Neutral Citation No.- 2023:PHHC:076702

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

CWP-21875-2021
Decided on: 25.05.2023

SANDEEP KUMAR AND ANR.

Petitioners

VERSUS

COMMISSIONER PATIALA AND ORS.

Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sherry K. Singla, Advocate
for the petitioners.

Mr. Athar Ahmed, 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 22.05.2018 (Annexure P-2) passed by the Additional Deputy Commissioner-cum-Collector, Ludhiana (hereinafter referred to as the Collector) whereby, the petitioners have been directed to pay an additional amount of Rs.4,34,550/- 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 23.06.2010 and the order dated 09.09.2021 (Annexure P-4) passed by the Divisional Commissioner, Patiala Division, Patiala, affirming the order of the Collector, with a further prayer to direct the respondents to refund the

amount of Rs.4,35,000/- along with interest @ 9% per annum, deposited by the petitioners in the Government Treasury, vide challans dated 03.04.2018 and dated 20.04.2018.

2. In brief, the facts as stated are that the petitioners purchased land measuring 8 kanals, situated in the revenue estate of Village Dharor, Sub-Tehsil Dehlon (now Sahnewal), District Ludhiana vide sale deed dated 23.06.2010. The requisite stamp duty as well as registration fee were duly paid by the petitioners. The sale deed was registered by the Sub-Registrar, Sahnewal and at that time, the sale deed was not impounded on account of inadequacy of stamp duty. The sale deed was returned to the petitioners after registration. The Auditor General, Punjab, Chandigarh vide its audit report for the year 2010-12 sent an audit memo to Sub-Registrar, Sahnewal pointing out that there was a loss of Rs.4,34,550/- towards deficiency of stamp duty and registration fee on the sale deed in question. On the basis of the audit report, the Sub-Registrar made a reference vide letter No.416/RC dated 22.02.2018 to the Collector intimating him that an amount of Rs.4,34,550/- is to be recovered from the petitioners as deficient stamp duty. Thereafter, the Collector issued notice under Section 47-A of the Indian Stamp Act, 1899, in the year 2018 to the petitioners regarding the deficient stamp duty, 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, Sahnewal while registering the instrument did not impound the sale deed nor was any reference made to the Collector at his own instance at that point of time. The sale deed was handed over to the petitioners after

registration. It is thereafter, that notice was issued by the Collector under Section 47-A(3) of the Indian Stamp Act, 1899, asking for deficient stamp duty in the year 2018, beyond the period of limitation. He would submit that the petitioners have made total payment of Rs.4,35,000/- to the respondents in the Government Treasury, which would be evident from copy of the receipts annexed as Annexure P-2A and the said amount is liable to be refunded to the petitioners as the order passed by respondent No.2 is in violation of the provisions of Section 47-A of the Indian Stamp Act, 1899.

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 23.06.2010 and pursuant to that, notice was issued to the petitioners herein to pay the additional amount of Rs.4,34,550/- towards deficient stamp duty and registration charges.

5. Pursuant to order dated 22.02.2023, Rahul Chaba, Collector-cum-Additional Deputy Commissioner, Ludhiana is present in Court today and would submit that he will not be able to file an affidavit regarding any judicial decision taken by his predecessor, who is now retired. As per the previous order, there was a direction to him to file his personal explanation as to how the impugned order was passed in violation and in excess of the powers conferred upon him under Section 47-A of the Indian Stamp Act, 1899. The explanation putforth today by him is hereby accepted and his personal appearance is hereby dispensed with.

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

7. The facts are not in dispute. The sale deed came to be registered on 23.06.2010 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 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*
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> *(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 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, 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."*

8. 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 in the year 2018 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 Mohan Chadha versus State of Punjab and Others, CWP No.527 of 2010,*** decided on ***15.02.2012*** and ***Jyoti Singla and Others versus State of Punjab and Others, CWP No.21097 of 2019,*** decided on ***24.03.2022.***

9. In view of the finding rendered above, the instant writ petition is allowed and the impugned orders dated 22.05.2018 (Annexure P-2) passed by the Additional Deputy Commissioner-cum-Collector, Ludhiana and dated 09.09.2021 (Annexure P-4) passed by the Divisional Commissioner, Patiala Division, Patiala, are quashed. The respondents are directed to refund the amount of Rs.4,35,000/- deposited by the petitioners in the Government Treasury under the relevant head vide challans dated 03.04.2018 dated 20.04.2018, forthwith.

(JAISHREE THAKUR)
JUDGE

25.05.2023
Chetan Thakur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No