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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21179-2018
Decided on: 07.07.2022

PREM WATI AND ANOTHER

Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Abhilaksh Grover, Advocate
for the petitioners.

Ms. Kirti Singh, DAG, Haryana.

JAISHREE THAKUR J.

1. The instant petition has been filed seeking to challenge the order dated 26.06.2015 (Annexure P-6) passed by the District Revenue Officer-cum-Collector, Karnal- respondent No.2 (hereinafter referred to as the Collector) whereby directions have been passed to realize stamp duty of Rs.4,08,000/- from the petitioners under the Haryana Stamp (Prevention of Under Valuation of Instruments) Rules, 1978; order dated 08.06.2017 (Annexure P-7) passed by the Commissioner, Karnal Division, Karnal-respondent No.4, affirming the order of the Collector, in appeal, besides order dated 03.07.2018 (Annexure P-9) passed by the Chief Controlling Revenue Authority, Haryana, Chandigarh-respondent No.5, wherein the orders passed by respondent Nos.2 and 4 were upheld.

2. In brief, the facts are that the petitioners purchased land measuring

128 kanals comprised in Khewat No.134Min/117, Khatauni No.186 and 188 as per jamabandi for the year 2005-2006, situated at Village Mustafabad, Tehsil and District Karnal for a total sum of Rs.1,04,00,000/-. A sum of Rs.3,12,000/- was paid towards stamp duty. The sale deed was registered by the Sub-Registrar, Karnal and at that time, the sale deed was not impounded on account of inadequate stamp duty. The sale deed was returned to the petitioners after registration. The audit party of the office of the Accountant General, Haryana sent an inspection note to Tehsildar-cum-Sub Registrar, Karnal pointing out that there was a loss of Rs.4,08,000/- towards deficiency of stamp duty on the sale deed in question. On the basis of the audit report, the Sub Registrar-cum-Tehsildar made a reference to the Collector intimating him that an amount of Rs.4,08,000/- is to be recovered as deficient stamp duty. Thereafter, the Collector under Section 47-A of the Indian Stamp Act, issued a notice dated 01.04.2015 to the petitioners regarding the deficient stamp duty detected during audit.

3. In the proceedings under Section 47-A of the Indian Stamp Act, a reply was filed, taking a plea that the stamp duty had correctly been affixed, however, the Collector by impugned order dated 26.06.2015 concurred with the objection raised by the audit party and directed that deficiency of stamp duty be recovered from the vendees as per the Haryana Stamp (Prevention of Under Valuation of Instruments) Rules, 1978. The appeal and revision filed against the said order were also dismissed, which has led to the filing of the instant writ petition.

4. Learned counsel appearing on behalf of the petitioners herein

would contend that the impugned orders are unsustainable, as the Sub-Registrar 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 petitioners after registration of the same. It is also argued that there are judgments to the effect that the reference can be made by the Sub-Registrar to the Collector immediately after registration of an instrument or in the course of registration. It is submitted that in the judgment rendered in **Abhinav Kumar Vs. State of Haryana 2001 (1) RCR (Civil) 91**, a reference had been made by the Sub Registrar to the Collector after a period of 8 days and it was held to be not in accordance with law. It is also argued that in the case of **Iqbal Singh and others Vs. State of Haryana and others 2011 (3) RCR (Civil) 365**, it has been held that an audit party is not authorized under any provisions of the Indian Stamp Act to assess and determine the nature of any document or the stamp duty payable thereon.

5. Per contra, learned counsel appearing on behalf of the respondent-State would submit that on the basis of audit report, it had been found that there was deficient stamp duty affixed on the sale deed that was executed on 08.11.2011 and pursuant to that, notice was issued to the petitioners herein to pay the additional amount of Rs.4,08,000/- towards deficient stamp duty.

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 08.11.2011 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 Haryana. 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 any instrument transferring any property has reason to believe that the value of the 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 the Collector for determination of the value or consideration, as the case may be, and 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 value or 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 motu, or on receipt of reference from the Inspector-General of Registration or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situate, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, not already referred to him under Sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reasons to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in Sub-section (2) and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty:

Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as

aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.

(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 the order, prefer an appeal before the Commissioner of the Division and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.

7. As per Section 47-A, if the Registering Officer as appointed under the Registration Act, 1908, while registering any instrument relating to the transfer of any property, has reason to believe that the property has been under-valued, he may after registration, refer the same to the Collector for determination of value of the property or the consideration, as the case may be, and the proper duty payable thereon. On receipt of the reference, the Collector shall give reasonable opportunity to the parties to be heard and after holding an enquiry in such manner as may be prescribed, determine the value and if amount of duty is found to be deficient, it shall be payable. As per Section 47-A (3), the Collector may suo motu or on receipt of the reference from the Inspector General of Registration or Registrar of a District in whose jurisdiction the property or any portion thereof, which is subject matter of the instrument, is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, **within a period of three years from the date of the registration of any instrument**, call for and examine any instrument and satisfy himself whether or not, instrument had been valued correctly. If the Collector has reason to believe that proper duty had not been paid, he may give the person concerned reasonable opportunity of being heard and hold an

enquiry as provided under sub-section (2) and if it is found that the instrument has not been properly valued, such person shall be liable to pay the duty.

8. A reading of sub-section (1) of the aforesaid Section enjoins a responsibility on the Registering Officer to refer to the Collector any such instrument for determination of the value of the property in case he believes, while registration of the instrument that the correct valuation of the property has not been truly set forth. On receipt of the reference under sub-section (1), the procedure is prescribed under sub-section (2) of Section 47-A whereas the Collector may suo motu or on receipt of reference from the Inspector General of Registration or Registrar of a District or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of the instrument, call for and examine said instrument for the purposes of satisfying himself as to the correctness of the value of the property.

9. In the instant case, it is on the objection raised by an audit party that the reference was made by the Sub Registrar to the Collector regarding deficiency in stamp duty on the sale deed executed on 08.11.2011. In a catena of judgments it has been held that the Sub-Registrar would become *functus officio* after registration of the sale deed and in case he is to make reference, it has to be done immediately after registration of the instrument, as has been held in the case of **Abhinav Kumar's case** (supra). It would be pertinent to add here that in case of *Abhinav Kumar*, reference had been made by the Sub-Registrar to the Collector within a period of 8 days, which was held to be invalid.

Therefore, by relying upon the said judgment, this Court can hold that there was a delay in sending the reference to the Collector. However, this Court is also aware of a judgment rendered by a Coordinate Bench rendered in **Seema Vs. State of Haryana and others** in CWP No.27881 of 2017 decided on 10.12.2019, where the question posed was if the Sub-Registrar maintains silence by inaction on the date of registration and accepts the stamp duty and after the registration of sale deed still does not make any reference, would the Collector have the power to initiate suo motu action and determine the proper stamp duty by calling for and examining the record and upon hearing the vendee and the likely to be affected parties, pass an order. The Coordinate Bench came to hold that the act of the Sub-Registrar in registering a sale deed is an administrative act and not judicial or quasi-judicial. His quasi-judicial jurisdiction starts with notice of under-valuation by party avoiding payment of proper stamp duty. In **Seema's case** (supra), the sale deed was registered on 19.07.2012 and the Sub Registrar made reference to the Revenue Officer-cum-Collector, Karnal on 21.09.2012 i.e. within a period of less than three months. But in the instant case, reference was made by the Sub-Registrar to the Collector on receipt of the audit report. Pursuant to the said reference, the petitioners herein vide notice dated 01.04.2015 were called upon to appear in proceedings before the District Revenue Officer and Collector, Karnal, which notice was well beyond the period of three years. Even if the argument of the respondent-State is taken into consideration, that the registering authority does not become *functus officio* as has been held in **Seema's case**, this Court cannot lose sight of the fact that the Collector took cognizance of reference received well beyond the period of three years. Even if Section 47-A (3) of the Indian

Stamp Act permits Collector to issue notice suo motu, it has to be done within a period of three years from the date of registration of the instrument. It is settled law that communication of the order alone confers on a paper the status of an order as has been postulated by Article 166 of the Constitution (see *Vikas Vs. State of Haryana and others*, 2008(2) RCR (Civil) 526). The Division Bench in *Vikas's case* (supra) has held as under:-

"The only argument raised by the respondents is that an audit objection was raised vide Audit Note dated 12.6.2002 and on the basis of the audit objection it was sought to be contended that within the period of three years objections have been taken (R-1). Therefore, the period of three years would not come in the way of the respondents as audit objection was raised on 12.6.2002. We find that the argument is totally absurd because there was no communication of the audit objection to the petitioner so as to constitute a basis for argument that the action was taken within period of three years. The real action was initiated only on the issuance of show cause notice, which admittedly was issued on 7.12.2005. It is well settled that the communication of the order alone confer on a paper the status of an order as has been postulated by Article 166 of the Constitution. The aforementioned provision was interpreted by a Constitution Bench of Hon'ble the Supreme Court in the case of Bachhitar Singh v. State of Punjab, AIR 1963 Supreme Court 395. In that case the Constitution Bench had held that till an order is communicated it would not assume the character of executive action. A similar view has been taken by Hon'ble the Supreme Court in the case of Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413. Therefore, we have no hesitation to reject the argument."

10. The argument raised by the petitioners while relying upon the judgment rendered in *Iqbal Singh's case* that the audit party is not authorized to assess and determine the nature of any document or the stamp duty payable thereon has no force, as in that case the document executed in respect of the property was the relinquishment deed on which stamp duty was not payable and not the sale deed as in the instant case. Therefore, the *ratio decidendi* culled out in *Iqbal Singh* is not applicable to the present case.

11. Therefore, in view of the finding rendered above, the impugned orders dated 26.06.2015 (Annexure P-6) passed by the District Revenue Officer -cum-Collector, Karnal, dated 08.06.2017 (Annexure P-7) passed by the Commissioner, Karnal Division, Karnal and dated 03.07.2018 (Annexure P-9) passed by the Chief Controlling Revenue Authority, Haryana, Chandigarh, are quashed and the instant writ petition stands allowed.

(JAISHREE THAKUR)
JUDGE

07.07.2022
Chetan Thakur

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