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

**CM-2426-LPA-2021 and
CM-265-LPA-2023 in/and
LPA-1037-2021 (O&M)
Date of Decision: 15.02.2023**

Manju

......Appellant

Vs.

Commissioner, Ambala Division, Ambala and others

.........Respondents

103-2 **CM-2575-LPA-2021 and
CM-270-LPA-2023 in/and
LPA-1108-2021 (O&M)**

Kamal

...Appellant

vs.

Commissioner, Ambala Division, Amabala and others

….Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. S.S. Dinarpur, Advocate, with
Mr. Arvind Singh, Advocate,
for the applciant-appellant.

Mr. Ankur Mittal, Addl, A.G., Haryana, with
Mr. Saurabh Mago, A.A.G., Haryana.

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<u>G.S.SANDHAWALIA, J. (ORAL)</u>

**<u>CM-2426-LPA-2021 in LPA-1037-2021 and
CM-2575-LPA-2021 in LPA-1108-2021</u>**

By these applications, the applicants-appellants seek condonation of delay for the period ranging from 116 days to 117 days in filing the accompanying appeals.

Notice in the applications.

Mr. Ankur Mittal, Addl, A.G., Haryana, with Mr. Saurabh Mago, A.A.G., Haryana, accepts notice on behalf of the respondent-State.

Keeping in view the averments made in the applications which are duly supported by affidavits of the appellants, the applications are allowed and the delay for the period ranging from 116 days to 117 days is hereby condoned.

CM-265-LPA-2023 in LPA-1037-2021 and
CM-270-LPA-2023 in LPA-1108-2021

These applications have been filed for placing on record the notification, dated 29.10.2007, issued by the Government of India, as (Annexure P-4), with the accompanying appeals.

Keeping in view the earlier order dated 27.09.2022, the applications are allowed, subject to all just exceptions and the aforesaid notification is ordered to be taken on record as (Annexure P-4) with the accompanying appeals.

CMs stand disposed of.

LPA-1037-2021 (O&M) and LPA-1108-2021 (O&M)

The consideration in these two Letters Patent Appeals is to the order passed by the learned Single Judge in CWP No. 18741-2018, titled **Manju vs. Commissioner, Ambala Division, Ambala and others** and CWP-18603-2018, titled **Kamal vs. Commissioner, Ambala Division, Ambala and others**, both decided on 26.08.2019. Since the controversy in both the cases is common, as such, the reasoning of the learned Single Judge is also common and therefore, we proceed to decide both the appeals together by way of a common judgment.

The learned Single Judge has dismissed the writ petitions on the ground that the writ petitioners were concealing the facts and had got the sale deeds registered by showing the land out of the residential zone, whereas it is situated in the residential zone and the Collector rates of the residential zone and the agricultural land were different while placing reliance on the notification dated 29.10.2007. Resultantly, reliance was placed upon sub-section (3) of Section 47-A of the Stamp Act (Haryana Amendment) Act, 1973, to submit that there was a period of 03 years limitation provided for *suo motu* or on receipt of reference from the Inspector General of Registration or the Registrar of a district. The power provided the Collector to examine the instrument and call for it for the purpose of satisfying himself as to the correctness of the value or consideration. If the Collector, after such examination, has reasons to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty in accordance with the procedure provided for in sub-section (2).

A perusal of sub-section (2) would go on to show that an enquiry has to be made before the Collector comes to the said conclusion. A perusal of the order of the Collector dated 15.01.2014 (Annexure P-1), would go on to show that a show cause notice had been issued on 18.09.2013 regarding the sale deed in favour of the appellants on 09.11.2011 which had been executed for 06 Kanals and 08 Marlas, which was for consideration of ₹ 32,00,000/- and stamp duty of ₹1,60,000/- had been paid. Resultantly, on account of an audit of the record, it was found that there was deficiency of stamp duty of ₹2,40,000/-. The show cause notice had then been initiated. The respondents had also filed written statement on 24.04.2013 in the response to the said. A perusal of the order which was impugned before the learned Single Judge and was also subject matter of the appeal before the Commissioner, who had dismissed it on 04.04.2018 (Annexure P-2) would go on to show that the Collector passed a non-speaking order totally on the basis of the objection raised by the audit party. There was a total non-application of mind, as such, on the part of the Collector and the provisions of sub-section (2) of Section 47-A of the Act were thus not complied with. Holding an enquiry is also provided for in sub-section (3) that if there are reasons to believe that the value of consideration has not been truly set for an instrument even determining the value or consideration and the duty as aforesaid in accordance with the procedure provided under sub-section (2), he may determine the value or consideration. The relevant part of the order of the Collector reads as under:-

> *"I have heard Sh. Yogesh Mohan Sharma, Advocate and have gone through all the facts available on the record land measuring 6K-8M has been purchased by the respondent vide sale deed No. 2363/1, dated 09.11.2011, in the revenue estate of Village Billa. It is also relevant to clarify here that the decision dated 19.12.2005 passed by Allahabad High Court in CWMP-32595-2003, titled as* ***Naushad Ahmed and others*** *vs.* ***State of U.P. And others*** *is not applicable to the facts of*

*the cases because in this district the Collector rates of agricultural land falling in residential zone/urban zone have been fixed separately @ per acre and not in term of sq. yards of residential plots. Decision dated 24.03.2005, passed by Allahabad High Court in case CWMP No. 39705-1996, titled as **Mukesh (Minor) vs. Chief Revenue Controlling Authority/Board of Revenue, U.P. And Allahabad** is also not applicable in this case. Audit objection raised by Stamp Auditor (Circle), Panchkula, in his audit note in November 2011 indicating the deficiency of stamp duty of Rs. 2,40,000/- on this sale deed be got deposited from the respondents. Purchaser is directed to deposit the amount before the O/o Sub Registrar, Panchkula, within a period of 30 days failing which proceedings under Section 48 of the Indian Stamp Act, 1899, will be carried out against them, hence, the reference consigned to the record room. File be consigned to the record room after compliance."*

The appeal was preferred which also suffers from the same lacuna when the Commissioner dismissed it on 04.04.2018 (Annexure P-2). The relevant part of which reads as under:-

"I have heard the arguments of learned counsels of both the parties and I have also gone through the record available on the file as well as the order passed by the courts below and I have arrived at the conclusion that the appellants by concealing the facts have got the sale deed registered by showing the land in question out of residential zone whereas this land is situated in the residential zone. At the time of registration of sale deed, appellants have not paid the

requisite stamp duty and registration fee and the sale deed has been registered at a lower rate. Hence, the deficiency of stamp duty and registration fee found by the Collector is as per rules and the same is without any infirmity and I am in agreement with the same. Counsel for the appellants has failed to indicate any illegality in the order passed by the Court below. The recovery imposed by virtue of the order under challenge is unlawful. Finding no infirmity with the orders passed by the Courts below, there is no scope to interfere with the order challenged under the appeal. The order passed by the court below is lawful and hence I dismissed the appeal filed by the appellant finding no force therein."

In the reasoning given, both the Authorities below have not referred to the show cause notice as to on what ground as such there was deficiency of court fees and also to the reply filed by the appellant and, therefore, the factual aspect has not been balanced with the short reasoning which has been arrived at to impose huge amount of recovery after the document had been duly registered on an earlier occasion. Thus, there is no clarity as to on what account the deficiency had been noticed and what was the lacuna as such and what was the stance of the present appellant in their defence. In the absence of elaborative reasoning on these aspects, the learned Single Judge had the jurisdiction to interfere, which has not been exercised.

Before the learned Single Judge, in the written statement, there was no reference, as such, by both the parties, either to the notice issued and to the reply. Learned Single Judge thus, apparently relied upon a notification which was not even the defence as such in the written statement filed by the State.

In such circumstances, we are of the considered opinion that keeping in view the settled principles that a reasoned order has to be passed by the authorities when they are exercising the quasi judicial function.

Reliance can also be placed upon the judgment of the Apex Court passed in **Kranti Associates Pvt. Ltd. and another Vs. Masood Ahmed Khan and others**, (2010) 3 SCC (Civil) 852, wherein it has been held that even administrative orders should contain reasons, since the decision affects the persons prejudicially. Following principles were laid down in the said judgment:-

> "51. Summarizing the above discussion, this Court holds:
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> a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> b. A quasi-judicial authority must record reasons in support of its conclusions.
>
> c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
>
> f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

> o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process."

Thus, we are of the considered opinion that the orders below suffer from the above said lacuna, as such, which aspect the learned Single Judge did not consider.

In such circumstances, the present appeals are allowed and the order passed by the learned Single Judge, dated 26.08.2019, is set aside. The matter is remanded to the Collector to pass fresh orders, in view of the observations made hereinabove.

Pending miscellaneous application(s), if any, also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

February 15, 2023 **(HARPREET KAUR JEEWAN)**
nitin **JUDGE**

Whether Speaking	Yes
Whether Reportable	No