(1997) 09 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1909 of 1997

Anoop Singh APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 25-09-1997

Acts Referred:

Citation : (1998) 2 PLJ 519 : (1998) 4 RCR(Civil) 556

Hon'ble Judges : N.K.Aggarwal, J

Advocate : Mr. Parmod Goyal, DAG, Haryana., Mr. S.P. Khatri, Advocate., Advocates for appearing Parties

Judgement

N.K. Aggarwal, J.—This is a petition under Articles 226 and 227 of the Constitution, seeking a direction to the State of Haryana and SubRegistrar, Sonepat not to recover the stamp duty amounting to Rs. 96,445/. The petitioner''s agricultural land situated at Village Garhi Brahmanan, District and Tehsil Sonepat was acquired and award was given on May 4, 1995. The compensation amount was paid to the petitioner on May 12, 1995. A notification dated August 11, 1995 (Annexure P1) was issued by the Government of Haryana, in exercise of powers conferred by Section 9(1)(a) of the Indian Stamp Act, 1899 (for short, `the Act''), whereby stamp duty was remitted on sale deeds executed in favour of farmers whose land was acquired by the Haryana Government for public purposes and who purchased agricultural land in the State of Haryana within 1 year of the receipt of compensation. The remission was subject to two conditions one, it was limited to the amount of compensation and, two the farmer had to produce a certificate obtained from the concerned Land Acquisition Collector regarding the acquisition of land and the amount of compensation paid to the farmer.

2. The petitioner''s case is that he had purchased agricultural land in the District of Sonepat out of the amount of compensation within one year from the date of receipt of that amount. Compensation was received by the petitioners on May 12, 1995. Sale deeds were executed by the vendors in favour of the petitioner as

under :

(i) Sale deed No. 4320 in respect of the sale of land for Rs. 4,98,750/ on November 20, 1995.

(ii) Sale deed No. 5825 in respect of the sale of land for Rs. 70,000/ on January 17, 1996, and

(iii) Sale deed No. 5789 in respect of the sale of land for Rs. 67,000/ on January 16, 1996.

3. SubRegistrar, Sonepat registered the aforesaid sale deeds without payment of stamp duty by the parties. However, the Sub Registrar issued three recovery notices to the petitioner on October 28, 1996 for the recovery of the following amounts of stamp duty :

(i) Rs. 77,310/ in respect of the sale deed showing sale consideration of Rs. 4,98,750/,

(ii) Rs. 8,750/ in respect of the sale deed showing sale consideration of Rs. 70,000/, and

(iii) Rs. 10,385/ in respect of the sale deed showing sale consideration of Rs. 67,000/.

4. The petitioner has challenged the notices issued by the Sub Registrar for the payment of stamp duty on 3 sale deeds in question with the plea that at the time of registration of the sale deeds the Sub Registrar had rightly remitted the stamp duty in the light of the notification issued by the State Government. The purchases of land by the petitioner out of the compensation money had taken place after the coming into force of the said notification and were, therefore, fully covered by the notification. Recovery of stamp duty was wrongly being made, taking an incorrect view that exemption from the payment of stamp duty had been granted to those buyers only in whose favour award was given by the Collector after the issuance of the notification i.e. after August 11, 1995. In the case of the petitioner, award had been given on May 4, 1995, much before the date of notification granting exemption.

5. The petitioner''s case is that exemption from the payment of stamp duty was directly relatable to the sale deed and not to the date of the award. Therefore, the date of execution of the sale deed was the relevant date for the purposes of applicability of the notification. The date of award was not at all relevant inasmuch as exemption was to be granted to a buyer of agricultural land keeping in view the date of utilisation of the amount of compensation. Sale deeds in question had been executed after the issuance of notification and, therefore, the sale deeds were governed by the notification. There was no question of giving retrospective effect to notification in the case of the petitioner. The view taken by the Sub Registrar that notification was not applicable to the case of the petitioner because it was not retrospective in effect, is wholly misconceived and based on

an incorrect interpretation. The event of levy or the remission of stamp duty would occur after the issuance of notification whenever a sale deed was presented before the concerned authority for registration. The only relevant question before the Registering Authority would be to find out the sale deed was executed within one year from the receipt of the compensation money. Thus, receipt of compensation was only relevant for the purpose of computing the period of one year. The relevancy is, thus, with regard to the computation of one year and not for making the notification applicable from the date of receipt of compensation by the landowner. If land was purchased by a person from the amount of compensation after the issuance of notification, he would be entitled to get the benefit of exemption on fulfilling the requisite conditions.

6. The plea of the respondents is that the benefit of exemption from the payment of stamp duty was not available to the petitioner because the notification issued on August 11, 1995 was to operate prospectively. That notification was not applicable to the case of the petitioner because the petitioner had received compensation before the coming into force of the notification. Remission was given mistakenly by the Sub Registrar at the time of registering the sale deeds. The State Government clarified the applicability of notification by letter dated October 9, 1996. It was made clear that the notification was not effective retrospectively. It has also been pointed out that the petitioner subsequently deposited stamp duty amounting to Rs. 6,750/ on December 30, 1996 in respect of the sale deed dated January 17, 1996 regarding the sale consideration of Rs. 70,000/.

7. The basic controversy which arises in this petition is with respect to the effect of the notification issued by the State Government on August 11, 1995 in exercise of its power under Section 9(1)(a) of the Act. The said provision reads as under :

"SECTION 9(1)(a)

9. POWER TO REDUCE, REMIT OR COMPOUND DUTY

(1) The Government may by rule or order published in the official gazette

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, by or in favour of any members of such class are chargeable, and

(b) xx xx xx xx

(2) xx xx xx xx"

8. It would, thus appear that the State Government issued a Notification in exercise of the aforesaid power to reduce or remit the whole or part of the duty

payable under the Indian Stamp Act. The Government has the power to reduce or remit the stamp duty retrospectively also. The stamp duty may be remitted in the whole or in the part. Such remission can be granted in respect of any instrument or any particular class of persons or any member of such class. Thus the powers are very wide and the State Government may exercise the power in its discretion within the purview of the aforesaid provision. In the present case the notification was not given retrospective effect. Therefore, the only question which arises for consideration is whether the date of receipt of compensation by the landowner is the relevant date for making the notification applicable or it is the date of execution of the sale deed which would be the relevant date for attracting the notification. As has been seen, the object and purpose of the notification are to grant benefit to landowner who opts to purchase land within one year from the receipt of the amount of compensation. There is no dispute that the petitioner presented the sale deeds after the issuance of notification. Remission from payment of stamp duty was directly relatable to the sale deed and, therefore, there is no question of giving retrospective effect to the notification in the case of the petitioner. The computation of one year from the date of receipt of compensation money is something which is relevant only for the purpose of fixing the outer limit of one year. In this view of the matter, it is incorrect to state that the notification was not applicable to the sale deeds presented by the petitioner subsequent to the issuance of the notification. The exemption was claimed in respect of the purchase of land after the State Government announced the benefit by way of notification. Thus, the petitioner''s plea is found to be acceptable. The petitioner has already paid a sum of Rs. 8,750/ under pressure and threat of recovery. He is, therefore, entitled to refund. The Government''s clarification dated October 9, 1996 (Annexure R3) does not correctly explain the effect of notification dated August 11, 1995. Awards given before the issuance of the notification have been thereby excluded from the purview of the notification. It is the date of purchase of land out of the compensation money which is relevant and, therefore, instructions contained in Annexure R3 are held to be invalid and incorrect in the light of the notification dated August 11, 1995.

In the result, the petition succeeds and the recovery notices issued to the petitioner are quashed. The respondents shall also refund the amount of stamp duty recovered from the petitioner. No order as to costs.

