IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-21686-2015
Reserved on: 10.01.2023
Date of Decision: 19.01.2023

HARMEET SINGH AND ANR. .... Petitioners

Versus

STATE OF PUNJAB AND ORS. .... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Aakash Singla, Advocate,
for the petitioners.

Mr. Deepanjay Sharma, DAG, Punjab.

JAISHREE THAKUR.J

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the impugned notice dated 26.07.2011, Annexure P-4, whereby the petitioners have been asked to pay deficit stamp duty of Rs.1,81,500/- as *social security fund*, as well as the subsequent orders dated 16.05.2012, Annexure P-6, and 08.01.2015, Annexure P-7, passed by respondents No.3 and 2 respectively upholding the imposition of said *social security fund.*

2. Brief facts of the case are that one Sukhdev Singh transferred his property situated at Village Khadial, Tehsil Sunam, District Sangrur, in favour of his sons, who are the petitioners herein, vide transfer deed No.3580, dated 03.02.2010, for a total consideration of Rs.60,50,000/-, which was duly registered by the Sub Registrar, Sunam, in accordance with

law and without any objection. Thereafter, almost 1 ½ years later, the petitioners received notice dated 26.07.2011, Annexure P-4, from the District Collector (ADC), Sangrur, respondent No.3 herein, regarding recovery of deficit stamp duty i.e. *social security fund* @ 3% which comes to Rs.1,81,500/-, which notice was duly replied to by the petitioners by stating that stamp duty has been exempted by the Punjab Government on the transfer deeds on class-I heirs and the necessary registration fee @ 1% has already been paid at the time of registration of the instrument. However, respondent No.3, vide order dated 16.05.2012, upheld the imposition of deficit stamp duty by holding that since the land in question falls within the Municipal Committee, Sunam which has been assigned the status of Class-I Committee and as per directions of the Punjab Government, 3% additional stamp duty i.e. *social security fund* is to be paid, which was not paid at the time of registration of the document. The statutory appeal preferred against the said order was dismissed by the Commissioner, Patiala Division, Patiala-respondent No.2 vide order dated 08.01.2015.

3. Learned counsel appearing on behalf of the petitioners would contend that vide order dated 21.12.2001, Annexure P-1, the Government of Punjab, Department of Revenue and Rehabilitation (Stamp and Registration Bench) while exercising powers under Section 9 (1)(a) of the Indian Stamp Act, 1899 (for short, the Act), has remitted stamp duty in case of transaction of transfer by an owner of agricultural land and rural residential property to his Class-I heir (as defined in Schedule under Section 8 of the Hindu Succession Act, 1956). However, while issuing the impugned notice, said order of the Government, which was in vogue at the relevant time, was

ignored. It is contended that additional stamp duty is being asked in the name of '*social security fund'* and thus, the provisions of Section 3-C of the Act, have been wrongly interpreted. It is submitted that the objection with regard to deficit stamp duty, if any, should have been raised on the instrument at the time of its registration. Furthermore, the transfer of the property is to class-I heir of the executant and between blood relations i.e. from father to sons, so no stamp duty can be levied as per Annexures P-1 and P-2. Counsel has relied upon judgment of this Court passed in ***CWP No.25496 of 2012, Dyal Singh and others Versus State of Punjab and others, decided on 28.04.2016***, where in similar circumstances, this Court has set aside the orders asking for additional stamp duty.

4. On the other hand, learned counsel appearing on behalf of the respondents would submit that the land in question falls in village Khadiyal situated within Municipal Committee, Sunam, which, vide notification dated 12.03.2008 issued by the Punjab Government, has been declared as Class-I Committee. Vide notification dated 30.12.2009, the boundary limits of the Municipal Committee, Sunam were increased to the radius of 5 KMs area and the land in question falls within that area. Further, as per Punjab Government notification dated 13.06.2005 if the land is situated within Municipal limits, then 3% *social security fund* is liable to be paid at the time of registration of document, which was not charged from the petitioners at the relevant time on the transfer deed.

5. I have heard learned counsel for the petitioners, learned State counsel and have gone through the pleadings of the case as well as the

judgment relied upon by counsel appearing on behalf of the petitioners.

6. In order to appreciate the respective arguments raised by both the counsel for the parties, it would be relevant to refer to some provisions of the Indian Stamp Act 1899 , which are reproduced as under: -

> "***Section 3 – Instruments chargeable with duty.***-*Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say-*
>
> *(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;*
>
> *(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and*
>
> *(c) every instrument (other than a bill of exchange or promissory note) mentioned in the Schedule, which, not having been previously executed by any person, is executed out of India on or after that day relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:*
>
> *Provided that, notwithstanding anything contained in clause (a), (b) or (c) of this section or in Schedule I, and subject to the exemptions contained in Schedule 1-A, the following instruments shall be chargeable with duty of the amount indicated in Schedule 1-A, as the proper duty therefore, respectively, that is to say -*

(aa) every instrument mentioned in Schedule 1-A as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed in Punjab on or after the date of commencement of this Act.

(bb) every instrument mentioned in Schedule 1-A as chargeable with duty under that Schedule, which, not having been previously executed by any person is executed out of Punjab on or after the date of the commencement of this act and relates to any property situated, or to any matter or thing done or to be done in Punjab, and is received in Punjab:-

Provided also that no duty shall be chargeable in respect of –

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel; or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, Act No. 57 & 58 Vict. c. 60 or under Act XIX of 1838 Act No. or the Indian Registration of Ships Act, 1841, (CX of 1841) as amended by subsequent Acts.

(3) xxx xxx xxx xxx xxx"

"***Section 3-C - Instrument chargeable with additional duty –*** *(1) Every instrument mentioned in entry 33 of Schedule 1-A chargeable with duty under Section 3 shall, in addition to that duty, be also chargeable with such duty, as specified in Schedule 1- B, if such an instrument is executed in the area falling within the jurisdiction of a Municipality or a Corporation or within the area of five kilometers from the outer limit of the Municipality or Corporation, as the case may be, as* *may be specified by the Collector. This shall be applicable only to Municipal Corporation and Class-1 Municipalities.*

(2) The Additional duty with which any instrument is chargeable under sub-section (1), shall be paid and such payment shall be indicated on such instrument by means of stamp or stamp paper bearing the inscription "Social Security Fund" whether with or without any other design, picture or inscription.

(3) Except as otherwise provided in sub-section (2), the provisions of this Act shall, so far as may be, apply in relation to the additional duty chargeable under sub-section (1), in respect of the instruments referred to therein as they apply in relation to the duty chargeable under Section 3 in respect of those instruments.

Explanations: - For the purpose of this section, (1) The expressions "Municipality" and "the Corporation" shall have the same meaning as assigned to them respectively, under the Punjab Municipal Act, 1911 and the Punjab Municipal Corporation Act, 1976.

(2) The expression "Social Security Fund" means a fund constituted under the Punjab Social Security Fund Regulations, 2005 for providing financial assistance to the needy, deserving and weaker sections of the society in the State of Punjab through the Welfare Schemes.

"***Section 9 – Power to reduce, remit or compound duties.*** *(1) The Government may, by rule or order published in the Official Gazette;*

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments, or any particular class of instruments, or any of the instruments belonging to such class or any instruments when executed by or in favour of any

particular class of persons, or by or in favour of any members of such class are chargeable;

Provided that with respect to instruments which are chargeable with duty under Schedule 1-A, Schedule 1-B and Schedule 1-C such reduction or remission may, by notification be granted by the State Government, and

(b) provide for the composition or consolidation of duties [of policies of insurance and] in the case of issuance by any incorporated company or other body corporate or of transfers where there is a single transferee, whether incorporated or not of debentures, bonds or other marketable securities.

(2) In this section, the expression "the Government" means, (a) in relation to stamp duty in respect of bills of exchange, cheques promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, and in relation to any other stamp duty chargeable under this Act falling within Entry 96, List 1 in the Seventh schedule to the Constitution, the Central Government;

(b) save as aforesaid, the State Government."

"***Section 2(10)- "Conveyance"****- "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or Schedule 1-A or by Schedule 1-B or Schedule 1-C, as the case may be."*

7. There is no dispute that the land in question is situated within 5 KMs from the municipal limits of Sunam. It is also not disputed that the value of the land mentioned in the deed is Rs.60,50,000/-. The only question that arises for consideration before this Court is as to whether the

respondents are justified in asking the petitioners to pay stamp duty to the tune of Rs.1,81,500/- calculated @ 3% in terms of the letter dated 26.07.2011 issued by respondent No.3 in consonance with Section 3-C of the Act?

8. In the instant case, admittedly, the petitioners herein are class-I legal heirs of the executant Sukhdev Singh by virtue of Section 8 of the Hindu Succession Act, 1956. Sukhdev Singh executed a transfer deed and exemption is granted to such a document vide notification issued on 21.12.2001 by the Government of Punjab, Department of Revenue and Rehabilitation under Section 9(1)(a) of the Act, As per the said notification, transfer of immovable property to Class-1 heirs by conveyance deed is not chargeable to the stamp duty. Section 3-C of the Act requires charging of *additional stamp duty* payable on instruments which are mentioned in entry 33 of Schedule 1-A which are chargeable with duty under Section *3.* If the very instrument is exempt from payment of stamp duty, then the question of any additional stamp duty would not arise even if the land of the petitioners falls within the radius of 5 KMs within the municipal limits of Sunam.

9. The concluding paras of the judgment relied upon by counsel for the petitioners in ***Dyal Singh's case (supra)*** reads as under:-

> "*Section 3-C of the Act specifically provides that every instruments, mentioned in entry 33 of Schedule 1-A chargeable with duty under Section 3 of the Act, shall be liable for charging additional duty if the instrument by which the property is transferred falls within the jurisdiction of Municipality or a Corporation or within the area of 5 KMs of the outer limit of the Municipality or Corporation, as the case may be. The word "Social Security Fund" provided in Section 3-C of the Act is*

"instrument chargeable with additional duty" but the "instrument chargeable with duty" is provided in Section 3 of the Act, which provides every instruments, which are chargeable with duty but with an exception which is provided in Section 9 of the Act in which the Legislature has provided that the Government may by Rule or order published in the Official Gazette reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments, or any particular class of instruments, or any of the instruments belonging to such class or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class are chargeable. In pursuance of Section 9(1)(a) of the Act, Government of Punjab, Department of Revenue and Rehabilitation issued notification on 21.12.2001, as per which the transfer of immovable property to Class-1 heirs by conveyance deed is not chargeable to the Stamp Duty.

It is not in dispute that the petitioners are the sons of Ajmer Singh and thus are the Class-1 legal heirs in view of Section 8 of the Hindu Succession Act, 1956. The 'Conveyance Deed' is defined in Section 2(10) of the Act, which is chargeable with duty and thus the exemption is granted to such a document vide notification issued under Section 9(1)(a) of the Act, which is chargeable with duty, even if the land of the petitioners falls within the radius of 5 KMs within the Municipal Limits, Patiala City, the petitioners are not liable to pay the Stamp Duty of Rs.5,21,880/- calculated @ 3%.

In view of the aforesaid, the present petition is meritorious and hence, the same is hereby allowed and the impugned orders are thus set aside. The Stamp Duty, which is alleged to have been already deposited by the petitioners, is *hereby ordered to be refunded."*

10. In view of the above, the present petition is allowed and the impugned orders are set aside.

(JAISHREE THAKUR)
JUDGE

19.01.2023
sanjeev

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