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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17905-2018
Decided on: 27.07.2022

ASHOK KUMAR

Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rishabh Gupta, Advocate
for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab.

Mr. A. S. Sandhu, Advocate
for respondent Nos.5 and 6.

None for respondent Nos.4 and 7.

<u>JAISHREE THAKUR J.</u>

1. The instant petition has been filed seeking to challenge the order dated 12.08.2016 (Annexure P-3) passed by the Additional Deputy Commissioner-cum-Collector, Bathinda (hereinafter referred to as the Collector) whereby, the petitioner has been directed to pay an additional amount of Rs.4,55,931/- along with interest @12% from the date of registration of the sale deed till the deposit of the amount towards deficient stamp duty and registration fee pertaining to sale deed registered on 30.08.2012 and the order dated 28.02.2018 (Annexure P-5) passed by the Commissioner, Faridkot Division, Faridkot, affirming the order of the Collector.

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2. In brief, the facts are that the petitioner purchased land measuring 4 kanals 1-¾ marlas gair mumkin in nature, situated within municipal limits of Phul on 30.08.2012. A sum of Rs.2,18,000/- was paid towards stamp duty, registration fee etc. The sale deed was registered by the Sub Registrar, Bathinda and at that time, the sale deed was not impounded on account of inadequate stamp duty. The sale deed was returned to the petitioner after registration. The office of the Deputy Controller (Finance and Accounts), Internal Audit Institute (Revenue), Bathinda sent an audit memo to Tehsildar-cum-Sub Registrar, Bathinda pointing out that there was a loss of Rs.4,55,931/- towards deficiency of stamp duty and registration fee on the sale deed in question. On the basis of the audit report, the Sub-Registrar-cum-Tehsildar made a reference vide letter No.1456/RK dated 02.07.2015 to the Collector intimating him that an amount of Rs.4,55,931/- is to be recovered as deficient stamp duty. Thereafter, the Collector issued a notice under Section 47-A of the Indian Stamp Act dated 11.09.2015 to the petitioner regarding the deficient stamp duty detected during audit, resulting in the impugned orders.

3. Learned counsel appearing on behalf of the petitioner herein would contend that the impugned orders are unsustainable, as the Sub-Registrar, Bathinda while registering the instrument did not impound the sale deed nor was any reference made to the Collector at his own instance. The sale deed was handed over to the petitioner after registration of the same. It is thereafter, that notice was issued by the Collector under Section 47-A(3) of the Indian Stamp Act, 1899 asking for deficient stamp duty and such notice was issued beyond the period of limitation.

4. Per contra, learned counsel appearing on behalf of the respondents-State submitted that on the basis of audit report, it had been found that there was

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deficient stamp duty affixed on the sale deed that was executed on 30.08.2012 and pursuant to that, notice was issued to the petitioner herein to pay the additional amount of Rs.4,55,931/- towards deficient stamp duty and registration charges.

5. I have heard learned counsel for the parties and have perused the pleadings of the case. The facts are not in dispute. The sale deed came to be registered on 30.08.2012 by the Sub-Registrar but at that point of time, he did not impound the sale deed nor did he send a reference to the Collector as envisaged under Section 47-A (1) of the Indian Stamp Act, as applicable to the State of Punjab. Section 47-A of the Indian Stamp Act is reproduced as under: -

> *"47-A. Instruments under-valued how to be dealt with. - (1) If the Registering Officer appointed under the Registration Act, 1908, while registering. instrument transferring any property has reason to believe that the value of property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to Collector for determination of the value or consideration, as the case may be; the proper duty payable thereon. (2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the consideration and the duty as aforesaid and the deficient amount of duty, if any shall be payable by the person liable to pay the duty.*
>
> *(3) The Collector may, suo moto, or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under Registration Act, 1908 (Central Act .No. 16 of 1908), in whose jurisdiction property or any portion thereof which is the subject 3 of 8 matter of the instrument is situated or on the receipt of a report of audit by*

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> *the Comptroller and Auditor General of India or by any other authority authorised by the State Government in this behalf or otherwise within a period of three years from the date of the registration of an instrument, call for and examine any instrument for the purposes of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and of all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if after such examination, he has reason to believe that proper duty has not been paid, he may, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under sub- section (2), determine the value of the property or the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, would be payable by the person liable to pay the duty.*
>
> *(4) Any person aggrieved by an order of the Collector under sub section (2)or sub-section (3) may, within thirty days from the date of that order, prefer an appeal before the Commissioner and all such appeals shall be heard and disposed of in such manner as may ·be prescribed by rules made under this Act.*
>
> *Explanation. - For the purpose of this section, value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched if sold in the open market on the date of execution of the instrument relating to the transfer of such property."*

6. A plain reading of sub-section (3) of Section 47-A of the Indian Stamp Act, 1899 clearly shows that the period prescribed for initiation of

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proceedings under the said provision is three years. No notice can be issued after the expiry of three years. Such being the situation, the proceedings initiated by the respondents on 11.09.2015 were unjustified. Similar view has been taken by a Division Bench of this Court in ***Raghbir vs. State of Haryana, 2003 (4) RCR Civil 861*** and ***Vikas vs. State of Haryana and Others, (2008) 2 RCR (Civil) 526.*** The law so settled is followed in ***Lalit Mohan Chadha vs. State of Punjab and Others, CWP No.527 of 2010, decided on 15.02.2012*** and ***Jyoti Singla and Others vs. State of Punjab and Others, CWP No.21097 of 2019, decided on 24.03.2022.***

7. In view of the finding rendered above, the instant writ petition is allowed and the impugned orders dated 12.08.2016 (Annexure P-3) passed by the Additional Deputy Commissioner-cum-Collector, Bathinda and dated 28.02.2018 (Annexure P-5) passed by the Commissioner, Faridkot Division, Faridkot are quashed.

(JAISHREE THAKUR)
JUDGE

27.07.2022
Chetan Thakur

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

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