(2015) 10 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : CR No. 6542 of 2011 (O&M)

Nirmal Singh and Others APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Registration Act, 1908 — Section 23, 29, 52
Stamp Act, 1899 — Section 47(3)

Citation : (2016) 1 RCR(Civil) 876

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : Mani Ram Verma, for the Appellant; Samarvir Singh, Deputy Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kuldip Singh, J—Challenged in the present revision petition is the order dated 26.04.2011 passed by the Commissioner, Hisar Division, Hisar, upholding the order dated 23.05.2008 passed by SDO(Civil)-cum-Collector, Fatehabad.

2. Brief facts of the case are that the present petitioners purchased 16 kanals land, situated at village Dhani Tahaliwali vide sale deed dated 4241, dated 04.01.2008. The sale consideration was mentioned as Rs. 6,00,000/-. The sale deed was registered in the office of Sub Registrar, Fatehabad. During the inspection of Circle Stamp Auditor, Fatehabad, it was pointed out that there is deficiency of Rs. 54,000/- as stamp duty. Therefore, the Sub Registrar, Fatehabad issued a letter No. 159, dated 23.05.2008 asking SDO(Civil)-cum-Collector, Fatehabad for taking action under Section 47-A of the Indian Stamp Act, 1899 (in short ''the Stamp Act''). As such, the Collector, Fatehabad passed an order dated 16.01.2009 that the Collectorate Rate prevalent in the year 2007-08 for the Nehri agricultural land was Rs. 6,00,000/- per acre and under that rate value of the purchased land comes to Rs. 12,00,000/-. In this way, the stamp duty comes to Rs. 72,000/- @ 6%. The stamp duty of Rs. 36,000/- has

already been paid. Therefore, the vendees are liable to pay Rs. 36,000/- as stamp duty. The order was challenged before the Commissioner, Hisar Division, Hisar and the appeal was dismissed on 26.04.2011.

3. I have heard learned counsel for the parties and have also carefully gone through the case file.

4. In this case, admittedly, the sale deed was registered on 04.01.2008 and the value as mentioned by the parties was accepted by the Sub Registrar, Fatehabad. It was only on 23.05.2008 that the Sub Registrar sent the letter to the Collector, Fatehabad for taking action under Section 47-A of the Stamp Act on the ground that the Circle Stamp Auditor, Fatehabad during inspection found the deficiency of Rs. 54,000/- as stamp duty. The Collector, accordingly, assessed that there is deficiency of Rs. 36,000/- and the same was ordered to be paid.

5. Now, legal question would arise as to whether after the registration of the sale deed, the Sub Registrar can refer the matter to the Collector under Section 47-A of the Indian Stamp Act, 1899?

6. Section 47-A of the amended Indian Stamp Act provides as under:

"47-A. Under-valuation of the instrument.--

(1)(a) If the market value of any property which is the subject of any instrument, on which duty is chargeable on the market value of the property as set forth in such instrument, is less than even the minimum value in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908, (Act No. 16 of 1908), notwithstanding anything contained in the said Act, immediately after presentation of such instrument and before accepting it for registration and taking any action under Section 52 of the said Act, require the person liable to pay stamp duty under Section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with Section 23 of the Registration Act, 1908.

(b) When the deficit stamp duty required to be paid under clause (a) is paid in respect of any instrument and the instrument is presented again for registration, the Registering Officer shall certify by endorsement thereon, that the deficit stamp duty has been paid in respect thereof and the name and the residence of the person paying them and register the same.

(c) Notwithstanding contained in any other provisions of this Act, the deficit stamp duty may be paid under clause (a) in the form of impressed stamps containing such declaration as may be prescribed.

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in clause (a) and presents the instrument again for registration, the registering officer shall, before registering the instrument refer the same to the Collector, for determination of the market value of the property and the proper duty payable thereon.

(2) On receipt of a 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 market value of the property which is the subject of such instrument and the proper duty payable thereon.

(3) the Collector may, suo motu, or on a reference from any Court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or from a Deputy Commissioner of Stamps or from an Assistant Commissioner of Stamps or any officer authorized by the State Government in that behalf, within four years from the date of registration of any instrument on which duty is chargeable on the market value of the property, not already referred to him under sub-section (1), call for an examine the instrument for the purpose of satisfying himself as to the correctness of the market value, of the property which is the subject of such instrument and the duty payable thereon, and if, after such examination, he has reason to believe that market value of such property has not been truly set forth in such instrument, he may determine the market value of such property and the duty payable thereon:

Provided that, with the prior permission of the State Government, an action under this sub-section may be taken after a period of four years but before a period of eight years from the date of registration of the instrument on which duty is chargeable on the market value of the property.

Explanation: The payment of deficit stamp duty by any person under any order of registering officer under sub-section (1) shall not prevent the Collector from initiating proceedings on any instrument under sub-section (3).

(4) If on enquiry under sub-section (2) and examination under Sub-section (3) the Collector finds the market value of the property-

(i) truly set forth and the instrument duly stamped, he shall certify by endorsement that it is duly stamped and return it to the person who made the reference;

(ii) not truly set forth and the instrument not duly stamped, he shall require the payment of proper duty or the amount required to make up the deficiency in the same together with a penalty of an amount not exceeding four times the amount of the proper duty or the deficient portion thereof.

*[(4-A) The Collector shall also require alongwith the deficit stamp duty or penalty required to be paid under clause (ii) of sub-section (4), the payment of a simple interest at the rate of one and half percent per mensem on the amount of deficit stamp duty calculated from the date of the execution of the instrument till the date of actual payment:

Provided that the amount of interest under the sub-section shall be recalculated if the amount of deficit stamp duty is varied on appeal or revision or by any order of a competent Court or Authority.

(4-B) The amount of interest payable under Sub-section (4-A) shall be added to the amount due and be also deemed for all purposes to be part of the amount required to be paid.

(4-C) Where realisation of the deficit stamp duty remained stayed by any order of any Court or Authority and such order of stay is subsequently vacated, the interest referred to in sub-section (4-A) shall be payable also for any period during which such order of stay remained in operation.

(4-D) Any amount paid or deposited by or recovered from, or refundable to, a person under the provision of this Act, shall first be adjusted towards the deficit stamp duty or penalty outstanding against him and the excess, if any, shall then be adjusted towards the interest, if any, due from him.]

(5) The instrument produced before the Collector under sub-section (2) or under sub-section (3) shall be deemed to have come before him in the performance of his functions.

(6) In case the instrument is not produced within the period specified by the Collector, he may require payment of deficit stamp duty, if any, together with penalty on the copy of the instrument in accordance with the procedure laid down in Sub-sections (2) and (4)."

7. A perusal of Section 47A-1(a) of the Act would show that if any deficiency of stamp duty is found, the same is to be charged before accepting it for registration. Only on the payment of deficiency of stamp duty, the document is registered. Under Clause 1(d), if the deficient stamp duty is not made good in terms of order referred in clause (a), the Registering Officer shall refer the instruction to the Collector for determination of the market value of the property and the proper duty payable thereon.

8. It was under Clause 3 that the Collector may suo motu, or on a reference from any court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or from a Deputy Commissioner of Stamps or any officer authorized by the State Government in that behalf, within four years from the date of registration call for examination or the instrument.

9. However, in this case, it is apparent that the Sub Registrar referred the matter to the Collector apparently under Section 47-A of the Stamp Act. Once the document is registered, such reference cannot be made as clear from the bare perusal of the section itself. The matter has already been examined by this Court in Sub Registrar, Nuh and Another Vs. Mahipal and Others, (2011) 163 PLR 422 .

10. I am of the view that in this case, the document was already registered on 04.01.2008. Therefore, the Sub Registrar was not competent to make reference under Section 47-A of the Stamp Act to the Collector for recovery of the

deficiency of stamp duty. As such, the impugned order dated 26.04.2011 passed by the Commissioner, Hisar Division Hisar, affirming the order dated 23.05.2008 passed by the Collector, Fatehabad, are set aside.

11. Accordingly, the present revision petition stands allowed.

12. However, it shall always be open to the Collector to proceed under Section 47(3) of the Stamp Act, if so, permissible.

*inserted by Uttar Pradesh Act No. 38 of 2001 with effect from 20-5-2002.