213

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1670-2021
Decided on: 26.07.2022

BABA ZORAWAR SINGH BABA FATEH SINGH CHARTABLE EDUCATIONAL AND SOCIAL TRUST

Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rahul Sharma, Advocate
for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab.

JAISHREE THAKUR J.

1. The present writ petition has been filed seeking a writ in the nature of certiorari to be issued for quashing the order dated 26.08.2020 (Annexure P-12) passed by the Additional Chief Secretary-cum-Financial Commissioner (Revenue), Punjab, Chandigarh, by which order, he has reversed the order dated 08.01.2019 (Annexure P-6) of the Divisional Commissioner, Patiala Division, Patiala and upheld the order dated 04.05.2017 (Annexure P-4) passed by the Collector, Fatehgarh Sahib in proceedings under Section 47-A of the Indian Stamp Act, 1899, as applicable to the State of Punjab.

2. In brief, the facts as stated are that the petitioner herein is a charitable institution and is registered under the Societies Registration Act, 1860. The main objectives of the petitioner-Trust is to provide high quality of education in the area through establishing and running schools; to establish

general funds with a view to fulfil the aims and objects of the Trust and to do every possible thing necessary for that purpose etc. The petitioner-Trust purchased a piece of land vide sale deed No.588 dated 23.10.2015 from Sh. Daljit Singh and Sh. Manjit Singh, which was impounded by Sub-Registrar, Amloh. The sale deed was executed on 23.10.2015 and no stamp duty was paid on the registration of the said sale deed on the ground that all charitable institutions/NGOs have been exempted from payment of stamp duty. After the execution of the sale deed, the Sub-Registrar, Amloh sent a report to the Collector, Fatehgarh Sahib doubting the genuineness of the petitioner-Trust being a charitable institution. Vide order dated 04.05.2017 (Annexure P-4), the Collector, Fatehgarh Sahib ordered the petitioner-Trust to pay the deficit stamp duty amounting to Rs.15,14,240/- along with interest @ 12% per annum. Thereafter, an appeal was filed under Section 47-A of the Indian Stamp Act, 1899 (The Act of 1899 for short) challenging the said order, which was allowed vide order dated 08.01.2019 (Annexure P-6) by the Divisional Commissioner, Patiala Division, Patiala. Against the said order, the State filed a revision petition before the Additional Chief Secretary-cum-Financial Commissioner (Revenue), Punjab, Chandigarh, under Section 56 of the Indian Stamp Act, 1899, which was allowed vide order dated 26.08.2020 (Annexure P-12) whereby, the order of the Divisional Commissioner, Patiala Division, Patiala, was set aside and order as passed by the Collector, Fatehgarh Sahib was affirmed. The order of the Additional Chief Secretary-cum-Financial Commissioner (Revenue), Punjab, Chandigarh, has been assailed in these proceedings.

3. Learned counsel appearing on behalf of the petitioner herein submits that the impugned order dated 26.08.2020 passed by the Additional Chief Secretary-cum-Financial Commissioner (Revenue), Punjab, Chandigarh, is wholly without jurisdiction as revision petition under Section 56 of the Indian Stamp Act, 1899, filed against the order of the Divisional Commissioner, Patiala Division, Patiala, would not be maintainable. It is submitted that the Divisional Commissioner, Patiala Division, Patiala, while setting aside the order of the Collector, Fatehgarh Sahib, had rightly taken into account the instructions dated 29.08.2014 (Annexure P-7), which specifically provided that all charitable institutions are exempted from payment of stamp duty and as the petitioner is a charitable institution, it would not be liable to pay the stamp duty as assessed by the Collector, Fatehgarh Sahib.

4. Per contra, learned counsel appearing on behalf of the State of Punjab would urge that there is no infirmity in the order so passed in the revision as Section 56 of the Act of 1899 provides that the Chief Controlling Revenue Authority shall exercise control over the powers exercised by the Collector under Chapter IV and V and, therefore, the revision petition filed before the Financial Commissioner (Revenue), Punjab, Chandigarh, was maintainable. It is argued that the Divisional Commissioner, Patiala Division, Patiala had failed to take into account the fact that the petitioner was not a charitable institution and, therefore, the petitioner-Trust could not be exempted from paying the stamp duty.

5. I have heard learned counsel for the parties and on the pleadings and submissions made, the main question that would require determination

would be whether the order as passed by the Additional Chief Secretary-cum-Financial Commissioner (Revenue), Punjab, Chandigarh under Section 56 of the Indian Stamp Act, 1899 is sustainable or not?

6. Section 56 of the Indian Stamp Act, 1899 is reproduced as under:-

> *56.* ***Control of, and statement of case to, Chief Controlling Revenue-authority.*** *— (1) The powers exercisable by a Collector under Chapter IV and Chapter V [1][and under clause (a) of the first proviso to section 26] shall in all cases be subject to the control of the Chief Controlling Revenue-authority.*
>
> *(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.*
>
> *(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to asses and charge the duty (if any) in conformity with such decision.*

7. At this juncture, it would be interesting to note that the term 'Chief Controlling Revenue Authority' has not been defined under the Act of 1899 and, therefore, Section 3 Clause 10 of the General Clauses Act has to be read so as to understand as to who would be the 'Chief Controlling Revenue Authority'. As per the said Clause, the Financial Commissioner (Revenue), Punjab, Chandigarh would be the Chief Controlling Revenue Authority for the purposes of the Act of 1899.

8. Section 56 of the Act of 1899 provides for the control of the Chief Controlling Revenue Authority over the Collector. The Collector is the main

authority under the said Act, but the powers exercised by him under Chapter IV and V and under Clause (a) of the first proviso to Section 26 would be subject to control of the Chief Controlling Revenue Authority. The powers as exercisable by the Collector are further defined under Section 56(2) of the Act of 1899, which clearly reads that if any Collector, acting under Section 31, Section 40 or Section 41 has any doubt as to the amount of duty which is chargeable on an instrument, he may then draw up a statement and refer it with his own opinion thereon for the decision of the Chief Controlling Revenue Authority. In other words, the powers as exercised by the Collector under Section 31 of the Indian Stamp Act, 1899 can be read to be an opinion sought by a person who brings any instrument, whether executed or not and whether previously stamped or not to the Collector for determination as to the correct stamp duty to be paid, whereas Section 41 of the Act of 1899 pertains to proceedings when a Collector acknowledges that the deficit stamp duty on an instrument has been occasioned by accident, mistake or urgent necessity, then he can accept the amount instead of proceeding to recover the same.

9. The Act of 1899 has been amended as far as it concerns both the States of Punjab and Haryana. Aggrieved against any order as passed by the Collector in proceedings under Section 47-A of the Act of 1899, an appeal is to be filed under Section 47-A (4) of the Act of 1899 before the Commissioner of the Division and that too within a period of three months. The only remedy available to the aggrieved party, thereafter, would be to challenge the order of the Divisional Commissioner before the High Court under Article 227 of the Constitution of India. The Additional Chief Secretary-cum-Financial Commissioner (Revenue), Punjab, Chandigarh, in this case has exceeded his

jurisdiction by deciding an issue which arises out of a reference made by the Sub-Registrar, Amloh to the Collector, Fatehgarh Sahib, who passed orders under Section 47-A of the Act of 1899. The Additional Chief Secretary-cum-Financial Commissioner (Revenue), Punjab, Chandigarh could have exercised its jurisdiction upon an order passed by the Collector, when the Collector acts under Sections 31, 40 and 41 of the Act of 1899, whereas the order impugned before it was passed by the Divisional Commissioner exercising his jurisdiction upon an appeal filed under Section 47-A(4) of the Act of 1899.

10. Therefore, this Court has no hesitation in holding that the order so passed (Annexure P-12) by the Additional Chief Secretary-cum-Financial Commissioner (Revenue), Punjab, Chandigarh was by a person not competent to do so and is thus, set aside.

11. As the respondents-State had filed a revision petition challenging the order passed by the Divisional Commissioner, Patiala Division, Patiala within limitation, before an authority not competent to entertain the same, liberty is given to challenge the order afresh before an appropriate forum, within a period of two months from the date of receipt of the certified copy of this judgment.

12. Consequently, the instant writ petition stands allowed.

(JAISHREE THAKUR)
JUDGE

26.07.2022
Chetan Thakur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No