

H. P. Board of Departmental Examination
Departmental Examination for IAS/HAS Officers
OCTOBER, 2016.

PAPER NO. 5 REVENUE CASE

Time Allowed: 3 hours

Maximum Marks: 100

Note:

1. Questions No. 1 and 2 are compulsory. Attempt any one out of the remaining two.
2. Revenue Acts/Rules, H. P. Land Records Manual can be consulted.

Q 1

- a. What is a Judgment? What are its essential ingredients? What is the effect of non-mentioning of reasons in Judgment? (4,3,3 total 10 marks)
- b. What are the principles of natural justice? When and why is it necessary to comply with these? (5, 5 total 10 marks)

Q 2

- a. An appeal is pending before the Sub Divisional Collector against the order of Assistant Collector. Appellant is absent on the date fixed for hearing while Respondent is present. Pass order for the day.
- b. Appeal is filed before the Sub Divisional Collector against the order passed by the Revenue Officer. Notice is issued and the Respondent appears on the date fixed for the hearing and files reply. Pass an order.
- c. It is intimated to the Sub Divisional Collector during pendency of an Appeal that the Respondent has died. What Order will be passed?
- d. In Appeal, Respondent does not appear on the date fixed for service. There is proper Service. What order is to be passed?
- e. In the case (d) above, the Respondent appears on the date fixed for Arguments and wants to argue the case. What order is to be passed?

(6 marks each, total 30 marks)

Question 3

An appeal is filed before Collector, Shimla Sub Division under Section 14 of the H.P. Land Revenue Act, 1954 directed against the order passed by the Assistant Collector, Ist Grade Shimla in Mutation No. 450 on 11.11.2015 with respect to land measuring 8-8 bigha comprised in Khata/Khatauni No. 1/2 min situated in Mauja Mashobra, Tehsil and District Shimla.

Ld. counsel for the Appellants argued that the impugned order has been passed by the Assistant Collector Shimla behind their back and no opportunity of being heard was given to them. He further argued that the Assistant Collector could not attest the Mutation under the

H.P. Land Revenue Act, 1954 and that the said Mutation should have been attested by the Land Reform Officer only. He relied upon the order passed by Ld. Financial Commissioner, Himachal Pradesh in the case titled Darshan Kumar vs. Ram Kishan, Revenue Revision No. 77 of 1985 decided on 29.08.1985, The Lahore Law Times, Vol. LXV-1986 page-8-10 in support of his claim. He argued that this matter related to resumption of land under tenancy law and the Assistant Collector was not competent to attest the impugned mutation. He prayed that the impugned mutation be set aside.

Ld. Counsel for the Respondents, on the other hand, argued that the litigation in this matter started in the year 1975 when the landowners moved an application for resumption of one half share of their total land as provided in the tenancy law. The order was finally passed by the Land Reforms Officer, Shimla in the year 1992. This order of the Land Reform Officer, Shimla dated 24.11.1992 was challenged before the Collector, Shimla but the Appeal was dismissed on 30.12.1994. The order of the Collector was challenged by way of an Appeal before the Commissioner, Shimla Division which was dismissed on 31.11.1995. The revision petition filed by the Appellants was also dismissed by the Ld. Financial Commissioner (Appeal), H.P. on 27.07.2005. The Appellants then filed applications before the Hon'ble High Court which were also dismissed in the year 2010. In this case Mutation has been attested on the basis of the orders passed by the Land Reform Officer, Shimla, therefore, the claim of the Appellants is not justified. He further argued that the civil courts have also dismissed the suits filed by the Appellants with respect to the land in question. He placed before this court orders passed by Id. Civil Judge (Jr. Division), Shimla on 11.07.2013 and the Id. Additional District Judge-I, Shimla on 19.06.2014. He argued that the Appellants are dragging the matter needlessly and they are misusing the process of law. The matter has been settled by the Ld. Financial Commissioner and the Hon'ble High Court, therefore, he prayed that, therefore, the appeal is liable to be dismissed.

The record related to Mutation shows that the Mutation was attested by the Tehsildar as AC Ist Grade to implement the Order of LRO, Shimla passed in the year 1992. No notice to any party was given by the AC Ist Grade.

Pass an Order deciding the Appeal as Collector, Sub Division Shimla (50 Marks)

Question 4

Case:

Ld. District Judge Solan vide order passed in Civil Appeal No. 9-S/13 of 2014 on 04.04.2015 under Section 47-A (5) of the Indian Stamp Act (hereinafter called the Act) has remanded back the case to the Collector, Nalagarh with the direction to "*determine the value of the land as on the date of execution of the Sale Deed after making reference to the evidence placed on record by the parties after giving proper opportunity of being heard, as has been directed by the Hon'ble High Court of H.P. vide order dated 01.09.2010 passed in CMP No 107 of 2009.*"

The background:

Sub Registrar, Nalagarh referred the matter concerning Sale Deed No. 400 dated 5.5.2003 under Section 47-A of the Act to the Sub Divisional Collector Nalagarh (who is specifically empowered to decide cases under Section 47-A as Collector by way of a notification of the State Government) for determining the value of property involved in the said Sale Deed. The reference was based on the Audit Report which had pointed out that there was undervaluation of the said Sale Deed, the Audit had concluded that the said registry was undervalued by Rs 4,74,860.

The record on the case file shows that at the time of the Audit of the Sub Registrar, Nalagarh, auditors found out that at the time of registration of the Sale Deed in question annual average value of the land was assessed on the basis of one year average for Gair Mumkin Land as the land in question was recorded as Gair Mumkin Factory in the revenue record. The audit party concluded that the land should have been valued for Changar Barani Avval because the land was for "commercial purpose". Thus, the auditors re-calculated the stamp duty considering the land to be Changar Barani Avval and came to the conclusion that Sale Deed No. 437 dated 21.04.2003 was undervalued and the Respondent had paid deficient stamp duty therefore Rs. 4,74,860 were recoverable from him.

The Collector, Nalagarh Sub Division after hearing the parties, passed an Order on 15.10.2007 directing M/s ABC (hereinafter called the company) to deposit Rs. 4,74,860 as balance stamp duty registration fees. This order was challenged by the company in Civil Appeal which was decided by the Id. District Judge Solan. The Id. District Judge, Solan set aside the order passed by the Collector. The State of H.P. filed an Appeal against said order before the Hon'ble High Court of H.P. Hon'ble High Court of H.P. modified the order of the Id. District Judge, Solan and remanded the case back to the Collector with the direction to determine the market value of the land as on the date of execution of the Sale Deed after making reference to the evidence and material, if any, placed on record by the parties. Consequently the Collector decided the case on 19.07.2012. The Collector again came to the conclusion that company was liable to pay the deficient stamp duty amounting to Rs. 4,74,860. This order was challenged by the company before the Id. District Judge, Solan who while deciding the case on 04.04.2015 has remitted the case once again to the Collector for decision as mentioned above.

Pleadings of the Company:

Contention of the company is that when he purchased the land in question it was recorded as Gair Mumkin Factory in the revenue record. This land was earlier purchased by M/s XYZ. Before the property was purchased by M/s XYZ it was recorded as Changar Avval Barani in the Jamabandi for the year 1980-81. However, after the said land was purchased by M/s XYZ and said company raised a factory on the land its classification was rightly changed to Gair Mumkin Factory. The company purchased the land in the year 2003, because XYZ had become a sick unit and was closed. The land was no longer cultivated or irrigated and was not Changer Avval Baraani but was Gair Mumkin Factory. Accordingly the revenue authorities had rightly assessed the stamp duty and registration fee based on the correct classification of

land at the time of sale deed. Stamp Duty for this land cannot be assessed for Changar Avaal Barani.

Arguments on behalf of the State of HP:

This is a reference under Section 47-A of the Act. The auditor has correctly pointed out that the company is liable to pay an amount of Rs. 4,74,860. The Jamabandi for the year 1980-81 records the land as Changar Avaal Baraani. It has been rightly concluded by the Collector in the order passed on 19.07.2012 that even if the land was classified as Gair Mumkin Factory, its value actually increased because the land was for commercial use and because of the mushrooming of industrial activity in the vicinity the stamp value and registration fee was to be calculated for changar barani land and not gair mumkin land. He, therefore, argued that the Respondent be directed to deposit the amount pointed out by audit.

Arguments on behalf of the Company:

Both the Auditors and the Collector arrived at wrong conclusion. The value of land could not have been assessed for any other type of land other than the one recorded in Jamabandi. The revenue record clearly mentions that the land was classified as Gair Mumkin Factory at the time of transaction. The Collector has based his satisfaction upon the revenue record for the year 1980-81 whereas the classification changed in the year 1985. The Company purchased the land in the year 2003 along with the structure on it for which proper stamp duty and registration fee was paid. Ld. District Judge, Solan has set aside the order of the Collector on two different occasions because it was found to be unreasonable, unjust and incorrect. He therefore, prayed that that notice under Section 47-A of the Act be withdrawn and proceedings be dropped.

Pass a reasoned and detailed Order in the Case Collector, Nalagarh. (50 Marks)