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

CWP No.3613 of 2018 (O&M)
Date of Decision: May 6, 2022

M/s Jitu Real Estate Private Limited and others

...Petitioners

Versus

State of Punjab and others

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Rakesh Gupta, Advocate
for the petitioners.

Ms. Ambika Bedi, AAG Punjab.

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**JAISHREE THAKUR, J.**

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction, especially in the nature of *Certiorari* quashing the impugned order dated 13.12.2017 (Annexure P-1) passed by respondent No.2, vide which the revision petition preferred by the petitioners against the impugned notices bearing Nos.450 dated 15.05.2017, 447 dated 15.05.2017 and 444 dated 15.05.2017 (Annexures P-2 to P-4) issued by respondent No.4, whereby, he has directed the petitioners to deposit a sum of Rs.7,38, 375/- each for notices Annexures P-2 and P-3 and Rs.19,860/- for notice Annexure P-4 on account of deficiency in stamp duty and registration charges assessed and determined by Audit Party of AG Punjab, Chandigarh

Internal Wing, on account of registration of document i.e. Exchange Deeds executed on 17.02.2014 and 19.02.2014, has been dismissed.

2. In brief, the facts of the case are that petitioner No.1 is a Private Limited Company having its head office at Tripuri Town, Patiala and petitioner No.1 has authorized petitioners No.2 and 3 to file the present petition on behalf of petitioner-company. Petitioner No.1 decided to set up a colony under the name and style of Taj City Colony, Sunam Udham Singh Wala, which colony was approved by Punjab Urban Planning and Development Authority, vide licence dated 18.06.2012 and its drawing was approved on 12.03.2012. The petitioner-company in order to develop the colony decided to exchange certain piece of land with land owners and in pursuance of the said decision, aforesaid exchange deeds were executed between the petitioner-company and land owners. The exchange deeds were duly registered by the office of Sub-Registrar, Sunam Udham Singh Wala and no objection was ever raised with regard to their registration. However, after a lapse of more than 3 years, the aforementioned notices have been issued to the petitioners to deposit the amount of aforesaid amount of recovery. The said notices were challenged before respondent No.2, however, the revision came to be dismissed by the impugned order dated 13.12.2017 illegally and arbitrarily. Hence, the instant petition.

3. Notice of motion was issued in the matter, pursuant to which appearance has been caused on behalf of the respondents.

4. Mr. Rakesh Gupta, learned counsel appearing on behalf of the petitioners would argue that the impugned notices as well as order are unsustainable, as the Sub-Registrar while registering the instruments did not

impound the exchange deeds nor was any reference made to the Collector at his own instance. The exchange deeds were handed over to the petitioner-company after registration of the same. It is submitted 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 contended that in the case of *Abhinav Kumar vs. State of Haryana, 2001(1) RCR (Civil) 91,* a reference made by the Sub-Registrar to the Collector after a period of 8 days was held to be not in accordance with law.

5. Per contra, Ms. Ambika Bedi, learned AAG Punjab, appearing on behalf of the respondents would submit that on the basis of audit report, it had been found that there was deficient stamp duty affixed on the exchange deeds and pursuant to that, notices were issued to the petitioner-company to pay the additional amount towards deficient stamp duty and registration charges.

6. I have heard learned counsel for the parties and have gone through the pleadings of the case.

7. The facts are not in dispute in the present case. The short question involved in the present case is whether the impugned notices issued by respondent No.4-Sub Registrar-cum-Tehsildar, Sunam, Udham Singh Wala, District Sangrur are in violation of Section 47-A of the Indian Stamp Act?

8. In the case of ***Jyoti Singla and others vs. State of Punjab and others, CWP No.21097 of 2019, decided on 24.03.2022*** wherein, a similar issue was involved, this court while taking into consideration the provisions

of Section 47-A of the Indian Stamp Act and the decisions rendered in the case of ***Abhinav Kumar's case (supra)***, in the case of ***Seema vs. State of Haryana and others, CWP No.27881 of 2017, decided on 10.12.2019*** and in the case of ***Vikas vs. State of Haryana and others, 2008(2) RCR (Civil) 526***, has held that if the Collector took cognizance of reference received well beyond the period of three years from the date of registration of the instrument, the action of the Collector is not sustainable. Relevant paras are reproduced hereunder:-

> *"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 25.11.2010. 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 on 03.10.2013. Pursuant to the said reference,*

> *the petitioners herein vide notice dated 28.03.2014 were called upon to appear in proceedings before the Additional Deputy Commissioner-cum-Collector, Bathinda, 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)****."*

9. In the present case also, a similar issue is involved, as the impugned notices have been issued by the Sub-Registrar on 15.05.2017 with regard to the exchange deeds registered on 17.02.2014 i.e. beyond the period of three years from the date of registration of the exchange deeds, directing the petitioner-company to deposit a sum of Rs.7,38,375/- each for notices Annexures P-2 and P-3 and Rs.19,860/- for notice Annexure P-4, on account of deficiency in stamp duty and registration charges assessed and determined by Audit Party of AG Punjab, Chandigarh. As such, the instant case is squarely covered by the judgment rendered by this court in the case of ***Jyoti Singla and others vs. State of Punjab and others (supra)*** as the

impugned notices issued by respondent No.4 are beyond the period of three years. Consequently, the impugned order dated 13.12.2017 passed by respondent No.2 dismissing the revision of the petitioner-company as well as the impugned notices issued by respondent No.4 are held to be in clear violation of Section 47-A (3) of the Indian Stamp Act and the same are liable to be quashed.

10. In view of the foregoing discussion and ratio of law, instant petition is allowed and the impugned notices issued by respondent No.4 (Annexures P-2 to P-4) as well as the impugned order dated 13.12.2017 (Annexure P-1) passed by respondent No.2 are hereby quashed.

**(JAISHREE THAKUR)**
**JUDGE**

**May 6, 2022**
*vijay saini*

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