(2016) 04 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 3735 of 2014

Nirmal Singh and another — APPELLANT

Vs

Commissioner, Faridkot Division, Faridkot and others — RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : (2016) 2 LAR 142

Hon'ble Judges : Mr. Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : Mr. Aakash Singla, Advocate, for the Appellant; Mr. V. Ramswaroop, Addl. A.G., Punjab, Mr. A.S. Brar and Mr. I.S. Brar, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Rakesh Kumar Jain, J.(Oral) - This order shall dispose of two petitions bearing CWP No.3735 and 3739 of 2014 as the issue involved in both cases are the same. However, the facts are being extracted from CWP No.3735 of 2014.

2. The petitioners purchased land measuring 73 Kanal 04 Marlas, situated at village Araianwala Kalan, District Faridkot vide Vasika No.474 dated 05.05.2008 for a consideration of Rs. 36,60,000/-. A complaint was alleged to have been made by respondent No.3 for undervaluation of the land, on the basis of which action was initiated under Section 47-A of the Indian Stamp Act, 1899, as applicable to the State of Punjab (hereinafter referred to as the `Act'') on 07.07.2011. The Collector, vide his order dated 04.05.2012, asked for recovery of additional stamp duty of Rs. 1,34,960/- on the ground that the sale deed has been registered for a sum of Rs. 36,60,000/-, whereas as per the agreement, the deal was struck @ Rs. 6,95,000/- per acre and the sale deed should have been got registered for Rs. 63,58,152/- and, thus, was registered at a less value of Rs. 26,98,152/-. The order of Collector was challenged in appeal, which was also dismissed on 17.07.2013.

3. Counsel for the petitioners has submitted that the action initiated by the respondents was time barred as it has been initiated under Section 47-A (3) of the Act, which provides a period of three years from the date of registration of the instrument. In support of his submission, counsel for the petitioners has relied upon various judgments of this Court in the cases of Nirmala Devi v. State of Punjab & ors., CWP No. 6396 of 2014, decided on 08.02.2016, Vikas v. State of Haryana and others, 2008(2) R.C.R. (Civil) 526, Sanjay Gupta and another v. State of Haryana and others, 2014(24) R.C.R. (Civil) 27 and Sub Registrar, Nuh and another v. Mahipal and others, 2011(3) PLR 422.

4. On the other hand, the stand taken by the respondents is that the complaint was received on 16.03.2011 and the notice was issued on 07.07.2011, therefore, the action initiated under the provisions of law was within the period of limitation.

5. I have heard learned counsel for the parties and examined the available record.

6. In order to appreciate the case set up by the parties, it would be relevant to refer to Section 47-A of the Act, which 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 property duty payable thereon; and

(2) 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 rules 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 from the date of registration 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 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.

(3) The Collector may, suo moto, 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 authorised by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for 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 charge ability 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, along with interest at the rate of 12% per annum on such deficient amount, would be payable by the person liable to pay the duty from the date of registration 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 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."

7. Admittedly, the sale deed was executed on 05.05.2008 and the notice was issued on 07.07.2011, after the period of three years according to the petitioner, whereas according to the respondents, it is within the period of three years because the complaint was received on 16.03.2011. In Vikas''s case (supra), the Division Bench of this Court has held that the limitation is not to be counted from the date of audit objection or the complaint but from the date of its communication to the person affected.

8. In the present case, admittedly the action has been initiated vide notice dated 07.07.2011 which was beyond a period of three years from the date of registration of the instrument i.e. sale deed dated 05.05.2008 and, thus, it was totally time barred.

9. In view thereof, there is hardly any reason to uphold the impugned order(s) passed by the Authorities below and hence, both the writ petitions are hereby allowed and the impugned order(s) are set aside.