(2008) 02 P&H CK 0294

In the Punjab And Haryana At Chandigarh

Smt. Chand Kaur and Others — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 18-02-2008

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : AIR 2008 P&H 136 : (2008) 152 PLR 355 : (2008) 3 RCR(Civil) 776

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

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This order shall dispose of CWP Nos. 204 and 235 of 2007, as common questions of law and facts are involved in both these petitions. The facts are being referred from CWP No. 204 of 2007.

2. The petitioners have prayed for quashing of order dated 28-8-2006 (Annexure P7), passed by the Tehsildar, Pehowa, exercising the powers of Registrar, under the Registration Act, 1908 and Indian Stamp Act, 1899 (for brevity ''the Act''). The petitioners are transferees of property by virtue of a release deed dated 12-6-2000 (Annexure P5). An audit objection is said to have been raised and it was noted that there was deficiency in payment of stamp duty amounting to Rs. 6,43,750/- which became recoverable. On the basis of the aforementioned audit objection, respondent No. 4 Tehsildar, Pehowa, exercising the powers of Registrar, issued a notice to the petitioners on 28-8-2006, calling upon them to deposit afore said deficient amount within a period of 15 days, failing which it was to be recovered as arrears of land revenue.

3. In the written statement filed by respondent Nos. 1 to 4, the principal stand taken is that the present petition is not maintainable, as the remedy of appeal pro vided u/s 47-A of the Indian Stamp Act has not been availed of by the petitioners and as such, they be relegated to the remedy of said appeal. It has also been pointed out that a letter dated 14-9-2001 was addressed to the

petitioners, after the audit party had issued directions, but the aforementioned communication was received by one Ram Phal son of Jagat Ram, a close relative of the petitioners. The release deed was not supported by any document to prove that the property was ancestral in character. Eventually, impugned order dated 28-8-2006 (Annexure P-7) has been passed by respondent No. 2, calling upon the petitioners to pay the deficient stamp duty amounting to Rs. 6,43,750/-.

4. After hearing learned Counsel for the parties and perusing their pleadings with their able assistance, we are of the considered view that this petition deserves to succeed. u/s 47-A(3) of the Indian Stamp Act, 1899, it is only the Collector appointed under the Registration Act, 1908 who could proceed to recover the deficient stamp duty. He could proceed on his own motion or on receipt of reference from the concerned officers. There is further limitation of three years on the powers of the Collector to effect the recovery. The period of three years is to commence from the date of the registration of the document. In the present case, the order has been passed by respondent No. 4 Tehsildar, Pehowa, exercising the powers of Registrar, after lapse of about six years from the registration of the release deed (Annexure P-5). He has no authority by virtue of Section 47-A(3) of the said Act to pass such order. In any case, no action could have been initiated after a period of three years. Therefore, the impugned order is palpably unsustainable and is, thus, liable to be set aside. In view of the above, the writ petition is allowed and the impugned order dated 28-8-2006, passed by respondent No. 4 (Registrar) is set aside. The petitioners shall be entitled to costs, which is assessed as Rs. 5000/-. The amount of the costs shall initially be paid to the petitioners by State of Haryana respondent No. 1, but the same shall be recoverable from the erring Officer(s), who has indulged in fragrant violation of the express provisions of the Act.

