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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1073-2019
Date of decision: 23.03.2022

MUGANJEET KAUR

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Harpinder Singh Jalal, Advocate
for the petitioner.

Mr. C. L. Pawar, Sr. DAG, Punjab.

JAISHREE THAKUR, J.

The instant writ petition has been filed under Article 226 of the Constitution of India for issuance of writ in the nature of certiorari for setting aside the impugned orders dated 11.05.2018 (Annexure P-6) passed by respondent No.2 and dated 22.12.2016 (Annexure P-3) passed by respondent No.3 vide which the stamp duty has been assessed under the Indian Stamp Act, 1899 and recovery of Rs.41,600/- has been sought from the petitioner on account of deficit stamp duty.

In brief, the facts of the case are that the petitioner purchased 07 kanals of land vide sale deed No.450 from Surjeet Kaur wife of Gurcharan Singh and Mandeep Kaur wife of Rajpal Singh out of Khewat No.607 on the basis of Jamabandi for the year 2007-08 and the sale deed was to be registered on 20.05.2014. The petitioner also agreed to purchase the remaining 02 kanals of land out of the same khewat from the same parties and the second sale deed No.451 was registered on 20.05.2014 in favour of the petitioner. Thereafter, on the basis of audit report of the team from Auditor General, Punjab office, that the subsequent sale of the land was Rs.7,20,000/-, whereas, the same has been registered for Rs.2,00,000/-, the Sub-Registrar, Gidderbaha, sent a reference vide letter No.107/R.C. dated 15.07.2016 to the Collector, Sri Muktsar Sahib, regarding deficiency of stamp duty having been affixed. On receipt of the reference, the Collector, Sri Muktsar Sahib vide his order dated 22.12.2016 found deficiency of stamp duty of Rs.36,400/- and registration charges of Rs.5,200/- i.e. total amounting to Rs.41,600/-, on the ground that as the land is less than 02 kanals, the same is required to be charged at residential rates as against agricultural land. This order was challenged in an appeal which stands dismissed by the Commissioner, Ferozepur Division, Ferozepur, dated 11.05.2018.

Learned counsel for the petitioner herein would contend that the impugned orders are unsustainable and liable to be set aside on the ground that the requisite stamp duty and registration charges have been paid as per the Schedule, issued by the Collector's office. He would also argue that the sale deed in question came to be executed on 20.05.2014 and at the relevant time, no objection had been raised by the Sub-Registrar, Gidderbaha regarding deficiency of stamp duty and it is only thereafter, when an audit objection was raised, that the Sub-Registrar, Gidderbaha sent a reference to the Collector, Sri Muktsar Sahib. It is also argued that the Commissioner, Ferozepur Division, Ferozepur has also erred in coming to the conclusion that the 02 kanals of land is to be registered at the Collector's rate of Rs.18,000/- per marla, whereas, the same has been registered at the rate of Rs.8,00,000/- per acre.

Learned counsel for the petitioner would rely upon Annexure R-1 whereby, the Collector's rate has been fixed at Rs.18,000/- per marla which would come into effect from 26.06.2014, whereas, the sale deed was registered prior thereto.

Mr. C. L. Pawar, Sr. DAG, Punjab, would argue that as per the Collector's rate, the sold area which is less than 02 kanals or upto 02 kanals is to be treated as residential and the stamp duty is to be levied at Rs.18,000/- per marla and, therefore, the petitioner herein has not paid adequate stamp duty. It is submitted that the order of the Collector, Sri Muktsar Sahib asking for deficient stamp duty is well within the period of limitation of 03 years as prescribed under Section 47-A(3) of the Indian Stamp Act, 1899.

I have heard learned counsel for the parties and have perused the pleadings of the case.

It is an admitted fact that the sale deed regarding 02 kanals of land came to be registered on 20.05.2014 and at that relevant time, there was no objection raised by the Sub-Registrar, Gidderbaha regarding any inadequacy in the stamp duty paid and even he had not impound the said document at the relevant time. It is only on the basis of an audit objection report made subsequently that a reference was mark to the Collector, Sri Muktsar Sahib regarding inadequate stamp duty having been affixed on sale deed pertaining to 02 kanals of land. This decision was based on the Collector's rate for the year 2014-15, wherein, land bought for residential purposes would require stamp duty at the rate of Rs.18,000/- per marla, however, a perusal of Annexure R-1, which is from the office of the Registrar, Sri Muktsar Sahib to the Additional Secretary, Punjab Government, Revenue and Rehabilitation Department (Stamp and Registration Branch), Chandigarh, the Collector's rate for the year 2014-15 has been fixed at Rs.18,000/- per marla, which rate is applicable w.e.f. 26.06.2014. The authorities concerned have failed to take into account that the sale deed was registered much prior in time. The reply as furnished by the State does not reveal as to what was the prevalent rate on the date when the sale deed was executed.

It is also contended by learned counsel for the petitioner that the notices issued regarding buying 02 kanals of land which would fall within residential area is not sustainable, in view of the fact that the petitioner herein had purchased 09 kanals of land in total on the same day by two separate sale deeds from the same parties out of the same khewat. This contention also require consideration that in all he had purchased 09 kanals of land on the same day vide two separate sale deeds, which argument was not taken into consideration by the authorities concerned.

Therefore, the present petition is allowed and the impugned orders dated 11.05.2018 passed by respondent No.2 and dated 22.12.2016 passed by respondent No.3, are hereby set aside being not sustainable.

(JAISHREE THAKUR)
JUDGE

23.03.2022
Chetan Thakur

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No