IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-37552-2018 (O&M)
Date of Decision:12.03.2020

Amrit Kaur & another ... Petitioners

Versus

State of Haryana & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Sudhir Kashyap, Advocate for the petitioners.

Mr. Kiran Pal Singh, AAG, Haryana.

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TEJINDER SINGH DHINDSA, J. (ORAL).

Instant writ petition is directed against the order dated 19.09.2018 (Annexure P-3) passed by the Divisional Commissioner, Rohtak Division, Rohtak levying stamp duty of Rs.5,97,000/- and registration fee of Rs.5000/- (total Rs.6,02,000/-) upon the petitioner.

Brief facts are that the petitioners purchased 2 kanals 13 marlas of land in equal share situated in Village Kanheli, Tehsil and District Rohtak vide sale deed dated 09.10.2014 for a total sale consideration of Rs.16,60,000/-. A reference dated 13.03.2015 was made under Section 47-A of the Indian Stamp Act alleging a deficient stamp duty of Rs.6,02,000/- on the basis that the land in question measured less than 1000 sq. yards and keeping in view the Instructions dated 14.11.2000 issued by the State Government, the land was to be treated as residential.

Petitioners contested notice before the Collector/District Revenue Officer, Rohtak and who vide order dated 18.05.2016 (Annexure P-2) took a view that the petitioners herein had affixed the rightful stamp duty as per village agricultural rate fixed by the Collector. Consequently, the notice issued to the petitioners was set aside.

The appeal preferred by the State of Haryana against order of the Collector has been accepted vide impugned order dated 19.09.2018 (Annexure P-3) and accordingly, the deficient stamp duty of Rs.6,02,000/- including registration fee has been levied upon the petitioners.

Upon notice having been issued, a joint reply on behalf of respondents No.1 to 4 has been filed and placed on record. In para 2 of the reply on merits, a stand has been taken that since the share of both the petitioners pertaining to the sale deed is less than 1000 sq. yards, hence as per letter dated 14.11.2000 (Annexure R-1) issued by the Revenue Department, land less than 1000 sq. yards will be considered as residential land and accordingly, the petitioners are liable to pay the stamp duty and registration charges as per impugned order passed by the Commissioner.

The impugned order passed by the Divisional Commissioner accepting the appeal of the State contains the following reasoning:

> *"5. The revenue department vide letter No.6097 dated 04.11.2000 has issued instructions. From these instructions, it is clear that those deeds vide which the land or unfilled land transfers situated either in the Municipal Limits or in the village Abadi, whose area is less than 1000 sq. yards should be considered 'residential' and the same fact has been pointed by the stamp auditor in his account examination remarks. The lower Court without taking into consideration only observed that the land in question is agricultural land and thereby the assessed and deficient stamp duty imposed/levied upon the respondents was set aside which is against the rules and liable to be set aside.*

6. Therefore, the order dated 18.05.2016 passed by the lower Court is hereby set aside and the additional stamp duty of Rs.5,97,000/- and registration fee Rs.5000/- for a total Rs.6,02,000/- (rupees six lac two thousand) be recovered from the respondents. Appeal is accepted accordingly."

Apparently, the stand taken in the reply to the instant writ petition is not reflected in the impugned order. It would not be open for the State Government to now improve upon an order passed at the hands of the Divisional Commissioner. It was incumbent upon the Divisional Commissioner to have assigned cogent and valid reasoning while accepting the appeal filed by State of Haryana and to thereafter impose an additional stamp duty as also registration fee upon the petitioners. Suffice it to submit that the impugned order lacks clarity and is not a reasoned order. The same as such cannot sustain.

In view of the above, instant writ petition is allowed. The impugned order dated 19.09.2018 passed by the Divisional Commissioner, Rohtak Division, Rohtak at Annexure P-3 is set aside on the sole ground of being a non-speaking order.

Writ petition is allowed.

This order, however, would not prevent the 2nd respondent to pass an order afresh in accordance with law and after affording to the petitioners an opportunity of hearing.

12.03.2020 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No