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

102 **CWP-16142-2020**
Decided on : 05.10.2020

Green Heights Projects Pvt. Ltd. ... Petitioner

Versus

State of Haryana & others ... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.A.S.Lamba, Advocate, for the petitioner.

(The proceedings are being conducted through video conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India is for quashing of the impugned order dated 16.01.2020 (Annexure P-7) by the Commissioner as well as the order dated 26.10.2016 (Annexure P-5) passed by the District Revenue Officer-cum-Collector.

By virtue of the said orders, it has been found that the petitioner had got registered an agreement to sell and an amount of Rs.28,21,06,063/- had been paid out of the total amount of Rs.28,40,00,000/-. Thus, more than 90% of the amount had already been paid and possession of the land had been given. Resultantly, the agreement to sell which was sought to be registered was found to contain deficient stamp duty to the tune of Rs.1,42,00,000/-. The Commissioner has found that payment of said amount had been made from 27.02.2013 to 03.02.2016, which is prior to the execution of the agreement to sell as initially, a collaboration agreement had been executed between the parties on 30.03.2013 (Annexure P-1).

Resultantly, the Appellate Authority found that on holistic reading of the various clauses of the agreement to sell, it was a mere extension of the earlier collaboration agreement dated 30.03.2013 and it was not an agreement to sell and therefore, such type of documents had to be stamped as enumerated in Schedule 1A Article 5(d) of the Indian Stamp (Haryana Amendment) Act, 2013. The same reads as under:

> "(d) If relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of, any immovable property. The same duty as is leviable on a conveyance against article No.23 on the market value of the property mentioned in agreement."

It is not disputed that an earlier collaboration agreement was entered between the petitioner and M/s Paradise Systems Pvt. Ltd., the landowners, for the development of the land measuring 2.681 acres, falling in Village Lakhnaula Tehsil Manesar District Gurugram. The developer was to carry on development as per the agreement and to market the land and superstructure constructed thereon on the terms and conditions as may be decided by the developer and to receive the entire consideration in its own name or in the name of its nominee. The landowner was to apply for transfer of the licence in favour of the developer or its nominee. As per Clause 9 of the collaboration agreement, the landowner had to hand over the vacant physical possession of the land to the developer for commencing and completing the development in accordance with the licence. Subsequently, the agreement to sell dated 18.03.2016 (Annexure P-2) was sought to be registered.

A perusal of the said agreement would also go on to show that there was a reference to the earlier collaboration agreement and the fact that the petitioner-company was already in possession of the licenced land. The details of the payments received by the vendor were also mentioned in the agreement to sell. The said clause reads as under:

> "V. That the VENDEE is already in possession of the Licenced Land and carrying out development thereon pursuant to a Collaboration Agreement dated 30th March, 2013 and shall be in absolute possession upto execution of the Sale Deed in favour of the VENDEE."

A show cause notice was thus issued on 12.08.2016 (Annexure P-3) by the Collector-cum-District Revenue Officer, Gurugram regarding the under-valuation. In the reply given by the petitioner on 04.10.2016 (Annexure P-4), the stand was that the stamp duty under the Act would be of Rs.100/- which had been affixed at the time of the agreement to sell which was duly registered and it was admitted that the payment had been made.

It is, thus, apparent that possession changed hands in favour of the petitioner who wants the benefit of a prime piece of land, possession of which has been handed over for commercial development but is only ready to pay Rs.100/- as stamp duty. The prime land is situated in the National Capital Region and for which, consideration of Rs.28,40,00,000/- had to be paid. In such circumstances, it is apparent that the revenue authorities were correct in coming to the conclusion that the stamp duty was payable for the collaboration agreement. No illegality or irregularity is apparent on the face of the orders impugned which would warrant interference under the extraordinary writ jurisdiction of this Court.

Resultantly, in view of the above discussion, the present writ petition is dismissed in limine.

OCTOBER 05, 2020 **(G.S. SANDHAWALIA)**
sailesh **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No