**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 3099 of 2018
Reserved on: May 04, 2022
Pronounced on: May 16, 2022

KRISHAN KUMAR SHARMA

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajat Malhotra, Advocate
for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab.

Mr. Tarunvir Singh Lehal, Advocate
for respondent No.4-Ludhiana Improvement Trust.

<u>JAISHREE THAKUR J.</u>

1. The petitioner herein has approached this Court seeking a writ in the nature of certiorari for setting aside the order dated 15.10.2014 (Annexure P-2), passed by the Collector/ADC, Ludhiana, by which order the petitioner has been directed to pay stamp duty at the Collector's rate prevailing at the time of registration of sale deed, and order dated 26.04.2017 (Annexure P-1), passed on appeal by the Divisional Commissioner, Patiala Division, Patiala, upholding the

said order.

2. In brief, the facts as noticed are that the father of the petitioner was owner in possession of property at Bhadaur House, Ludhiana, where he was running Sharma Motor Mechanical General Workshop as a sole proprietor. The Ludhiana Improvement Trust took over the property and carved out booths. The father, Mr. Bal Mukand Sharma, being an outsee was allotted one SCF No. 13, which was small as compared to the size of the property taken. To set off the shortfall, arcade between SCF Nos. 13 and 14 was also allotted. After allotment, Mr. Bal Mukand Sharma (henceforth called the father) deposited Rs.5,590/-, being 25% of the price of SCF No.13. He could not deposit the balance amount as the Trust misplaced the file and the Trust asked for help to reconstruct the file. The petitioner managed to deposit a sum of Rs.10,464 and Rs.1,000/-, while depositing another sum of Rs.63,200/- on 28.09.1992, under threat of cancellation of allotment. As the Trust was not accepting the balance payment, he approached the High Court in CWP No. 9426 of 1993, seeking a writ in the nature of mandamus to be issued to the respondent-Trust to accept the balance payment and the Court vide order dated 09.12.1993, directed the Chairman of the Improvement Trust, Ludhiana, to take a final decision in the matter within three months. On 25.03.1994, Chairman, Improvement Trust, Ludhiana, admitted the fault of his officials and by fixing the responsibility of the concerned official, allowed him to deposit the payment as per the allotment letter. Thereafter, the petitioner and his father visited the office of the Trust for getting the sale deed registered, but to no avail. The father passed away and the petitioner duly informed the office of the Trust seeking registration of the sale deed in his favour being the sole legal heir. However, the Trust did not pay any heed. In the meantime, the Trust issued a

notification for all allottees of Government/Semi-Government Organization to get their sale deed registered on the price mentioned on the allotment letter latest by 31.03.2010, otherwise they would be burdened with payment of extra stamp duty. As the Trust was not executing the sale deed, the petitioner herein filed a Consumer Complaint before the District Consumer Disputes Redressal Forum, Ludhiana, which was allowed by order dated 26.11.2010, directing the Trust to transfer SCF No. 13 in favour of the petitioner in terms of the allotment letter, as well as to execute the sale deed at the price mentioned in the deed as admissible under the notification. As there was non-compliance of the said order, a contempt was filed and a statement was then made that the sale deed would be executed. Eventually, another letter was addressed in March, 2014 asking for the sale deed to be executed and it is then that the sale deed was executed and registered on 20.05.2014.

3. Thereafter, the Sub-Registrar impounded the sale deed and asked the petitioner to pay deficient stamp duty on the ground that the value of the property at the Collector’s rate on the date of the registration was Rs.1,47,12,000/- as against the transaction value of Rs. 20,350/-. An application for release of the sale deed was filed before the Collector/Additional Deputy Commissioner, Ludhiana, which application stands declined and the appeal dismissed. Aggrieved against the action of the respondents-State in not releasing the sale deed and impounding the same, the instant writ petition has been filed.

4. Learned counsel appearing on behalf of the petitioner herein contended that the father of the petitioner was allotted SCF No.13 by the Improvement Trust as far back as on 24.07.1972, on account of being a displaced person, whose property was acquired by the Improvement Trust. Thereafter, the

petitioner and his father had been put to undue harassment on account of one reason or the other. Initially, the Improvement Trust had misplaced the file pertaining to the allotment of SCF No.13 and on account of that, they refused to accept the balance amount of the allotment price. The original allottee, i.e. the father of the petitioner, had to approach the High Court seeking necessary directions to be issued to the respondents to accept the amount, which amount was eventually accepted, however, no sale deed was executed in favour of the petitioner, who became the legal heir of the original allottee. It is submitted that despite order of the District Consumer Disputes Redressal Forum, Ludhiana, to get the sale deed executed, the same was not done and on filing of a contempt petition, the Trust executed a sale deed, which now stands impounded by the Collector on account of deficit stamp duty. He submits that Collector is now asking for stamp duty to be paid at the current Collector's rate from the petitioner, whereas he had made the entire payment towards the allotment of SCF No.13, as far back as in 1972 itself and therefore, is not liable to pay the extra stamp charges as demanded. It is submitted that this fact stands noticed by the Consumer Court, who had directed the execution of the sale deed. Moreover, two notifications have been issued by the State Government dated 11.11.2009/15.12.2009 (Annexure P-20/21) and dated 08.04.2015 (Annexure P-29), by which it has been specified that all persons who had been allotted property by Government/Semi-Government entities, could get the sale deeds registered on the prevailing rate as mentioned in the agreement. He also argued that the Supreme Court in ***Civil Appeal No.4367 of 2000, "M/s Residents Welfare Association Noida versus State of U.P. and Others", 2009 (3) RCR Civil 87,*** has held that where there is a delay caused by the seller party in the execution of the sale deed, additional stamp duty cannot be asked for.

5. Learned State counsel appearing on behalf of respondents-State would submit that the State cannot be put to losses on account of deficit stamp duty having been paid by the petitioner herein. It is submitted that at the time of registration of the sale deed, the value of the property in question, as per the Collector's rate was Rs.1,47,12,000/-, whereas the value written of the property in the sale deed is Rs.20,350/-. It is also submitted that the two notifications as relied upon by the learned counsel for the petitioner would not be applicable in the instant case as the registration of sale deed pertaining to any allotment by the Government/Semi-Government was to be done by 31.03.2010, whereas the petitioner herein got the sale deed registered in 20.05.2014. He further submitted that this Court in ***"Sukhjit Singh Cheema, Advocate versus Punjab Urban Planning and Development Authority, Chandigarh and Others", 2009 (1) RCR (Civil) 337,*** has held that stamp duty is payable on the market value of the property on the date of the registration of instrument and not as per the sale consideration recited in the letter of allotment. He would also rely upon another judgment passed by this Court in "***Sham Kumar Kohli versus State of Punjab and Others", 2009 (1) RCR (Civil) 212***, wherein again it has been held that stamp duty on sale of immovable property has to be assessed on the market value at the time of registration of sale deed and not at the time of agreement to sell, nor at the time of filing of the suit because it might have taken years before it was finally disposed of.

6. Learned counsel for respondent No.4-Ludhiana Improvement Trust adopts the same plea as taken by the respondents-State.

7. I have heard learned counsel for the parties and have perused the pleadings of the case and case laws cited.

8. This is one of the classic cases where a common man had been put to great hardship on account of apathy by the respondents-State/and the Improvement Trust in dealing with the matters pending before them, and the sheer indifference to his plight. One would wonder as to whether the officials sitting on the table get some perverse pleasure in making a simple process difficult for a common person. The petitioner, whose father had been allotted SCF No.13 on account of being a displaced person, had to run from pillar to post to get the Improvement Trust to accept the balance amount due and payable on the allotment made to him. This is clearly evident from the fact that petitioner had to approach the Writ Court seeking direction to the Improvement Trust to accept the balance cost of the property. A reading of the order dated 25.03.1994, passed by the office of the Improvement Trust, Ludhiana, would clearly reflect that the Improvement Trust had admitted to the fact that it had lost the papers pertaining to SCF No.13. The operative part of the order reads as under: -

> *" Hence it is established from the facts and circumstances of this case, the petitioner was not at all default in depositing the balance payment. However, it is the fault of the concerned official as it is evident from the reporting of the files. The petitioner is hereby allowed to deposit the balance amount of payment as per allotment letter."*

9. It was only when the said order was passed by the office of Improvement Trust, Ludhiana, that the payment of the petitioner was accepted. Once again, the Improvement Trust was derelict in its duty to get the sale deed

executed, which again necessitated the petitioner to approach the Consumer Forum in this regard. The Consumer Forum after having taken note of all contentions raised, passed an order that the sale deed should be executed. This order was passed on 26.11.2010, with a further direction that the sale deed be executed at the price as admissible under the notification issued by the State Government dated 11.11.2009/15.12.2009 (Annexure P-20/21). Thereafter, it took the filing of a contempt petition to get the sale deed registered. The ordeal of the petitioner did not come to an end here as he has been faced with the sale deed being impounded on account of deficit stamp duty. This has been done by the Sub-Registrar since the sale deed was registered at the allotment price of Rs.20,350/-, whereas, a demand has been made to pay the deficit stamp duty by taking the value of the property at the Collector's rate to be of Rs.1,47,12,000/- on the date of the registration. The Collector and the Appellate Authority have failed to consider the fact that the petitioner herein was not at fault and the deficit stamp duty could not have been demanded as it was the respondent-Improvement Trust, that failed to execute the sale deed despite all payments having been made as far back as in 1992. The very action of the petitioner, who had to approach the Consumer Forum asking for the sale deed to be executed, establishes that he was not shying away from getting the sale deed executed. Even though the Consumer Forum had directed the sale deed to be executed by its order dated 26.11.2010, the Improvement Trust in terms of the notification, failed to do the needful.

10. It would be worthwhile to note that there is a notification dated 08.04.2015, amending the Punjab Stamp (Dealing of Under-Valued Instruments) Rules, 1983, wherein Rule 3-B has been incorporated, which reads as under:

> *"3-B. Notwithstanding anything contained in rule 3-A, the rate fixed for allotment at the fixed price or at the price accepted after public auction of an immovable property by the Government or public sector undertaking or a local body, shall be deemed to be the Collector's rate as fixed under rule 3-A of such property and the Stamp Duty shall be charged for registration of instrument of such property at the rate so fixed, at the time of execution of first conveyance deed of such property; provided the conveyance deed has been got registered within a period of two months from the date of issue of this notification after making full payment of the price as per the schedule fixed for payment in respect of such property and whose possession has been handed over, as the case may be."*

11. By the said notification it has been decided that the allotment of immovable property (plot/house etc.) allotted by the Government/Semi-Government departments of which all the installments have been deposited and possession was delivered, but the allottees who have not got registration, are to be given two months' time to get the registration done from the date of issuance of the notification dated 08.04.2015. The petitioner herein would have been covered under this notification as well considering the fact that the possession of immovable property allotted by the Improvement Trust had been given, for which entire payment stood deposited. There is no issue regarding non-deposit of the entire sale consideration. The judgments as relied upon by the learned State counsel would pale into insignificance in the light of the judgment rendered by the Supreme Court in ***"M/s Residents Welfare Association Noida versus State of U.P. and Others", 2009 (3) RCR Civil 87.*** In the instant case, no fault can be attributed to the petitioner herein who deposited his entire allotment price within the specified time and it is the Trust being the seller, who was at fault in creating the

delay in execution of the sale deed.

12. The impugned orders suffer from infirmity of being non-speaking orders as the only consideration for impounding the sale deed and non-release of the same is that the petitioner herein had taken no steps to get the sale deed registered after the order of the Consumer Forum in the year 2010. This reasoning is belied since a contempt had to be filed before the registration of the sale deed was done and that too in the year 2014. None of these factors have been taken into account while raising a demand of deficit stamp duty and rejecting the appeal as filed by the petitioner herein. Consequently, the impugned orders are unsustainable.

13. Another factor that needs to be taken into account is that the petitioner has placed on record certain orders passed in the cases of similarly situated persons, who were allotted the land by the Improvement Trust, but sale deeds were got registered later. The benefit of the notifications dated 11.11.2009/15.12.2009 and 08.04.2015, has been given to such allottees, *i.e* of allowing registration to be done on the price as mentioned in the allotment letters instead of the current Collector's rate, by taking note of the fact that it was the seller who was causing the delay in the registration of the sale deed. In fact, reference of the Supreme Court judgment in ***M/s Residents Welfare Association Noida*** (supra) has been made while allowing stamp duty to be paid on the basis of value mentioned in the allotment letter. The same yardstick ought to have been adopted in the instance case as well.

14. Consequently, the present petition is allowed and impugned orders dated 15.10.2014 (Annexure P-2), passed by the Collector/ADC, Ludhiana and

dated 26.04.2017 (Annexure P-1), passed on appeal by the Divisional Commissioner, Patiala Division, Patiala, are set aside. Respondents are directed to release the sale deed of the petitioner herein forthwith, within a period of one month from the date of receipt of the certified copy of this order.

(JAISHREE THAKUR)
JUDGE

May 16, 2022
Chetan Thakur

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