Before Justice Rajiv Narain Raina, J.

SEEMA — *Petitioner*

versus

STATE OF HARYANA AND OTHERS — *Respondents*

CWP No. 27881 of 2017 (O&M)

December 10, 2019

Registration Act 1908, Indian Stamp Act, 1899 (as applicable to Haryana, inserted by Haryana (1st amendment) Act 37 of 1973)- Section 47- A (1) and (3)- legality of recovery proceedings for affixing deficient stamp duty and registration charges- The question involved is if the Sub-Registrar accepts deficient stamp duty below the Collector rate on the day of registration of sale deeds and does not make any reference regarding the same within time limit - would the Collector have the power to suo moto determine the proper stamp duty and further recover the deficient amount?- Held- Section 47-A(3) of the Act (Haryana Amendment) to the Indian Stamp Act would have meaningful construction to the point that when no time limit has been prescribed by the statute regarding any reference to be made by the Sub-Registrar, then the action of the Collector would be legal and valid-He can suo moto recover the amount- Petition dismissed- Act and conduct of the petitioners in describing the land to be not falling within municipal limits is a species of fraud committed on the state exchequer- The amount to be recovered as arrears of land revenue.

Held, that the moot point which requires determination is that if the Sub Registrar maintains silence by inaction on the day of registration and accepts the stamp duty and after the registration of sale deeds 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.

(Para 8)

Further held , that the factual position in this case is that the Sub Registrar did initiate action by making a reference to the Collector three days after the expiry of two months i.e. on 21st September, 2012 from the date of registration of the sale deeds…… Merely because the Sub Registrar has acted or has failed to do so in a prima facie case of deficient payment of insufficient stamp duty would not to my mind

detract from the power of the Collector to enter upon the dispute and decide the case after putting parties to notice, offering them a reasonable opportunity of hearing and then to pass final order. So long as the entire issue has come to his knowledge within three years of the execution and registration of sale deeds in the office of the Sub Registrar. I would commend attaching this meaningful construction on the provisions of Section 47-A (3) of the Act (Haryana Amendment) to the Indian Stamp Act.

(Para 9)

Further held ,that a bare perusal of the provisions of Section 47-A (3) of the Act as applicable to Haryana reveals that time limit has not been prescribed for the Registrar to make a reference after registration of sale deed. If there is no time limit fixed by the statute or in the Haryana Amendment Act, then I do not find any legal infirmity in the reference made within two months and 2 days after the registration of sale deed. If the Sub Registrar was within his jurisdiction to make a reference, then it follows that the action of the Collector is legal and valid. In this case the Collector decided the case on the basis of a reference received from the Sub Registrar in the belief that deficient stamp duty had been paid on the instrument by under-valuation.

(Para 10)

Further held ,that the act and conduct of the petitioners in describing the land to be not falling within municipal limits is a species of fraud committed on the State exchequer, and therefore, the costs of the litigation throughout will be borne by the petitioners to be assessed and recovered from them as arrears of land revenue.

(Para 21)

Akshay Jindal, Advocate
for the petitioners.

Saurabh Mohunta, D.A.G., Haryana.

RAJIV NARAIN RAINA, J.

(1) This order will dispose of CWP Nos.27881 and 27938 of 2017 as common questions of law and fact are involved in both the writ petitions the subject matter of which arise out of sale deeds of lands falling within the revenue estate of Village Gharaunda, Tehsil Gharaunda, District Karnal within the limits of Municipal Committee, Gharaunda. However, for the sake of brevity, the facts are taken from

CWP No.27881 of 2017.

(2) The question of law which falls for consideration in both the cases is regarding the legality of recovery proceedings for affixing deficient stamp duty and registration charges under the Indian Stamp Act, 1899 (as applicable to Haryana, inserted by Haryana (First Amendment) Act 37 of 1973) [for short "the Act"] payable on sale deeds not below the Collector rates; and, whether under Section 47-A (1) of the Act, the Sub Registrar would have the jurisdiction to make a reference after a period of about two months of the registration of the sale deeds without raising any objection at that time of registration as delineated by this Court vide its order dated 9th March, 2018 while issuing notice of motion and staying the operation of the impugned order. Section 47-A (1) and (3) of the Act read as under:-

> "47-A. Instruments under-valued how to be dealt with. -(I) If the Registrering 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.
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> (3) The Collector may suo motu, or on/receipt of reference from the Inspector General of Registration or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject-matter of the instrument is situate, appointed under the Registration Act, 1908**,** shall, within three years from the date of registration of any instrument, not already referred to him under subsection (l), 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 reasons 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 the 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:
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> Provided that the Collector shall, within a period of two

> years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970."
> (emphasis supplied)

(3) The two sale deeds were registered on 19th July, 2012. After registering the sale deeds with 3% stamp duty affixed, the Sub Registrar made a reference to the Revenue Officer-cum-Collector, Karnal on 21st September, 2012 on the ground that the agricultural lands in question are situated within the municipal limits, for which the petitioner had to pay 5% stamp duty. The Collector passed an ex-parte order on 22nd April, 2013 maintaining the reference. The said order was set aside in appeal by order dated 21st August, 2014 passed by the Commissioner, Rohtak Division, Rohtak and the case was remanded back to the Collector for a decision on merits afresh. The Collector again passed the order on 20th March, 2015, after hearing the parties against them which has been maintained by the Commissioner vide order dated 27th October, 2016 and the thereafter by the Chief Controlling Revenue Authority, Haryana vide its order dated 11th July, 2017.

(4) At the time of motion hearing, the petitioner had argued before the bench that in terms of the provisions of Sub Section (3) of Section 47-A of the Act, the Collector may *suo motu* take action within three years from the date of registration of an instrument only if it has already not already been referred to him under Sub Section (1) of Section 47-A. In other words, if the reference under Section 47-A(1) of the Act is not made by Sub Registrar within three years and it comes to the notice of the Collector that the stamp duty has been inadequately affixed on an instrument, then he can *suo motu* initiate action by calling the record and examining the case himself.

(5) The petitioner relies on a decision in ***Abhinav Kumar*** versus ***State of Haryana and others***[1] which has been followed by at least four judgments of this Court mentioned in the order dated 9.3.2018, namely, ***Zile Singh*** versus. ***Commissioner, Hisar Division, Hisar and others***[2], ***Vishal Rekhan and others*** versus ***State of Haryana and others***[3], ***Pankaj Gupta and others*** versus ***State of Haryana and***

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[1] 2001 (1) RCR (Civil) 91
[2] 2016 (1) LAR 708
[3] 2015 (3) RCR (Civil) 502

others[4]and ***Balbir Singh*** versus ***State of Haryana and others***[5]. While relying on these judgments and especially on *Abhinav Kumar* case**,** *supra*, learned counsel for the State brought to the notice of this Court the decision of the division bench in case ***Sandeep Nakra*** versus ***State of Punjab***[6], holding that the ruling in *Abhinav Kumar* was decided per incuriam and not a binding precedent on the ground that Section 47-A (3) was not brought to the notice of the Court while deciding the case of *Abhinav Kumar* case.

(6) The case of *Sandeep Nakra*, was a Punjab matter and the Central Act was followed. Section 47-A (1) provides that the Collector himself within a period of three years from the date of registration of instruments can take cognizance of the deficiency of stamp duty, and therefore, initiation of proceedings after one and a half years of the registration of instrument is not illegal. It transpires that the decision in the case *Sandeep Nakra* had been unsuccessfully challenged before the Supreme Court in SLP (Civil) No.933 of 2009 which was dismissed.

(7) Section 47-A (3) of the Act confers jurisdiction on the Collector that he may take *suo motu* action within three years from the date of registration of an instrument only if it has already not been referred to him under Sub Section (1) of Section 47-A of the Act.

(8) The moot point which requires determination is that if the Sub Registrar maintains silence by inaction on the day of registration and accepts the stamp duty and after the registration of sale deeds 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.

(9) In case the Sub Registrar makes the reference on any day subsequent to the day of registration, then can he at any time within three years from the date of the commencement of the Amended Act as applicable to Haryana under the proviso to Section 47-A (3) or his power stands denuded. If the Sub Registrar fails to act only then would the Collector act, if it comes to his knowledge that deficient court fee was paid in a case. The factual position in this case is that the Sub Registrar did initiate action by making a reference to the Collector three days after the expiry of two months i.e. on 21st September, 2012 from

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[4] 2014 (2) PLR 17
[5] 2007 (3) RCR (Civil) 410
[6] 2009 (2) RCR (Civil) 532

the date of registration of the sale deeds. To my mind, the correct interpretation to be placed on Section 47-A (3) of the Act has to be read broad enough to bring in the revenue to the State and the Court is a guardian of public revenue if it comes to the conclusion on the merits of the case that there was indeed insufficient stamp duty affixed on the sale deed, which is a matter of evidence and determination of the issue as to whether the corpus agricultural land fell within municipal limits, and if it does, depending on the location of the land, would the transfer suffer 5% stamp duty on the sale consideration or 3% for land outside the municipal limits. Merely because the Sub Registrar has acted or has failed to do so in a prima facie case of deficient payment of insufficient stamp duty would not to my mind detract from the power of the Collector to enter upon the dispute and decide the case after putting parties to notice, offering them a reasonable opportunity of hearing and then to pass final order. So long as the entire issue has come to his knowledge within three years of the execution and registration of sale deeds in the office of the Sub Registrar. I would commend attaching this meaningful construction on the provisions of Section 47-A (3) of the Act (Haryana Amendment) to the Indian Stamp Act.

(10) A bare perusal of the provisions of Section 47-A (3) of the Act as applicable to Haryana reveals that time limit has not been prescribed for the Registrar to make a reference after registration of sale deed. If there is no time limit fixed by the statute or in the Haryana Amendment Act, then I do not find any legal infirmity in the reference made within two months and 2 days after the registration of sale deed. If the Sub Registrar was within his jurisdiction to make a reference, then it follows that the action of the Collector is legal and valid. In this case the Collector decided the case on the basis of a reference received from the Sub Registrar in the belief that deficient stamp duty had been paid on the instrument by under-valuation.

(11) In ***Abhinav Kumar's*** case this Court construed the significance of the words "while registering any instrument" in Section 47-A (1) of the Act to hold that the Sub Registrar can make reference immediately after registration of the documents or in the course of registration and accordingly, the reference made after 8 days was not in accordance with law. The Legislature has created two stages for the Sub- Registrar. Firstly, the Sub Registrar in dealing with the case has reasonable belief that the instrument is under-valued and insufficient stamp duty and registration charges have been affixed on the instrument. The first stage is for the Sub Registrar "to act while

registering the instrument". The second stage is "after registering an instrument". In this case, the Sub Registrar did not act while registering the instrument. If the word "while" has to be read literally assuming that he did not do so, but subsequently, had reason to believe or it came to his knowledge that the value or consideration has not been truly set forth in the instrument, he still has the jurisdiction to make a reference after referring such instrument to the Collector for determination of the value of consideration, the proper stamp duty payable thereon.

(12) In *Abhinav Kumar's* case, the first stage was noticed, but the second stage had escaped notice. When these two collections of words in Section 47-A (1) are read together harmoniously keeping the object in mind, I do not see how the action of Sub Registrar can be faulted if he makes reference after 8 days as was the case in *Abhinav Kumar*, or after any number of days or months so long as his entire action is within the time limit for Collector's *suo motu* powers i.e. within three years within which time the Collector can act either *suo motu* or upon a reference leaing sufficient time for the Collector to act within the total period the law permits for making amends. When the provision is so read together with the words and expression used in Section 47-A (3) i.e. *"not already referred to him under Sub Section (1)"* has to be read harmoniously and purposefully to uphold the order of reference made after two months and 2 days of the registeration of sale deeds and the orders passed in the reference by the Collector within three years. I do not find myself persuaded with the ratio in *Abhinav Kumar's* case based on strict construction of the words irrespective of the fact that it has been declared *per incuriam* which only fortifies my belief on how the provisions "*while registering instrument"* and "*after registering"* in Section 47-A (1) ought to and deserve to be read, not in the literal sense but figuratively to achieve the object of the legislation by bringing in lawfully the proper revenue to the State exchequer. The words in Section 47-A (3) and especially "not already referred to him" in "*...shall, within three years from the date of registration of any instrument, not already referred to him under subsection (l),..."* gives rise to two situations. Either already referred or not referred. If it had been referred there is no occasion for the Collector to act *suo motu*. The Sub Registrar could have plugged the leakage of revenue after notice and hearing. Aggrieved party can then file remedy in jurisdictional court for correction of error, if any, in the proceedings. By prescribing an outer limit of three years all that the legislature intended was to put a quietus on transactions after three years where after they are not to be reopened so that no buyer is taken by surprise thereafter in an indefinite

period of time.

(13) *Abhinav Kumar's* case was followed in ***Iqbal Singh and others*** versus ***State of Haryana and others***[7]. This was a case of execution of a relinquishment deed registered by the Sub Registrar on 3.6.2002. The petitioners were served with the notice on 10.2.2005 asking them to appear before the Collector in connection with under-valuation of the property. The Collector determined the stamp duty payable on the relinquishment deed at the rate applicable to conveyance treating them to be sale deed. The determination was made on the basis of the objections of the audit party of the Accountant General. The Court held that audit party's opinion was not a final and sacrosanct word on the question of determination of the stamp duty payable under law and it was the duty of the Sub Registrar and the Collector to determine and assess the stamp duty payable on an instrument. Learned counsel for the petitioner has relied on paragraph 10 of the judgment which reads as follows:-

> "10.There is another aspect of the matter. The document after registration was handed over to the petitioners. This document was never brought before any authority or officer by way of evidence, whereupon its admissibility in evidence could be called in question and consequently determination of the stamp duty in terms of Section 35 of the Indian Stamp Act. A document once registered, the Registering Authority, ceases to have any control over the document and it becomes a functus officio the moment he loses the control over the document. Stamp duty upon such a document/instrument becomes determinable either when the document is used by the parties by way of evidence before any authority or officer and he decides to proceed under Section 35 of the Indian Stamp Act or by the Collector or in accordance with sub section 3 of Section 47-A of the Indian Stamp Act. None of the situations have occurred. The Sub Registrar after a period of almost 3 years made a reference to the Collector for which he was not competent to do so. There was no action by the Collector on his own nor any reference was made to him by the Inspector General of Registration or the Registrar of a district in whose jurisdiction the property, subject matter of the instrument is situated. The total

[7] 2011 (3) RCR (Civil) 365

> exercise seems to have been made on the basis of an audit report for the period 2002-03. It is also pertinent to note that even the audit report has not been supplied to the petitioners to enable them to respond to the same on any valid legal grounds. Even though, a show cause notice was issued to the petitioners by the Collector, however, there has been a gross violation of principles of natural justice on account of non-furnishing of the audit report to the petitioners to enable them to effectively respond to the same."

(14) The situation in *Iqbal Singh's* case, supra has not occurred in this case. The central theme which the Court dealt with in *Iqbal Singh's* case was that both the Sub Registrar and the Collector had acted only on the opinion formed in the report of the audit party. That was not a case of under-valuation of an instrument and it course correction by the statutory authorities under the Act. It was a case of relinquishment of rights in property that had not been partitioned and each share holder had a right to claim every inch of the property. Accordingly, legal heirs of one of the petitioners, namely, Jagir Kaur was within her right to have surrendered her right by relinquishing her property in favour of one of the co-sharers. Therefore, the relinquishment deed could not be treated as sale deed between the vendor and vendee. Ratio of the case does not lie in interpretation of the provisions of Section 47-A as applicable to Haryana and the reference to *Abhinav Kumar's* case in paragraph 11 of the reported judgment is *en passant*, and is, therefore, distinguishable both on facts and grounds. It was not necessary to render the decision and the conclusion based on an unacceptable audit note as the prime mover.

(15) The doctrine of *functus officio* introduced in *Iqbal Singh's* case has permeated to the other judgments relied upon by the petitioner which has been corrected by a Division Bench of this Court in *Sandeep Nakra's c*ase. The concept of functus officio attaches to officers whose mandate has expired. The assignment is accomplished prohibiting a revisit. The act of the Sub Registrar in registering a sale deed is an administrative act and not judicial or quasi judicial. His quasi judicial jurisdiction starts with notice of under-valuation by party avoiding payment of proper stamp duty. Error in administrative action can be corrected at any time. The maxim functuous officio is more often than not found in arbitration law or in the industrail disputes law. Recent judgments of the Supreme Court have diluted the concept in the ID, Act, 1947.

(16) *Sandeep Nakra* is a short but meaningful order binding on single bench passed by the division bench of this Court declaring *Abhinav Kumar's* case per incuriam and it can profitably be quoted. The judgment and order is reproduced below:-

> "3. Section 47-A, sub clause 3 of the Act contemplates initiation of proceedings by the Collector within a period of three years from the date of registration of the instrument. In view of the said fact, when the order passed by the Collector itself is within the period of three years from the date of registration of the instrument, it cannot be held that initiation of proceedings after one and a half year of the registration of the instrument is illegal or in any way, contravenes the provisions of the Act. In Abhinav Kumar's case (supra) provisions of Section 47-A (3) were not brought to the notice of the Court substituted vide Punjab Act No. 17 of 1994."

(17) In order to distinguish this case, learned counsel submits that it is true that it is not a case of reference by the Sub Registrar, but in the overarching powers of the Collector and the three key expressions adverted to in the preceding paragraphs, two ocurring in Section 47A (1) and one of them in Section 47A (3) i.e. (i) "while registering any instrument"; (ii) "after registering such instrument referred to the Collector for determination" and (iii) "not already referred to him under Sub Section (1)" are to be read, with great respect to the precedents cited by the petitioner, holistically with the object sought to be achieved. It is the view which has commended itself to me in the foregoing discussion on these expressions in this order.

(18) Having reached this conclusion, I would turn to the facts as to whether the land was agricultural *per se* or fell within the municipal limits where the Collector rate was Rs.90 lakhs per acre which is higher than the Collector's rate for agricultural land in the same area but falling outside the limits of the municipality.

(19) In the written statement filed by the District Revenue Officer-cum-Collector, Karnal, it has been stoutly submitted that the Collector rate of land at the time of registration was Rs.90.00 lakhs per acre. With the intention to save stamp duty, the petitioner had shown the land outside the municipal limits and got the sale deeds registered to the tune of Rs.68,43,750 whereas since the lands fell within the municipal limits and sale deeds should have been registered for an amount of

Rs.2,05,31,250/- and as such the stamp duty of the lands amounts to Rs.10,26,562/- @ 5% as against 3% for agricultural land whereas the petitioner has deposited stamp duty of only Rs.2,05,320/- @ 3% due to which revenue loss has been caused to the State exchequer due to non-payment of stamp duty of Rs.8,21,242/- (wrongly typed as Rs.8,21,842/- in paragraph 8 of the written statement). The petitioner has not filed any replication to rebut the averments made in the written statement, and therefore, the same are deemed to be accepted as true on the principle of *non- traverse*.

(20) For these reasons, I find no substance in both the writ petitions. They are dismissed. The order dated 20th October, 2015 passed by District Revenue Officer-cum-Collector, Karnal for making good the deficient stamp duty and registration charges on the sale deeds, the order dated 27th October, 2015 passed by the Commissioner, Rohtak Division, Rohtak dismissing the appeal and the order dated 11th July, 2017 passed by Chief Controlling Revenue Authority, Haryana dismissing the revision are legal and valid and are maintained. Further action be taken in accordance with law.

(21) The act and conduct of the petitioners in describing the land to be not falling within municipal limits is a species of fraud committed on the State exchequer, and therefore, the costs of the litigation throughout will be borne by the petitioners to be assessed and recovered from them as arrears of land revenue.

Payel Mehta