

Before Permod Kohli, J.

JAGDISH,—Petitioner

versus

STATE OF HARYANA & OTHERS,—Respondents

CWP Nos. 17696 and 17697 of 2009

5th August, 2010

Constitution of India, 1950—Art. 226—Indian Stamp Act, 1899—S. 47-A—Stamp duty and registration fee paid at determined rate—Section 47-A permits Collector to re-determine value of land on reference being made by Sub Registrar at time of registration of document—Sale deed registered and delivered to vendee—Merely on basis of some audit objections Sub Registrar proceeding to make reference after 5 months of registration of document—Action of Sub Registrar proposing to make reference to Collector is totally illegal and without any competence—Neither Sub Registrar has any authority to make a reference nor Collector has any jurisdiction to re-determine the value of the land and stamp duty/registration fee—Petition allowed.

Held, that proximity of the agricultural land with the residential area does not change the nature of the land and, thus, the impugned order is totally perverse and is liable to be set aside. Section 47-A permits the Collector to re-determine the value of the land on the reference being made by the Sub Registrar at the time of registration of the document. Once the document is registered and delivered to the vendee, neither the Sub Registrar has any authority to make a reference nor the Collector has any jurisdiction to re-determine the value of the land and the stamp duty/registration fee.

(Para 7)

Further held, that it is not dispute that the land is recorded as agricultural land in the revenue record. This revenue record was part of the sale deed. The petitioner has paid the stamp duty on the rates determined by the Collector for such agricultural land. Merely on the basis of some

audit objections the Sub Registrar proceeded to make reference that too after 5 months of registration of document. As a matter of fact the Collector became functuous officio after registration of the document and cease to have any jurisdiction or control over the same. The action of the Sub Registrar proposing to make 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 8)

Further held, that the Collector has based his findings on spot visit. Such a recourse is also impermissible in law. Even on spot visit the Collector has not opined that the land is non-agricultural. It is only recorded that the land is 1-2 acres away from the locality. The revenue record clearly shows that the land is agricultural. Spot visit cannot be made the basis for determination of the value of land particularly when the land is duly recorded as agricultural land in the undisputed revenue record.

(Para 10)

Dinesh Arora, Advocate *for the petitioners*.

R. S. Kundu, Addl. A. G., Haryana.

PERMOD KOHLI, J. (ORAL)

(1) Both parties and issues in both these petitions being common, the same are being disposed of by this common order.

(2) The petitioners purchased land situated in District Rohtak by two sale deeds dated 20th June, 2007 and 30th May, 2007 and paid the requisite stamp duty and registration fee on the sale consideration fixed in the sale deeds. On the basis of some audit report respondent No. 2 issued notices to the petitioners to deposit the deficient stamp and registration fee on the sale deeds. These notices were issued on 15th October, 2008. The petitioners were asked to deposit the deficient amount of stamp duty and registration fee amounting to Rs. 32,560 in respect to deed No. 3194, dated 20th June, 2007 an amount of Rs. 31,760 in respect to deed No. 2305 dated 30th May, 2007. It seems that the petitioners did not appear before

the Collector in response to the aforesaid notices. The City Magistrate-Collector, Rohtak passed orders dated 19th September, 2008 under Section 47-A of the Indian Stamp Act, whereby the petitioners were made liable to pay an amount of Rs. 32,560 relating to sale deed No. 3194 and an amount of Rs. 31,760 relating to sale deed No. 2305 within 30 days. Petitioners preferred appeals before the Commissioner, Rohtak Division, Rohtak. The Appellate Authority,—*vide* a common order dated 25th November, 2008 dismissed these appeals. The orders passed by the Collector and the Commissioner (Appellate Authority) are subject matter of challenge in the present petitions.

(3) From the perusal of the impugned orders, it has been revealed that the Sub Registrar registered the sale deeds on the basis of the stamp duty and registration fee paid on the amount of sale consideration fixed in the sale deeds. It appears that some objections were raised by the audit party and on that basis the Sub Registrar referred the matter to the District Revenue Officer-cum-Collector. The Collector himself visited the spot in presence of the Halqa Patwari and proceeded to assess the value of the land. It has been recorded in the impugned order dated 19th September, 2008 that the land is nearer to the Sheetal Nagar residential area and accordingly assessed the value of the land as residential. The assessed value being more than the sale consideration differential/deficient stamp duty and registration fee is sought to be recovered.

(4) Reasons recorded in the impugned orders are reiterated in the replies.

(5) I have heard learned counsel for the parties.

(6) The petitioners have placed on record the copies of khasra girdawari of village Sunari Kalan, Tehsil and District Rohtak , where the land is situated. The land is shown to be Nehri Agricultural land and under self cultivation of the vendor. It is, accordingly, submitted on behalf of the petitioners that the Collector has committed glaring illegality by assessing the land as residential when the land is duly recorded as agricultural in the revenue record up to the date of sale.

(7) Proximity of the agricultural land with the residential area does not change the nature of the land and thus the impugned order is totally perverse and is liable to be set aside. The other contention of the petitioners is that the action of the Sub Registrar and the Collector is otherwise without any jurisdiction. Section 47-A permits the Collector to re-determine the value of the land on the reference being made by the Sub Registrar at the time of registration of the document. Once the document is registered and delivered to the vendee, neither the Sub Registrar has any authority to make a reference nor the Collector has any jurisdiction to re-determine the value of the land and the stamp duty/registration fee.

(8) It is not in dispute that the land is recorded as agricultural land in the revenue record. This revenue record was part of the sale deed. The petitioner has paid the stamp duty at the rates determined by the collector for such agricultural land. Merely on the basis of some audit objections the Sub Registrar proceeded to make reference that too after 5 months of registration of document. As a matter of fact the Collector became functus officio after registration of the document and ceases to have any jurisdiction or control over the same. The action of the Sub Registrar proposing to make 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 as **State of Punjab versus Beant Singh and others**, wherein following opinion was expressed.

“Sub Section (1) of Section 47-A 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 Controller 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 47-A 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 47-A 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 Government 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 47-A has been adopted. The appellate authority has rightly allowed the appeals. I find no merit in these revision petitions which are accordingly dismissed.”

(9) The present controversy is squarely covered by the aforesaid judgment.

(10) Apart from the above, the Collector has based his findings on spot visit. Such a recourse is also impermissible in law. Even on spot visit the Collector has not opined that the land is non-agricultural. It is only recorded that the land is 1-2 acres away from the locality. The revenue record clearly shows that the land is agricultural. Spot visit cannot be made the basis for determination of the value of land particularly when the land is duly recorded as agricultural land in the undisputed revenue record.

(11) In view of the above circumstances, the impugned orders passed by the Collector and the Appellate Authority are without jurisdiction and void *ab initio*, same are hereby quashed .

(12) Copy of this order be placed on each connected. file.