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

CWP No.26243 of 2018 (O&M)
Date of decision:14.02.2020

Ajay Kumar and another ... Petitioners

Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Gunjan Mehta, Advocate
for the petitioners.

Mr. Kapil Bansal, DAG, Haryana.

SUVIR SEHGAL, J.

The petitioners have approached this Court for issuance of a writ in the nature of certiorari quashing the order dated 16.05.2018 (Annexure P-6) passed by Divisional Commissioner, Rohtak, respondent no.2 whereby appeal filed by the petitioner under Section 47-A(4) of Indian Stamp Act, 1899 (for brevity "the Act") has been dismissed and order dated 23.11.2017 (Annexure P-3) passed by Collector, Meham (respondent No.3) vide which the petitioners have been directed to deposit undervalued stamp duty under Section 47-A(3) of the Act.

Facts in brief are that the petitioners had purchased 707 square yards (100 square yards commercial plus 607 square yards residential, total covered area 1312 square feet) within Municipal Limits of Meham, District

Rohtak, vide registered sale deed dated 18.11.2014 (Annexure P-1) by paying the stamp duty of ₹3,33,900/-. The property was residential in nature with an open courtyard, four residential rooms and four shops constructed in front. A reference was made by Accountant General, Haryana on the basis of an audit note for the years 2014-2016 that there was deficiency of stamp duty. After calling for a report from Sub-Registrar, Meham and hearing the petitioner, respondent no.3, vide impugned order dated 23.11.2017 (Annexure P-3) reached at the conclusion that there is a deficiency of stamp duty of ₹5,54,610/- in the above sale deed and directed the petitioners to deposit the same within thirty days. A notice dated 28.11.2014 (Annexure P-4) was served upon the petitioners to deposit the deficit stamp duty. The petitioners filed an appeal (Annexure P-5), which was dismissed by the Divisional Commissioner, respondent no.2, by impugned order dated 16.05.2018 (Annexure P-6).

The respondents filed reply wherein it was submitted that according to site report of Sub-Registrar (Annexure R-1), a double storey Dharamshala and shops are constructed in the property, which is commercial in nature, as such Sub-Registrar, Meham sent the sale deed to respondent no.3 for adjudication under Section 46-A(3) of the Act. It was further submitted that Sub-Registrar in his report had mentioned that the entire 707 square yards is commercial and covered area is 7711 square feet. The land mutated in sale deed was valued at ₹1,26,93,000/- on the basis of stamp duty calculated at ₹8,88,510/- whereon stamp duty of ₹3,33,900/- was only paid. There is, thus, deficiency of ₹5,54,610/-. It was also mentioned that the property falls within 60 feet of main road.

Counsel for the petitioners has contended that there was no material before the appellate authority, respondent no.2, to come to conclusion that there was Dharamshala running in the property and the property is commercial in nature.

On the other hand, State counsel has submitted that on the basis of report of Sub-Registrar, the authority had rightly arrived at the conclusion that the property was commercial and that there was a deficiency in payment of stamp duty on the sale deed.

An examination of impugned order dated 23.11.2017 (Annexure P-5) passed by respondent no.3 shows that proceedings under the Act, had been initiated on the basis of audit report in which reference had been made to a site report of the Sub-Registrar, Meham which was not available on the file. Respondent no.3 called the said site report, but Sub-Registrar vide letter No.1/Special/MSD dated 19.01.2017 informed that the said site report was taken by the Accountant General, Haryana. Respondent no.3, therefore, directed the Sub-Registrar, Meham to visit the site again and prepare a fresh report. On the basis of fresh report so submitted, respondent no.3 came to the conclusion that deficient stamp duty had been paid on the sale deed. Relying upon the same site report, the appellate authority upheld the conclusion arrived at by respondent No.3 and also recorded that a Dharamshala was being run in the property.

This Court by order dated 13.09.2019, directed the respondents to place on record the documents in support of the assertion that the area is commercial. By way of C.M.No.18529-CWP-2019, respondents filed the site report dated 25.09.2017 (Annexure R-1) which reads as under:-

> *"Today, as per the orders of Tehsildar, the site of the property situated at Meham was inspected. Upon the instructions of the site, it has been found that the above property is situated in the market and the above property is not in different units, although it is a one unit and the above property is two sided open property. The length of this property from East to West is about 102 feet and the width from North to South is above 68 feet and the covered area is about 7711 square feet.*
>
> *The report is submitted.*
>
> *Sd/-*
> *Ravinder*
>
> *Endst.No.795/R* *Dated 25.09.2017*
>
> *The above in original is sent to Sub-Divisional Officer (N), Meham, it is requested that the report of the Patwari is in detail. Thus it is submitted for your information.*
>
> *Sd/-25.09.2017*
> *Tehsildar*
> *Meham*

A perusal of the report shows that the property is reported to be a single unit and located in the market and is open from two sides. There is no report to the effect that a Dharamshala is functioning from the property. As such there was no material before the respondent-appellate authority to arrive at this finding. The fact that a Dharamshala is operating from the property is not borne out from the record. As a result, the impugned order dated 16.05.2018(Annexure P-6) cannot be sustained.

Consequently, the impugned order dated 16.05.2018 (Annexure P-6) is set aside and the matter is remitted to respondent no.2 to decide the appeal afresh in accordance with law after affording an opportunity of hearing to the petitioners. The necessary exercise be carried out within a period of four months from the date of the receipt of a certified copy of this order.

With these observations, the writ petition is disposed of.

February 14, 2020 **(SUVIR SEHGAL)**
savita **JUDGE**

Whether Speaking/Reasoned Yes/No
Whether Reportable Yes/No