
(2008) 09 P&H CK 0092
In the Punjab And Haryana At Chandigarh

Sukhjot Singh Cheema, Advocate and Others

APPELLANT

Vs

Punjab Urban Planning and Development Authority and
Others

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Stamp Act, 1899 — Section 2, 3, 47, 75

Citation : (2008) 152 PLR 484 : (2009) 1 RCR(Civil) 337

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of Civil Writ Petition No. 1 1530 of 2005, 19922 of 2006, 18722 of 2007 and 4084 of 2008, wherein identical questions of law have been raised out of similar facts. In all these cases, the petitioners are the allottees or the purchasers from the State Government or one or other instrumentalities of the State of a piece of plot. Though the allotments were made some time past, but when the petitioners sought registration of the conveyance deed/title deed, the Sub Registrar has sought stamp duty on the basis of market value of the land at the time of registration of the documents. It is the case of the petitioners that such Stamp Duty on market value has been claimed on the basis of a circular issued by the Department of Revenue and Rehabilitation (Stamp and Registration Branch), Chandigarh, which is to the following effect:

Copy of letter No. 24/96/2001-ST-2/4593, dated 22.10.2002 from Department of Revenue and Rehabilitation (Stamp and Registration Branch) Chandigarh to the Deputy Commissioner (Collector) etc.

Subject: Levy of Stamp Duty on instrument(s) of transfer/conveyance deed executed by the Punjab Urban Development Authority in favour of the allottees.

I am directed to refer to the subject noted above and to say that Section 47-A(1)

of the Indian Stamp Act, 1899, as amended vide notification No. 24 Leg./2001, dated 21.12.2001, inter alia, lays down that 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 Collector for determination of the market value of such property and the property duty payable thereon.

2. The Registering Officer have generally been complying with the provisions aforesaid while levying stamp duty on the instruments relating to the transactions of immovable property presented for registration by the public at large. However, it has come to the notice of the State Government that the same criteria is not being followed while registering the instruments executed by the Punjab Urban Development Authority in favour of the allottees. In such cases the price fixed by the PUDA at the time of original allotment of the property in question is being taken into consideration for the purpose of levying of stamp duty. This practice evidently is not in conformity with the aforesaid provisions of Section 47-A of the Act *ibid*. Moreover, the price of the land/property as fixed by the PUDA at the time of the original allotment does not necessarily represent the actual market value prevailing at the time of registration of the conveyance deed. The action of Registering Officers to levy stamp duty on the basis of price fixed by the PUDA many years back at the time of original allotment also results into avoidable revenue loss to the State Exchequer.

3. It is, therefore, directed that the practice being followed by the Registering Officer to levy stamp duty on the basis of price of land/property fixed by the Punjab Urban Development Authority at the time of original allotment be discontinued where it does not match the market value at the time of registration of the relevant instruments and compliance of the above said statutory provision be ensured in letter and spirit strict action may be taken against the officers found to be not complying with the above said provisions.

4. The receipt of this letter may also be acknowledged.

2. Since the questions raised are identical, for the facility of reference, the facts are taken from C.W.P. No. 11530 of 2005. In the aforesaid case, House No. 984, Sector 3, Ajnala Road, Amritsar was allotted to the petitioner by the Punjab Housing Development Board, Chandigarh, on 4.10.1988 at price of Rs. 2,20,590/-. The petitioner was required to pay a sum of Rs. 1,00,000/- as claimed, before delivery of possession and the balance was payable in 156 monthly installments.

3. On completion of instalments, the petitioner sought execution and registration of the conveyance deed but the petitioner was directed to deposit stamp duty at the market value of Rs. 6,000/- per square yard. The assertion of the petitioner is that stamp duty is payable on the sale consideration of Rs. 2,20,590/-.

Reliance was placed upon Section 3 of the Indian Stamp Act, 1899 (for short "the Act") contemplating that the stamp duty is payable on the amount of consideration. The relevant provisions of the Act read as under:

2(10) "Conveyance" - "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule 1 or by Schedule I-A or by Schedule 1-B, as the case may be;

3. Instruments chargeable with duty.- Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say -

(a) every instrument mentioned in that Schedule, which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

(b) to (c) x x x x x x x x x x

Provided that, notwithstanding anything contained in Clause (a), (b) or (c) of this Section or in Schedule I, and subject to the exemptions contained in Schedule I-A, the following instruments shall be chargeable with duty of the amount indicated in Schedule I-A as the proper duty therefore, respectively, that is to say-

(aa) every instrument mentioned in Schedule I-A as chargeable with duty under that Schedule, which, not having been previously executed by any person is executed in Punjab on or after the date of commencement of this Act.

(bb) xx xx xx xx xx xx

Schedule-I Description of Instrument Proper Stamp Duty 23. Conveyance, [as defined by Section 2(10), not being a transfer charged or exempted under (No. 62) Where the amount of value of the consideration for such Eight Annas conveyance as set forth therein does not exceed Rs. 50/-; Where it exceeds Rs. 50/- but does not exceed Rs. 100/-. One Rupees. Schedule I-A (For Punjab) Description of Instrument Proper Stamp Duty 23. Conveyance as defined by Section 2(10) not being a transfer charged or exempted under No. 62. Where conveyance Other Conveyances Amounts to sale of Immovable Property (a) (b) 123 Where the value or amount of Three Rupees Two Rupees the consideration for such conveyance as set forth therein does not exceed Rs. 50/-; For Punjab:

27. Facts affecting duty to be set forth in instrument.- (1) The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

(2) In the case of instruments relating to immovable property chargeable with an ad valorem on the value of the property, and not on the value set forth in the

instrument, the instrument shall fully and truly set forth, the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property, the local rates, municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act.

4. Learned Counsel for the petitioner has vehemently argued that in terms of Section 3 of the Act read with Entry 23 in Schedule 1-A of the Act, stamp duty is payable on the amount of consideration. The amount of consideration in respect of sale or allotment by the State or its instrumentalities is not subject to any dispute, therefore, stamp duty is payable on the sale consideration recited in the letter of allotment or such other similar document stipulating the sale consideration. It is contended that certain State Governments have made amendments in the Act levying stamp duty on the market value on the date of registration of the instrument but in the absence of provision in the Statute, the petitioner cannot be made liable to pay stamp duty on the market value of the property as on the date of registration of the instrument.

5. In C.W.P. No. 18722 of 2007, the petitioner has relied upon instructions dated 3.6.2008, Annexure P-6 issued by the Punjab Government, Revenue and Rehabilitation Department, Stamp Registration Branch, to the effect that if any plot is allotted according to any scheme or policy of the Government then the registered deed/conveyance deed of such land is to be executed not on the collector rate rather it is to be taken on the value paid to the Government. The relevant instructions, when translated in English, read as under:

To All Collectors (Deputy Commissioners) in State, Chandigarh, dated 3.6.2008.
Sub: Regarding stamp duties on conveyance deed registration deed on the lands allotted by the Government. Sir On the subject cited above, I have been directed to invite your attention and it is instructed that under the provisions of Section 47-A of the Indian Stamp Act, 1899 and Punjab Government Rules 1983 for valuation of instruments, if according to it any registration deed for such land is executed, then the documents are valued by you and the registration fee is also assessed by you.

2. In this regard, it has been brought to the notice of the Government that if according to any scheme or policy of the Government, any plot is allotted then the plots allotted by virtue of such policy, the value is fixed by Government and the full value is paid in instalments then the registered deed/conveyance deed of such land is issued by Government in favour of the owner are produced by the Registrar for registration, however, at the time of registering officer demands the stamp duty of such property according to the Collector rates; ignoring the allotted value of the land.

3. In this regard, it has been decided by the Government that if land is allotted by the Govt. in any policy then the stamp value of such registration deed is not to be taken on the collector rate rather it is to be taken on the value paid by the

Government.

In this regard, immediate action be taken and if any sale deed of the allotted plots is to be taken into account then value received by the department be considered for registration of deeds.

Yours faithfully, Sd/-Bhag Singh Under Secretary, Revenue & Rehabilitation Department, Stamp Registration Branch.

6. Learned Counsel for the petitioners contend that the Collector's rate has been found to be inadmissible and unworthy of reliance for determining the market value as such rate has no statutory sanction. Reliance has been placed upon Chamkaur Singh and Anr. v. The State of Punjab and Anr. 1991 P.L.J. 249; State of Punjab and Others Vs. Mohabir Singh etc. etc., and Inderjit Singh v. Punjab State (1997) 136 P.L.R. 759. The learned Counsel have also has referred to Naresh Kumar and Ors. v. State of Haryana and Anr. 2004 (4) R.C.R. 217; Mulakh Raj Vs. State of Haryana and others, and Rajeev Passi Vs. The Commissioner, Rohtak Division and Others, to contend that stamp duty is payable as per the sale consideration recited in the instrument of sale.

7. Learned Counsel for the respondents have relied upon Section 47-A of the Act, as amended by the Punjab Act No. 21 of 1982, to argue that if the market value of any property is less than the minimum value as determined in accordance with the rules made there under on the date of registration of the instrument, then the registering officer can make reference to the Collector for determination of the market value of such property and the proper duty payable thereon. Therefore, it is contended that stamp duty is payable on the market value of the property on the date of registration of instrument in respect of which instrument is sought to be executed and not as per sale consideration recited in the letter of allotment or such other document of conveying the property. Reliance was placed on the Explanation in Section 47-A of the Act. It is further contended that the judgments relied upon by the petitioners, arising out of registration of instruments executed in Punjab, were before the amendment of Section 47-A(1) of the Act vide Act No. 14 of 2001 and before the insertion of Rule 3-A in the Punjab Stamp (Dealing of Undervalued Instruments) Rules 1983 (for short "1983 Rules") vide notification dated 23.8.2002. Therefore, the judgments referred to by the petitioners are not applicable to the changed circumstances.

8. Section 47-A of the Act contemplates demand of deficient stamp duty, if the instrument is not sufficiently stamped as per the market value of the property on the date of registration of the instrument. For the facility of reference, Section 47-A is reproduced hereunder:

For Punjab.

Section 47-A of the Act, as inserted by Act No. 21 of 1982, reads as under:

47-A. (1) If the Registering Officer appointed under the Registration Act, 1908 (Central Act No. 16 of 1908) while registering any instrument relating to the

transfer of any property has reason to believe that the value of the property or 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 of the property or the 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 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.

3 and (4) xxxx

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 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.

(emphasis supplied).

However, vide Act No. 14 of 2001, Sub-section (1) of Section 47-A was substituted to read as under:

(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 makes 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 proper duty payable thereon.

(emphasis supplied)

Still later on, vide Act No. 15 of 2004, Sub-section (2) of Section 47-A of the Act was substituted as under:

On receipt of reference under Sub-section (1), the Collector shall, after giving the parties reasonable opportunity of bearing 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, along with interest at the rate of twelve per cent per annum on such deficient amount 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.

9. Government of Punjab, in exercise of powers conferred by Sections 47-A and 75 of the Act, framed Punjab Stamp (Dealing of Undelivered Instruments) Rules, 1983. The said Rules were amended vide notification dated 23rd August, 2002, whereby definition of "Commercial premises", "Industrial Premises" "rural Area" and "Urban Area" were introduced and also inserted Rule 3-A. The relevant Rule 3-A reads as under:

3-A. Procedure to be adopted for fixation of minimum value of land/property - The Collector of district shall in consultation with Committee of experts consisting of officers of the Department of Public Works (Building and Road), Department of Revenue and Rehabilitation, Punjab Urban Development Authority, Department of Local Government, Department of Rural Development and Panchayats Department of Horticulture/Forest/Town Planning/Industries or any other department as may be found desirable, fix the minimum market value of land/properties, located in his district, locality-wise and category-wise and convey the same to the Registering Officers) for the purposes of levying of stamp duty on instruments of transfer of any property. The value of agricultural land will be fixed per acre/per Bigha whereas for other lands/properties, it will be fixed per Maria, per square yards/per square feet/per square metre keeping in view the following factors:

(a) In the case of agriculture land ?

x x x x x x x x x x (b) In case of non-agriculture land-

x x x x x x x x x x (c) In case of building:

x x x x x x x x x x

10. As per amended Section 47-A(1) of the Act, the Registering Officer can make reference to the Collector for determination of the market value if market value is less than the minimum value as determined in accordance with the Rules made under the Act. In exercise of such powers, the State Government have introduced Rule 3-A in 1983 Rules under which the Collector has to determine the collector rate in consultation with the Committee of experts in respect of the market value of the land/properties, located in his district, locality wise and category wise.

11. We have heard counsel for the parties at length. The judgments referred to by the learned Counsel for the petitioners are the cases which arise before the insertion of Section 47-A(1) of the Act and Rule 3-A of 1983 Rules. In Chamkaur Singh's case (supra), this Court has held that the guidelines could neither be issued u/s 47-A of the Act nor these are in consonance with the same, rather these just run counter to the language and intendment of the said provisions. It was held to the following effect-

We are, therefore, clearly of the opinion that these so called guidelines could neither be issued u/s 47-A of the Stamp Act nor are lese in consonance with the same, rather these just run counter to the language and intendment of the said

provisions. We are further of the opinion that no guidelines can possibly be issued or laid down for controlling the quasi-judicial decision of a particular functionary or authority under a particular statute.

12. Hon''ble Supreme Court in Mohabir Singh's case (supra), has affirmed the said judgment while dismissing the appeal of the State. It was found that the guidelines inhibit the Registering Authority to exercise his quasi judicial satisfaction of the true value of the property or consideration reflected in instrument presented before him for registration.

13. Naresh Kumar's case (supra), Mulakh Raj's case (supra) and Rajiv Passi's case (supra) arises out of the registration of documents in the State of Haryana where the provisions of Section 47-A are not para materia with the amended provisions of Section 47-A of the Act in Punjab. Inderjit Singh's case (supra) though relates to Punjab but it is prior to the amendment of the statute in 2001 and insertion of Rule 3-A of 1983 Rules.

14. Though the sale consideration mentioned in the letter of allotment or such like document cannot be disputed but what would be proper stamp duty is required to be determined in terms of Section 47-A of the Act which contemplates that it is the market value of the property on the date of registration of the instrument. Therefore, irrespective of sale consideration in the letter of allotment, stamp duty would be payable on the market value of the property determined in terms of Rule 3-A of 1983 Rules prevalent at the time of registration of instrument.

15. Though Section 47-A of the Act came into operation after the instrument of sale is registered but keeping in view the statutory intent and the fact that such Collector's rate has been fixed in exercise of statutory powers, the same can be insisted upon at the time of registration of instrument as well. Such insistence would avoid disputes and payment of deficient duty at the later stage.

16. In view of the above, we are of the opinion that the circular issued by the State Government on 20.10.2002 to follow the procedure for determination of market value of the property in respect of instrument executed on the date of registration of instrument is in accordance with the provisions of Section 47-A(1) of the Act as amended and Rule 3- of 1983 Rules. Some confusion has arisen as no reference was made to Rule 3-A of the Rules in the said circular though the same was published on 23rd August, 2002.

17. The argument of learned Counsel for the petitioner in C.W.P. No. 18722 of 2007 based upon instructions dated 3.6.2008 cannot be made applicable in respect of transaction of sale prior to issuance of circular. It is always open to the State Government to give concession in exercise of its executive power if such benefit does not contravene any provision of the Act or rules framed thereunder.

18. Since, no argument has been raised in respect of the legality of circular dated 3.6.2008 we are not examining the legality of such circular. However, all

instruments of sale presented for registration after the enactment of Act No. 14 of 2001 and subsequent framing of Rules w.e.f. 23.8.2002, are required to be affixed with stamp duty in terms of the Collector's rate.

19. In view of the above, we do not find any merit in the present writ petitions. The same are dismissed.