
(2010) 12 SHI CK 0329

In the High Court Of Himachal Pradesh

Case No : CMPMO No's. 461 and 483 of 2009

Seema Chauhan

APPELLANT

Vs

State of HP and Others

RESPONDENT

Date of Decision : 27-12-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Stamp (Himachal Pradesh Amendment) Act, 1988 — Section 47A, 47A(1), 47A(2), 47A(3)

Citation : (2010) 12 SHI CK 0329

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—Both these petitions are being disposed of by a common judgment, since common questions of law and fact are involved in these cases.

2. Briefly stated, the facts of the case are that the Petitioner purchased 27-11 bighas of land through two sale deeds No. 352 and 353 in Mauza Deori, Hadbast No. 98, Pargana Basal, Tehsil Kasauli, District Solan. These sale deeds were duly stamped and registered by the Sub Registrar. A show cause notice was issued to the Petitioner u/s 47-A of the Indian Stamp (Himachal Amendment) Act, 1988. In this show cause notice it was stated that an Audit Party in their audit report had pointed out that the stamp duty affixed on the sale deeds was deficient and not in accordance with the market value of the property. The Petitioner filed reply to the show cause notice and submitted that the stamp duty and registration charges had been paid by assessing the value of the property as per one year average value issued by the Patwari for the relevant area. It was alleged that the objections of the Audit Party were wrong.

3. Both parties were permitted to lead evidence. The State relies on the report of the District Revenue Officer dated 27.12.2006. This property was initially known as a TB Sanitorium and consisted of a large number of old buildings. It is

situated on the State Highway. The property in question is very close to Kasauli. The District Revenue Officer was of the view that this property could be used as a Hotel or Resort and he, therefore, came to the conclusion that the amount of Rs. 30 lacs for the entire property reflected in the two sale deeds was not the the property as assessed by the Audit Party was only Rs. 1,29,55,000/-, whereas if the property was put to auction it could have fetched even more than Rs. 5 crores. According to the audit report the deficiency in the stamp duty was to the tune of Rs. 11,94,600/-. The Collector after considering the entire evidence led before him came to the conclusion that the value of the land which was part and parcel of the house could not be calculated on the basis of the land revenue payable and the market value had to be assessed by seeing that the property was a huge house and land apparent therewith and came to the conclusion that in the sale deed No. 352 there was deficiency of Rs. 2,56,380/-and in sale deed No. 353 deficiency of Rs. 1,69,020/-, therefore a total amount of Rs. 4,25,400/- was payable by the Petitioners after deducting the stamp duty and registration fee already paid.

4. Appeal was filed against this judgment in the Court of the learned Addl. District Judge, Solan who dismissed the same vide judgment dated 24.3.2009. Hence these two petitions.

5. In proceedings under Article 227 of the Constitution of India this Court only exercises supervisory jurisdiction. Therefore, this Court can interfere only where the impugned orders are perverse or are wholly illegal or where the authority has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction vested in it by law.

6. The main ground urged before the learned Lower that there is no provision whereby a complaint can be made to the District Collector that less stamp duty has been paid. In CMPMO No. 107 of 2009 titled as State of Himachal Pradesh v. M/s A.K. Turners Pvt. Ltd. CMPMO No. 107 of 2009, decided on 1st September, 2010 this Court has dealt with the scope and ambit of Section 47-A of the Act and also considered the judgment of this Court in Harcharan Singh Gill v. State of H.P. and others, Latest HLJ 2003 (HP) 489.

7. A bare perusal of Section 47 shows that an objection regarding valuation of the sale deed can be raised u/s 47-A(1) at the time when the same is registered and reference is made to the Collector and then the Collector shall act u/s 47-A(2). Section 47-A(3) empowers the Collector to suo moto or on receipt of a report from the Inspector General of Registration or Registrar having jurisdiction over the District to take action within 3 years from the date of the registration of instrument. The Collector in this case exercised powers u/s 47-A(3). It is contended by Mr. K.D. Sood that the assessment has not been properly made by the authorities below. These are pure questions of fact and what is the assessment to be made is a factual issue which cannot be gone into in these proceedings, unless it is shown that the assessment is totally perverse. Therefore, I find no merit in these petitions, which are accordingly rejected. No

costs.