

## **Gilco Developers and Builders Pvt. Ltd. Vs State of Punjab and Others**

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Feb. 1, 2011

**Acts Referred:** Stamp Act, 1899 " Section 47(A)2, 47A

**Citation:** (2011) 162 PLR 611 : (2011) 5 RCR(Civil) 668

**Hon'ble Judges:** Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

**Bench:** Division Bench

**Final Decision:** Allowed

### **Judgement**

Adarsh Kumar Goel, J.

This petition seeks quashing of order dated 26.8.2008 passed by the Collector determining true value of the

transaction of the sale under the provisions of the Section 47A of the Indian Stamp Act 1899 (for short "the Act") as affirmed on appeal vide order

dated 20.5.2009.

2. Case set out in the petition is that the Petitioner purchased a chunk of land measuring 48 kanals. Agreement to sell was executed on 16.10.2004

and sale deed was executed on 1.2.2006 for Rs. 35 lacs per acre, The matter was referred to the Collector with the allegation that there was

under valuation to evade stamp duty as the land was a residential area being within municipal limits of Kharar town for which collector rate was Rs.

80 lacs per acre. The Collector accordingly held that there was under valuation to evade stamp duty and correct valuation was Rs. 4,80,00,000/-

as against Rs. 2,10,00,000/-declared by the Petitioner. It was observed:

6. In view of the provisions of Section 47-A, and rules made there under I am convinced that as per the stamp Act, for charging the stamp duty

price of property is to be assessed on the basis of its value on the date of execution of the instrument relating to transfer of the property as per its

kind. This clearly means that the value has to be taken as it stood on the date when the parties execute the documents before the Registering

authority, in this case the value has to be taken as it stood on that date.

7. Keeping in view the above it is clear that the Collector rates are fixed by taking" various factors such as the classification of land, its kind,

location, distance from bus stand, railways station, market its present use etc., and as such it has to be seen what type of land the Respondent has

purchased so that the same is assessed at the correct"" rates fixed by the Collector. It is a fact that the Respondent has purchased chunks of land

but its kind has to be determined. To arrive at the conclusion, the entries in the revenue record, report of the Sub Registrar and the local inquiry are

to be made the basis. As per Sub Registrar"s report, the area purchased by the Respondent is under colonization, plotting is being done, houses

are being constructed, hence can be called a residential area and valued at the rates fixed for residential plots.

8. To know the factual position on the ground as to the classification of the land at the time of registration "Khasra girdawri" was looked into and

as per copy supplied by the concerned Patwari, the kind of land purchased by the Respondent comes mainly that of "gair-mumkin plots". Further

during the course of local inquiry, it has been noted that there has been spurt in the prices of the land in question because of various Mega Projects

coming in Mohali and around Kharar and the entire land purchased by the Respondents falls within the Municipal Committee, Kharar area. From

the report of the Sub Registrar, facts available in the revenue record as mentioned above and from the local enquiry it has been found that the

Respondent has purchased mainly the plotted area and it would be fair if the stamp duty is assessed on the rates applicable to the kind of land

purchased by him. Though during the local enquiry it has also been found that the rate of property at the relevant point of time i.e. at the time of

registration of sale deed was on the higher side, yet the rates determined by the District Collector after taking into all the facts for plots/residential

areas in Mohali/Kharar for the year 2006-07 which are Rs. 50,000/- per marla for plots/abadi, would definitely apply to it.

Therefore, it would be reasonable and fair if the value of the land is determined as per Collector rates for the residential/plotted land purchased by

the buyer. As per these rates the value of 48 kanal land comes to Rs. 4,80,00,000/-. On this the stamp duty payable works out to be Rs.

43,20,000/- and the Registration fee works out to be Rs. 10,000/-. The stamp of Rs. 18,90,000/- and Registration fee of Rs. 10,000/- has

already been paid as per the report of Sub Registrar. Hence M/s Gilco Developers & Builders Pvt. Ltd., Head Office Kothi No. 2169, Phase-7,

Mohali is directed to pay the remaining stamp duty of Rs. 24,30,000/- (Rs. Twenty four lacs thirty thousand) along with interest @ 12% per

annum from the date of registration of the deed till the date of payment of the deficient stamp duty.

3. The above finding was affirmed by the Commissioner.

4. We have heard learned Counsel for the parties.

5. Learned Counsel for the Petitioner raises following contentions:

i) The land was agricultural land for which collector rate was Rs. 18 lacs per acre and the Petitioner having declared valuation of Rs. 35 lacs per

acre for the transaction, there was no under valuation.

ii) Assumption that the land was residential was unfounded as the land use had not yet been changed. Mere potential for residential purpose could

not be a ground to hold that there was under valuation.

iii) The transaction was entered into in the year 2004 though registration of sale deed was in February, 2006. The Collector rate as on 1.4.2006

could not be applied.

iv) Even if rate applicable to residential property was applied, the rate applicable to a small plot cannot be applied to larger chunk of land. The land

involved in the present transaction is about 6 acres which is not meant for use as such but for being sold in plots after development. The Collector

rate is worked out on the basis of average of prices in the registered sale transactions for residential purpose. Such transactions normally will not

be of big chunks of land. In any case, this aspect has not been looked into by Collector while applying the residential rate to the present transaction

of sale of 48 kanals of land.

v) The Collector proceeded exparte without affording due opportunity to the Petitioner. It was wrongly recorded that Vajinder Singh Bajwa

represented the Petitioner and his appearance could not be treated on behalf of the Petitioner.

6. In support of his submissions, reliance has been placed on the following judgments:

Sushil Kumar Vs. Haryana State and Another, to submit that proceedings u/s 47A could be exercised only in the case of under valuation. Inder

Singh v. Punjab State (1997) 117 P.L.R. 759 P&H , Mulakh Raj v. State of Haryana and Ors. 2001 (1) R.C.R. 581 P&H Civil Writ Petition No.

8121 of 2008 (Tejinder Singh v. State of Haryana and Ors. decided on 18.9.2008 (P and H) to submit that the Collector cannot determine value

mechanically on the basis of Collector rate. Abhinav Kumar v. State of Haryana and Ors. (2001-1) 127 P.L.R. 598 to submit that the Sub

Registrar can make reference only at the time of registration and not later. Sarvahitkarini Sahkari Awas Samiti Ltd. v. State of Uttar Pradesh and

Ors. 2006 (1) R.C.R. 104 (All.) to submit that value of the transaction has to be determined on the date of transaction and not on a future date.

State of Haryana and Anr. v. Mahabir Solvent Plant (2007) 148 P.L.R. 273 to submit that the Collector must give reasons in support of its order.

Madan Lal Vs. State of Punjab and Others, to submit that mere spot inspection could not be the basis of valuation.

7. Learned Counsel for the State submitted that the Petitioner had every opportunity of being heard. Notice was duly served. The Petitioner was

duly represented before the Collector. In the order of Collector, presence of Vajinder Singh Bajwa on behalf of the Petitioner was recorded.

8. From the rival contentions, following questions require consideration:

a) Whether opportunity was given to the Petitioner?

b) Validity of valuation.

9. Learned Counsel for the State has produced record showing due service of the Petitioner of notice dated 7.3.2008. After the service on

27.3.2008, Vajinder Singh Bajwa, Project Manager appeared on behalf of the Petitioner. He has also shown subsequent sale deed dated

21.1.2011 executed by Vajinder Singh Bajwa on behalf of the Petitioner company. Thus, the plea of the Petitioner that Vajinder Singh Bajwa was

not its authorised representative cannot be accepted.

10. As regards the valuation, the scope of power of Collector u/s 47A(2) of the Act is to determine the valuation of transaction. If a reference is

made to him on formation of opinion that market value set forth in the instrument was less than the market value, the Collector has to determine the

correct value. The relevant provision is as under:

47-A. Instruments under valued how to be dealt with

(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 (3), 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 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.

(3) The Collector may suo motu, or on receipt of reference from the Inspector General of Registration or the Registrar of a district, appointed

under the Registration Act, 1908 (Central Act No. 16 of 1908), in whose jurisdiction the property or any portion thereof which is the subject

matter of the instrument is situate, shall within two years from the date of registration of any instrument not already referred to him under Sub-

section (1) call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case

may be, and the duty payable thereon and if after such examination, he has reason to believe that the value or consideration has not been truly set

forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with procedure provided for in Sub-

section (2) and the deficient amount of duty, if any, shall 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 the order,

prefer an appeal before the Commissioner of Division 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 on 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,

11. Reference to the above provision will show that the Collector has to determine the true value of the transaction. For doing so, the Collector has

to go by the relevant material on record and make assessment as per best of his judgment. The Collector has to determine the value taking into

account the nature and location of land and other relevant factors including the Collector rate though the said rate may not be conclusive.

12. In the present case, the Collector has found that the land was in the municipal area and was purchased for colonization. Its value was not less

than Collector rate fixed for residential area. In view of this finding, which is not shown in any manner to be perverse, mere fact that the land was

described by the Petitioner to be agricultural, could not be a ground to interfere with the rate fixed by the Collector. The Petitioner was a colonizer

and not an agriculturist. The transaction was in February 2006 for which the rate notified on 1.4.2006 could not be held to be irrelevant, There is

nothing to show that the rate determined by the Collector is for future and not on the date of the sale. The change of land use may affect the

valuation but it cannot be said that in absence thereof value of the land should be treated at par with rate notified for agricultural land. Even

according to the valuation given in the sale deed, the rate was almost double of notified rate for agricultural land. Thus, the submissions made on

behalf of the Petitioner at Sr. Nos. (i) to (iii) cannot be accepted.

13. Coming now to submission (iv), we find that order of the Collector does not take into account the size of the chunk of land involved in the

transaction. In determining the value, though the Collector rate could be taken into account, the same could not be mechanically followed. The

same could at best be treated as guideline, In applying the said rate, the size of the plot could not be ignored. It is well settled that price fetched for

small plots cannot be the basis for determining value of each track of land. In Administrator General of West Bengal Vs. Collector, Varanasi, , it

was observed:

6. It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable

properties. (See: The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, ; Mirza Nausherwan Khan and Another Vs. The Collector (Land

Acquisition), Hyderabad, ; Padma Uppal and Others Vs. State of Punjab and Others, , Smt. Kausalya Devi Bogra and Others Vs. Land

Acquisition Officer, Aurangabad and Another, ). The principle that evidence of market value of sales of small, developed plots is not a safe guide

in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots

cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for

building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the

method of a hypothetical lay-out could with justification be adopted, then in valuing such small, laid-out sites the valuation indicated by sale of

comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary, deductions for the extent of

land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water

and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be

made. In Brig. Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, this Court indicated that deductions for land

required for roads and other developmental expenses can, together, come up to as much as 53%. But the prices fetched for small plots cannot

directly be applied in the case of large areas for the reason that the former reflects the "retail" price of land and the latter the "wholesale" price.

14. In view of above, the matter will require fresh consideration by the Collector. Accordingly, we set aside the impugned order and remand the

matter to the Collector for passing a fresh order in accordance with law within two months from the date of receipt of a copy of this order. The

Petitioner may appear before the Collector for further proceedings on 14.3.2011.