2023:PHHC:137031

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-487-2021 (O&M)
Date of Decision:- 20.10.2023

Nipun Jain ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr.Anil Kumar Ahuja, Advocate for the petitioner.

Mr. Aman Dhir, DAG Punjab.

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GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 29.1.2018 (Annexure P-14) passed by the Collector, Jalandhar in exercise of powers under Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as *'the Act'*) holding therein that the land sold vide sale deed dated 20.2.2013 which had been registered being agricultural land was infact a commercial land and consequently the petitioner was directed to deposit an amount of Rs.56,55,840/- being the deficit stamp duty and registration fees and included the interest component as well. The petitioner also assails order dated 7.10.2020 (Annexure P-17) passed by the Commissioner, Jalandhar Division vide which an appeal challenging aforesaid order dated 29.1.2018 (Annexure P-14) has been dismissed.

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2. The learned counsel for the petitioner submits that the impugned order dated 29.1.2018 (Annexure P-14) and order dated 7.10.2020 (Annexure P-17) have been passed without there being any credible evidence to show that the land in question was commercial in nature and that as a matter of fact the Naib Tehsildar had submitted his report dated 25.3.2019 to the contrary to the effect that the land in question was agricultural land and that there is no commercial or residential construction in the said land and that crops of *'Barsin'* and wheat were standing on the land in question.

3. The learned counsel further submitted that even as per the Collector Rates for the year 2012-2013, the land in question i.e. land measuring 4 kanals which is part of *Khasra* No. 19//21 and 19//22/1 is not included in the commercial area, although several other *khasra* numbers have been specifically mentioned therein. It has been submitted that the factum of the land not being commercial would also be evident from the fact that the adjacent land in respect of which also notices had been issued for conducting proceedings under Section 47-A of the Act were lateron withdrawn. The learned counsel in this regard has drawn the attention of this Court to order dated 28.7.2022 (Annexure P-18) and another order of even date (Annexure P-19).

4. It has been submitted that the entire proceedings conducted under Section 47-A of the Act are without jurisdiction inasmuch as the same were initiated after more than three years of the registration of the sale deed and that while the sale deed was executed on 20.2.2013, the notice in respect of the same was issued to the petitioner on 6.4.2016 i.e. after more than three years i.e. after expiry of the limitation.

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5. It has further been submitted that although the impugned order dated 7.10.2020 (Annexure P-17) does indicate that the Collector on 5.5.2016 had sought a factual report from SDM, Jalandhar after conducting a spot visit and that pursuant to the said spot inspection, the SDM had reported that the land in question was of commercial nature and there is a boundary wall around the same and there are factories in the vicinity but the said report made on the basis of spot inspection in the year 2018 would be irrelevant for the purpose of sale deed, which was executed/registered in the year 2013.

6. On the other hand, the learned State counsel vehemently opposed the petition and submitted that in the instant case, the reference in respect of deficiency in stamp duty was made on 29.9.2015 i.e. within a period less than 3 years of the sale deed dated 20.2.2013 and that as a matter of fact even the proceedings under Section 47-A of the Act were initiated on 8.2.2016, as would be evident upon perusal of the impugned order dated 29.1.2018 (Annexure P-14) wherein the date of institution is specifically recorded as 8.2.2016.

7. The learned State counsel has next submitted that no sanctity can be attached to the report dated 25.3.2019 (Annexure P-6) inasmuch as the said report states that there is no commercial or residential construction in the said land without specifying as regards the nature of locality as a whole i.e. as regards the neighbouring plots/buildings in the area. The learned State counsel has submitted that there are several factories in the adjacent area and that even the photographs annexed with the status report dated 1.3.2023 clearly indicate that the property itself has boundary wall with an entry gate and there is construction around the property in question and a small tin shed has also been constructed upon the property.

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8. The learned State counsel further submitted that the property in question is shown to be *'Gair Mumkin Godown'* in the revenue record and that the sale deed has cleverly been got registered by showing the same to be agricultural land.

9. This Court has considered rival submissions addressed before this Court.

10. It is no doubt correct that it is the actual position and nature of the property, as existing at the time of sale deed which has to be taken into account for the purpose of determining the stamp duty. In the present case, however, there is ample evidence to show that the property in question can definetly be said to be commercial as on the date of sale-deed in the year 2013. First of all, the *jamabandi* for the year 2009-10 (Annexure R-4/2) shows that the entry recorded in the relevant column is that the property is shown to be *'Gair Mumkin Godown'*. As a matter of fact, even the '*khasra Girdwaris'* annexed by the petitioner as Annexure P-7 indicate that the property is described as 'Godown'. Still further, pursuant to order dated 4.4.2022, the respondent-State filed a fresh status report by way of affidavit of Balbir Raj Singh, SDM, Jalandhar-II, which is accompanied by letter dated 17.2.2023 written by the Deputy Director of Factories, Circle-2, Shaheed Bhagat Singh Colony, Maqsoodan By-pass, Jalandhar to the Deputy Commissioner, Jalandhar. The relevant extract of said letter is reproduced herein-under :-

"To

The Deputy Commissioner,
Jalandhar.

No: 197
Dated : 17.02.2023

Subject: Regarding Civil Writ Petition No: 487 of 2021 Nipun Jain versus State of Punjab and others.

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Sir,

On the above cited subject with reference to your office letter No: 148/Reader/A.D.C., dated 13.02.2023.

As per yours order received vide above letter the undersigned has attended a meeting on 15.02.2023 with the committee constituted regarding above mentioned case. Thereafter, the Tehsildar, Jalandhar-2 alongwith staff has shown a site, which was a vacant plot. As per office record around this site (plot) the name of institutions and date of registration under Factories Act, 1948 is as per under :-

Sr. No.	Name of the Factory	Address of Factory	Occupier Name	Date of Registration
1	Kohinoor Polymers	Basti Bawa Khel, Jalandhar	Akshay Jain	19/06/2006
2	Narula Rubber Udyog	Kohinoor Rubber Street, Basti Bawa Khel, Kapurthala Road, Jalandhar	Harvinder Singh	31/12/1991
3	Jaspo Worldwide	11, New Gautam Nagar, Near Kohinoor Rubbers, Kapurthala Road, Jalandhar	Pritpal Singh	26/07/2019
4	TRC Exports Pvt. Ltd. (Old Name The Roller Company)	6, Kohinoor Street, Basti Bawa Khel, Jalandhar	Taranjit Singh	17/10/06 Name Change date: 31/10/08
5	Jain Packwell	1, Kohinoor Street, New Gautam Nagar, Basti Bawa Khel, Jalandhar	Bharat M Jain	27/08/1975
6	Dashmesh Filter Paper	Basti Bawa Khel, Kapurthala Road, Jalandhar	Tarlochan Singh	31/05/1999
7	SK Traders	New Gautam Nagar, Kohinoor Street, Basti Bawa Khel, Jalandhar	Shiv Kumar Seth	28/02/2013
8	Parveen Bakers Ville Pvt. Ltd	Kohinoor Street, Basti Bawa Khel, Kapurthala Road, Jalandhar	Pawan Kumar	29/06/2022
9	Kohinoor India Pvt. Ltd.	Plot No. 36, Pannu Farm, Basti Bawa Khel, Jalandhar	Nipun Jain	23/07/1973
10	Kewal Ice Factory	Basti Bawa Khel, Jalandhar	Kewal Krishan	26/03/2004

Sincerely,

Sd/-
Deputy Director of Factories,
Circle-2, Jalandhar."

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11. As per the said letter there are factories and institutions around the plot in question which had been duly registered under Factories Act, 1948. A perusal of aforesaid letter shows that 7 out of the 10 factories mentioned therein were registered prior to 2013. M/s Kohinoor Polymers was registered in the year 2006. Kewal Ice Factory was registered in the year 2004. Kohinoor India Pvt. Ltd. of which the petitioner admittedly is Director was registered in the year 1973 and so on.

12. In view of the afove stated position, it is evident that although there is no construction on the property in the nature of any factory etc. but the nature of the said property is commercial and is surrounded by several other factories existing since long. As such, there is no infirmity in the impugned order passed by the Collector and as upheld by the Commissioner, and do not warrant any interference.

13. Finding the petition to be sans merit, the same is dismissed.

20.10.2023 **(Gurvinder Singh Gill)**
kamal **Judge**

Whether speaking /reasoned Yes / No
Whether Reportable Yes / No

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