

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 14476 of 1993

Date of decision : June 30, 2014

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Sharma Confectioners (P) Ltd.

.....Petitioner

Versus

State of Haryana and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: None for the petitioner.

Mr. C.S Bakshi, Additional Advocate General,
Haryana.

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RITU BAHRI, J (ORAL)

The petitioner is challenging the order dated 7.9.1993 (Annexure P-3) passed by the Additional District Judge, Gurgaon and order dated 5.10.1992 (Annexure P-1) passed by the Collector, Gurgaon, by way of this writ petition.

Petitioner had purchased the agricultural land measuring 37 kanals and 3 marlas for a sales consideration of Rs.1,02,163/- vide sale deed No. 395 dated 11.4.1989. After registration of the sale deed, the Sub Registrar on report given by the Stamp Auditor made reference to the Collector under Section 47-A of the Stamp Act.

Vide order dated 5.10.1992 (Annexure P-1) , the Collector

after giving due notice to the petitioner proceeded ex parte. The

report of the Sub Registrar was examined along with the report of the Stamp Auditor and considering the price index of that time, assessed the price of the property at Rs. 3,48,281/- and the petitioner was directed to deposit the deficient stamp duty. On an appeal, the order was affirmed by the learned Additional District and Sessions Judge, Gurgaon (Annexure P-3). The Collector under Section 47-A Sub Clause-II, on a reference by the Sub Registrar would make an independent enquiry and determine the value of the property in question. The sale deed in question was registered by the Sub Registrar on 11.4.1989. The relevant provisions of Section 41, 47-A Sub Clause-I reads as under:

“Section 47-A(1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property, has reason to believe that the value of the 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 the Collector for determination of the value or 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 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 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."

The aforesaid provisions of Section 47-A regulates the powers of the Sub Registrar at the time of registration. These provisions had come up for consideration before this Court in case of

Abhinav Kumar vs State of Haryana and others, 2001 (1) RCR (Civil) 91 and the consistent view has been that the Sub Registrar under Section 47-A (I) can refer the sale deed at the time of registration to the Collector for reassessment. Once the sale deed is registered the Sub Registrar cannot refer the sale deed to the Collector. The relevant portion of the aforesaid judgment reads as under:

7. *Thus, the reading of the above provision would show that the Legislature has used the following words with some significance and importance:*

"While registering any instrument."

Meaning thereby the reference can only be made immediately after the registration of the document or in the course of the registration of the document but in the present case, reference has been made after 8 days which is not in accordance with law. These provisions were also interpreted by

the High Court in Civil Revision No. 4412 of 1998,

Vijya Ram vs State of Haryana and others,

where it was held as follows:-

"It will thus appear that the consistent view of this Court is that there is no provision in the Indian Stamp Act where in deficient stamp duty can be recovered by the registering authority either from the vendor or from the vendee subsequent to and after the registration of the sale deed."

The Collector under Section 47-A Sub Clause 3 has suo motu powers to make a reference within a period of three years to examine the instrument for the purpose of deficient stamp duty. It is the Collector who may suo motu on or on receipt of reference from Inspector General of Registration or Registrar of a District within a period of three years refer or give notice for redetermination of stamp duty.

In the present case, after going through the orders P-1 & P-3 it is born out that the sale deed was registered on 11.4.1989 and after registration on the basis of a report of the Stamp Auditor dated 27.4.1989, the Sub Registrar made a reference to the Collector. As per consistent view taken by this Court after 11.4.1989 under Section 47-A Sub Clause I, the Sub Registrar could not refer the sale deed to the Collector for reference. The writ petition is allowed.

Orders Annexures P-1 and P-3 are set aside.

June 30, 2014

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**(RITU BAHRI)
JUDGE**