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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No.13386 of 1996
Date of Decision: 10.02.2020

G.K. Jain and another

Petitioners

Versus

The Estate Officer, U.T., Chandigarh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Keshav Gupta, Advocate
for the petitioners.

Mr. Yogesh Putney, Sr. Standing Counsel
for the Revenue.

Mr. M.L. Sarin, Senior Advocate with
Mr. Ritesh Aggarwal, Advocate
for respondents No.7 to 10.

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AJAY TEWARI, J. (Oral)

[1] This writ petition was filed with the following prayers:-

"(i) Respondents herein, by an appropriate writ order or direction be directed to transmit the entire records of the case to this Hon'ble Court;

(ii) An appropriate writ in the nature of Mandamus and/or certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order dated 16-6-1995 passed by the Collector, respondent No.2 herein, (Annexure P-28), deserves to be issued;

(iii) An appropriate writ in the nature of

Mandamus or any other appropriate writ, order or directions to the Central Bureau of Investigation to investigate and submit a report for the consideration of this Hon'ble Court for the purpose of passing necessary orders in accordance with law against all the respondents, namely, respondent Nos.1 to 26 herein, involved in the illegal transfer of the property in question and its execution thereof, be issued;

(iv) An appropriate writ in the nature of Mandamus or any other appropriate writ, order or directions to the Appropriate Authority, respondent No.12 herein, to initiate action under the provisions contained in Chapter XX-C of the Income Tax Act, 1961 in respect of the property comprised in SCO 11, Sector 17-E, Chandigarh, be issued;

(v) An appropriate writ in the nature of Mandamus or any other appropriate writ, order or directions be issued to the Appropriate Authority, respondent No.12 herein, to initiate action against the Vendor(s) and the Vendee(s) respondent Nos. 4 to 10 herein, by giving effect to the report dated 14-7-1995, submitted by the Assistant Director of Income Tax (Investigation), Chandigarh, respondent No.20 herein;

(vi) An appropriate writ in the nature of Mandamus or any other appropriate writ, order or directions be issued to the Commissioner of Income Tax, respondent No.14 herein, to order for launching of the prosecution against the Vendor(s) under Section 277 read with Section 279 of the Income Tax Act, 1961;

(vii) An appropriate writ in the nature of Mandamus or any other appropriate writ, order or directions be issued to the Chief Commissioner of Income Tax, respondent No.13 herein, to order for the prosecution of respondent Nos.1 to 10, 17, 18, 22 to 24

herein, under section 276AB read with Section 269UL of the Income Tax Act, 1961;

(viii) The service of advance notice and copies of the writ petition on the respondents may also be dispensed with;

(ix) The filing of the certified copies of Annexures P-1 to P-78 which are true copies of the originals may kindly be dispensed with;

(x) Any other interim and/or final relief as may appear to Your Lordship to be just and proper in the circumstances of the case, be also granted to the petitioners herein; and

(xi) Costs of the present writ petition be also be awarded to the petitioners herein.

[2] Learned counsel for the petitioners, at the time of arguing, has restricted his prayer only to prayer Nos.(iv) and (v).

[3] The brief facts are that the petitioner No.1 was tenant in the property in dispute (alongwith petitioner No.2 about whom reference would be made lateron). The petitioner made a complaint to the Revenue that the owners of the property were intending to sell it at an austensible price of ₹15 lakhs whereas he was ready to buy it for ₹40 lakhs and it is the case of the petitioner that in fact sale deed took place in the manner which had been suspected. The petitioner No.2 withdrew from the petition. The complaint of the petitioner was investigated and the Assistant Director went through the whole issue and gave following conclusions:-

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"An intimation regarding the on-going proceedings relating to the sale transactions of SCO No.11/17-E, Chandigarh was sent to the Sub-Registrar, Chandigarh, vide this office letter No.ADIT (Inv.) HQ/CHD/95-96/489-90, dated 26-5-95, a copy of which was endorsed to the Sub-Registrar for taking necessary action. However, it is not in the competence of the Revenue Authorities to stop any sale deed from being registered, more so when there is no concrete evidence in the possession of the department. Subsequently, the landlords furnished three copies of orders passed by the Collector, U.T. Administration, Chandigarh in respect of three recently executed Sale Deeds of SCO No.11/17-E, Chandigarh. A perusal of these orders reveals that the Sub-Registrar had impounded these Sale Deeds for re-examining the possible evasion of Stamp Duty under the Indian Stamp Act, 1899. The Collector, after examining various parties has come to the conclusion that the market value of SCO No.11/17-E, Chandigarh has been correctly set-forth in the Sale Deeds.

In view of the above mentioned facts and circumstances, the landlords have asserted that there has been no under-valuation of property SCO No.11/17-E, Chandigarh and no unaccounted money has passed hands in the sale transaction.

It is not possible to comment on the basis of evidences brought on record, whether any unaccounted money have been changed hands in te sale of SCO No.11/17-E, Chandigarh."

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"A copy of the report may kindly be

forwarded to the Commissioner of Income-tax, Patiala for examination of the following issues:-

a) Whether the Income-tax Clearance Certificates u/s 230A was fraudulently obtained by the sellers before executing the Sale Dees.

b) Whether false statements were given by the co-owners in verification in Form No.34-A while making application for Clearance Certificates u/s 230A, thereby making them liable for penalty and prosecution.

c) The Assessing officer may also examine the issue relating to deemed gifts arising out of sale transactions of SCO No.11/17-E, Chandigarh in the hands of the sellers."

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[4] The pointed query which we put to learned counsel is how the petitioner could maintain the petition for mandamus.

[5] It is his contention that whenever duty is cast on any public official and they do not faithfully fulfil the duty, a citizen has a right to seek mandamus and more so, in the present case, because the petitioner was a complainant.

[6] In our opinion, though there may be some areas wherein the issue of *locus standi* have lost its importance yet the present cannot be a such case. The judgment cited by learned counsel for the petitioners i.e. (2004) 2 SCC 463 titled as ***Mehsana District Central Cooperative Bank Ltd. and others Vs. State of Gujarat and others*** would not come to his help. In that case a cooperative bank invested money in the market contrary to the statutory provisions and thereafter lost that public money. On the one hand

notices were issued by the government and on the other hand, writ petition was filed in Gujarat High Court making these allegations which was treated as Public Interest Litigation by the Gujarat High Court. In those circumstances, the Supreme Court had upheld action of the High Court having entertained that petition. This authority can not be read to indefinitely expand the *locus standi* in the manner suggested by learned counsel for the petitioner.

[7] There is another angle for viewing the present case. The petitioner was one of the tenant occupying the property in question and was intending to buy the same, he was looking out to encash the order dated 05.08.1992 passed by the Rent Controller, Chandigarh in the eviction proceedings as it was in favour of the tenant. In such circumstances, he made a complaint. The complaint was duly looked into and investigated by the Assistant Director of Income Tax (Investigations), Chandigarh. The matter was also sent to the revenue authorities who came to the conclusion that the market value of the property was correctly set forth in the sale deed. The Assistant Director (Investigation), Chandigarh concluded that the evidence brought on record was not sufficient to establish that unaccounted money had passed hands in the sale of the property. In spite of this, he forwarded the matter to the Commissioner of Income Tax for examination of the three possibilities. He further had certain doubts with regard to sale of three separate units by the co-owners. By this itself, no right accrued in favour of the petitioner. It is not in every case that resort has to be made to Section 269UD of the

Act. Moreover, it was for the income tax authorities to look into the same and there was no requirement that the petitioner should have been associated or informed about the outcome.

[8] It has also not been disputed that by this time, the petitioner has been evicted from the property in accordance with law. Consequently, we see no reason to interfere.

[9] The writ petition is dismissed.

[10] Since the writ petition is dismissed, the pending application, if any, stands disposed of.

[AJAY TEWARI]
JUDGE

[AVNEESH JHINGAN]
JUDGE

February 10, 2020
pankaj baweja

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No