IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23246 of 2018 (O&M)
Date of Decision: 5.4.2022

ARC Bio Fuel Pvt. Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Gaurav Sharma, Advocate
for the petitioner.

Mr. Pawan Sharda, Sr. DAG, Punjab.

JAISHREE THAKUR, J.

1. The instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of Certiorari seeking quashing of the order dated 25.4.2018 passed by the Commissioner, Patiala, Division, Patiala—respondent No.2 by which the appeal filed by the respondent—State was allowed and the case was remanded back to the District Collector, Barnala, with a direction to decide the same afresh.

2. The brief facts giving rise to the instant writ petition are that the petitioner purchased an agriculture land measuring 19 kanals 7 marlas out of the total land of 229 kanals 15 marlas through two registered sale deeds No. 1175 and 1313 dated 13.6.2013 and 24.6.2013 respectively, situated in village Handiaya, Tehsil and District Barnala. Since the said land came under Code No.1 of the Collector rate as such the requisite stamp duty

was paid at the time of registration of the sale deeds.

After purchasing the above said land, the petitioners obtained CLU (change of land use) of the entire purchased land for setting up a bio gas industry from the Town & Country Planning Department, which was granted on 9.1.2014 after deposit of requisite fee amounting to ₹2,76,854/-. However, on a complaint made by one Tarsem Jindal, respondent No.3 issued a notice under Section 47-A of the Indian Stamp Act to the petitioner regarding deficiency in the stamp fee affixed on the sale deeds, to which the petitioner replied along with the relevant record. In the meantime, respondent No.3 also called for a report from the Sub Divisional Magistrate, Barnala, in this regard, who opined that the petitioner has correctly affixed the stamp duty as per the Collector rate because the land was agricultural land at the time it was purchased and CLU has been issued thereafter. After going through the submissions made by the petitioner as well as after going through the report, the Collector, Barnala, closed the proceedings initiated under Section 47-A of the Indian Stamp Act by order dated 12.2.2015.

Against the order dated 12.2.2015, the respondent—State filed an appeal, which was allowed by the Commissioner, Patiala Division, Patiala, vide impugned order dated 25.4.2018, as noticed above, giving rise to the instant petition.

3. Learned counsel appearing on behalf of the petitioner would argue that the impugned order is not sustainable in the eyes of law. It is submitted that the Collector had passed the order after calling a report from the Sub Divisional Magistrate and as such the same ought not have been interfered. It is submitted that for the purpose of payment of requisite stamp

duty, the nature of the land has to be seen as on the date the sale deed is being registered and subsequent user cannot be taken into account for calculation of stamp duty. In support of his arguments, learned counsel relies on the judgment of the Supreme Court rendered in **State of U.P. And others Versus Ambrish Tandon and another 2012 (1) R.C.R. (Civil) 865.**

4. Per contra, learned counsel for the respondent—State would argue that respondent No.2 has rightly remanded the matter to the Collector as the CLU was obtained by the petitioner subsequent to the registration of the sale deed with due deliberation in order to cause loss to the State exchequer.

5. I have heard learned counsel for the parties and have gone through the pleadings of the parties as well as the case law cited.

6. Admittedly, on the date when the land in question was purchased by the petitioner, it was an agricultural land and the stamp duty was paid as per the Collector rate prevalent at that point of time. Thereafter, the petitioner obtained CLU for setting up a bio gas industry from the Town & Country Planning Department, which was duly granted to the petitioner. Respondent No.2, while remanding the matter, observed that "*issue in this case is as to whether the land in dispute is agricultural in nature or commercial in nature.*". *w*hereas, the question that ought to have been decided should have been, as to what nature of the land was when the same was purchased? In fact, the nature of user is relatable to the date of purchase and it is that date that would be relevant for the purpose of calculation of stamp duty and not any date subsequent thereto. The Supreme Court in Ambrish Tandon's case (supra), while deciding the

similar issue held as under:-

> *"...The impugned order of the High Court shows that it was not seriously disputed about the nature and user of the building, namely, residential purpose on the date of the purchase. Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty..."*

7. In this case also, the nature of the land as on the date of purchase is not disputed. Further, payment of stamp duty as per the Collector rate prevalent at that time is also not disputed. Therefore, merely because the land is being used for a commercial purpose at the later point of time is not relevant for the purpose of assessing the stamp duty.

9. For the reasons afore-stated, the writ petition is allowed and the impugned order is set aside.

05.4.2022 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No