



CWP-13198-2022

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

(203)

CWP-13198-2022

Date of decision:- 29.07.2024

Yash Garg and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Deepak Kumar Garg, Advocate
for the petitioners.

Ms. Amrita Garg, AAG, Punjab
for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. Instant writ petition has been filed under Articles 226/227 of the Constitution of India *inter-alia* for issuance of a writ in the nature of certiorari for quashing orders dated 03.11.2015, Annexure P-3 and 17.06.2021, Annexure P-10, passed by the respondents-authorities, whereby the petitioners have been fastened with the liability to deposit of Rs.1,29,340/- as deficit stamp duty and registration charges.

2. Brief facts leading to the filing of the petition are that Ishwar Chand, predecessor of the petitioners, had purchased a 30 Sq. Yard residential plot vide sale deed, Annexure P-1, which was registered on 18.02.2013, and sold it to Smt. Suresh Rani, vide registered sale deed dated 08.04.2013, Annexure P-2. On the basis of an internal Audit Report, the sale deed, Annexure P-1, was impounded and proceedings were initiated

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under Section 47-A of the Indian Stamp Act, 1899 (for short “the Act”) for recovery of deficit stamp duty. No notice was served and by an ex-parte order, Annexure P-3, respondent No.3 ordered the recovery of Rs.1,29,340/- from Sh. Ishwar Chand. When a recovery notice dated 01.03.2022, Annexure P-9, was served upon the petitioners, they became aware of the order passed by respondent No.3 and filed an appeal challenging it. However, the appeal was rejected by respondent No.2 vide order, Annexure P-10, as being barred by time.

3. Upon notice issued by this Court, writ petition has been contested by the official respondents by filing a reply.

4. Counsel for the petitioners urges that petitioners are no longer the owner of the property. He submits that similar notices were issued to Smt. Suresh Rani, the subsequent purchaser, who appeared in the proceedings before the Collector-respondent No.3 and by order dated 11.08.2016, Annexure P-8, the matter was consigned to the record. He submits that the petitioners’ case is covered by order, Annexure P-8. Still further, it is his contention that the land was purchased by Iswar Chand, who expired on 29.03.2018, and immediately becoming aware of the order, Annexure P-3, an appeal was filed before the Commissioner, who without examining the merits, has dismissed it on the ground of delay.

5. On the other hand, State counsel has opposed the petition and has submitted that the appeal was hopelessly barred by time.

6. I have heard counsel for the parties and considered their respective submissions.

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7. Order, Annexure P-10, passed by the Divisional Commissioner, Patiala Division, Patiala - respondent No.2, deserves to be noticed and is reproduced hereunder:-

“1. This is an appeal filed under section 47-A of the Indian Stamp Act, 1899, against the order dated: 03.11.2015 passed by Collector Barnala in vasika number 4849 dated: 18.02.2013.

*2. Learned counsel for the appellants was heard at per hearing stage and found that the appeal is hopelessly time barred as the same has been filed after a gap of more than 5 years. The appellants have failed to explain any cogent argument to condone this delay. Thus, the appeal filed by the appellants is liable for dismissal and the same is, hereby, **dismissed being time barred.**”*

8. A perusal of the above reproduction shows that the appellate authority has dismissed the appeal solely on the ground of length of delay. He has not examined the reasons given by the petitioners for approaching the Court late. He has not even noticed that similar notices were issued to the subsequent purchaser, Smt. Suresh Rani and after she appeared and contested the proceedings, the file was consigned to the record vide order, Annexure P-8.

9. In ***Sheo Raj Singh (Deceased) through LRs and others Versus Union of India and another, (2023) 10 SCC 531***, Supreme Court has held that condonation of delay being a discretionary power available to the



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Courts, exercise of discretion must necessarily depend upon the sufficiency of cause shown and degree of acceptability of the explanation, the length of delay being immaterial. Supreme Court has observed that Court should attempt to decide a case on its merits, unless the same is hopelessly sans merit.

10. As the Appellate Authority has neither examined the explanation given by the petitioners for filing the appeal belatedly, nor has it looked into the fact that similar proceedings initiated against the subsequent purchaser have culminated in the passing of order, Annexure P-8, this Court is left with no other option, but to set aside the appellate order, Annexure P-10, and remand the matter to the Appellate Authority for re-determination.

11. Accordingly, impugned order, Annexure P-10, is set aside. Matter is remitted to the Commissioner, Patiala Division, Patiala - respondent No.2 to hear the parties and re-decide the application for condonation of delay and also the appeal.

12. Petition is disposed of.

13. Parties are directed to appear before the Commissioner, Patiala Division, Patiala on 10.09.2024, at 11:00 A.M., for further proceedings.

(SUVIR SEHGAL)
JUDGE

29.07.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No