

PLR PLRonline

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(418503)

PUNJAB AND HARYANA HIGH COURT

Before: Ms. Justice Jaishree Thakur.

DARSHAN KAUR and others - Petitioners,

Versus

STATE OF PUNJAB and others - Respondents.

CWP-27374-2019

Indian Stamp Act, 1899 (2 of 1899) Section 47-A - A reading of sub-section (1) of the aforesaid Section enjoins a responsibility on the Registering Officer to refer to the Collector any such instrument for determination of the value of the property in case he believes, while registration of the instrument that the correct valuation of the property has not been truly set forth - On receipt of the reference under sub-section (1), the procedure is prescribed under sub-section (2) of Section 47-A whereas the Collector may suo motu or on receipt of reference from the Inspector General of Registration or Registrar of a District or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of the instrument, call for and examine said instrument for the purposes of satisfying himself as to the correctness of the value of the property - was to be done within a period of three years- Even if the argument of the respondent-State is taken into consideration, that the registering authority does not become functus officio as has been held in Seema's case, this Court cannot lose sight of the fact that the Collector took cognizance of reference received well beyond the period of three years - Even if Section 47-A (3) of the Indian Stamp Act permits Collector to issue notice suo motu, it has to be done within a period of three years from the date of registration of the instrument - Communication of the order alone confers on a paper the status of an order as has been postulated by Article 166 of the Constitution - Orders quashed.[Para 9]

Cases referred to:-

1. (2001-1)127 PLR 598, *Abhinav Kumar v. State of Haryana.*

2. 2011(3) RCR (Civil) 365, *Iqbal Singh v. State of Haryana.*

3. (2020-1)197 PLR 431, *Seema v. State of Haryana.*

4. (2008-2)150 PLR 724, *Vikas v. State of Haryana.*

Mr. Ravish Bansal, for the petitioners. Ms. Rukhsaar Dhindsa, AAG, Punjab.

Jaishree Thakur J. - (27th May, 2022) -

1. The instant petition has been filed seeking to challenge the order dated 28.10.2016 (Annexure P-3) passed by the Additional Deputy Commissioner-cumCollector, Mansa

(hereinafter referred to as the Collector) whereby the petitioners have been directed to pay an additional amount of Rs.13,15,350/- along with interest @12% from the date of registration of the sale deed till the deposit of the amount towards deficient stamp duty and registration fee pertaining to sale deed registered on 17.05.2013, besides order dated 17.07.2019 (Annexure P-5) passed by the Commissioner, Faridkot Division, Faridkot, affirming the order of the Collector, in appeal.

2. In brief, the facts are that the petitioners purchased land measuring 9 kanals 10 marlas i.e. $\frac{1}{2}$ share of total land measuring 19 kanals for a total sale consideration of Rs.35,65,000/- vide registered sale deed No.412 dated 17.05.2013.

A sum of Rs.3,51,000/- was paid towards stamp duty, registration fee etc. The sale deed was registered by the Sub-Registrar, Sardoolgarh and at that time, the sale deed was not impounded on account of inadequate stamp duty. The sale deed was returned to the petitioners after registration. The office of the Deputy Controller (Finance and Accounts), Internal Audit Institute (Revenue), Bathinda sent an audit memo to Tehsildar-cum-Sub Registrar, Sardoolgarh pointing out that there was a loss of Rs.13,15,350/- towards deficiency of stamp duty and registration fee on the sale deed in question. On the basis of the audit report, the Sub Registrar-cumTehsildar made a reference vide letter No.24/R.K dated 03.05.2016 to the Collector intimating him that an amount of Rs.13,15,350/- is to be recovered as deficient stamp duty. Thereafter, the Additional Deputy Commissioner, while exercising the power of Collector under Section 47-A of the Indian Stamp Act, issued a notice dated 23.05.2016 to the petitioners regarding the deficient stamp duty detected during audit.

3. In the proceedings under Section 47-A of the Indian Stamp Act, a reply was filed, taking a plea that the stamp duty had correctly been affixed, however, the Collector by impugned order dated 28.10.2016 agreed with the objection raised by the audit party and directed that deficiency of stamp/registration fee be recovered from the vendee along with interest @12% per annum. The appeal filed against the said order was also dismissed, which has led to the filing of the instant writ petition.

4. Learned counsel appearing on behalf of the petitioners herein would contend that the impugned orders are unsustainable, as the Sub-Registrar while registering the instrument did not impound the sale deed nor was any reference made to the Collector at his own instance. The sale deed was handed over to the petitioners after registration of the same. It is also argued that there are judgments to the effect that the reference can be made by the Sub-Registrar to the Collector immediately after registration of an instrument or in the course of registration. It is submitted that in the judgment rendered in *Abhinav Kumar v. State of Haryana*¹ (2001-1)127 PLR 598, a reference had been made by the Sub Registrar to the Collector after a period of 8 days and it was held to be not in accordance with law. It is also argued that in the case of *Iqbal Singh and others v. State of Haryana and others*² 2011 (3) RCR (Civil) 365, it has been held that an audit party is not authorized under any provisions of the Indian Stamp Act to assess and determine the nature of any document or

the stamp duty payable thereon.

5. *Per contra*, learned counsel appearing on behalf of the respondent-State would submit that on the basis of audit report, it had been found that there was deficient stamp duty affixed on the sale deed that was executed on 17.05.2013 and pursuant to that, notice was issued to the petitioners herein to pay the additional amount of Rs.13,15,350/- towards deficient stamp duty and registration charges.

6. I have heard learned counsel for the parties and have perused the pleadings of the case as well as the case laws cited. The facts are not in dispute. The sale deed came to be registered on 17.05.2013 by the Sub-Registrar but at that point of time, he did not impound the sale deed nor did he send a reference to the Collector as envisaged under Section 47-A (1) of the Indian Stamp Act, as applicable to the State of Punjab. Section 47-A of the Indian Stamp Act is reproduced as under:-

“47-A. Instruments under-valued how to be dealt with. - (1) If the Registering Officer appointed under the Registration Act, 1908, while registering instrument transferring any property has reason to believe that the value of property or the 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 Collector for determination of the value or consideration, as the case may be; the proper duty payable thereon.

(2) On receipt of 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 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) 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 Registration Act, 1908 (Central Act No. 16 of 1908), in whose jurisdiction 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 chargeability 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, would be payable by the person liable to pay the duty.

(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. As per Section 47-A, if the Registering Officer as appointed under the Registration Act, 1908, while registering any instrument relating to the transfer of any property, has reason to believe that the property has been under-valued, he may after registration, refer the same to the Collector for determination of value of the property or the consideration, as the case may be, and the proper duty payable thereon. On receipt of the reference, the Collector shall give reasonable opportunity to the parties to be heard and after holding an enquiry in such manner as may be prescribed, determine the value and if amount of duty is found to be deficient, it shall be payable. As per Section 47-A (3), the Collector may suo motu or on receipt of the reference from the Inspector General of Registration or Registrar of a District, in whose jurisdiction the property or any portion thereof, which is 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 authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of any instrument, call for and examine any instrument and satisfy himself whether or not, instrument had been valued correctly. If the Collector has reason to believe that proper duty had not been paid, he may give the person concerned reasonable opportunity of being heard and hold an enquiry as provided under sub-section (2) and if it is found that the instrument has not been properly valued, such person shall be liable to pay the duty.

8. A reading of sub-section (1) of the aforesaid Section enjoins a responsibility on the Registering Officer to refer to the Collector any such instrument for determination of the value of the property in case he believes, while registration of the instrument that the correct valuation of the property has not been truly set forth. On receipt of the reference under sub-section (1), the procedure is prescribed under sub-section (2) of Section 47-A whereas the Collector may suo motu or on receipt of reference from the Inspector General of Registration or Registrar of a District or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of the instrument, call for and examine said instrument for the purposes of satisfying himself as to the correctness of the value of the property.

9. In the instant case, it is on the objection raised by an audit party that the reference was made by the Sub Registrar to the Collector regarding deficiency in stamp duty on the

sale deed executed on 17.05.2013. In a catena of judgments it has been held that the Sub-Registrar would become functus officio after registration of the sale deed and in case he is to make reference, it has to be done immediately after registration of the instrument, as has been held in the case of *Abhinav Kumar's case* (supra). It would be pertinent to add here that in case of *Abhinav Kumar*, reference had been made by the Sub-Registrar to the Collector within a period of 8 days, which was held to be invalid. Therefore, by relying upon the said judgment, this Court can hold that there was a delay in sending the reference to the Collector. However, this Court is also aware of a judgment rendered by a Coordinate Bench rendered in *Seema v. State of Haryana and others* ³ (2020-1)197 PLR 431, where the question posed was if the Sub-Registrar maintains silence by inaction on the date of registration and accepts the stamp duty and after the registration of sale deed still does not make any reference, would the Collector have the power to initiate suo motu action and determine the proper stamp duty by calling for and examining the record and upon hearing the vendee and the likely to be affected parties, pass an order. The Coordinate Bench came to hold that the act of the Sub-Registrar in registering a sale deed is an administrative act and not judicial or quasi-judicial. His quasijudicial jurisdiction starts with notice of undervaluation by party avoiding payment of proper stamp duty. In *Seema's case* (supra), the sale deed was registered on 19.07.2012 and the Sub Registrar made reference to the Revenue Officer-cum-Collector, Karnal on 21.09.2012 i.e. within a period of less than three months. But in the instant case, reference was made by the Sub-Registrar to the Collector on receipt of the audit report on 03.05.2016. Pursuant to the said reference, the petitioners herein vide notice dated 23.05.2016 were called upon to appear in proceedings before the Additional Deputy Commissioner-cum-Collector, Mansa, which notice was well beyond the period of three years. Even if the argument of the respondent-State is taken into consideration, that the registering authority does not become functus officio as has been held in *Seema's case*, this Court cannot lose sight of the fact that the Collector took cognizance of reference received well beyond the period of three years. Even if Section 47-A (3) of the Indian Stamp Act permits Collector to issue notice suo motu, it has to be done within a period of three years from the date of registration of the instrument. It is settled law that communication of the order alone confers on a paper the status of an order as has been postulated by Article 166 of the Constitution (see *Vikas v. State of Haryana and others*, ⁴ (2008-2)150 PLR 724). The Division Bench in *Vikas's case* (supra) has held as under:-

“The only argument raised by the respondents is that an audit objection was raised vide Audit Note dated 12.6.2002 and on the basis of the audit objection it was sought to be contended that within the period of three years objections have been taken (R-1). Therefore, the period of three years would not come in the way of the respondents as audit objection was raised on 12.6.2002. We find that the argument is totally absurd because there was no communication of the audit objection to the petitioner so as to constitute a basis for argument that the action was taken within period of three years.

The real action was initiated only on the issuance of show cause notice, which admittedly was issued on 7.12.2005. It is well settled that the communication of the order alone confer on a paper the status of an order as has been postulated by Article 166 of the Constitution. The aforementioned provision was interpreted by a Constitution Bench of Hon'ble the Supreme Court in the case of *Bachhitar Singh v. State of Punjab*, AIR 1963 Supreme Court 395. In that case the Constitution Bench had held that till an order is communicated it would not assume the character of executive action. A similar view has been taken by Hon'ble the Supreme Court in the case of *Laxminarayan R. Bhattad v. State of Maharashtra*, (2003) 5 SCC 413. Therefore, we have no hesitation to reject the argument."

10. The argument raised by the petitioners while relying upon the judgment rendered in Iqbal Singh's case that the audit party is not authorized to assess and determine the nature of any document or the stamp duty payable thereon has no force, as in that case the document executed in respect of the property was the relinquishment deed on which stamp duty was not payable and not the sale deed as in the instant case. Therefore, the ratio decidendi culled out in Iqbal Singh is not applicable to the present case.

11. Therefore, in view of the finding rendered above, the impugned orders dated 28.10.2016 (Annexure P-3) passed by the Additional Deputy Commissioner-cum-Collector, Mansa and dated 17.07.2019 (Annexure P-5) passed by the Commissioner, Faridkot Division, Faridkot are quashed and the instant writ petition stands allowed.

R.M.S. – Petition allowed.