(2008) 02 P&H CK 0162

In the Punjab And Haryana At Chandigarh

Chaman Singh Bhatoa and Another — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 18-02-2008

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 2 CivCC 447 : (2008) 149 PLR 93 : (2008) 104 RD 673

Hon'ble Judges : Tej Pratap Singh Mann, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing order dated 7.6.2005 (Annexure P.2) passed by the Collector -cum- A.D.C. Hoshiarpur holding that the value of the land in question is Rs. 90,000/- per acre which has been registered at a far less value. As a consequence, defenciecy of stamp duty alongwith registration fee amounting to Rs. 76,716/.- has been ordered to be recovered. The aforementioned order has been upheld by the Commissioner, Jalandhar Division, Jalandhar on 28.12.2006 (Annexure P.4) in an appeal preferred by the petitioner. It has been held that the sale deed was executed after a lapse of 9 years from the date of execution of agreement to sell. After 9 years, the nature of the land has undergone change and the value has also increased which is to be determined at the prevailing rates for which the land is sold in the open market. The plea raised by the petitioner that the date of agreement for the purpose of assessment of stamp duty should be accepted has been rejected by holding that already a lenient view has been taken by the Collector and instead of assessing the land @ Rs. 1,60,000/- per acre being chahi land the assessment has been made at the value of Rs. 90,000/- per acre.

2. In the written statement the stand taken by the respondent is that agreement of sale has been ante-dated by the vendor who is mother of the vendee which is recorded on plain paper. It has further been pleaded that agreement of sale which is usually recorded by a Deed Writer has been written on an ordinary

paper (Annexure R/1 and R/2).

3. We have heard learned Counsel for the parties and perused the record. The only question which arises for determination of this Court is whether the date of agreement to sell could be the basis for calculating and determining the market value of the land for the purpose of assessing the stamp duty and registration fee. The answer to the afore-mentioned question is not far to seek because Hon''ble the Supreme Court in the case of State of Rajasthan v. Khandaka Jain Jewellers 2008(1) RCR 91 has held that stamp duty on sale of Immovable property has to be assessed on the market value at the time of such sale and not at the time of agreement to sell nor at the time of filing of the suit. The two instruments namely agreement to sell and sale deed are entirely different in nature, content and effect. Interpreting Section 47A of the Stamp Act,1952 (as amended by the State of Rajasthan), it has been observed that although the instrument has to be registered as per the ostensible value but Section 47A of the Act confers ample power on the Collector to assess market value of such land. It has been categorically observed in para 10 of the judgment that market value of the instrument has to be seen at the time of execution of the sale deed and not at the time when agreement of sale was entered into. It has been further held that a taxing statute is not to apply upon contingent based on the convenience of the parties and that it has to be construed strictly.

4. In view of the above, the writ petition fails and the same is dismissed.