

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ WRIT PETITION (CIVIL) NO. 11523-24 OF 2005

% Reserved on : 4th August, 2009.
Date of Decision : 11th August, 2009.

CHANDER BAGAI AND ANOTHER ... Petitioners.
Through Mr.Sunil Bagai, petitioner in person.

VERSUS

GOVT. OF NCT OF DELHI
AND OTHERS Respondents.
Through Mr. Darpan Wadhwa, Advocate for respondent-GNCT of Delhi.

Ms. Kusum Bhalla, advocate for DDA.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

Mr. Chander Bagai and Mr.Sunil Bagai, the petitioners have filed the present Writ Petition seeking the following reliefs:-

- “i) issue appropriate writ, order or directions in the nature of Mandamus directing the respondents to pay a sum of Rs.18,277/- with interest @ 24% p.a. with effect from 14.8.2001;
- ii) issue appropriate writ, order or directions in the nature of Mandamus directing the respondents to pay a sum of Rs.1,00,000/- on account of litigation expenses and damages,

suffered by the late B.L.Bagai and the petitioners, due to proved malafide, oppressive and capricious acts of the respondents, who are public servants;

iii) issue appropriate writ, order or direction thereby imposing exemplary/special damages in favour of the petitioners and against the respondents for their proved malafide, oppressive, capricious, illegal, arbitrary and unconstitutional acts due to which the petitioners were dragged into the unnecessary and prolonged litigation, lasting for more than five years (from 1998 to 2003);

iv) issue a writ, order or direction to the respondent No.1 to 3 to pay interest on Rs.25,142/- paid by the petitioners as stamp duty on 12.5.2000 at the rate of 24% p.a. till the date of refund i.e. 13.8.2002;

v) Award the costs of these proceedings in favour of the petitioners and against the respondents;

vi) issue any other and further orders be also made as are deemed fit and proper in the facts and circumstances of the case.”

2. The husband of petitioner no.1 and father of petitioner no.2, late Mr.B.L.Bagai had acquired interest in the leasehold rights in the property/flat no. C-8/8235, Vasant Kunj, New Delhi-110070 from the original allottee on payment of Rs.3.60 lacs. No sale deed was executed nor permission from Delhi Development Authority (hereinafter referred to as DDA, for short)-the lessor was obtained for the said transfer. The original allottee had executed Agreement to Sell, receipt, Will, Power of Attorney, etc.

3. On 30th May, 1996, late Mr.B.L.Bagai applied for conversion of the said flat from leasehold to freehold and made payments including 1/3rd additional amount towards regularization of the transfer made by the original allottee.

4. On 2nd December, 1997, DDA-respondent no.4 herein issued an unexecuted conveyance deed form which was required to be adjudicated and stamped with the proper stamp duty by the Collector under Section 31 of the Indian Stamp Act, 1899.

5. On 25th March, 1998, late Mr.B.L.Bagai deposited the unexecuted conveyance deed along with copy of the Agreement to Sell, etc. for adjudication with the Collector of Stamps. It is stated by the petitioners that an earlier attempt to deposit the said papers on 17th March, 1998 was made but without success. .

6. By Order dated 6th April, 1998, late Mr.B.L.Bagai was asked by the Collector to deposit the original Agreement to Sell, Power of Attorney, etc executed by the original allottee. Aggrieved, late Mr.B.L.Bagai filed a revision petition before the Deputy Commissioner, which was rejected by the Order dated 6th June, 1998.

7. Thereupon, late Mr. B.L.Bagai filed a Writ Petition (Civil) No.3264/1998 in this Court. This Writ Petition was allowed vide Order dated 4th November, 1999 holding, inter alia, that the conveyance deed had to be stamped on the basis of the consideration mentioned therein and accordingly for adjudication of the stamp duty payable on the conveyance deed, the Collector of Stamps need not hold any independent enquiry into the market value of the flat/property. It was held that the unstamped conveyance deed submitted for adjudication did not mention the sale consideration paid by late Mr.B.L.Bagai to

the original allottee and therefore the said consideration cannot be added or included to the amount mentioned in the conveyance deed for computation of the stamp duty. Learned Single Judge while allowing the Writ Petition followed an earlier judgment of this Court in ***Collector of Stamps versus Hem Lata and another*** 64 (1996) DLT 450.

8. There was delay on behalf of the Collector of Stamps in complying with the said judgment and late Mr.B.L.Bagai filed a contempt petition in this Court in May, 2000.

9. While the Contempt Petition was pending, late Mr.B.L.Bagai made an application for return of the unexecuted conveyance deed to the Collector of Stamps vide letter dated 4th May, 2000. The Collector of Stamps did not return the original unexecuted conveyance deed but issued challans on 8th May, 2000 for payment of stamp duty of Rs.25,142/-. The challans were issued on the basis of the amount mentioned by the DDA in the unexecuted conveyance deed without including the consideration of Rs.3.60 lacs paid by late Mr.B.L.Bagai to the original allottee. This amount of Rs.25,142/- was deposited by late Mr.B.L.Bagai on 12th May, 2000 and acknowledgement dated 15th May, 2000 was received.

10. The Collector of Stamps, however, refused to issue duly stamped unexecuted conveyance deed and on 25th May, 2000, a time barred Letters Patent Appeal was filed. The Division Bench

issued notice on 10th July, 2000 but no stay order was passed. Thus, the matter became sub-judice before the Division Bench.

11. During the pendency of the said appeal, late Mr.B.L.Bagai filed an application for interim relief and directions. The said application was disposed of on 6th December, 2000, noticing the judgment of the Division Bench of this Court in ***Hem Lata (supra)*** and the fact that the said judgment was subject matter of appeal before the Supreme Court. The Court accordingly, passed the following Order :

“Learned counsel for the appellants says that in case the respondents furnishes an undertaking before the Collector of Stamps to the effect that he shall produce the original agreement to sell relating to property being flat No.8235, situated in sector C, Pocket No.8, Vasant Kunj, New Delhi as and when required by the Collector of Stamps and will pay the stamps duty/penalty leviable on the agreement to sell subject to the decisions of the Hon’ble Supreme Court of India in Dr. Hem Lata’s case or any other decision pertaining to the issue in question, conveyance deed forms shall be stamped by him. Learned counsel for the respondents states that he shall file undertaking before the collector. On consideration of the submissions of the learned counsel for the parties, we direct that in case the respondents file the aforesaid undertaking before the Collector the conveyance deed for Me shall be stamped by the Collector of stamps in accordance with law.”

12. On 23rd January, 2001 the unexecuted Conveyance Deed duly stamped was issued by the Collector of Stamps.

13. On 31st January, 2001 late Mr.B.L.Bagai submitted the papers with DDA for execution of the conveyance deed. However, before

the said execution could fructify and could be actually performed, he expired on 7th February, 2001.

14. The petitioners herein on 22nd June, 2001 submitted papers for mutation of the flat in favour of petitioner no.1 with DDA. They also approached Central Vigilance Commission in July 2001. DDA by their letter dated 19th July, 2001 accepted and approved the mutation of the flat in favour of petitioner no.1. The new unexecuted conveyance deed was deposited with the Collector of Stamps on 30th July, 2001. On 14th August, 2001, the petitioner no.1 was asked to deposit stamp duty of Rs.40,905/- on the conveyance deed calculated @ 13% of the sale consideration mentioned in the conveyance deed. On the first unexecuted conveyance deed stamp duty of Rs.25,142/- was payable as per the prevailing rate of 8%. The stamp duty rate had been increased from 8% to 13% w.e.f. July, 2001.

15. The petitioners applied for refund of Rs.25,142/- which had been paid on the first unexecuted conveyance deed in favour of late Mr.B.L.Bagai. An amount of Rs.22,628/- was received by them on 5th March, 2002 after statutory deduction of 10%.

16. The Letters Patent Appeal came up for hearing before the Division Bench on 17th March, 2003 and was disposed of, recording as under:-

“LPA No.308/2000

So far as the respondent is concerned Mr.Sunil Bagai says that his conveyance deed has already been adjudicated for stamp duty and delivered to the respondent. In this view of the matter, the appeal has become infructuous. Dismissed.”

17. The present Writ Petition was filed on 7th April, 2005 claiming relief of damages and refund of the additional stamp duty paid on account of increase in stamp duty rates from 8% to 13% w.e.f. July, 2001. There is no doubt that there was delay and to some extent lassitude and sluggishness had caused the delay in processing of the application for computation of the stamp duty in the Office of the Collector at least during the period 4th November, 1999 when writ petition no.3264/1998 was allowed and the appeal was filed on 25th May, 2000. However, the appeal filed by Collector of Stamps was not dismissed inspite of the delay and notice was issued, though no stay order was passed. Thereafter, late Mr.B.L.Bagai had filed an application for interim relief on which Order dated 6th December, 2000 was passed,. The said order required late Mr.B.L.Bagai to furnish an undertaking that he shall pay additional stamp duty/penalty on the consideration mentioned in the Agreement to Sell and other documents executed by the original allottee, subject to the decision of the appeal by the Supreme Court in the case of ***Hem Lata (supra)***. It is admitted that the Collector of Stamps had filed an appeal against the decision of the Delhi High Court in the case of ***Hem Lata (supra)*** which was admitted and the matter was sub judice before the

Supreme Court. The question in this appeal was whether stamp duty was payable only on the consideration mentioned in the conveyance deed but also upon the amount paid to the original allottee for transfer of his rights to the subsequent purchaser in whose favour the conveyance deed was being executed. This appeal was dismissed after examining the provisions of the Stamp Act, 1899 by the judgment dated 23rd April, 2003. It was held that the two transactions i.e. transaction between the subsequent purchaser and the original allottee and the second transaction between the subsequent purchaser and the DDA for conversion of the leasehold rights into freehold along with 1/3rd additional amount were two separate transactions and accordingly Section 28(3) of the Stamp Act, 1899 was not applicable and the stamp duty payable on the conveyance deed had to be adjudicated on the basis of the amount mentioned in the conversion deed as it pertains to DDA holding the revisionary interest in the land/leasehold property. With the decision of the Supreme Court, legal issues raised were finally adjudicated and decided on 23rd April, 2003. In these circumstances, the delay in computation and execution of the stamp duty, etc. payable on the conveyance deed was on account of the legal issues and contentions which required adjudication. These were finally settled only on 23rd April, 2003 by the Supreme Court. Further the High Court had entertained the Letters Patent Appeal and thereafter late Mr.B.L.Bagai had filed an application seeking interim relief and

direction for execution of the conveyance deed, which was disposed of vide Order dated 6th December, 2000. Thus, delay till the said date, i.e. 6th December, 2003 is explained and understandable in view of the legal questions and issues involved relating to computation of stamp duty on the conveyance deed. No doubt the Letters Patent Appeal could have been filed earlier and there was delay about six months in filing of the same but the Division Bench did not dismiss the appeal on the question of delay and limitation. The appeal was entertained and even notice was issued.

18. The delay after passing of the Order dated 6th December, 2000 can be explained. Late Mr.B.L.Bagai was required to furnish an undertaking and after the same was furnished the original unexecuted conveyance deed was released duly stamped on 23rd January, 2001. Unfortunately, late Mr.B.L.Bagai expired on 7th February, 2001. There was delay of about four months on the part of the petitioners when they applied for mutation in the records of the DDA on 22nd June, 2001. Mutation was approved on 19th July, 2001 but in the meanwhile, the rate of stamp duty payable on conveyance deeds was increased from 8% to 13% w.e.f. July, 2001.

19. Thus the delay, after passing of Order dated 6th December, 2000, is attributable to the petitioners, though it is not difficult to understand the reason why the petitioners took four months to apply to DDA for mutation after the death of late Mr.B.L.Bagai. The increase in stamp duty rates was as a result of legislative

amendment, over which neither the petitioners nor the respondents had any control and the respondents cannot be held liable for the same.

20. It may be noted that the Letters Patent Appeal was disposed of on 17th March, 2003, long after the conveyance deed was executed in favour of the petitioner no.1 in August/September, 2001. The petitioners did not press for costs at that stage and the Letters Patent Appeal was dismissed without any order as to costs. The present Writ Petition was filed, as stated above, in April, 2005.

In view of the aforesaid discussion, I do not find any merit in the present Writ Petition and the same is dismissed.

There will be no order as to costs.

(SANJIV KHANNA)
JUDGE

AUGUST 11, 2009.
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