IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(219) **LPA-238-2016 O&M)**
Decided on: 21.02.2023

Sunita

....Appellant(s)

Versus

State of Punjab and others

.... Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Amit Jhanji, Senior Advocate with
Ms. Zaheen Kaur, Advocate and
Mr. Sachit Singla, Advocate for the appellant(s).

Mr. Abhay Pal Singh Gill, DAG, Punjab.

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G.S. Sandhawalia, J.

The present Letters Patent Appeal requires consideration of the order of the learned Single Judge passed in **CWP No.9319 of 2013**, whereby the writ petition filed by the present appellant was dismissed on 08.01.2016. The learned Single Judge came to the conclusion that the property in question which was purchased on 25.04.2007 had been shown as a residential property. The sale consideration had been shown as Rs.32,70,000/- and the stamp duty of Rs.2,61,600/- had been paid on it. Since a complaint had been filed after 5 years by one Kamal Kapoor that the transaction was undervalued and the property was commercial and not residential and located in the commercial area, therefore, the collector had rightly raised the demand of difference in the stamp duty and asked for Rs.12,39,024/- including interest vide order dated 17.09.2012 (Annexure P-2). The appeal had been dismissed since the counsel could not deny the fact that the area where the sale deed was registered was commercial and not residential and they had suppressed the material facts. Resultantly, the learned Single Judge rejected the claim on the ground that even if the

Collector had not afforded any opportunity of hearing, the same was available before the Commissioner under the statutory appeal, which was never raised.

2. The issue thus lies in the very narrow ambit regarding the procedure which has been prescribed under the relevant provisions. The property in question which is measuring 18 marlas was sold on 23.04.2007 (Annexure P-1) by the vendors describing it a house situated near Old Courts, Opposite Nehru Garden, Civil Lines, Jalandhar. The description as such was given that on the east there was a road, on the west there were other owners, on the north there was one Ajay Dureja and on the south side there was a hotel. The property was consisting of three rooms, one bathroom, one kitchen, one store which had been earlier purchased by the vendor on 05.03.1990 vide sale deed No.10237. The vendor described the status of the above noted house constructed over the land measuring 18 marlas including all kind of construction raised thereon; all kind of fittings; electricity; water; sewerage and all other rights and appurtenances while selling it to the present appellant. Resultantly, the stamp duty of Rs.2,61,600/- was paid on the sale consideration of Rs.32,70,000/-.

3. Apparently, no issue as such was raised at that point of time of undervaluation by the Sub-Registrar while registering the sale deed. Thereafter, a complaint was received from one Kamal Kapoor that the sale deed No.993 dated 25.04.2007 had been got registered by showing it as house, whereas it is situated in Civil Lines and is a commercial property. The said complaint was inquired through Halqa Patwari by the Collector, who had mentioned in his report that the Company Bagh is situated opposite the said property and sometimes back on the said land Hotel Moti Mahal was existed, which stood closed. Earlier also after the registration

of the sale deed the said land had been used as commercial property and, therefore, it would be appropriate to apply commercial rate on the said property. Resultantly, a finding was recorded vide impugned order dated 17.09.2012 (Annexure P-2) by the Collector by noting these facts that the vendee was required to get registered the sale deed for a sum of Rs.1,26,00,000/- as he got registered the sale deed at less price to the tune of Rs.93,30,000/- and paid less stamp duty of Rs.7,46,400/-. Accordingly, recovery of Rs.12,39,024/- was directed to be paid, which including interest @ 12% per annum amounting to Rs.4,92,624/-. Apparently, no notice was issued to the vendee and straightway the quantified amount was demanded by issuing Form No.2 under Sub-Rule (1) of Rule 5 of the Punjab Stamp (Dealing of Undervalued Instruments) Rules, 1983, vide notice dated 21.09.2012 (Annexure P-3). The factum of the right to file an appeal was also incorporated in the said demand notice. The format of the said Form No.2 reads as under:-

“ **Form 2**

Notice [See sub-rule (1) of rule 5]

To

Shri ______________ son of _____________ Village _____________ Post office ________ Tehsil ______________ and District ____________

1. Take notice that a sum of Rs. _____________ has been determined as the deficit amount of duty payable by you under section 47-A of the Indian Stamp Act, 1899 (Central Act No. 2 of 1899).

2. You are required to pay the above amount into the Government Treasury at _____________ under the head [30-Stamps and Regulation - (c) Stamps - Non- judicial] on or before __________ and to produce necessary receipted copy of challan in proof of payment before the undersigned not later than _________ failing which the said sum of Rs.

__________ will be recovered from you in the manner as provided in section 48 of the said Act.

3. If you are dissatisfied with my order you may present an appeal to the District Judge within 30 days from the date of receipt by you of the said order.

Officer Seal

Place_____________ Signature___

Date _____________ Collector____ District__"

4. Aggrieved against the same the appeal was carried to the Commissioner, wherein it was projected that there was a dispute between Kamal Kapoor and the earlier owner and, thus, the complaint was moved by the said gentleman and the proceedings had been initiated on the same. Instead of discussing the issue of the procedure which was to be followed, the Commissioner dismissed the appeal on the ground that the counsel could not deny the fact the area which had been shown as a residential area, was a commercial one. Relevant part of the said order reads as under:-

> " I have considered the arguments advanced by the counsel for the appellant. The counsel for the appellant has not denied the fact that the area, which was got registered by the appellant in the year 2007 by showing a residential a commercial one and the Collector rate at that time was Rs. 7,00,000/- per Marla, whereas the appellant had executed the sale deed for the 18 Marla of land for a consideration of Rs. 32,70,000/- and paid the stamp duty 2,61,600/-, whereas he had to pay stamp duty of Rs. 7,46,400/-. It appears that the appellant had suppressed the material facts while executing the sale deed. So, the order of the Collector is self speaking and needs no interference. The appeal is without any merit and it is dismissed."

5. Reliance had been placed upon the judgment passed in **Sub-Registrar, Nuh Vs. Mahipal, 2011 (3) Civil Court Cases 817** before the

Commissioner, wherein the learned Single Judge of this Court had upheld the orders of the Courts below, wherein notice which had been issued beyond a period of 3 years after the registration of the relinquishment deed had been quashed. A finding was recorded that it was beyond 3 years and in view of Section 47A of the Stamp Duty Act, 1899 (for short '1899 Act'), the demand notice was beyond limitation and even issued without jurisdiction by the Sub-Registrar. Merely because the property was situated in a commercial area and not in a residential area, was held not to be a good ground as such to initiate the proceedings. The Commissioner, however, chose not to discuss the said judgment.

6. Learned Senior Counsel is well justified while placing reliance upon the provisions of Section 47A of the Indian Stamp (Punjab Amendment) Act, 1899 and to contend that as per Sub-Section 2 the Collector has to give a reasonable opportunity to the parties of being heard. Only after holding an enquiry in such manner as may be prescribed by rules under the Act, determination of the value or consideration and the duty as aforesaid and the deficient amount of duty alongwith interest @ 12% shall then become payable from the date of registration of the instrument. The same was to be done on the receipt of the reference under sub-Section 1 of Section 47-A. Sub-Section 3 further provides that the Collector may suo motu or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908 or on receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government within a period of three years from the date of the registration of an instrument, call for examining any instrument for the purposes of satisfying himself as to the correctness of the value of the

property. The said sub-Section 3 further provides that the Collector after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner as provided under sub-Section 2, determine the value of the property. Relevant provisions read as under:-

> "**47-A. Instruments undervalued 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;
>
> 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 not setting forth the correct market value of such property.
>
> 3) The collector may, suo motu, 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 the 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 not setting forth the correct market value of such property.

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 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. Apart from the provisions reproduced above, the Punjab Stamp (Dealing of Undervalued Instruments) Rules, 1983 (for short '1983 Rules') provides the procedure which shall be adopted for fixation of minimum value of the land/property. Rule 3-A providing the said procedure reads as under :-

> "**3A. Procedure to be adopted for fixation of minimum value of land/property. –**
>
> The Collector of district shall in consultation with Committee of experts consisting of officers of the department of Public Works (Building and Road), Department of Revenue and Rehabilitation, Punjab Urban Development Authority, Department of Local Government, Department of Rural Development and Panchayats Department of Horticulture/Forest/Town Planning/Industries or any other department as may be found desirable, fix the minimum market value of land/properties, located in his district, locality- wise and category wise and convey the same to the Registering Officer(s) for the purposes of levying of stamp duty on instruments of transfer of any property. The value of agricultural land will be fixed per acre/per bigha whereas for other lands/properties, it will be fixed per Marla, per square yards/per square feet/per square metre keeping in view the following factors :-
>
> (a) In case of agricultural land, -
>
> (i) Classification of land.
>
> (ii) Source of irrigation.
>
> (iii) Distance from roads, Bazars, Bus Stand, Railway Station, Factories, Educational Institutions, Hospitals, Government Offices and shopping complexes.
>
> (iv) Situation of land like urban/rural.
>
> (v) Number of crops per year sown.
>
> (vi) Any other special feature having bearing on valuation.
>
> (b) In case of non-agriculture land, -

(i) Distance from Roads, Bazars, Bus Stand, Railway Station, Factories, Educational Institutions, Hospitals Government Offices and Shopping Complexes.

(ii) Situation of land like urban/rural.

(iii) Purpose for which the land is being used presently

(iv) Any other special features having bearing on the valuation.

(c) In case of buildings, -

(i) for ground floor, ten percent of the cost of land; and

(ii) for every consecutive floor, five percent of the cost of land;

(d) In case of gardens, -

(i) Kind of land.

(ii) Source of Irrigation.

(iii) Cost of trees, according to their kind, value, size and age.

(iv) Income being derived out of the garden.

(v) Whether situated in urban or rural area.

(vi) Any other special features having bearing on the valuation.

[Provided that the Chief Controlling Revenue Authority i.e. the Financial Commissioner Revenue, may issue policy directive to the District Collector with regard to fixing the quantum of the collector rates or the procedure for fixing the Collector rates of the property. Such Policy directive shall be binding on the District Collectors]

Note :- The list of factors given above is only indicative and not exhaustive.

The rates so fixed, will be revised by the Collector, once a year as far as possible in the month of March and to be effective from first April of each year or after one month of its fixation. Copies of rates so fixed/revised shall be made available by the Collector to the Government, Inspector General of Registration, Punjab, Commissioner of Divisions, Sub-Divisional Magistrates and the Registering Officers concerned. The Registering Officers will display the rate lists on the notice board for the information of general public. The value of land/properties so fixed/revised shall be deemed to be the price, which it would have fetched if sold in public auction.] **Explanation:-** The consideration amount fixed at the time of allotment of immovable property by any Government/Semi Government Organization shall be deemed to be the Collector's rate and the Stamp duty shall be charged for registration of document upon the consideration amount fixed by the Government/Semi Government Organization, provided that document is got registered [upto 31st March, 2010] by the original allottee or to the persons whom such property is transferred by the original allottee through Governments/Semi Government Organization who is yet to pay full and final installments or legal heirs of the original allottees, in case of death of original allottee who is yet to pay full and final installment or by legal heirs as prescribed in Section 8(a) and Section 15(a) of the Hindu Succession Act, 1956, if such heirs have been included by the Allotting Agency subsequently in the allotment letter; or on reallotment after cancellation of allotment of original allottee by the Allotting Agency; or within three months from the payment of last regular installments as per schedule of payment of such allotment."

8. Rule 4 (1) of 1983 Rules further provides that notice in Form 1-A has to be served on the person who is liable to pay the stamp duty and he has to produce or cause to be produced any evidence on which such person may rely in his support. Sub-Rule 2 of the said rule further provides that after taking such evidence, the liability of the person to pay the duty and after making such enquiry, the Collector has to determine the value of the property or the consideration and the assessment of the amount of deficit duty recoverable. Rule 4 of the 1983 Rules reads as under:-

"**4. Assessment of duty-**

(1) On receipt of reference under sub-section (1) of Section 47-A, the Collector shall serve or the person liable to pay the duty a notice in [Form 1-A], requiring him on a date and at a place to be specified therein either to attend in person or through an authorised agent and to produce or to cause to be produced any evidence on which such person may rely in his support.

(2) The Collector, after taking such evidence as the person liable to pay the duty may produce and after making such enquiry as he may deem proper, shall determine the value of the property or the consideration, as the case may be, and assess the amount of deficit duty recoverable form such person.

(3) If the person liable to pay the duty fails to attend in response to the notice served under sub-rule (1), the Collector shall proceed ex parte and assess the deficient amount of duty, if any, to the best of his judgment."

9. The format of Form 1-A reads as under:-

"**Form 1-A**

Notice [See sub-rule (1) of rule 4]

To

Shri ________________________________ son of ______________________________ Village _____________________________ Post office __________________________ Tehsil _________ and District ___________

Whereas it is alleged that instrument of __________________ relating to ____________of property situated in the Village __________________ Thana______________ which purports to have been executed by you on ___________ and registered in the office of the registering officer of ____________________ on______________________ on a lesser valuation of property, you are hereby directed to appear before the under-signed in person or by a duly authorised agent on the _____________ day of _________________19_____ at _________________ in the forenoon to answer the claim and as the date fixed for your appearance is appointed for the final disposal of the case, you must be prepared to produce on that day all witnesses upon whose evidence and all the records and documents upon which you rely in support of you evidence.

Take notice that in default of your appearance on the day before mentioned, the case will be heard and determined in your absence.

Given under my hand and the seal of the court this the ________________ day of ________________

Office Seal

Place______________ Signature___

Date ______________ Collector____ District__"

10. Thus, apparently from the reading of the above, it would be clear that there is a procedure prescribed which has apparently been not resorted to and no show cause notice was issued, to which the present appellant could have objected to whether the show cause notice was within the prescribed period and whether it was within limitation and what was the market value of the area sought to be sold, resultantly an inquiry was to be held after giving the person the reasonable opportunity of being heard under sub-Rule 2 & 3.

11. The stand of the State was that on the complaint being received the matter was referred to the Additional Deputy Commissioner-cum-Collector, Jalandhar on 11.11.2011 for initiating proceedings under Section 47-A of the 1899 Act to determine the value or consideration of the property in question. The Patwari Halqa was then directed to conduct spot examination and submit his report. He had reported that sometimes back there existed Hotel Moti Mahal on the said land. The stand of the State was that the nature of the property had been deliberately suppressed to evade the stamp duty and, therefore, limitation aspect would not come

into force while placing reliance upon the judgment of the Apex Court passed in **State of Punjab and others Vs. M/s Mahajan Sabha, Gurdaspur and others, AIR 1996 SC 2153.**

12. Apparently, the prescribed procedure was never followed and cursory inquiry was done at the back of the appellant and a demand notice was issued as noticed above. The appellant had to be given an opportunity before passing an order which adversely affected her in as much as a huge demand of Rs.12,39,024/- had been raised which was inclusive of the interest element. Thus, we are of the considered opinion that the procedure prescribed under the rules was not adhered to by the authorities and the order passed by the Commissioner can be termed as a non-speaking order, as this aspect was never considered. The appeal was only dismissed by recording the statement of the counsel that the area was fell within the commercial zone.

13. We have also perused the necessary contents of the sale deed, which would go on to show that the property was described as a residential house which was sold. Merely because house was situated in a commercial area would not be a conclusive proof as such that the property had to be treated as a commercial property. The said exercise had necessarily to be done by the Collector, who had failed to do so by passing only the order of recovery and without making a proper inquiry and giving opportunity to the appellant to produce evidence as provided under Rule 4 as reproduced above.

14. A similar view was taken by the Coordinate Bench in **Naresh Kumar Vs. State of Haryana and another, 2004 (4) RCR (Civil) 217,** wherein agricultural land had been purchased and the sale deed had been registered without raising an objection. Two years later notice had been

issued to the purchasers to produce evidence regarding the value of the property. Resultantly, an order was passed asking to deposit a additional stamp duty of Rs.1,06,250/- as the value of the property was determined as Rs.2,50,000/- per acre instead of Rs.80,000/- per acre, on which rate the sale deed was registered. Resultantly, the writ petition was allowed by coming to the conclusion that the evidence which was collected during the course of inquiry had been put to the party and the Inquiry Officer had come to the conclusion that the land was *Chahi* in nature and not water logged. Similarly a finding herein has been recorded that because the area was being considered as Commercial, therefore, property has to be treated as Commercial property, irrespective of the fact that it was a residential house at the time of sale. Relevant observations of the Coordinate Bench reads as under:-

> "5…………An analysis of the provisions reproduced above shows that while sub-section (1) of Section 47-A does not envisage holding of enquiry or giving of opportunity of hearing at the stage of reference, subsection (2) thereof imposes a mandatory duty on the Collector to hold an enquiry in the manner prescribed by the rules and also give reasonable opportunity of hearing to the parties before making a determination of the correct value of the land or property. This necessarily means that the Collector can determine the value of the property only after giving reasonable opportunity of hearing to the parties and after holding appropriate enquiry. The expression "reasonable opportunity of hearing" has not been defined in the Act or the Rules but, broadly speaking, it means that the party concerned should be given notice of the proposed action and also of the circumstances and evidence available/collected against it and called upon to submit its defence qua the proposed action and/or rebut the evidence sought to be relied upon by the competent authority. In a given case, the party can also ask for an opportunity to adduce evidence to rebut the evidence collected by the competent

authority. To put it differently, before passing an order under sub-section (2) of Section 47-A, the Collector is under a duty to hold an enquiry and also give an opportunity to the vendee and the Sub Registrar to project their respective cases on the issue of determination of the value of the land or property which is subject-matter of the deed. He is also required to disclose the evidence collected during the course of enquiry or otherwise and give opportunity to both the parties to support or controvert such evidence.

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9. In the present case, respondent No. 2 determined the value of the property as per the rate fixed by the Collector without giving notice to the petitioners that he proposes to take into consideration the said rate and without considering the evidence produced by them. To put it differently, respondent No. 2 abdicated his discretion, which he was expected to exercise judiciously, to the rate fixed by the Collector and made determination without applying mind to the requirement of Section 47-A(2) of the Act read with Rule 4 of the Rules.

In view of the above, we hold that order Annexure P-3 is violative of Section 47-A(2) of the Act and is also vitiated by an error of law apparent on the face of the record.

10. Coming to the appellate order (Annexure P-5), we find that after making a brief reference to the dispute relating to the value of the property and the contents of the memo of appeal, the Commissioner recorded a bald conclusion that the order passed by respondent No. 3 does not suffer from any infirmity. He did not deal with any of the points raised in the memo of appeal and mechanically endorsed the determination made by respondent No. 3. In our view, such an order is liable to be castigated as a non-speaking order.

11. The requirement of recording of reasons by quasi judicial authorities and communication thereof to the effected person has been treated as an integral part of the concept of fair procedure which even the administrative authorities are required to follow while adjudicating upon the rights of the individuals. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the corner-

stones of our constitutional set up. The administrative authorities charged with the duty to act judicially cannot decide the matters on considerations of policy or expediency. The requirement of recording of reasons by such authorities is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimises arbitrariness in the decision making process. Another reason which makes it imperative for the quasi judicial authorities to give reasons is that their orders are not only subject to the right of the aggrieved persons to challenge the same by filing statutory appeal and revision but also by filing writ petition under Article 226 of the Constitution. Such decisions can also be challenged by way of appeal under Articles 136 of the Constitution of India. The High Courts have the power to issue writ of certiorari to quash the orders passed by a quasi judicial authority/Tribunal. Likewise, in appeal the Supreme Court can nullify such order/decision. The power of judicial review can be effectively exercised by the superior Courts only if the order under challenge contains reasons and we cannot countenance a situation in which the administrative authorities vested with the power to decide the rights of the parties may stultify the power of judicial review vested in the Court simply by not recording reasons in support of their decisions or by refraining from communicating such reasons to the affected person. This is the reason why the Courts have insisted on rigorous compliance of the requirement of recording of reasons and communication thereof by every quasi judicial authority."

15. A similar view had also been taken by another Coordinate Bench in **Mulakh Raj Vs. State of Haryana and others, 2001 (1) PLR 377.** Thus, the present facts are appropriately covered by the said reasoning as such the material collected by the authorities were never put to the appellant and no opportunity was given to rebut the same by leading evidence to the contrary.

16. In such circumstances, we are of the considered opinion that orders passed by the authorities below dated 17.09.2012 (Annexure P-2) and upheld in appeal on 21.01.2013 (Annexure P-4) and the order of the learned Single Judge dated 08.01.2016 are not liable to be sustained. Accordingly, the same are quashed.

17. Liberty is given to the State to issue notice in Form I-A as prescribed under Rule 4 of the 1983 Rules. Thereafter, appellant be also given an opportunity to produce evidence and after taking into consideration the said material, proper prescribed procedure be followed under Rule 4 of the 1983 Rules and a reasoned order be passed by the Collector.

18. The appeal stands allowed in the above said terms.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

21.02.2023
Naveen

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