

(17) For the foregoing reasons, this petition is allowed. A writ of certiorari is issued quashing the stand of the State in the written statement which denies appointment merely because of a likelihood of an order being passed under Section 319 Cr.P.C. against the petitioner which reason is not found legal or valid in depriving the petitioner of a right of consideration for appointment. A mandamus is issued to the respondents to consider the case of the petitioner for appointment within 30 days of the date of receipt of a certified copy of this order and such a consideration is directed subject to fulfilling other conditions as may remain. The petitioner will be entitled to all consequential benefits of notional increments, seniority etc. from the date of appointment of the 120 constables but he would be entitled to salary and allowances from the date of filing of the present petition which bears the office stamp dated 2<sup>nd</sup> April, 2013 as his rights stand crystallized then.

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**S. Gupta**

***Before Paramjeet Singh, J.***

**PANKAJ GUPTA AND OTHERS—*Petitioners***

*versus*

**STATE OF HARYANA AND OTHERS—*Respondents***

**C.R. No. 5588 of 2006**

September 24, 2013

***Indian Stamp Act, 1899 - S. 47A - Stamp duty valuation - Reference to Collector - Petitioner purchased industrial plot along with constructed ground floor - After objection was raised by Sub-Registrar at the time of registration of sale deed, petitioners deposited deficient stamp duty - Sale deed was duly registered - After 17 days of registration of sale deed, Sub-Registrar made reference to Collector to determine value of property - Collector inspected site after about 15 months - In the meantime, substantial construction was done - Collector made higher valuation and petitioner was directed to deposit balance amount of stamp duty - Held, that Collector becomes functus officio after registration of document and he ceases to have any jurisdiction over the same - Action of Sub-Registrar in making reference to Collector is totally illegal - Further, no evidence has been brought in shape of mutations or sale deeds of adjoining area to indicate undervaluation - Collector was not cross-examined to explain valuation - Orders passed by Collector are without jurisdiction and void ab initio.***

*Held*, that from 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 lakhs. 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.

(Para 7)

*Further held*, that 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.

(Para 9)

*Further held*, that 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.

(Para 11)

Tribhuvan Dahiya, Advocate, *for the petitioners.*

K.C. Bhatia, Adl. A.G., Haryana.

**PARAMJEET SINGH, J.**

(1) Instant revision petition has been filed for setting aside the reference dated 26.11.2001 of Sub-Registrar, Panchkula, under Section 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 ₹ 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.

(2) 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 ₹ 10.00 lakhs. Sub-Registrar at the time of registration of the sale deed found that there was deficiency of ₹ 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.

(3) I have heard learned counsel for the parties and perused the record.

(4) 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 versus State of Haryana and others*<sup>1</sup> and *Jagdish versus State of Haryana*<sup>2</sup> to contend that after registration Sub-Registrar has no jurisdiction to make reference to the Collector.

(5) 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.

(6) I have considered the rival contentions raised by learned counsel for the parties.

(7) From the perusal of record it is clear that petitioners purchased a constructed industrial plot measuring 1000 sq.m. and

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<sup>1</sup> 2001(1) RCR (Civil) 91

<sup>2</sup> 2011(5) RCR (Civil) 486

constructed area ground floor 2248 sq.ft. from one Satish Manchanda s/o Om Parkash for a sum of ₹ 10.00 lakhs. After objection raised by Sub-Registrar at the time of registration of the sale deed petitioners deposited the deficient stamp duty of ₹ 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 versus 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-section (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.”

(8) 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.

(9) 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 undervaluing 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.

(10) In the case of *Inderjit Singh versus State of Punjab*<sup>3</sup> 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.

(11) 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.

(12) Present revision petition is allowed.

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*A. Aggarwal*

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<sup>3</sup> 1997(1) PLR 759