

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 4180/2003

Reserved on: October 31, 2011

Decision on: November 9, 2011

MAYA DARYANI

..... Petitioner

Through: Mr. Ajay Tejpal, Advocate for
Mr. Amitabh Chaturvedi, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS. Respondents

Through: Mr. P. C. Sen, Advocate for R-1.
Ms. Nasreen Khatoon, Advocate for
Ms. Sujata Kashyap, Advocate for
R-2 to 4.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in Digest? | No |

JUDGMENT

9.11.2011

1. The Petitioner seeks a writ of mandamus to the Respondents Government of National Capital Territory of Delhi ('GNCTD'), Respondent No. 4 and the Union of India, Respondent No. 5 to implement the policy declared by them for reduction of stamp/transfer duty by exercising the statutory powers under the New Delhi Municipal Council Act, 1994 ('NDMC Act') and the Delhi Municipal Corporation Act, 1957 ('DMC Act').

2. The Petitioner states that she is a purchaser of property No. 31, Rajdoot Marg, Diplomatic Enclave, Chanakya Puri, New Delhi. It is stated that in a budget speech by the Finance Minister, GNCTD for the year 2003-04 a statement was made that the rate of stamp duty and transfer duty leviable and payable to the GNCTD and the respective municipal authorities in respect of transfer, sale and purchase of immovable properties shall be reduced from 13% to 8%. It is stated that this proposal was endorsed by the Government of India inasmuch as the Minister of Urban Affairs made a speech in the Parliament stating that the said reduction was in accordance with the policy of the Central Government. At that stage, 13% duties were being charged split into two parts, i.e., 8% on the transfer consideration payable to the GNCTD and transfer duty/corporation tax @ 5% payable to the MCD/NDMC as the case may be.

3. According to the Petitioner at that time the MCD was levying transfer duty/corporation tax @ 5% and at no point of time did it come out with any independent notification on this subject. The Petitioner states that for drawing of draft of the sale deed to be executed in respect of purchase of the said property, she approached the Treasury on 24th June 2003 for purchase of stamp papers. At that stage, it was informed that the transfer duty component remained at 5% since the property was situated in the NDMC area for which there had been no reduction in the transfer duty despite such reduction given effect to by the MCD. The Petitioner was asked to pay transfer duty @ 5%. Thereafter, the Petitioner made enquires and filed this writ petition.

4. It is submitted by learned counsel for the Petitioner that from 1957 to 2003 transfer duty had been levied at the same rate for whole of Delhi although under two different enactments, viz., DMC Act and Punjab Municipal Act, 1911 ('PMA'). After the NDMC Act came into effect in

1994, the transfer duty in respect of New Delhi area was 5%. Since this was the rate adopted by the NDMC, however a policy decision was taken for reduction of the transfer duty as noted hereinbefore. It is, therefore, submitted that when in practice the levy of transfer duty for the NDMC properties is same as that in the MCD areas and premises held due that it after the enactment of the NDMC. Moreover, levy of transfer duty @ 5% to the NDMC while maintaining it 3% for the MCD area was arbitrary and discriminatory *vis-a-vis* properties in the MCD areas and that this was violative of Article 14 of the Constitution. There was no legal basis for differentiating among the NDMC and MCD areas. Moreover, the provisions contained in Section 94 and 94 of the NDMC Act were identical to Sections 147 and 148 of the DMC Act. Reliance is placed on the decision in *Patel India (P) Ltd. v. Union of India AIR 1973 SC 1300* and *S.T.O. Benaras v. Kanayalal AIR (1959) SC 135* to contend that where money has been paid under a mistake the Government authority is bound to refund the money.

5. The above submissions are resisted by learned counsel for the MCD. It is pointed out that in the Petitioner's case the sale deed was executed on 24th June 2003. Subsequently, for the period 12th August 2003 to 31st March 2004 an exemption was granted under Section 124 of the NDMC Act. Resultantly the reduction in revenue by area is Rs. 200 lakhs. The exemption could not apply retrospectively. Moreover, the submissions made by the Minister in Parliament would not translate in law. Reliance is placed on the *Pine Chemicals Ltd. v. Assessing Authority (1992) 2 SCC 683* and *B.K. Industries v. Union of India 1993 Supp. (3) SCC 621*. It is further submitted that the effective cut-off date for grant of exemption is a matter of policy decision of Government and no mandamus can be issued in that regard. Moreover, the state has greater latitude in the matters of taxation. Reliance is placed on the decision in *Orissa Sponge Iron Ltd. v.*

State of Orissa (1998) 2 SCC 268.

6. The prayer of the Petitioner that this Court should issue a mandamus to the GNCTD and the Government of India to enforce a statement made by the Finance Minister of GNCTD to the State Legislative Assembly in 2003-04 followed by the statement made in the Parliament by the Union Minister for Urban Affairs is plainly misconceived. These are matters of policy and as rightly pointed out by learned counsel for the Respondent MCD that a court cannot issue a mandamus in that regard unless there is a statutory provision or a statutory notification to that effect. This is consistent with the legal position explained in *B.K. Industries v. Union of India* and *Pine Chemicals Ltd. v. Assessing Authority*.

7. This Court also accepts the submission of learned counsel for the Respondent that the exemption granted from payment of transfer duty @ 5% by way of notification for period 12th August 2003 to 31st March 2004 had no retrospective effect. Therefore, issuing any mandamus to reduce the transfer duty from 5% to 3% from retrospective duty would be impermissible in law. There is no arbitrariness in the NDMC charging 5% as stamp duty on immovable properties situated in the NDMC areas whereas the MCD is charging 3% transfer duty. Not all the localities in Delhi or New Delhi have similar features. There can be different transfer duty for properties located in New Delhi area as compared to the transfer duty applicable to the properties in the MCD areas. The mere geographical location of the properties being in the same city would not render the differential transfer duty and irrational, arbitrarily or discrimination within the meaning of Article 14 of the Constitution of India.

8. For the aforementioned reasons, this Court finds the writ petition to be

without merits and dismisses it as such, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

NOVEMBER 9, 2011

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