
(2011) 08 P&H CK 0202

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No.20304 of 2009 (O and M)

Gian Singh and Another

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

Citation : (2011) 164 PLR 373

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.

CM No.11317 of 2011

1. Application for placing on record the replication to the counter affidavit filed by the respondents 1 to 3 is allowed and the same is taken on record.

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2. The petitioners challenge the order passed by the Appellate Authority under the Stamp Act, rejecting the plea of the petitioners that they were entitled to the benefit of the amendment brought about in Punjab Stamp (Dealing of undervalued instruments) Rules of 1983. This was done through a notification issued on 02.03.2009 and extended again by an order notification on 28.05.2009 and still later by yet another notification dated 25.08.2009. The dispute is with reference to the valuation date which is relevant for the purpose of collection of stamp duty and registration charges for property obtained by a person through a public auction of property offered by Punjab Urban Development Authority (PUDA). The petitioners were such allottees from PUDA now called Greater Mohali Area Development Authority (GMADA) and the price was payable in several installments, the last of which fell on 07.09.2005. The document had not been immediately made, but the petitioners got a sale deed executed on

03.07.2008 and presented for registration. The petitioners had recited the value as paid through various installments, while the Collector on a reference u/s 47-A demanded that the valuation shall be made at the Collector's rate as on the date when it was presented for registration. Against the Collector's decision, the petitioners had preferred an appeal to the Financial Commissioner and when it was pending, a notification had been issued on 02.03.2009 bringing about an amendment to the Rules that explained the market value of a property which would be the Collector's rate as the rate fixed by the Government or Government organization. This was further subject to a proviso which is the subject for an adjudication in this writ petition.

3. The amendment rule brought through the notification dated 02.03.2009 reads as under:-

1. These rules may be called the "Punjab Stamp (Dealing of under valued instruments) Rules, 1983.

2. In the Punjab Stamp (Dealing of under valued instruments) Rules, 1983 in rule 3-A after the existing note, the following explanation shall be inserted:-

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 by the original allottee within three months from issue of this notification or within three months from the payment of last installment as per schedule of payment of such allotment.

4. The last portion of the amended rule is relevant, for, it contemplates two situations: (i) where the document is got registered by the original allottee within 3 months from the issue of the notification. This situation does not apply to this case, since the document was not got registered after 02.03.2009 within a period of 3 months. On the other hand, it had been presented for registration even on 03.07.2008, (ii) The second contingency which the amended rules provides is that, it should be a document that is got registered within 3 months from the payment of the last installment as per the schedule of payment of such allotment. The contingencies, therefore, that provide for a deeming fiction that the Collector's rate would be taken as value as on the date when it is got registered within a period of 3 months either from the date of notification or from the last installment could only be construed strictly as brought out through amendment itself. The learned counsel for the petitioners would contend that there had been no finality of the stamp duty payable and so long as there was an appeal pending before the Financial Commissioner, the benefit of the notification should always be applied. I am afraid, I cannot accept this contention, for, such an argument is really bringing a third new contingency which the rules do not provide. If the language of the amended rule were to be in relation to a

document for which the determination of the stamp duty is not yet finally made, then the application of such deeming fiction would be possible. On the other hand, if the Rules provide for two contingencies, it is irrelevant that there was any proceeding pending at the time when the notification was made. A power to reopen the issue of undervaluation suo motu by the Registering Officer is available under the Punjab Stamp (Dealing of Undervalued) Rules, 1983 within a period of 3 years. The said amendment to Section 47-A reads as follows:-

Haryana.- Section 47A inserted in Haryana.- Section 47A.- Instruments undervalued, how to be dealt with,- (1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property, has reason to believe that the value of the property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value or consideration, as the case may be, and the proper duty payable thereon.

(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, or on receipt of reference from the Inspector-General of Registration or the Registrar of a district, in whose jurisdiction the property or any portion thereof which is the subject-matter of the instrument is situate, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, not already referred to him under subsection (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reason to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty:

Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from date of the order, prefer an appeal before the District Judge and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act"

Punjab.- Section 47-A inserted in Punjab.- Same as in Haryana except for the

following differences -

(1) in sub-section (1) for "transferring any property", read "relating to the transfer of any property". And for the words, "determination of the value or consideration", read "determination of the value of the property or the consideration."

(2) in sub-section (3) for "three years" read "two years" and omit proviso.

(3) Add the following explanation:- For the purposes of this Act, 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.

5. It is a known rule of interpretation that the taxing laws that generate revenue for the State have to be strictly construed and if there is a certain benefit that is extended for any person, he has to come within the four corners of the benefit which the particular provision in the Act of the Rules provide for. In my view, there is no scope for application of the amended rule of the petitioner's case, since neither of the two contingencies for the applicability for the Rules exist.

6. The writ petition is dismissed.