2023:PHHC:089595

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

CWP-12522-2022 (O&M)
Date of Decision:- 18.7.2023

M/s Microtek Buildwell Private Limited … Petitioner

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Akshay Kumar Jindal, Advocate for the petitioner.

Mr. Sharad Aggarwal, DAG, Haryana.

Respondent No.4 – Shri Gulab Singh Rana is present in person.

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GURVINDER SINGH GILL, J.

1. The petitioner - M/s Microtek Buildwell Private Limited assails order dated 17.5.2022 (Annexure P-7) passed by learned Commissioner, Gurugram Division, Gurugram vide which an appeal filed by respondent no. 4 – Gulab Singh Rana against dismissal of his complaint filed under Section 47-A (3) of the Indian Stamp Act, 1899, has been partly accepted and the case has been remitted back to the Collector for deciding the matter with regard to deficiency of stamp duty afresh.

2. The facts of this petition are that the petitioner and respondent no. 4 - Gulab Singh Rana entered into a collaboration Agreement dated 19.7.2010 in respect of land measuring 20 kanals 10 marlas situated in village Chauma, District Gurugram for the purpose of developing and constructing

commercial buildings. Thereafter, an agreement dated 21.7.2010 was also entered into by petitioner and respondent no. 4. Pursuant to the said agreement, a sale deed dated 21.1.2011 (Annexure P-1) was executed and duly registered. While the sale consideration is recorded as Rs. 10,03,00,000/-, a stamp duty of Rs. 70,21,000/- was affixed. The said payments were made by cheques on the following dates :

Sr. No.	Cheque/Pay order date	Amount	In favour of
1.	219709, 20.7.2010	Rs.5,00,000/-	Gulab Singh Rana
2.	219710, 21.7.2010	Rs.95,00,000/-	Gulab Singh Rana
3.	053293, 18.1.2011	Rs.9,03,00,000/-	Gulab Singh Rana

3. Subsequently, the vendor i.e. respondent No. 4 moved a complaint dated 22.10.2019 before the Deputy Commissioner, Gurugram (Annexure P-3) alleging therein that the sale deed had been undervalued and that as such, the stamp duty as affixed was deficient. Respondent No. 4 alleged that the sale deed had been got registered as agricultural land whereas the rates in respect of commercial land ought to have been applied. Upon a notice having been issued, the petitioner submitted his reply. The Deputy Commissioner considered the matter and dismissed the application while recording that the land in question was agricultural land at the time of registration of sale deed vide order dated 20.12.2021 (Annexure P-6) and that as such, there was no deficiency of stamp duty.

4. Respondent No. 4, aggrieved by dismissal of proceedings under Section 47-A of the Indian Stamp Act, 1899 preferred an appeal to the Commissioner, Gurugram on 17.1.2022. The Commissioner, upon considering the submissions made by respondent no. 4, disposed off the appeal vide order dated 17.5.2022 (Annexure P-7) while observing that the Collector had not

considered all the facts including the fact that the value of the property stood enhanced on account of construction of a road and development in the nearby areas and that the Collector had incorrectly treated the land as agriculture without any supportive documents and consequently, remitted the matter back to the Collector for fresh decision.

5. The petitioner, aggrieved by the aforesaid impugned order dated 17.5.2022 (Annexure P-7) is assailing the same *inter alia* on the following grounds :-

(i) that the proceedings under Section 47-A of the Indian Stamp Act, 1899 are hopelessly time barred inasmuch as the sale deed dated 21.1.2011 (Annexure P-1) was executed in the year 2011, whereas the proceedings under Section 47-A of the Indian Stamp Act, 1899 were initiated in the year 2020 i.e. after about a decade at the instance of vendor.

(ii) that the proceedings, as a matter of fact, have been initiated at the instance of vendor on account of his greed since on account of subsequent development of the area, the value of the property stands enhanced and that the complainant is trying to extract more amount from the petitioner.

(iii) that the complainant had also instituted a civil suit praying therein for a declaration that the sale deed dated 21.1.2011 (Annexure P-1) was null and void and not binding on his rights but the same was dismissed on account of non-affixation of *ad-valorem* court fee.

(iv) that it is the nature of land at the time of execution of sale deed which is the relevant consideration for assessing the value of land for the purpose of affixation of stamp duty and that subsequent change in the nature or value of the land cannot be taken into account and since in the present case the area in question was at the initial stages of development, the fact that the area ultimately came to be well developed or that its value enhanced subsequently cannot be taken.

6. Opposing the petition, respondent no. 4, who is appearing in person and has also filed its reply has vehemently argued that as a matter of fact he had only entered into a colloboration agreement with the petitioner and that the agreement for sale of the land or the sale deed itself were got executed by way of deceit by getting his signatures affixed on the pretext that the said documents were only with regard to the registration of the collobration agreement. Respondent no. 4 has further submitted that the limitation as prescribed under Section 47-A of the Indian Stamp Act, 1899 i.e. of 3 years from the date of execution of sale deed is a limitation applicable to the Sub-Registrar only and is not applicable in respect of proceedings before the Collector or Commissioner or the Court.

7. The learned State counsel has also supported the stand of respondent No. 4 and has submitted that since the matter has been remanded by the Commissioner to be decided afresh, such order cannot be said to be prejudicial to the petitioner and that as such, the present petition may be dismissed.

8. This Court has considered rival submissions addressed before this Court and has also perused the record.

9. It is undisputed that while the sale deed was executed in the year 2011, the proceedings under Section 47 of the Indian Stamp Act, 1899 were initiated in the year 2020, pursuant to a complaint filed by respondent in the year 2019

i.e. after about more than 9 years. Before proceeding further, it is apposite to refer to the provisions of Section 47-A(3) of the Indian Stamp Act, as applicable to the State of Haryana, which reads as under :-

> "**47-A. Instruments under-valued how to be dealt with.**
>
> (3) The Collector may suo motu, or on receipt of reference from the Inspector-General of Registration or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situate, appointed under the Registration Act, 1908, shall, **<u>within three years from the date of registration of any instrument</u>**, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he 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 as aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty: Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.
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> *Emphasis supplied*

10. A perusal of the aforesaid provisions shows that it is provided in unambiguous terms that the proceedings under Section 47 of the Indian Stamp Act can be initiated within a period of 3 years from the execution of the sale deed. As such, the proceedings initiated in the present case after the period of more than 9 years were clearly barred by limitation and could

not have been initiated. Under these circumstances, this Court need not delve deeper into other issues since the proceedings under Section 47 of Indian Stamp Act, 1899 itself are barred by limitation.

11. The petition, as such, is accepted that the impugned order dated 17.5.2022 (Annexure P-7) passed by learned Commissioner, Gurugram Division, Gurugram as well as the entire proceedings initiated against the petitioner are set aside.

18.7.2023 **(GURVINDER SINGH GILL)**
kamal **JUDGE**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No