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

CWP No.6708 of 2023 (O&M)
Date of Decision.29.03.2023

Nirpinder Singh ...Petitioner

Vs

State of Punjab and others …Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vikas Mehsempuri, Advocate
for the petitioner.

Mr. Athar Ahmed, DAG, Punjab.

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JAISHREE THAKUR J.

1. This is a writ petition that has been filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction including a writ in the nature of Certiorari for quashing the impugned order dated 15.02.2023 (Annexure P-5) passed by respondent No.2 and order dated 10.04.2018 (Annexure P-3) passed by respondent No.3 for recovery of deficiency of stamp duty.

2. In brief, facts are that an agreement to sell dated 20.05.2006 had been executed with the vendor and since the sale deed was not executed, a suit for specific performance of the agreement to sell in respect of land measuring 41 kanals 10 marlas of land out of total land measuring 83 kanals 8 marls was filed. During the pendency of the suit, a compromise deed dated 27.01.2016 was executed. In terms of the aforesaid compromise deed, a judgment and decree dated 06.02.2016 was passed whereby sale deed for land measuring 8 kanals 0 marla was to be executed. The sale deed was executed for land measuring 8 kanals 0 marla and the stamp duty of

Rs.2,25,000/- was duly paid for the same, being agricultural land. The Sub Registrar, Ludhiana (Central) vide his letter No.26/SR dated 26.09.2016 sent a reference to the Collector for further proceedings under Section 47-A of the Indian Stamp Act, 1899 (in short Act of 1899). The said matter was decided *ex parte* vide order dated 10.04.2018, while taking note of the fact that the purchaser party neither came to the Court nor any reply had been filed. On coming to know about the *ex parte* order, an appeal was filed before the Divisional Commissioner, Patiala Division, Patiala, who came to hold that the objection of the Sub-Registrar is correct, as the land is agricultural in nature whereas the same has been registered as *gair mumkin* and therefore, there is deficiency of stamp duty.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner was not given due opportunity of hearing before passing the impugned order. It is also contended that as per Section 47-A (3) of the Act of 1899, as applicable to the State of Punjab, the Collector is to hold an enquiry as provided under sub-Section 2 of Section 47-A of the Act of 1899 and then determine the value of the property or the consideration/character/ description of instrument, However, in the instant case, no such enquiry has been held. It is further submitted that the order of the Collector would reflect that apart from noting contentions of the Sub-Registrar, Ludhiana (Central), there is no cogent finding of the Collector holding the land to be agricultural in nature.

4. Notice of motion.

5. Mr. Athar Ahmed, DAG, Punjab, who is present in Court, accepts notice for the respondents and would submit that the impugned orders

passed by the respondents No.2 and 3 are in consonance with the provisions of the Act of 1899, as the land was *gair mumkin.*

6. I have heard learned counsel for the parties and have perused the paper book.

7. The procedure for assessment of duty has been prescribed under Rule 4 of the Punjab Stamp (Dealing of Undervalued Instruments) Rules, 1983, which is reproduced as under:-

> "***4. Assessment of duty.*** *- On receipt of reference under sub-section (1) of section 47-A, the Collector shall serve on the person liable to pay the duty a notice in [Form 1-A], requiring him on a date and at a place to be specified therein either to attend in person or through an authorised agent and to produce or to cause to be produced any evidence on which such person may rely in his support.*
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> *(2) The Collector, after taking such evidence as the person liable to pay the duty may produce and after making such enquiry as he may deem proper, shall determine the value of the property or the consideration, as the case may be, assess the amount of deficit duty recoverable from such person.*
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> *(3) If the person liable to pay the duty fails to attend in response to the notice served under sub-rule (1), the Collector shall proceed ex-parte and assess the deficient amount of duty, If any, to the best of his judgement."*

8. In view of Rule 4 of the Rules *ibid,* order dated 10.04.2018 passed by the Collector is cryptic in nature. Other than noting the Rules, which specify that the Collector shall determine the value of the property and that too, in an abbreviated fashion, the procedure as prescribed under the Rules of 1983 has

not been followed. Consequently, the writ petition is allowed and the order dated 10.04.2018 passed by the Collector as well as the order dated 15.02.2023 passed by the Divisional Commissioner, Patiala Division, Patiala are set aside. The matter is remanded back to the Collector, Ludhiana to decide the same afresh in consonance with the provisions of Section 47-A (3) of the Act of 1899 read with Rule 4 of the Rules of 1983. Parties are directed to put in appearance before the Collector, Ludhiana on 25.04.2023. Reply, if any, be filed within a period of one week from the date of appearance having been caused by the parties and the matter shall be decided within a period of one month thereafter.

(JAISHREE THAKUR)
JUDGE

March 29, 2023
Pankaj*

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