2023:PHHC:044397-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-849-2017 (O&M)
Date of Decision:13.03.2023

Commissioner, Jalandhar Division, Jalandhar and another

......Appellants

Vs.

Asha Rani

.........Respondent

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

Present: Ms. Deepali Puri, Addl. A.G., Punjab,
for the appellants.

Mr. Rajesh Gupta, Advocate,
for the respondent.

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HARPREET KAUR JEEWAN, J.

1. The present Letters Patent Appeal filed by the State is directed against the judgment dated 08.02.2017, passed by the learned Single Judge in **CWP-8346-2015**, titled **Asha Rani vs. Commissioner, Jalandhar Division, Jalandhar and another**, whereby the order dated 15.11.2012 (Annexure P-3), passed by the Collector, Hoshiarpur, and the order dated 21.03.2014 (Annexure P-5) passed in appeal by the Commissioner Jalandhar Division, Jalandhar, have been quashed.

2. As per the brief facts, the respondent, Asha Rani purchased 1 kanal and 1 marla of land at Village Garhshankar by way of executing the sale deed dated 22.11.2010 (Annexure P-1) and an audit objection was raised that the land is commercial in nature and the Collector rate of such land is ₹3,30,000/- per marla and reference was received by the Collector

Hoshiarpur (hereinafter referred to as “the Collector”), under Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as 'the Act').

3. Receiving notice, the respondent filed the written statement before the Collector alleging that the land is situated on Anandpur Sahib-Garhshankar main Road, near Village Dugri and is agricultural in nature. It was specifically alleged that it is not commercial in nature and is also not situated at Nawanshar main Road.

4. The spot was inspected by the SDM Garhshankar, who submitted the report dated 30.12.2012 (Annexure P-3) that land is situated on Anandpur Sahib-Garhshankar main Road.

5. Considering the said spot inspection report, the Collector rate fixed for the year 2010-11 as per Punjab Stamp (dealing of the under-valued Instruments) Rules 1983 (Ist Amendment), 2002 (hereinafter referred to as 'the Rules') and the fact that the respondent was unable to dispute the factum of the said rates, the Collector held the rate of the land in question as ₹3,30,000/- per marla. As such he ordered for recovery of total amount of ₹3,82,800/- which included deficiency of stamp papers as ₹3,61,800/- and deficiency of registration fee as ₹21,000/-. Along with the recovery of the said amount, interest @ of 12% was also ordered to be recovered.

6. The appeal filed by the respondent was dismissed, vide impugned order dated 21.03.2014 (Annexure P-5) by the Commissioner, Jalandhar Division, Jalandhar.

7. Both the said orders were challenged by the respondents by way of filing CWP-8346-2015 and the learned Single Judge observed that

the enquiry report relied upon by the State counsel is only regarding a sale deed bearing No. 2515, dated 04.11.2011, whereas the sale deed of the respondent is dated 22.11.2010 (Annexure P-1). While placing reliance upon the decisions of the Hon'ble Division Bench of this Court in **Chamkaur Singh vs. State of Punjab** AIR 1991 Punjab and Haryana 26 and **State of Punjab vs. Mahabir Singh** 1996 (1) RR 58, it was observed that the authority below had not undertaken the independent exercise in ascertaining the rates, as such, and the demand was not backed by any foundation. Hence, the demand was quashed.

8. The learned State counsel submitted that the respondent has not affixed proper stamp duty as per the prevalent Collector rate fixed for commercial property. The sale deed was got executed by mentioning lessor value by describing it as agricultural land, whereas, it was commercial property. As such, the order passed by the Collector for recovery of deficiency in the stamp duty was based upon the enquiry conducted. Even in the said enquiry, notice was issued to the respondent and she had filed reply before the Collector. In such circumstances, the findings arrived at by the learned Single Judge that enquiry has not been properly conducted were factually misplaced. Hence, the order was liable to be set aside.

9. On the other land, learned counsel for the respondent submitted that no enquiry was conducted. The sale deed was executed in the year 2010. However, the illegal demand subsequently made on the basis of the audit report has been rightly set aside by the learned Single Judge.

10. We have considered the aforesaid submissions and perused the paper-book. Admittedly, the sale deed was executed on 22.11.2010

(Annexure P-1) for the land measuring 01 kanal and 01 marla comprised of a share of *'Khasra'* No. 82//2/2/3 (3-8) 3 (2-4) 8 (5-24) 6/1 (2-11) 13 (3-3), situated at Garhshankar as per the *'Jamabandi'* for the year 2006-07. Notice was on 24.05.2012 which was decided by the Collector on 15.11.2012 by passing the order Annexure P-3, whereby demand of deficiency in stamp papers and registration fee, total amounting to ₹3,82,800/- was made on the basis of the audit objection and the report submitted by the SDM, Garhshankar.

11. Section 47-A of the Stamp Act, provides a procedure for dealing with the instruments which are under-valued. The said section as applicable to the State of Punjab provides that if the market value of property which is the subject of any instrument on which the duty is chargeable on market value is found less than even the market value as determined in accordance with the Rules made under the 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 the said property and proper duty payable thereon. It further provides that the Collector shall determine the value or consideration after giving opportunity of hearing to the parties and after holding an enquiry. The order passed by the Collector is also appealable, as such, and any person aggrieved by such an order passed by the Collector has a right to prefer an appeal before the Commissioner. Section 47-A of the Stamp Act, 1899 reads as under:-

> ***"47-A. Instruments under-valued how to be dealt with:-***
>
> *[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

[2] <u>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 the rules under this Act, determine the value or consideration and the duty as aforeaid, and the deficient amount of duty, if any,</u> 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 registraton 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 percent per annum, if there was an intentional omission or laps on his part in not setting forth the correct market value of such peroperty.

[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, <u>within a period of three years from the date of the registration of an instrument</u>, callfor 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, if any, would be payable by the person liable to pay 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 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."(emphasis laid)"*

12. The order passed by the Collector, dated 15.11.2022 (Annexure P-3) was primarily based upon the audit objection and the report of the SDM, Garhshankar. There is no question of the respondent having been heard when the audit objection was raised but apart from that, it has to be noticed that even the SDM, Garhshankar, whose report has been relied upon by the Collector had not joined the respondent while submitting his report. His report has been relied upon by the Collector as Annexure R-3 which indicates that neither the SDM had given any notice to the respondent while visiting the spot nor the SDM has heard the respondent. The Collector had also given no opportunity to the respondent to file any objections to the said *ex parte* report. Section 47-A (2) of the Act clearly provides that the Collector has to conduct an enquiry after receiving the reference under sub-section (1) of Section 47-A of the Act. No such enquiry was conducted. Neither the statement of any witness was recorded nor any sale deeds were taken into consideration. As such, the order passed by the Collector, as well as the subsequent order passed in appeal, cannot be held to be in compliance of the provisions of sub-section (2) of Section 47-A of the Act. Hence, the said orders have been rightly set aside by the learned Single Judge.

13. The sale deed was executed on 22.11.2010 after receiving the reference. The demand of the deficiency was raised by the Collector, vide notice dated 24.05.2012 which was within a period of three years from the

date of registration of an instrument, as such within the period of limitation as provided under sub-section (3) of Section 47-A of the Act.

14. We are of the considered opinion, since the action was initiated within a period of limitation, as such, it would be in the interest of justice, if the matter is relegated to the Collector for passing a fresh order in terms of Section 47-A of the Act after holding an enquiry and affording a reasonable opportunity of being heard as envisaged under sub-section (2) of Section 47-A of the Act, rather than quashing the demand out-rightly as has been done by the learned Single Judge.

15. Consequently, the present appeal is allowed. The order passed by the learned Single Judge is modified to the extent that the matter is remanded to the Collector, Hoshiarpur, for fresh decision in terms of Section 47-A of the Act, who after holding an enquiry and affording reasonable opportunity of being heard to the respondent, shall pass a reasoned order.

Pending miscellaneous application (s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

March 13, 2023
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Whether Speaking	Yes
Whether Reportable	No