IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12445 of 2020 (O&M)
Reserved on: 27.07.2022
Date of Pronouncement: August 5, 2022

Aggarwal Construction Company

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab.

JAISHREE THAKUR, J.

1. The instant civil writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for setting aside the order dated 27.02.2015 Annexure P/5 passed by respondent No.3 and order dated 26.07.2017 Annexure P/7 passed by respondent No.2 whereby the petitioner has wrongly been fastened with the recovery of ₹23,68,000/- on account of deficient stamp duty.

2. In brief, the facts are that the petitioner company purchased an agricultural land measuring 8 kanals comprised in Killa No.233//10 (8-0), Khewat/Khata No.1659/3936 as per Jamabandi for the year 2008-09 situated in Village Mansa Kalan, District Mansa, vide sale deed dated 23.07.2012. The total sale consideration was ₹40 lacs. The sale deed was executed as per entry Sr. No.57/133 which would reflect the land as Nehri. After the registration of the sale deed, an audit was done and it was pointed

out that there is deficiency of stamp duty amounting to ₹2,56,000/- and accordingly, the office of the Sub-Registrar, Mansa issued letter dated 06.06.2014 to the office of Collector-cum-ADC regarding deficiency in the stamp duty. On receipt of the said letter, the office of Collector vide notice dated 12.06.2014 initiated proceedings under Section 47-A of the Stamp Act. As the petitioner was not served, he could not appear before the Collector, consequent to which he was proceeded ex-parte. During these proceedings, a report was called from the Sub Divisional Magistrate, Mansa, who vide his report dated 01.08.2014, submitted that the sale deed had been registered correctly as per the Collector rates. Since there was variation in the price regarding the proper valuation of the sale deed, the Collector herself visited the spot on 23.02.2015. The Halqa Patwari was also present along with the record. It was noticed that the land is situated in Green Valley Colony and as per the Collector rate approved by the District Collector, Mansa, the value and Collector rate of the said area was ₹7000/- per sq. yard as per entry Sr. No.57/129. Therefore, taking that the sale deed had been executed as per entry Sr. No.57/133 instead of entry Sr. No.57/129 of the Collector rates, it was held that there was deficiency of stamp duty and the sale consideration of the land is to be considered as ₹36,00,000/- and the valuation of the said land as per Collector rate was ₹7000/- per sq. yard. The deficient stamp duty was assessed at ₹23,68,000/-. The Collector directed the payment of the same by an order dated 27.02.2015. An appeal was preferred by the petitioner against the said order dated 27.02.2015 before the Commissioner, Faridkot Division, Faridkot, which came to be dismissed on 26.7.2017. Hence, the instant writ petition.

3. Mr. Ashish Gupta, learned counsel appearing on behalf of the petitioner herein would contend that at the time of registration of the sale deed, the Collector rate for registration of the land was reflected at Sr. No.57/133 with the proposed rate of ₹1500 per square yard. It is contended that the spot inspection was done by the Collector after a period of 2 ½ years of the execution of the sale deed, therefore, the demand for payment of deficient stamp duty would not be sustainable. Counsel for the petitioner would rely upon judgment rendered by the Apex Court in **State of Rajasthan and other vs. M/s Khandaka Jain Jeweller, 2008(1) RCR (Civil)** 91 and judgments rendered by this Court in **Gauri Singla vs. State of Haryana and other, 2009(1) RCR (Civil) 293, Madan Lal vs. State of Punjab and other, 2008(3) RCR (Civil) 462 and Sham Kumar Kohli vs. State of Punjab and other, 2009(1) RCR (Civil) 212** to submit that the stamp duty is to be determined on the date when the sale deed is executed. It is also submitted that it was on the basis of the spot inspection at a later stage, where it was found that the land mentioned in the sale deed fell in the Green Valley Colony where many houses are built and there was adequate facility of the sewerage, water supply, roads etc. that the Collector came to the conclusion the sale deed could not have been entered as Nehri at Sr. No.57/133. However, such a report cannot be considered.

4. On the other hand, Mr. Pawan Sharda, learned Sr. DAG Punjab appearing on behalf of the respondent-State would submit that the land in question is located in Green Valley Colony, which stands fully developed and, therefore, the land has to be treated as residential area and valued at

₹3,36,00,000/- on which value stamp duty has to be paid at ₹ 7000/- per sq yard . It is argued that the Collector rate for the land falling in Green Valley Colony for residential purposes would fall under Sr. No.57/129 instead of considering the land to be Nehri in nature.

5. I have heard learned counsel for the parties and with their assistance have perused the documents and the case laws cited.

6. The facts are not in dispute that the land in question was purchased in the year 2012, on which date the Sub Registrar did not impound the document and handed it over to the petitioner. Subsequent thereto, an audit report was received pertaining to the land in question and deficiency of stamp duty of ₹2,56,000/- was pointed out. On receipt of the reference, the Collector initiated proceedings under Section 47-A of the Stamp Act and asked the Sub Divisional Magistrate, Mansa to give his report therein. The Sub Divisional Magistrate, Mansa, vide his report dated 01.08.2014 stated that correct valuation has been done. On account of the conflicting views, the Collector inspected the land herself and found that the land mentioned in the sale deed falls in the Green Valley Colony where houses are built, road and street lights etc. are there, so treating the land to be residential in nature, the Collector asked the petitioner herein, who is the developer of the land, to pay the deficient stamp duty.

7. The law as settled by the Apex Court in the judgment rendered in **M/s Khandaka Jain Jeweller (supra)** is very much clear that the value of the land is to be taken as on the date when the sale deed is executed. In the present case, it would be pertinent to note that though the Sub Divisional Magistrate, Mansa has opined that the sale deed was adequately

stamped, the Collector on the basis of the spot inspection done 2 ½ years later, noting development on the land, has come to the conclusion that the sale deed pertains to the residential area. A perusal of the impugned orders do not reflect that the Collector or the Commissioner had any evidence available before them to come to the conclusion that the land in question was residential at the relevant time when the sale deed was executed nor do the orders reflect what was the prevalent market rate and the nature of the land at the time of the sale deed in question. In fact, the assessment has been made on the basis of the spot inspection and the subsequent developments made all around. In a similar situation in the case of **Gauri Singla (supra),** the Division Bench of this Court has held as under;-

> *"7. In the present case, neither the Collector nor the Commissioner has adverted to any independent evidence to return a finding in respect of the market value of the land. The basis of the order is Collector's rate of the land in dispute as ₹ 9 lacs per acre. Neither there is any reference to any sale instance in the neighbourhood nor any other evidence, which is without any statutory support, cannot be given effect to in view of the judgments referred to above. Thus, the impugned orders passed by the Collector and the Commissioner, suffer from patent illegality and material irregularity."*

A similar view has been taken by the Division Bench of this Court in the case of **Madan Lal (supra).** Since both, the Collector and the Commissioner have not relied upon any evidence that would establish the market value of the land at the relevant time or the nature of the land, be it Nehri or residential, in the absence of such material, market value of the land could not have been determined on the basis of a subsequent spot inspection only.

8. In view of the foregoing discussion, the instant writ petition is allowed. The impugned orders dated 27.02.2015 and 26.07.2017 passed by the Collector Mansa as well as by the Commissioner, Faridkot Division, Faridkot in appeal respectively are hereby set aside. The matter is remitted back to the Collector, Mansa for a fresh decision in accordance with law. The parties are directed to appear before the Collector, Mansa on 06.09.2022.

August 5, 2022 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No