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

CWP-1207-2019 (O&M)
Reserved on : 31.01.2023
Date of Decision: 08.02.2023

M/S GAJIBO CONSTRUCTIONS PVT. LTD. PATIALA

..Petitioner

Versus

COMMISSIONER PATIALA DIVISION PATIALA AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. R.K.Kapoor, Addl.A.G., Punjab

ANIL KSHETARPAL, J(Oral)

1. This writ petition has been filed to challenge the correctness of order dated 22.05.2014 which has been affirmed in appeal vide order dated 25.04.2018. The competent authority while exercising powers under Section 47-A of the Stamp Act, 1899 has found that the stamp duty and registration fee deposited by the petitioner is deficient to the tune of Rs.37,54,035/-.

2. This Bench has heard the learned counsel representing the petitioner at length and with his able assistance perused the paper book.

3. The learned counsel representing the petitioner contends that as per the jamabandi for the year 2010-2011, the land is recorded as 'Chahi' (agricultural land). He further submits that even as per the tentative collector's rate issued by the District Collector, the residential area extends to the depth of 2 acres on the Raikot road. He submits that the land in dispute is admittedly beyond the depth of 2 acres. He relies upon the

judgment passed in ***Asha Rani vs. Commissioner, Jalandhar Division, Jalandhar and another, 2017 (1) L.A.R. 131*** and ***Pankaj Gupta and others vs. State of Haryana and others, 2014(2) PLR 17***.

4. This court has considered the arguments of the learned counsels representing the parties and examined the paper book.

5. On careful reading of order dated 22.05.2014 passed by Collector, it is evident that the sale deed dated 03.05.2013 was impounded by the Sub Registrar, Barnala, under Section 47A of the Indian Stamp Act, 1899 and the same was sent to the District Collector for the decision. The Collector deputed the Sub Divisional Magistrate, Barnala, to submit his report with regard to the sale deed in question. On the receipt of the report, the Collector found that the area which has been sold is in fact, part of a colony and the Collector rate is Rs.3000/- per sq. yard. Consequently, the calculation has been made and an amount of Rs.37,34,000/- is sought to be recovered from the petitioner that consists of stamp duty and registration fee.

6. After having considered the submissions of the learned counsels, this court is of the view that the matter is required to be remitted back to the Collector for a fresh decision. Once the Collector has come to the conclusion that the area which was the subject matter of sale was located in the 'Gair Mumkin' colony and a boundary wall was also in existence, the Collector was required to assess the deficient stamp duty on the basis of some substantive evidence. The Collector's rates are given/made only for the purpose of guidance of the Registering Authorities. Such guidelines in no way control or regulate the quasi judicial discretion and power of the Collector as it is a wider power. Section 47-A of the Indian Stamp Act, 1899 as applicable to the State of Punjab enables the Collector to determine

the value of the land and the consideration and the duty payable thereon. Hence, the Indian Stamp Act, 1899 itself envisages collection of some evidence which proves that the value and consideration as recited in the sale deed is not the proper value of the land sold. However, for that basis, the Collector's rate which are nothing but guidelines and have no statutory backing cannot be solely made the basis to assess the value and deficient stamp duty in case of sale of land. In this particular case, the Collector should have collected material evidence before coming to a conclusion that the consideration as recited in the sale deed is inadequate and an effort has been made by the parties to the sale deed to save the stamp duty and the registration fee.

7. Keeping in view the aforesaid facts and discussion, the orders dated 12.05.2014 which was affirmed in appeal vide order dated 25.04.2018 are set aside while remitting the matter back to the Collector to decide the matter afresh after granting opportunities to the parties to lead sufficient evidence.

8. The Collector is requested to decide the matter within a period of 6 months, positively, from the date of appearance of the parties.

9. The parties through their learned counsels are directed to appear before the Collector, on 02.03.2023.

10. All the pending miscellaneous applications, if any, are also disposed of.

08th February, 2023 **(ANIL KSHETARPAL)**
nt **JUDGE**

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