

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 12818 of 2022 (O&M)

Reserved on: February 24, 2023

Pronounced on: March 23, 2023

M/s Chirag & Company Pvt. Limited

...Petitioner

Versus

Additional Deputy Commissioner-cum-Collector Shaheed Bhagat Singh
Nagar, Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Puneet Kansal, Advocate
for the petitioner.

Mr. Deepanjay Sharma, DAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner by way of instant writ petition seeks quashing of the letter dated 12.4.2021 (Annexure P/5) and order dated 6.10.2021 (Annexure P-15), vide which the petitioner has been directed to pay difference of ₹51,95,243/- on account of deficiency in stamp duty.

2. The facts as enumerated in the writ petition are that on 14.8.2015, a company known as M/s Montari Industries Ltd. was ordered to be wound up by this High Court in Company Petition No. 83 of 2010 and an Official Liquidator was appointed. Thereafter, for sale of the movable and immovable properties of the said company i.e. land, building, machinery etc., a sale notice was published in the Indian Express dated 28.12.2016 (P-1). The petitioner was a successful bidder as it had given the highest bid for

CWP No. 12818 of 2022

the properties. Thereafter, Official Liquidator filed a Company Application No. 35 of 2017 in the High Court seeking confirmation of sale of movable and immovable properties in favour of the petitioner being the highest bidder, which was allowed, vide order dated 2.6.2017 (P-2). The petitioner received letter dated 9.2.2021 (P-3) from the Official Liquidator to complete the formalities as per the requirement of the revenue authorities and inform them of the schedule for execution of the sale deed. Consequently, necessary papers for execution of sale deed were presented to Sub-Registrar Balachaur and the sale deed was executed on 12.4.2021 (P-4) and stamp duty of ₹33,13,200/- was paid on 7.4.2021 by the petitioner in respect of sale consideration of ₹5,52,20,000/- for land and the building in terms of the price fixed and approved by this Court. However, the Sub-Registrar, Balachaur—respondent No.3 vide communication dated 12.4.2021 (P-5) itself referred the matter to the Additional Deputy Commissioner, SAS Nagar, under Section 47-A of the Indian Stamps Act, 1899 (for short “**the Act**”), depicting deficiency of the stamp duty and registration fee committed in execution of the sale deed.

3. It is alleged that since nothing was heard from the respondents for more than three months after the matter was referred by respondent No. 3 to respondent No.1, the petitioner sent a letter dated 12.7.2021 (P-6) to respondent No.1 raising issue of lack of jurisdiction on account of non-applicability of Section 47-A of the Act in the present case. Thereafter various letters were exchanged/addressed but the matter was not decided. Ultimately on 6.10.2021, order was passed by respondent No.1 vide which

CWP No. 12818 of 2022

action of invoking Section 47-A of the Act has been held to be justified and additional demand of ₹51,95,243/- on account of deficiency in stamp duty has been raised, which is being impugned in the instant writ petition.

4. Learned counsel for the petitioner would argue that the petitioner was the successful bidder in the court auction done through the Official Liquidator and the Official Liquidator had executed the sale deed in question in favour of the petitioner and that too after seeking permission from the Company Court. Therefore, Section 47-A of the Act cannot be invoked in case of auction sales and the same is applicable to the private sales only. In these circumstances, the sole question that was required to be addressed by respondents was whether in respect of sale of property through court auction, could there be a case of undervaluation of property or deficiency in payment of stamp duty. However, that issue was not addressed, while passing the impugned order. Hence, the instant writ petition.

5. Per contra, learned counsel for the respondents would argue that value of the property set forth in the sale deed being less than minimum value, as determined in accordance with rules under the Act, the reference to the Collector was justified and the Collector rightly determined the value on the date of registration. Counsel would rely upon judgments as rendered by the Supreme Court in **State of Rajasthan Vs. M/s Khandaka Jain Jewellers 2008 (1) RCR (Civil) 91** to argue that stamp duty is to be paid when deed is presented for registration. It is also argued that the present writ petition is not maintainable as against the impugned order, the statutory

CWP No. 12818 of 2022

remedy available to the petitioner was to approach the Divisional Commissioner, Rupnagar, but he did not avail that remedy and rather has directly approached this Court by way of instant writ petition, which is not maintainable.

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

7. The issue that requires consideration is whether in respect of sale of property through court auction, the stamp duty is to be paid on market value or on the purchase price at the auction.

8. Section 47-A of the Indian Stamp Act 1899 as applicable to Punjab, is re-produced as under:-

“47-A Instruments under-valued how to be dealt with -

(a) If the market value of any property, which is the subject of any instrument on which duty is chargeable on market value as set forth in such instrument, is less than even the minimum value as determined in accordance with the rules made under this Act, the Registering Officer appointed under the Registration Act, 1908, shall, after registering the instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon; and

(2) On receipt of reference under Sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules under this Act, determine the value or consideration and the duty as aforesaid, and the deficient amount of duty, if any, alongwith interest at the rate of twelve per cent per annum on such deficient amount, shall be payable

by the person liable to pay the duty from the date of registration of the instrument relating to such property to the date of payment of deficient amount of the duty:

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum, if there was an intentional omission or lapse on his part in note setting forth the correct market value of such property.

*(3) The Collector may, suo moto, or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908 (Central Act No.16 of 1908), in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for and examine any instrument for the purposes of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and of all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if after such examination, **he was reason to believe that proper duty has not been paid**, he may, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under subsection (2), determine the value of the property or the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, if any, alongwith interest at the rate of twelve per cent per annum on such deficient amount, would be payable by the person liable to pay the duty from the date of registration of*

the instrument relating to such property to the date of payment of deficient amount of the duty;

Provided that a person shall also be liable to pay penal interest at the rate of three per cent per annum, if there was an intentional omission or lapse on his part in note setting forth the correct market value of such property.

(4) Any person aggrieved by an order of the Collector under subsection (2) or sub-section (3) may, within thirty days from the date of that order, prefer an appeal before the [Commissioner] and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.

Explanation.-For the purpose of this section, value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched, if sold in the open market on the date of execution of the instrument relating to the transfer of such property."

9. The scheme of Section 47-A of the Act is to deal with cases where parties by arrangement in a clandestine or fraudulent manner, undervalue the property sought to be transferred in order to deprive the State of legitimate revenue by way of stamp duty. Section 47-A of the Act empowers the Collector to act under this provision in case of deliberate arrangement to undervalue the property to evade payment of stamp duty. With parties undervaluing the property, the State losses its revenue. The Collector must have reasons to believe that the property sold and registered has been undervalued. Ordinarily, in a transaction of immovable property by transfer or exchange or partition or gift etc. where the transferor is State or

CWP No. 12818 of 2022

public authority, the provisions of Section 47-A of the Act would not be attracted as in such transactions, undervaluation may not be involved and there is no deliberate attempt to defraud the State Exchequer of its revenue. It must be kept in mind that at times public auctions do not always reflect the correct market value and may be by way of distress sale as well. It is not always necessary that a public auction would in all circumstances fetch the market value or be sold at the collector's rate as fixed.

10. The sale, in the present case, was by public auction by a public authority. As a rule of law, the stamp duty to be paid on an instrument is based on the market value of the property which is either the price at which such property would have been sold at in the open market or the consideration paid for it, whichever is higher. The judgment as rendered in the case of **V.N. Devadoss v. Chief Revenue Control Office-cum-Inspector & Ors., (2009) 7 SCC 436** would be applicable in the present case, which arose under Section 47-A of the Indian Stamp Act 1899, as applicable to the State of Tamil Nadu, pertaining to the property sold by the Board for Industrial and Financial Reconstruction (BIFR) in an open auction, on the basis of a valuation done by the Assets Sales Committee. In these circumstances, the Supreme Court held as under:-

“On the facts of the case it cannot be said that Section 47A has any application because there is no scope for entertaining a doubt that there was any under valuation. That being so, the High Court's order is clearly unsustainable and is set aside. The registration shall be done at the price disclosed in the document of conveyance. There is no scope for exercising power under Section 47-A of the Act as there is no basis for

even entertaining a belief that the market value of the property which is the subject matter of conveyance has not been truly set forth with a view to fraudulently evade payment of proper stamp duty.”

11. Similarly in the case of **Ballyfabs International Limited v. State of West Bengal 2022 (2) Cal. H.C.N.282**, the Division Bench at Calcutta when it was seized of a matter wherein there was a demand raised for additional stamp duty, on a sale conducted under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, on the ground that it was not as per market value, the Court held that once the sale is effected by an authorized officer under SARFAESI Act by making wide publication in the widely circulated newspapers, shall be regarded as the open market sale and, therefore, the registering authority cannot have any reason to believe that the sale price has been shown undervalued having not sold in the open market.

12. In a recent judgment as rendered by the Supreme Court in **Registrar of Assurances v. ASL Vyapar Private Ltd. 2022 (4) R.C.R. (Civil) 485**, while dealing with a similar issue of additional demand of stamp duty on property sold in public auction, it was held as under:-

“22. On the conspectus of the matter, we have not the slightest hesitation in upholding the view that the provision of Section 47A of the Act cannot be said to have any application to a public auction carried out through court process/receiver as that is the most transparent manner of obtaining the correct market value of the property.

23. It is no doubt true that in a court auction, the price obtainable may be slightly less as any bidder has to take care

of a scenario where the auction may be challenged which could result in passage of time in obtaining perfection of title, with also the possibility of it being overturned. But then that is a price obtainable as a result of the process by which the property has to be disposed of. We cannot lose sight of the very objective of the introduction of the Section whether under the West Bengal Amendment Act or in any other State, i.e., that in case of under valuation of property, an aspect not uncommon in our country, where consideration may be passing through two modes - one the declared price and the other undeclared component, the State should not be deprived of the revenue. Such transactions do not reflect the correct price in the document as something more has been paid through a different method. The objective is to take care of such a scenario so that the State revenue is not affected and the price actually obtainable in a free market should be capable of being stamped. If one may say, it is, in fact, a reflection on the manner in which the transfer of an immovable property takes place as the price obtainable in a transparent manner would be different. An auction of a property is possibly one of the most transparent methods by which the property can be sold. Thus, to say that even in a court monitored auction, the Registering Authority would have a say on what is the market price, would amount to the Registering Authority sitting in appeal over the decision of the Court permitting sale at a particular price.

24. It is not as if a public auction is carried out just like that. The necessary pre-requisites require fixation of a minimum price and other aspects to be taken care of so that the bidding process is transparent. Even after the bidding process is completed the court has a right to cancel the bid and such bids are subject to confirmation by the court. Once the court is

satisfied that the bid price is the appropriate price on the basis of the material before it and gives its imprimatur to it, any interference by the Registering Authority on the aspect of price of transaction would be wholly unjustified.”

13. In the present case, the property has been sold in by the Company Court in an open auction conducted by the Official Liquidator as attached to the said Court and the sale stands confirmed by this Court itself. There is no element of fraud or intention of the purchaser to dupe the State of the revenue, considering the fact that the sale price has been fixed by the High Court itself. Therefore, in view of the ratio of the judgments above, the registering authority is unjustified in demanding additional stamp duty in the instant case.

14. Learned counsel for the respondents has urged that the Supreme Court in its judgment rendered in **State of Rajasthan (Supra)** has held that the stamp duty is to be paid on market value, as on the date when the deed is presented for registration and, therefore, the petitioner is to pay the deficient stamp duty as assessed by the Collector. However, this judgment is distinguishable and not applicable to the facts of the present case. In the case referred to above, the issue arose whether the stamp duty is to be paid on the price settled in the agreement to sell or when the deed is presented for registration. The vendor in the case referred to, had backed out of executing the sale agreement and the vendee obtained a decree of specific performance and the prices shot up in the meantime. The court held that pendency of litigation does not affect the principles of interpretation of a taxing Statue. In the case in hand, the sale is by a public authority by

holding a public auction and the sale has been confirmed by the High Court. There is no question of evading stamp duty and depriving the State of its revenue.

15. The objection raised that the petitioner has not availed alternate remedy of filing an appeal is not tenable in the instant case. There is no specific bar to a writ court exercising its jurisdiction if alternate remedy has not been availed of as in the instant case. In this regard, reference can be made to a recent judgment as rendered by the Supreme Court in **Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-Cum-Assessing Authority 2023 AIR (SS) 781**, wherein it has been held that where there is a question of law as to the jurisdiction and controversy is legal one and does not involve disputed question of fact, a writ can be entertained. In **Magadh Sugar & Energy Limited Vs The State of Bihar and others 2021(4) PLJR 142**, the Supreme Court, in Para 19 of its judgment, has laid down certain principles where the writ court can exercise its jurisdiction instead of relegating the party to avail alternate remedy. In the instant case, there is no dispute about any fact. The only issue is whether stamp duty is to be paid on the current market value of the property bought in a public auction or on the auction price? The issue is no longer *res integra* and stands settled by judicial pronouncements, therefore it would be futile exercise in remanding the case to the appellate authority. Under these circumstances, this court is exercising its writ jurisdiction and sets aside the order dated 12.4.2021 impounding the sale deed dated 12.4.2021 and the order of the Collector dated 6.10.2021 passed under Section 47-A of the Act. The sale deed which

has been impounded is directed to be released immediately, after its due registration.

13. The writ petition stands allowed on the above terms.

March 23, 2023

prem

Whether speaking/reasoned :

Whether Reportable :

(JAISHREE THAKUR)

JUDGE

Yes

No