IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15011 of 2018 (O&M)
Date of Decision.18.04.2022

Sneemar Kaur Bala ...Petitioner

Vs

State of Punjab and others ...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Kanwaljit Singh, Senior Advocate with
Ms. Shazia K. Singh, Advocate
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

-.-

JAISHREE THAKUR J. (ORAL)

1. The instant petition has been filed seeking to challenge the order dated 04.05.2018 (wrongly mentioned as 04.05.2017) (Annexure P-4) passed by the Collector whereby the land belonging to the petitioner has been ordered to be put to auction on account of recovery of Rs.73,388/- as well as order dated 14.03.2016 (Annexure P-3) passed by the respondent No.3 whereby the petitioner has been directed to deposit Rs.73,388/- on account of deficit registration fee as assessed by the audit party.

2. In brief, the facts are that petitioner along with Salveen Kaur had purchased land measuring 91 kanals 18 marlas in village Dadyal, Tehsil Dasuya, District Hoshiarpur vide sale deed dated 07.11.2012. In the year 2018, the petitioner came to know that some recovery has been sought to be effected against her. Thereafter, she had submitted an application dated 06.02.2018 in the office of Deputy Commissioner seeking information with respect to any proceedings under Section 47-A of the Indian Stamp Act,

who vide letter dated 15.02.2018 informed her that the necessary information will be provided by the office of Tehsildar Dasuya. On visiting the office of Tehsildar Dasuya, the petitioner came to know that an order dated 14.03.2016 had been passed by the Tehsildar, Dasuya stating therein that the Deputy Commissioner had ordered to effect recovery of Rs.73,388/- under the Punjab Land Revenue Act in lieu of deficiency of registration fee paid on sale deed dated 07.11.2012 and the petitoner was directed to deposit the said amount in the office of Tehsildar, Dasuya on 17.03.2016. The petitioner had approached the authorities to get copy of any order passed under Section 47-A of the Indian Stamp Act as no recovery proceedings can be initiated without any order under the Punjab Land Revenue Act but she did not get any such order. Thereafter, vide order dated 04.05.2018, the Collector Hoshiarpur ordered to put the property on auction on 12.06.2018 at 11 AM in order to effect recovery of Rs.73,388/-. Aggrieved against the said orders, the petitioner has approached this Court.

4. Learned counsel appearing on behalf of the petitioner raised following arguments while assailing the impugned orders:-

(i) Proceedings to recover the deficit stamp duty and registration fee on the sale deed can be initiated under Section 47-A of the Indian Stamp Act, that too after giving a reasonable opportunity of hearing to the defaulter. In the present case, no opportunity of hearing was provided to the petitioner at any stage. In support of his argument, reliance has been placed to the judgment rendered by a Coordinate Bench of this Court in CWP No.8346 of 2015 titled as ***Asha Rani Vs. Commissioner, Jalandhar Division, Jalandhar and another*** decided on 08.02.2017 wherein it has been held that Collector on receipt of inquiry report had not conducted an independent enquiry but accepted the same as a sermon, which is not the scope of Section 47-A of the Indian Stamp Act and consequently, quashed the orders impugned therein.

(ii) Audit party has not been authorized under any of the provisions of the Indian Stamp Act to assess and determine either nature of any of the document or the stamp duty payable therein and therefore, action of the Collector initiating recovery proceedings solely on the basis of the audit report without making an independent enquiry under Section 47-A of the Indian Stamp Act, is not sustainable in the eyes of law. In this regard, reliance has been placed upon the judgment rendered by this Court in CWP No.5461 of 2008 titled as ***Iqbal Singh and others Vs. State of Haryana and others*** decided on 30.09.2010.

(iii) It is also argued that on the basis of audit report, the Collector can examine any instrument for the purpose of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and the amount of duty with which it was chargeable within a period of three years from the date of registration of the instrument and that too, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under sub-section (2). In the case at hand, the sale deed was registered on 07.11.2012 whereas the notice qua deficit registration fee was issued on 14.03.2016 i.e. after a period of three years four months and therefore, the recovery proceedings are time barred. To substantiate this argument, counsel for the petitioner has relied upon the judgment rendered by a Coordinate Bench of this Court in CWP No.5690 of 2014 decided on 29.02.2016 titled as ***Sharmila Rani and others Vs. State of Punjab and others.***

(iv) The order for deposit of deficit stamp duty has been passed by the Tehsildar, who has no authority to pass such an order under Section 47-A of the Indian Stamp Act. It is only the Collector, who could proceed to recover the deficient stamp duty as has been held by a Division Bench of this Court in ***Smt. Chand Kaur and others Vs. State of Haryana and others (2008) 3 RCR (Civil) 776.***

5. Per contra, learned counsel appearing on behalf of the respondent-State submitted that on the basis of audit report, it had been found that there was deficient registration fee on the sale deed that was executed on 07.11.2012 and pursuant to that, notice was issued to the petitioner herein to pay the additional amount of Rs.73,388/- towards deficient registration charges. It is also argued that it is the not the case of undervaluation of the document rather non-deposit of registration fee as per Punjab Government notification dated 23.10.2012 and therefore, provisions of Section 47-A of the Indian Stamp Act would not be applicable to the instant case.

6. I have heard learned counsel for the parties and have perused the pleadings of the case as well as the case laws cited. The facts are not in

dispute. The sale deed came to be registered on 07.11.2012 and the notice pertaining to recovery of Rs.73,388/- was issued on 14.03.2016. This Court is in agreement with the argument raised by the counsel for the petitioner that the audit party has not authorized under any of the provisoins of the Indian Stamp Act to assess and determine either nature of any of the document or stamp duty payable therein. It is only the Collector appointed under the Registration Act, 1908, who could proceed to recover the deficient stamp duty and the registration fee under Section 47-A of the Indian Stamp Act after holding an enquiry in this regard and affording reasonable opportunity of being heard to the defaulter/concerned person, within a period of three years from the date of registration of the sale deed. In the instant case, the Collector only on the basis of audit report initiated recovery proceedings against the petitioner under the Punjab Land Revenue Act without conducting an independent enquiry as per Section 47-A(3) of the Indian Stamp Act and therefore, recovery proceedings suffer from perversity. Moreover, the notice of recovery has been issued to the petitioner after a period of three years from the date of registration of the sale deed and therefore, initiation of proceedings by the respondents was barred by limitation. This Court in CWP No.21097 of 2019 titled as ***Jyoti Singla and others Vs. State of Punjab and others*** decided on 24.03.2022 has dealt with the similar issue where the Collector issued notice to the petitioners therein to make good the deficiency of stamp duty and registration charges after lapse of a period of three years and therefore, set aside the orders passed by the Collector as well as the Appellate Authority by holding that the Collector can take congnizance of the matter within a period of three years from the date of registration of the instrument under

Section 47-A (3) of the Indian Stamp Act and not beyond that.

7. The argument raised by the respondent-State that it is a case of non-deposit of registration fee and not a case of undervaluation of the document does not hold field, as it is the Collector who is authorized under Section 47-A (3) of the Indian Stamp Act to examine any instrument for the purpose of satisfying himself not only to the correctness of the value of the property or of the consideration disclosed but also of all other facts and circumstances affecting the chargeability of the instrument and the amount of duty with which it was chargeable and thus, include non-deposit of registration fee as well.

8. Therefore, in view of the finding rendered above, the writ petition stands allowed and the impugned orders dated 04.05.2018 and 14.03.2016 passed by respondent No.2 and 3 respectively are quashed.

(JAISHREE THAKUR)
JUDGE

April 18, 2022
Pankaj*

Whether speaking/reasoned Yes/No
Whether reportable Yes/No