirmed in the case of *State of Haryana and another v. Manoj Kumar 2010(4) SCC 350*. In view of the settled proposition of law by pronouncement of the Hon'ble Apex Court referred to hereinabove, we find no illegality in the view taken by the learned Single Judge in dismissing the writ petition and holding that the stamp duty was liable to be determined and paid on the market rate prevailing at the time of presentation of the conveyance deed for registration.
8. The intra court appeal is thus devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

11.02.2019
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No