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

**CWP-22633-2019
Decided on: 27.01.2023**

SUDHIR KANT AND OTHERS

Petitioners

VERSUS

COMMISSIONER, FARIDKOT DIVISION, FARIDKOT AND OTHERS

Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ravish Bansal, Advocate
for the petitioners.

Mr. Deepanjay Sharma, DAG, Punjab.

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JAISHREE THAKUR J.

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India, seeking to challenge the order dated 06.10.2016 (Annexure P-3) passed by the Additional Deputy Commissioner-cum-Collector, Bathinda (hereinafter referred to as the Collector) whereby, the petitioners have been directed to pay an additional amount of Rs.2,00,500/- along with interest @ 12% from the date of registration of the sale deed till the deposit of the amount towards deficient stamp duty and registration fee pertaining to sale deed registered on 22.09.2010 and the order dated 27.11.2018 (Annexure P-5) passed by the Commissioner, Faridkot Division, Faridkot, affirming the order of the Collector.

2. In brief, the facts as stated are that the petitioners purchased land measuring 310 square yards equivalent to 6 biswas situated at Patti Mehna, Bathinda as per jamabandi for the year 2002-03. A sum of Rs.93,000/- was paid towards stamp duty, registration fee etc. The sale deed was registered by the Sub-Registrar, Bathinda and at that time, the sale deed was not impounded on account of inadequate stamp duty. The sale deed was returned to the petitioners after registration. The office of the Deputy Controller (Finance and Accounts), Internal Audit Institute (Revenue), Bathinda sent an audit memo to Tehsildar-cum-Sub-Registrar, Bathinda pointing out that there was a loss of Rs.2,00,500/- towards deficiency of stamp duty and registration fee on the sale deed in question. On the basis of the audit report, the Sub-Registrar-cum-Tehsildar made a reference vide letter No.871/RK dated 16.08.2013 to the Collector intimating him that an amount of Rs.2,00,500/- is to be recovered as deficient stamp duty. Thereafter, the Collector issued notices under Section 47-A of the Indian Stamp Act dated 24.12.2013, 10.04.2014 and 09.11.2015 to the petitioners regarding the deficient stamp duty detected during audit, resulting in the impugned orders.

3. Learned counsel appearing on behalf of the petitioners herein would contend that the impugned orders are unsustainable, as the Sub-Registrar, Bathinda while registering the instrument did not impound the sale deed nor was any reference made to the Collector at his own instance. The sale deed was handed over to the petitioners after registration of the same. It is thereafter, that notices were issued by the Collector under Section 47-A(3) of the Indian Stamp Act, 1899, asking for deficient stamp duty and such notices were issued beyond the period of limitation.

4. Per contra, learned counsel appearing on behalf of the respondents-State submits that on the basis of audit report, it had been found that there was deficient stamp duty affixed on the sale deed that was executed on 22.09.2010 and pursuant to that, notices were issued to the petitioners herein to pay the additional amount of Rs.2,00,500/- towards deficient stamp duty and registration charges.

5. I have heard learned counsel for the parties and have also perused the pleadings of the case.

6. The facts are not in dispute. The sale deed came to be registered on 22.09.2010 by the Sub-Registrar but at that point of time, he did not impound the sale deed nor did he send a reference to the Collector as envisaged under Section 47-A (1) of the Indian Stamp Act, as applicable to the State of Punjab. Section 47-A of the Indian Stamp Act is reproduced as under: -

> *"47-A. Instruments under-valued how to be dealt with. –*
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> *(1) If the Registering Officer appointed under the Registration Act, 1908, while registering. instrument transferring any property has reason to believe that the value of property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to Collector for determination of the value or consideration, as the case may be; the proper duty payable thereon.*
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> *(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the consideration and the duty as aforesaid and the deficient amount of duty, if any shall be payable by the person liable to pay the duty.*
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> *(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 Registration Act, 1908 (Central Act .No. 16 of 1908), in whose jurisdiction*

property or any portion thereof which is the subject 3 of 8 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 authorised 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 has 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 sub- section (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, would be payable by the person liable to pay the duty.

(4) Any person aggrieved by an order of the Collector under sub section (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."

7. A plain reading of sub-section (3) of Section 47-A of the Indian Stamp Act, 1899, clearly shows that the period prescribed for initiation of proceedings under the said provision is three years. No notice can be issued after the expiry of three years. Such being the situation, the proceedings initiated by the respondents on 24.12.2013 were unjustified. Similar view has been taken by a Division Bench of this Court in ***Raghbir versus State of Haryana, 2003 (4) RCR Civil 861*** and ***Vikas versus State of Haryana and Others, (2008) 2 RCR (Civil) 526.*** The law so settled is followed in ***Lalit***

<u>Mohan Chadha versus State of Punjab and Others, CWP No.527 of 2010,</u> decided on ***<u>15.02.2012</u>*** and ***<u>Jyoti Singla and Others versus State of Punjab and Others, CWP No.21097 of 2019,</u>*** decided on ***<u>24.03.2022.</u>***

8. In view of the finding rendered above, the instant writ petition is allowed and the impugned orders dated 06.10.2016 (Annexure P-3) passed by the Additional Deputy Commissioner-cum-Collector, Bathinda and dated 27.11.2018 (Annexure P-5) passed by the Commissioner, Faridkot Division, Faridkot are quashed.

(JAISHREE THAKUR)
JUDGE

27.01.2023
Chetan Thakur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No