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

CWP No.685 of 2017 (O&M)
Date of Decision.18.04.2022

Mahavir Educational and Charitable Trust ...Petitioner

Vs

State of Punjab and others ...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Ms. Ambika Bedi, AAG, Punjab.

-.-

JAISHREE THAKUR J. (ORAL)

1. The instant petition has been filed seeking to challenge the order dated 10.09.2014 passed by the Additional Deputy Commissioner-cum-Collector, Mansa (hereinafter referred to as the Collector) whereby the petitioner has been directed to pay an amount of Rs.2,60,000/- 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 24.09.2008 and the order dated 10.02.2016 passed by the Commissioner, Faridkot Division, Faridkot affirming the order of the Collector.

2. In brief, the facts are that the petitioner-Mahavir Educational and Charitable Trust, Sardulgarh, Mansa, which is a registered society under the Societies Registration Act, had purchased agricultral land measuring 82 kanals situated in the revenue limit of Village Khaira Khurd for a consideration of Rs.50 lakhs vide sale deed dated 24.09.2008. The

petitioner is also certified as 'not profit making society' by the Additional Registrar of Societies, Mansa and therefore, constructed educational institution on the land purchased vide aforesaid sale deed under the name of Bharat Group of Colleges. An audit of the office of the Sub Registrar, Sardulgarh was conducted by the audit party of Accountant General, Punjab, which furnished report dated 21.11.2011 stating therein that proper stamp duty and registration fee has not been paid with respect to sale deed dated 24.09.2008. Based on the report submitted by the audit party, Sub Registrar, Sardulgarh made a reference to the Collector for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon. On receipt of the reference made by the Sub-Registrar, Sardulgarh, the Collector on 11.04.2012 issued notice to the petitioner with respect to determination of deficit stamp duty and registration fee, which the petitioner duly responded. However, the Collector vide order dated 27.02.2013 under Section 47-A of the Indian Stamp Act ordered the petitioner to make good the deficit stamp duty and registration fee with respect to sale deed dated 24.09.2008. The aforesaid order dated 27.02.2013 passed by the Collector was challenged by the petitioner before the Commissioner, Faridkot Division, Faridkot, who vide order dated 12.02.2014 remanded the matter back to the Collector to take a decision afresh after taking into consideration as to whether the petitioner herein is exempted from payment of stamp duty as per notification dated 09.03.1981 published on 20.02.1981. The Collector considered the matter afresh and while passing the order dated 10.09.2014 held that the petitioner-Trust had not been able to adduce any evidence that it came under the definition of Charitable Institution under Charitable Act, 1890 and therefore, did not fulfill the conditions as laid down by the aforesaid notification/instructions issued by the Punjab Government and ordered the petitioner to deposit of the deficit stamp duty and registration fee amounting to Rs.2,60,000/- with interest @12% per annum from the date of execution of the document till its payment. Appeal preferred against the said order also stood dismissed vide order dated 10.02.2016.

3. Learned counsel appearing on behalf of the petitioner 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 petitioner after registration of the same. It is further contended that as per Section 47-A (3) of the Indian Stamp Act, the Collector may within a period of three years from the date of registration of an instrument call for and examine any instrument for the purpose of satisfying himself as to the correctness of the value of the property or of the consideration disclosed, on receipt of any reference from the Inspector General of Registration or Registrar of the District appointed under the Registration Act, 1908 or *suo motu*. It is argued that in the present case, the sale deed was registered on 24.09.2008 whereas the notice by the Collector was issued on 11.04.2012 i.e. after a period of three years and therefore, initiation of proceedings by the Collector under Section 47-A(3) of the Indian Stamp Act is barred by limitation. In support of his argument, he relied upon the judgment rendered by a Coordinate Bench of this Court in ***Sharmila Rani and others Vs. State of Punjab and others 2016 (3) RCR (Civil) 166*** and ***Nirmala Devi Vs. State of Punjab and others 2016 (3) RCR (Civil) 608.***

4. Per contra, learned counsel appearing on behalf of the respondent-State submitted 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 24.09.2008 and pursuant to that, notice was issued to the petitioner herein to pay the additional amount of Rs.2,60,000/- towards deficient stamp duty and registration charges.

5. 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 24.09.2008 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 theconsideration 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 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 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. 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 make good the deficit stamp duty and registration fee.

7. 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 24.09.2008 and on receipt of the same, the Collector issued notice to the petitioner on 11.04.2012 i.e. after a period of three years and therefore, initiation of proceedings at the behest of Collector under Section 47-A (3) of the Indian Stamp are barred by limitation. This Court in CWP No.21097 of 2019 titled as ***Jyoti Singla and others Vs. State of Punjab and others*** decided on 24.03.2022 has dealt with the similar issue where the Collector issued notice to the petitioners therein to make good the deficiency of stamp duty and registration charges after lapse of a period of three years and therefore, set aside the orders passed by the Collector as well as the Appellate Authority by holding that the Collector can take congnizance of the matter within a period of three years from the date of registration of the instrument under Section 47-A (3) of the Indian Stamp Act and not beyond that.

8. Therefore, in view of the finding rendered above, the writ petition stands allowed and the impugned orders dated 10.09.2014 and 10.02.2016 passed by respondent No.3 and 2 respectively are quashed, being passed beyond the period of three years limitation

(JAISHREE THAKUR)
JUDGE

April 18, 2022
Pankaj*

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