

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 4938/2007**

Date of Decision 11th November, 2009

S.K.KHOSLA Petitioner
Through Mr. Sameer Vashisht, Adv.

versus

M.C.D. Respondent
Through Ms. Amita Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

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

GITA MITTAL, J (Oral)

1. The question which has been raised by the petitioner in the present case relates to the validity of the demand of transfer duty by the Municipal Corporation of Delhi as a pre-condition to the mutation of the petitioner's name in respect of the property bearing no.A-3/133A, situated in Block 3, Paschim Vihar, New Delhi. This issue raised in the present writ petition is not res integra and stands concluded by several pronouncements of the Apex Court as well as by the pronouncements of the Division Bench and learned Single Judges of this court.

2. The undisputed facts to the extent necessary for the present consideration are noted hereafter. On 4th February, 1994, one Shri Rajesh Kumar and Smt. Anita Rani acquired lease hold rights in the Plot No.A-3/133A, Paschim Vihar, New Delhi admeasuring 108.33 sq. mtrs. in an open auction conducted by the Delhi Development Authority which was the superior lessor

thereof on a total sale consideration of Rs.9,70,000/-. The DDA executed a perpetual lease deed dated 6th December, 1994 in their favour.

3. On 11th October, 1995, the lessees of the subject property entered into an agreement to sell with the petitioner whereby they agreed to transfer their rights in the subject property to the petitioner for a total sale consideration of Rs.10,25,000/-. Apart from the execution of an agreement to sell in favour of the petitioner, the lessees also executed a registered General Power of Attorney in favour of Smt. Kamlesh Khosla, wife of the petitioner. The possession of the property was handed over on the same date.

4. The petitioner applied on 23rd December, 1999 to the DDA for conversion of lease hold rights to free hold in respect of the subject property.

5. By a communication dated 9th August, 2001, the DDA required the petitioner to get the unsigned format of the conveyance deed, duly stamped by the Collector of Stamps in respect of the property.

6. It has been stated that Collector of Stamps returned the unsigned conveyance deed to the petitioner on 18th September, 2001 which was duly stamped and bore the following certificate:-

“Certified that the instrument is properly stamped under Section 82 of the Indian Stamp Act. The stamp duty of Rs.640/-, transfer duty Rs.400/-, total Rs.1040/- has been deposited vide treasury Challan dated 18.09.2001.”

7. Pursuant to the above, a conveyance deed dated 22nd October, 2001 was registered by the Sub-Registrar VII, New Delhi conveying the reversionary interest in the said demised property to the purchaser i.e. the petitioner.

The schedule enclosed to the conveyance deed dated 22nd October, 2001 has described the property as “plot of land being the residential plot no. A-3/133A, Paschim Vihar, New Delhi admeasuring 108.33 sq. mtrs”.

8. It is asserted on behalf of the petitioner that on 3rd July, 2003, he has applied to the Assistant Assessor & Collector (West Zone) of the MCD for

mutation of the plot in his name. The petitioner was called upon by communications dated 11th November, 2003 and 11th February, 2004 from the MCD to complete certain formalities. One of the conditions imposed was a requirement of payment of 3% transfer duty under Section 147 of the Delhi Municipal Corporation Act.

9. The petitioner had responded to this requirement by a communication dated 27th April, 2004 pointing out that he complied with all stipulations except the requirement of deposit 3% transfer duty as was demanded by the MCD. According to the petitioner, so far as the payment of transfer duty was concerned, the same stood collected on behalf of the MCD by the Collector of Stamps on 18th September, 2001. Reliance was made on endorsement effected on the conveyance deed and the payment of the amount to the Collector of Stamps as demanded.

10. The MCD however has taken a stand that so far as the conveyance deed is concerned, the same has reflected the amount of consideration as only Rs.7,700/- on the conveyance of the rights whereas the petitioner had entered into an agreement to sell in respect of the subject property with the erstwhile owner wherein the petitioner has reflected the consideration of Rs.10,25,000/-. It is contended that the MCD is justified and entitled to claim transfer charges on such demand.

11. Ms. Amita Gupta, learned counsel for the MCD has further contended that in view of the amendments which have been effected to Section 147 of the Delhi Municipal Corporation Act by the Delhi Act 6 of 2003, an agreement for transfer of immovable property is exigible to transfer duty and, therefore, the MCD is entitled to claim the amount of transfer duty based on the consideration reflected in the agreement to sell entered into by the person seeking mutation. She submits that therefore the petitioner is required to pay duty calculated on the basis of the consideration reflected in the agreement to sell.

12. I have heard learned counsel for the parties at length.

13. It is trite law that so far as the transfer of rights in immovable properties are concerned, the same can be effected only by a registered instrument. The rights which are conveyed are as per such registered document. The terms contained in the agreement to sell between the parties would necessarily merge in the final document which is registered by the authorities. In this background, the submission by learned counsel for the MCD to the effect that the respondents are justified in ignoring the registered instrument and placing reliance on the agreement to sell which preceded the registered instrument are wholly misconceived and deserve to be rejected.

14. Learned counsel for the petitioner has placed before me a pronouncement of the Division Bench of this court adjudicating on this very issue which is reported at **64 (1996) DLT 450 (DB) The Collector of Stamps Vs. Dr. Hemlata & Anr.** In this pronouncement, the court was concerned with the issue regarding the power and authority of the Collector of Stamps to go behind the sale consideration which is mentioned in the registered instrument. In this regard, this court had held as follows:-

“(6) We have given due consideration to the submissions made. The short question before us is whether stamp duty on the conveyance deed sent for adjudication is to be paid on the disclosed consideration of Rs. 10,000 or on the amount of consideration that may have been mentioned in another document, viz. the agreement to sell ? A perusal of the conveyance deed shows that it purports to grant the "reversionary interest of the Vendor", viz. the original allottees in the land underneath the flat allotted leased in favor of the purchaser, viz. respondent No. 1 for a consideration of Rs. 10,000. The transfer is limited to the above extent. It does not mention the super structure of the flat. It is not in dispute that the consideration for conversion of the reversionary interest in the land underneath is on the rates prescribed by the DDA. The Collector of Stamps is not required to hold an independent inquiry into the market value of the property conveyed or the consideration for conveying the same for determining the duty chargeable. He has to go by the consideration mentioned in the document for calculating the stamp duty payable which, in the instant case, is governed by Article 23 of the Schedule to the Stamp Act. This is now well established and reference in this

connection may be made to the following cases :

1. The Chief Controlling Revenue Authority. (2) Board of Revenue, Madras Vs . K. S. Dwarkanathan: AIR 1980 Mad 171 .

2. Shri Krishan Jindal Vs . Registrar (Deputy Commissioner) District Patiala and Others.

3. Ramchandra Vishwanath Ghaisas and others Vs . The State of Maharashtra AIR 1981 Bombay 164

4. Himalaya House Co., Ltd., Vs . The Chief Controlling Revenue Authority and another : AIR 1972 SC 899.

(7) As regards the submission of the learned counsel for the appellant that the learned Single Judge had erred in observing that no agreement to sell had been executed between them, it is noticed in the earlier part of the judgment that the learned Single Judge had taken note of the sum of Rs. 5,51,000 which had been paid as sale consideration for the flat. The erroneous observation regarding non-execution of the agreement to sell

would not make any material difference as there was no conveyance deed executed with consideration of Rs. 5,51,000 which was the subject matter of adjudication before the Collector of Stamps. The question to be considered is whether the terms of the agreement to sell by which the respondent No. 1 purchased the flat have been incorporated in the conversion deed or not? It is clear from a perusal of the conveyance deed for the reversionary of interest in the land that it does not incorporate any term of the agreement to sell. In the absence of any terms of the agreement to sell being incorporated in the conveyance deed, the stamp duty that is chargeable and payable would be on the basis of the consideration as disclosed in the conveyance deed, which is confined to the value of reversionary interest in the land underneath the flat."

15. This judgment was carried in appeal to the Apex Court which challenge was rejected by the judgment reported at ***JT 2003 (6) SC 91 Collector of Stamps Vs. Hem Lata & Anr.*** The court had placed reliance on the view taken on the same issue in several prior judgments and held as follows:-

4. In our judgment, the views taken by the learned single judge and the Division Bench of the High Court are perfectly justified and unexceptionable. This Court in Himalaya House Co. Ltd. v. The Chief Controlling Revenue Authority and Anr., [1972]3SCR332 had occasion to consider almost a similar situation. This Court noticed that Article 23 of Schedule 1A to the Indian Stamp Act 1899 had come up for consideration before various High Courts on a number of occasions. Approving the view taken in Raman Chetty v. Mohammed

Ghouse, , Sakharam Shankar v. Ramchandra Babu Mohire, and Sitaram Kamalia v. State of Bihar, it was held by this Court that the question which arose for decision was settled by a series of judgments that stamp duty was chargeable only on the basis of the consideration set forth in the instrument to be stamped. It was also held that the collector under the Indian Stamp Act had no jurisdiction to embark upon an enquiry with regard to the market value of the property assigned by the document nor did he have the power to adjudicate further stamp duty on the basis of his own evaluation. This Court expressed its agreement with the view taken in the aforesaid decisions. In view of the long line of decisions it was observed that the legislature may have had good reasons not to empower the revenue to make an independent enquiry as regards the valuation of the right sought to be assigned.

5. The learned counsel for the appellant contended that what was conveyed by the conveyance deed was not only that reversionary rights of the DDA to the first respondent but also all the rights of the allottees in the property to the first respondent. In support of his contention, he invited our attention to the perambulatory recitals in the conveyance deed. We are afraid that his argument cannot be accepted. The perambulatory recitals in the conveyance deed do not amount to the habendum et tenned of the conveyance deed. What is conveyed under the deed is indicated by the four clauses contained therein. A perusal thereof shows that the only thing conveyed by the deed is the reversionary rights of the DDA to the first respondent and no more, the consideration for which is declared to be Rs. 10,000/-. We are thus of the view that the collector of stamps could not have adjudicated under Section 31(1) on the basis of anything other than the set forth consideration of Rs. 10,000/-.

6. The learned counsel pressed Section 28(3) of the Act into service and contended that the High Court had not properly appreciated the contention based on Section 28(3) of the Act. After hearing learned counsel we are satisfied that the High Court was justified in giving short shift to the contention. What Sub-section (3) of Section 28 of the Act contemplates is that the interest in the property conveyed by a purchaser to a sub purchaser, without obtaining the conveyance deed from the original seller must be identical with that which was agreed to be conveyed by the original seller to the purchaser. In the present case, the DDA was their original seller (assuming that it was really a case of sale) and the society was the original purchaser.

7. The allottees were the member of the society under an agreement which entitled them to get a sub lease executed in their favour. They in turn without getting the lease/sub lease executed in their favour transferred their interest to the first respondent upon consideration of Rs. 5,51,000/- under an agreement of sale. The conveyance deed which was sought to be adjudicated under Section 31(1) conveyed a totally different interest in the property, namely, the DDA's reversionary interest in the land to the sub-purchaser (first

respondent). In our view in these circumstances Sub-section (3) of Section 28 does not stand attracted and the High Court was justified in rejecting the contention.

16. In the instant case also, the document by which the rights have been conveyed to the petitioner relates to an identical conveyance deed as was under consideration before the Supreme Court and Division Bench in the afore-noticed judgments. The conveyance deed relied upon by the petitioner for mutation also seeks to convey only reversionary rights in the land on which the building has been constructed by the allottee. It is not the case of the MCD even that the DDA has conveyed any constructed property.

17. Learned counsel for the respondent has placed reliance on the amendment which has been effected to Section 147 of the Delhi Municipal Corporation Act which deals with the duty on transfer of property and assessment thereof. By virtue of the amendment which has taken effect from 1st October, 2003, the legislature has included a 'contract for transfer of immovable property' in the description of 'instrument' mentioned in the statutory provision at serial no.VI.

18. The need for incorporation of this provision is based on the observations of the Division Bench of this court in para 8 of the pronouncement in ***The Collector of Stamps Vs. Dr. Hemlata & Anr (supra)*** whereby the court had rejected the contention on behalf of the Collector of Stamps that acceptance of this transaction would result in a large scale evasion of stamp duty. The Division Bench had observed that this could be avoided only if the statutory authorities take appropriate steps to effect amendment in the statute rules and regulations and make such transfer exigible to stamp duty on the actual consideration that may be paid.

19. The amendment which has been effected to Section 147 of the Delhi Municipal Corporation Act would not be applicable to the instant case for two reasons. Firstly, it has to be noted that the conveyance deed which is relied

upon by the petitioner was registered on 22nd October, 2001 which was well before the amendment was effected. The second reason is the nature of the rights in property which were transferred. The leasehold rights in the land stood leased by the Delhi Development Authority, the land owner and the superior lessor to the erstwhile lessees. The petitioner had also sought transfer of reversionary interest alone in the subject land from the DDA. DDA has permitted the transfer of the reversionary interest in the property by way of conveyance of deed. So far as the consideration which the petitioner has paid to the DDA for the transfer is concerned, in terms of the conveyance deed dated 22nd October, 2001, the same has been fixed at Rs.7,700/-.

20. An additional aspect of this matter merits consideration. Another change in law was also effected by the amendment in the Registration and Other Related Laws (Amendment) Bill 2001 which made the registration of an agreement to sell w.e.f. 7th August, 2001 also compulsory. As a consequence, an agreement to sell which was entered into by the parties for transfer of property after the 7th August, 2001 effected document registerable and as a consequence, the stamp duty has been made exigible on the consideration mentioned therein. However, this amendment does not impact the present case for the reason that the agreement to sell in the instant case is dated 11th of October, 1995 which is prior to the amendment.

21. So far as the power to recover transfer charges are concerned, the same has been considered by a recent judgment pronounced by learned Single Judge of this court reported at **141 (2007) DLT 715 Raghu Nayyar Vs. Municipal Corporation of Delhi & Ors.** wherein in para 19, it was held as follows:-

“19. It requires to be immediately noticed that Clause (vi) was introduced in the above provision only with effect from 1.8.2003. The other relevant provisions are Section 2(6), 2(11), Sections 31, 32 and 40 of the Stamp Act, 1899. It appears that transfer duty is not payable under the Stamp Act and therefore the non-payment of such transfer duty cannot result in the impounding of the documents under the Stamp Act unless the document is in

fact the sale deed. Previous to 1.8.2003, no transfer duty was payable on a document of a mere agreement to sell. In any event as pointed out in Sudarshan Talkies (Delhi) Vs. Controller of Stamps, AIR 1978 Del 112 (Special Bench), the transfer duty leviable under Section 147 is independent of the stamp duty. In so observing the Full Bench of this Court in Dayal Singh V. Collector of Stamps, AIR 1972 Delhi 131. It was explained by the Full Bench of this Court in AIR 1978 Delhi 112 (at page 114):

“6. It is evident from the perusal of Section 147 that the duty leviable, under the said section is in the form of surcharge leviable under the Corporation Act over and above the stamp duty. The transfer duty is thus assessed independently of the stamp duty. The proceeds so collected are credited to the fund of the Corporation. That being so, a conveyance deed cannot be impounded under Section 33 of the Stamp Act, nor can it be subjected to penalty under Section 40 of the said Act for failure to pay the duty envisaged by Section 147 of the Corporation Act. We are fortified in this view by the judgment of a Special Bench of this Court in Dayal Singh v. Collector of Stamps, ILR (1972) 1 Delhi 593: (AIR 1972 Delhi 131), wherein it was observed that the transfer duty leviable under Section 147 of the Corporation Act, on the transfer of property in the form of surcharge is leviable under the Corporation Act; that the transfer duty is levied and collected over and above the stamp duty, being payable to the Corporation and goes to the Corporation fund; and that the transfer duty is not a percentage of the stamp duty; on the other hand it is a percentage of the amount or value of the consideration for the sale as set forth in the instrument of conveyance. Further, the transfer duty is assessed independently of the stamp duty on the amount of consideration for sale. In the premises, it was held that a sale deed is not ‘chargeable’ to transfer duty under the Stamp Act and that the instrument of sale cannot either be impounded under Section 33 or can be subjected to the imposition of a penalty under Section 40 of the Stamp Act on the ground that the duty on transfer of property levied ‘under the Corporation Act’ is either not paid or is insufficiently paid.”

22. After a detailed consideration of the entire law on the subject including the few judgments noted hereinabove, on the question of the payment of stamp and transfer duty the court laid down the clear principles that it is the consideration mentioned in the conveyance deed which is the relevant value for computation of the stamp and transfer duty. The court held as follows:-

“26. The resultant position therefore as regards the payment of stamp duty and transfer duty on the deeds of

conveyance dated 25.6.2001 in the instant case are concerned, it is the value mentioned in those deeds of conveyance presented for registration which had to be taken as the relevant value for the purpose of payment of such duty and not the value indicated in the agreement to sell. The value indicated in the agreement to sell would have been relevant if at all, only 24.9.2001 when the Amendment was introduced in the Indian Registration Act, 1908 and not earlier. Therefore, as far as the present case is concerned, the petitioners were rightly assessed to stamp duty and transfer duty by the Collector of Stamps on the basis of the value indicated in the conveyance deed i.e. Rs.10,000/-. Once such conversion was granted there can be no manner of doubt that the superior lessor i.e. the DDA has transferred the revisionary right of the land beneath the flats in question to the petitioners."

23. It is not disputed that the petitioner has paid the transfer charges as endorsed by the Collector of Stamps on 18th September, 2001.

24. Learned counsel for the petitioner submits that so far as the prayer for mutation is concerned, it is confined to such interest as stands conveyed by the Conveyance Deed on 22nd October, 2001 which is reversionary interest in the subject land and nothing more.

25. In view of the above discussion, it has to be held that the transfer duty was rightly assessed and collected by the Collector of Stamps from the petitioner as certified on the conveyance deed dated 22nd October, 2001. The refusal of the respondents to effect mutation of the interest in the subject property in favour of the petitioner without payment of further transfer duty is without any justification.

26. Since payment of transfer duty stands paid on the conveyance deed, a direction is issued to the MCD to carry out the mutation of the land in the name of the petitioner within a period of six weeks from today.

This writ petition is allowed in the above terms.

GITA MITTAL,J

NOVEMBER 11, 2009
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