Pankaj Gupta and Others Vs State of Haryana and Others

Civil Revision No. 5588 of 2006 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 24, 2013

Citation: (2014) 174 PLR 17

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Paramjeet Singh, J.
Instant revision petition has been filed for setting aside the reference dated 26.11.2001 of Sub-Registrar, Panchkula,

u/s 47A of the Indian Stamp Act, 1899, order dated 21.2.2003 passed by Collector, Panchkula, whereby petitioners have been directed to

deposit the balance amount of stamp duty of Rs. 5,98,650/-, as well as the order dated 30.3.2006 passed by Commissioner, Ambala Division,

Ambala Cantt., whereby the appeal preferred by the petitioners has been dismissed. Brief facts of the case are that petitioner No. 1 purchased a

constructed industrial plot No. 71 Phase-2, Panchkula, measuring 1000 sqm and constructed area ground floor 2248 sq.ft. from one Satish

Manchanda S/o. Om Parkash for a sum of Rs. 10.00 lacs. Sub-Registrar at the time of registration of the sale deed found that there was deficiency

of Rs. 1,84,100/- in stamp duty as per market price in the sale deed. Accordingly, the purchaser vide receipt No. 15 dated 9.11.2001 deposited

the deficient stamp duty. Thereafter, sale deed dated 9.11.2001 was duly registered as document No. 1317 dated 9.11.2001 by Sub-Registrar,

Panchkula. After registration of the document, petitioners applied to the Estate Officer, HUDA for transfer of the plot in question in their name.

After the report from concerned JE, Estate Officer, vide memo No. 2067 dated 12.2.2002 granted permission for transfer of the plot in the name of petitioners and the plot was duly transferred as such in the records of HUDA on 18.2.2002. After the transfer, petitioners got some construction done over the plot in question during the period from March to June, 2002 at their own expenses. After registration of the document i.e. on 26.11.2001, Sub-Registrar made reference to the Collector, Panchkula, under Section, 47A of the Indian Stamp Act on the ground that petitioners have got the document registered by showing less covered area; 60-65% is constructed area with double storey lintel building and 3-4 rooms in the rear of the plot and a factory of medicines was also stated to have been installed in the building. On reference, Collector, Panchkula, issued notice to the parties concerned. The petitioners appeared before the Collector and statement of petitioner No. 3 - Sunil Kumar was recorded. The petitioners also presented bills of the contractor and material, cement, bricks, bajri etc. with respect to the construction carried out by the petitioners on the plot in question after registration of the document between March to June, 2002. Besides, a copy of the transfer permission in respect of the plot in question given by HUDA was also placed on record. The Collector, Panchkula, inspected the site in question on 21.2.2003. Thereafter the impugned order was passed. Aggrieved against the order passed by Collector, petitioners filed an appeal before the Commissioner, Ambala Division and the same was also dismissed. Hence this revision petition.

2. I have heard learned counsel for the parties and perused the record.

3. Learned counsel for the petitioners vehemently contended that as per Section 47A of the Indian Stamp Act, registering authority has no jurisdiction or power to refer the document for re-valuation, therefore, reference made by Sub-Registrar for determining the value of the property in question after 17 days of the registration is without jurisdiction. The deficiency in stamp duty as pointed out by the Sub-Registrar was duly made good by the petitioners being vendees on the same day; accordingly the document was registered. The so-called inspection by the ""Collector on 21.2.2003 was after more than one year and three months of the execution of the sale-deed and its registration, therefore, has no meaning in the eyes of law. There is no evidence on record indicating the nature of the constructed building or its condition prior to purchase by petitioners. The impugned orders passed by the authorities are without jurisdiction, therefore, are liable to be set aside. In support of his contentions learned counsel for the petitioners placed reliance on the judgments of this Court in Abhinav Kumar Vs. State of Haryana and others and Jagdish v. State of Haryana, 2011(5) RCR (Civil) 486 to contend that after registration Sub-Registrar has no jurisdiction to make reference to the Collector.

4. On the other hand, learned counsel for the State vehemently opposed the contentions raised by learned counsel for the petitioners by contending that Sub-Registrar found that the parties had suppressed true facts in the sale deed regarding construction showing less covered area while getting

it registered, therefore, the case was sent to the Collector for determining the correct value.

5. I have considered the rival contentions raised by learned counsel for the parties.

6. From the perusal of record it is clear that petitioners purchased a constructed industrial plot measuring 1000 sqm and constructed area ground

floor 2248 sq.ft. from one Satish Manchanda S/o. Om Parkash for a sum of Rs. 10.00-lacs. After objection raised by Sub-Registrar at the time of

registration of the sale deed petitioners deposited the deficient stamp duty of Rs. 1,84,100/-. Thereafter, sale deed dated 9.11.2001 was duly

registered as document No. 1317 dated 9.11.2001 by Sub-Registrar, Panchkula and the plot in question was transferred in the name of the

petitioners in the records of HUDA. It was after 17 days of the registration of the document that Sub-Registrar made reference to the Collector to

determine the value of the property. As a matter of fact the Collector becomes functus officio after registration of the document and ceases to have

any jurisdiction over the same. The action of the Sub-Registrar in making reference to the Collector is totally illegal and without any competence.

The action of the Collector in taking cognizance of such a reference is also without jurisdiction. This issue has been considered by this Court in

Civil Revision No. 3530 of 1995 titled "State of Punjab v. Beant Singh and others" decided on 6.8.2009 wherein this Court has held as under:--

Sub-section (1) of Section 47A of the Act clearly provides for reference to the Collector as soon as the Registering Officer registers the document

and is of the opinion that the value fixed for determining the stamp duty is less than the market value. The Collector on receipt of the reference is

required to determine the market value, after affording reasonable opportunity of being heard in terms of Sub-section (2) of Section 47A of the

Act. In the present case, this procedure was not adopted. The Registering Officer, after registration of the documents handed over the same to the

vendees and it is only thereafter that he made the reference to the Collector. Sub-section (3) of Section 47A of the Act further empowers the

Collector to initiate proceedings either on the receipt of the reference from the Inspector General of Registration or Registrar of a District

appointed under the Registration Act, 1908 in whose jurisdiction, the property is situated or on the receipt of the report of the audit by the

Comptroller & Auditor General of India or by any other authority authorized by the State Govt. or suo motu, within a period of three years from

the date of registration of the instruments. In the present case, the Collector initiated the proceedings on reference being made by the Registering

Officer after he had handed over the document to the vendee. None of the situation contemplated under sub-sections (1) or (3) of Section 47A

has been adopted. The appellate authority has rightly allowed the appeals. I find no merit in these revision petitions which are accordingly

dismissed.

7. The present case is fully covered by the aforesaid decision of this Court as in the present case also the Sub-Registrar i.e. the registering authority

made a reference after 17 days of registering the document.

8. In the present case, the value of the land and construction over the plot has been assessed on the basis of spot inspection dated 21.2.2003 by

the Collector. No evidence has been brought on record either in the shape of mutations or sale deeds of adjoining area to indicate that the sale

deed in question has been got registered by under valuing the property. Even the officer who inspected the spot was not examined as a witness and

subjected to cross-examination to test his veracity and the manner in which he had come to a conclusion to determine the value of property.

9. In the case of Inderjit Singh and Another Vs. Punjab State and Another, the Collector had fixed the price of land after visiting the spot and on

that basis it was found that property was situated in thickly populated area. It was held that value of the property can be determined only by

leading evidence by the parties. The Collector is required to conduct proper enquiry; merely placing reliance upon the spot inspection report is not

enough to reach a conclusion that the document was under valued. Such an enquiry cannot be held to be legal and valid. In view of above, the

impugned orders passed by the Collector and the appellate authority are without jurisdiction and void ab initio. As such, same are hereby quashed.

Present revision petition is allowed.