2023:PHHC:118173

In the High Court for the States of Punjab and Haryana
At Chandigarh

CWP-6270-2023 (O&M)
Date of Decision:-6.9.2023

Abbey Properties Private Limited and others ……..….Petitioners

Versus

State of Haryana through FC and others …….Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. R.S. Rai and Mr. Chetan Mittal, Senior Advocates, with
Mr. Sehaj Sandhawalia, Mr. Kunal Dawar,
Mr. Himanshu, Ms. Rubina Virmani and
Ms. Shruti Mandhotra, Advocates
for the petitioners.

Mr. Sharad Aggarwal, DAG, Haryana.

Mr. M.L.Sarin and Mr. Sanjeev Sharma, Senior Advocates with
Mr. Animesh Sharma and Mr. Amandeep S. Talwar, Advocates
for respondent No.12.

Mr. Puneet Bali, Senior Advocate with
Mr. Rohit Khanna, Mr. Sachin Jain,
Mr. Siddharth Kohli, Advocates, for respondent No.13.

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GURVINDER SINGH GILL, J.

1. The petitioner companies (95 in number), which are wholly owned subsidiaries of respondent No. 13 – EMAAR India Limited (in short hereinafter referred to as EMAAR), claim themselves to be owners of various parcels of land in Gurugram, which are subject matter of the instant petition.

The petitioners assail order dated 3.1.2023 (Annexure P-14) vide which the Collector, Badshahpur, District Gurugam, while holding that Demerger Order dated 16.7.2018 (Annexure P-8) in respect of EMAAR - MGF Development Ltd. had not been adequately stamped and that there was deficiency of Rs.7.5 crores, as per government Notification dated 22.11.2017, called upon respondent no.12 - MGF Development Ltd. (hereinafter, in short referred to as MGF)) to make good the deficiency and further ordered for entering mutation of land accordingly.

2. Shorn of unnecessary details, the facts are that pursuant to a Joint venture agreement dated 18.12.2004, entered into between EMAAR and MGF, a company by the name EMAAR-MGF Development Ltd. was incorporated. During the years 2005 to 2016, the said company acquired rights to develop various parcels of land with several land-owners, called as 'Collaboration Agreements'. One such 'Collaboration Agreement' dated 10.2.2006 (Annexure P-7) had been executed between 'Active Promoters Private Limited' (petitioner No. 3), who is referred to as the owner therein and 'EMAAR-MGF Land Private Limited', who is referred to as the Developer, for the purpose of development of land and as per which the owner was to place land at disposal of the developer as a licencee for the purpose of development, construction and completion. It was also agreed that the developer would pay the owner an amount of Rs. 500 crores as interest-free refundable advance/security deposit. The owner was to allow the developer to enter into the land within seven days from grant of license to the owner. There were several other conditions agreed upon amongst the parties including settlement of dispute through arbitration.

3. Subsequently, on account of some issues, the matter for demerger of EMAAR-MGF was taken up before the National Company Law Tribunal and as per order dated 16.7.2018 (Annexure P-8), the Scheme of Arrangement in terms of section 391 and 394 of Companies Act 1956 was approved with EMAAR as the demerged company and MGF as the resulting company. It is the said Demerger order dated 16.7.2018 (Annexure P-8), which is subject matter of impugned order dated 3.1.2023 (Annexure P-14).

4. The learned senior counsel representing the petitioners, assails the impugned order 3.1.2023 (Annexure P-14) on various grounds but the two contentions upon which much stress has been laid are as under

(i) that by way of impugned order, the Collector has exceeded his jurisdiction inasmuch as while proceeding under Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act'), so as to assess the deficiency in stamp duty, he has virtually defined ownership/title of the property in favour of respondent no. 12 - MGF by directing that mutation be also sanctioned accordingly;

(ii) that principles of natural justice have been given an absolute go-bye inasmuch as the impugned order, as a result of which the ownership rights of the petitioners in land worth thousands of crores of rupees are now under a cloud, has been passed without even issuing any notice to petitioners or to EMAAR, though as per the Demerger order it was only development rights in respect of a part of land which stood transferred to respondent MGF.

5. The learned counsel further submits that as a matter of fact the entire exercise has been conducted at the behest of respondent No. 12 – MGF, in whose favour mutation has been sanctioned by deleting names of petitioners and that the entire exercise of proceedings under section 47-A of Stamp Act and mutation proceedings have been completed within a span of about a week

whereas Revenue Department would normally take months even for transferring even a few yards of land. It has also been submitted that notice dated 22.12.2022 (Annexure P-12) issued solely to respondent No. 12 – MGF, has been issued on the premises that the document in question is a conveyance deed between MGF and EMAAR companies though no such conveyance deed had been executed between the aforesaid companies whereas the impugned order passed pursuant to aforesaid notice (Annexure P-12) is with respect to an order of Demerger.

6. It has also been submitted that the Collector never bothered to verify about the ownership of the land in question in respect of which mutation has been ordered and that while the respondent No. 12 – MGF in its reply to notice dated 22.12.2022 (Annexure P-12) claimed itself to be owner of 507 acres of land whereas as a matter of fact, it is the petitioners who are owners of a substantial part of the said 507 acres of land situated within the revenue estate of District Gurugram and MGF had only been given development rights as per Demerger order.

7. It has further been submitted that MGF, in its reply dated 27.12.2022 (Annexure P-13) to notice dated 22.12.2022, has made a specific prayer that the Sub-Registrar be directed to take necessary action in accordance with the orders and scheme of State of Haryana and since the impugned orde dated 3.1.2023 is stated to have been passed on the strength of some policy dated 28.12.2022 wherein all the Deputy Commissioners had been directed that even in case of transfer of 100% development rights, the mutation is to be carried out in favour of the transferee company in the revenue record, the same smacks of an orchestrated design on part of respondent No. 12 – MGF,

given effect with the connivance of highly placed officials of the government, as respondent No. 12 – MGF at the time of filing reply on 27.12.2022, under normal circumstances, could not have possibly visualized that any such notification was in the offing. It has further been submitted that being the last week of December, there were holidays during that period i.e. 29.12.2022 being Gurpurab, 31.12.2022 being Saturday and 1.1.2023 being Sunday and as such it remains unexplained as to how the order/notification in question was conveyed not only to Deputy Commissioner but even further on to subordinate officers like Sub-Registrar etc. so as to lead to passing of impugned order dated 3.1.2023 i.e. within a short period, based on said notification.

8. On the other hand, Sh.M.L.Sarin, the learned Senior counsel appearing on behalf of respondent No. 12, has vehemently argued that the impugned order in question is an order simplicitor with respect to assessment of deficiency in stamp duty/registration fee when the revenue authorities came to know about the same and that since MGF had received a notice from the office of Collector, therefore MGF deposited the requisite stamp duty/registration fee pursuant to order dated dated 3.1.2023(Annexure P-14) and that it was thereafter that further necessary sequential action was taken by the revenue authorities concerned for carrying out mutation as is mandated under section 34 of Punjab Land Revenue Act.

9. The learned senior counsel submitted that the term *'land owner'* has been defined in Punjab Land Revenue Act, 1887 (as applicable to State of Haryana) in Section 3(2) of the Act to include a person who has any fiscal or possessory rights in the land in question. It has been submitted that

development rights are valuable rights duly acknowledged by revenue authorities for the purpose of mutation as also finds specifically mentioned in notification dated 29.12.2022 (Annexure R-1) wherein it has been directed that 100% development rights are also covered under the scope of Article 23-A of schedule 1-A of the Indian Stamp Act, 1899 under notification dated 22.11.2017 and mutation is also to be carried out in favour of the transferee company in the revenue records in the corresponding khasra numbers in the same manner as for land.

10. The learned counsel further submitted that it is well settled that a mutation is only a recording of rights in “Record of Rights” maintained under provisions of Punjab Land Revenue Act 1887 and such entries are maintained only for fiscal purposes and *ipso-facto* would not confer ownership rights to a party in whose favour the same has been sanctioned. The learned counsel, in order to hammer forth his aforesaid submission, places reliance upon *Suraj Bhan vs. Financial Commissioner (2007)6 SCC 186*. It has further been submitted that the petitioners cannot also be said to be aggrieved by the impugned order inasmuch as it is not the petitioners who have been burdened with payment of the stamp duty amounting to Rs. 7.75 crores.

11. Shri M.L.Sarin has vehemently argued that the impugned order, in any case, is an appealable order under provisions of Stamp Act 1899 and that even mutation, if any sanctioned, can be challenged by way of filing statutory appeal under section 13 of Punjab Land Revenue Act, 1887 and that the petitioners not having chosen to avail of said statutory remedies, the writ petition deserves to be dismissed. The learned counsel, in order to hammer forth his aforesaid submission places reliance upon *(2014)1 SCC 603*

Commissioner of Income Tax vs. Chhabil Dass Agarwal and *(1983)2 SCC 433 Titaghur Paper Mills Ltd. vs. State of Orissa*.

12. Shri Puneet Bali, learned senior counsel representing respondent no. 13 (EMAAR) submitted that EMAAR is the parent company with whom MGF had initially merged in the year 2005 but subsequently Demerger had been effected vide Demerger order dated 16.7.2018 (P-8) i.e the document found to be insufficiently stamped and that as such EMAAR was also a necessary party required to have been issued notice by the Collector before passing the impugned order. The learned counsel further submitted that the impugned order having been passed without even affording opportunity to affected parties is not just violative of principles of natural justice but is suggestive of fraudulent designs. The learned counsel places reliance upon a judgement of Hon'ble Supreme Court in *Radha Krishan Industries versus State of Himachal Pradesh and others (2021) 6 SCC 771*, to contend that in such cases, the impugned order ought to be set aside by High Court in exercise of writ jurisdiction.

13. The learned State Counsel opposes the petition on grounds of maintainability while submitting that the petitioners not having exhausted the remedy of statutory appeal, the writ could not be entertained. The learned State counsel in order to support his aforesaid submission places reliance upon a judgement of Division Bench of this Court in *M/s Ruby Anand and others versus State of Haryana and others 2018(1) RCR (Civil) 721* wherein it has been held that a party aggrieved by any entry in record of rights may file a civil suit seeking declaration as regards his rights as is suggestive in section 45 of Punjab Land Revenue Act 1887.

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

15. A perusal of the impugned order dated 3.01.2023(Annexure P-14) would show that the Collector while determining the stamp duty required to be affixed on the order of Demerger, has further directed that mutation be sanctioned on the basis of the document and the annexures in question. The impugned order in question does not indicate that any kind of inquiry has been made as regards the rights of the parties, who may be affected i.e. ownership or possessory rights. Although, the State in its reply has tried to justify the order on the strength of notification dated 28.12.2022 which pertains to properties in respect of which 100% development rights have been transferred but interestingly neither is there any reference to any such notification nor to 'development rights'. While the impugned order as far as the same relates to deposit of the stamp duty may not be interpreted to be adverse to the petitioners inasmuch as the petitioners have not been asked to pay the said amount but the fact that the mutation has also been ordered to be sanctioned in the said order, the same would certainly be prejudicial to all those who have right in the said land. It was certainly expected of the Collector to have made some preliminary inquiry with respect to the persons who may be affected before passing any such order. Rather, the manner and sequence in which the order has been passed shows that the officer has shown some extraordinary urgency, though in respect of a matter in hand where property of thousands of crores was involved, he should have taken extra caution. It has been informed that pursuant to impugned order, changes have already been made in the revenue record. When huge stakes are involved, it is expected that there is an element of extra care and caution before passing orders having tendency to affect others who may be associated or concerned

with the same. The Collector was very much aware about demerger and that EMAAR is the demerged company with MGF being the resulting company but yet chose to shut its eyes to said fact and did not even issue notice to EMAAR.

16. In these circumstances, this Court has no hesitation in holding that the principles of natural justice have been thrown to winds. None of all those who could be concerned and who would be affected and ought to have been heard before passing the impugned order have been given even a semblance of notice. As far as the contention of the respondents to the effect that petitioners not having availed of alternate efficacious remedy do not deserve any relief, it is apposite to bear in mind the view of Hon'ble Apex Court, as expressed in *2020(1) JCR 216 – M/s Magadh Sugar & Energy Ltd. Versus State of Bihar & Ors*. The relevant extract from the said judgment is reproduced herein-under :-

> 19. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in ***Whirpool Corporation v. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1*** and Harbanslal Sahni v. Indian Oil Corporation Ltd., (2003) 2 SCC 107. Recently, in Radha Krishan Industries v. State of Himachal Pradesh & Ors, 2021 SCC OnLine SC 334 a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:
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> "28. The principles of law which emerge are that:
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> (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

(emphasis supplied)"

17. A perusal of the above referred judgment shows Hon'ble Supreme Court has reiterated the well accepted principle that Courts should normally be reluctant to exercise inherent or extra-ordinary powers if other efficacious statutory remedies are available but there is no absolute bar and in case of orders passed without jurisdiction and which are suggestive of arbitrariness, the powers ought to be exercised to prevent gross violation of law.

18. The instant case is a case where the Collector has absolutely disregarded the principle of natural justice and has neither bothered to verify about the rights of any of the affected party nor had issued notice to them and apart from

assessing the stamp duty has even gone ahead to direct that the mutation be sanctioned in respect of the same. As a matter of fact, even mutations have been sanctioned on the basis of the impugned order and the names of some of the petitioners have been substituted with that of MGF. Ordering the carrying out of mutation was certainly beyond the scope of proceedings under section 47-A of Stamp Act. Though, it is correct that mutation *ipso-facto* would not confer any title but surely with the mutation entries, the rights of petitioners would now be under cloud. As such, the impugned order can not sustain and is hereby set aside. The matter is remanded back to the Collector for deciding afresh with a direction to issue notice and to afford proper opportunity of hearing to the affected parties including the petitioners before proceeding further. This Court need not go into the other contentions raised before this Court and the same are left open for the parties to be raised at appropriate stage.

19. The petition stands disposed of accordingly.

20. Needless to mention, any steps taken on the basis of the impugned order shall be set at naught. The amount deposited pursuant to the impugned order be refunded immediately.

6.9.2023 **(Gurvinder Singh Gill)**
kamal **Judge**

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