

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

Date of decision: 8th November, 2011.

+ **W.P.(C) 13122/2009**

% **SEEMA GROVER SETH** **Petitioner**
Through: Mr. Anil Kathuria, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS **Respondents**
Through: Ms. Neha Kapoor, Adv. for Mr. N.
Waziri, Adv. for R-1.
Mr. Anil Sharma, Adv. for R-3.

AND

+ **W.P.(C) 13888/2009**

% **GOVT. OF NCT OF DELHI** **Petitioner**
Through: Ms. Neha Kapoor, Adv. for Mr. N.
Waziri, Adv.

Versus

SANJAY GROVER & ANR. **Respondents**
Through: Mr. Anil Sharma, Adv. for R-1.
Mr. Anil Kathuria, Adv. for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary

3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. Both petitions impugn the order dated 1st July, 2009 of the Additional District Judge allowing the appeal preferred by Sh. Sanjay Grover under Section 47-A of the Indian Stamp Act, 1899 as applicable to Delhi and setting aside the order dated 19th August, 2008 of the Collector of Stamps, Delhi. Notices of the petitions were issued. Pleadings have been completed and the counsels have been heard.
2. The controversy concerns a Gift Deed registered on 1st May, 2006. Vide the said Gift Deed Sh. Chander Bhan Grover who was the father of the Ms. Seema Grover Seth and Sh. Sanjay Grover gifted industrial plot admeasuring 383.4 sq. yards of freehold land in the industrial area of Village Naraina, Delhi together with two and half storeyed construction thereon to Sh. Sanjay Grover. The property subject matter of gift was valued in the said deed at ₹19 lacs and the Gift Deed was executed on Non-Judicial Stamp Paper of ₹1,52,000/-. Sh. Chander Bhan Grover died shortly thereafter on

6th September, 2006. Several legal proceedings are stated to be pending between Ms. Seema Grover Seth and Sh. Sanjay Grover relating to the estate of Sh. Chander Bhan Grover as well as pertaining to the Gift Deed aforesaid.

3. The order dated 19th August, 2008 (supra) of the Collector of Stamps records that on 24th April, 2008, Ms. Seema Grover Seth made a complaint that the Gift Deed aforesaid under valued the property gifted causing loss to the Govt. Exchequer. The Collector on *prima facie* enquiry found a case of evasion of stamp duty to have been made out; notices were issued to Sh. Sanjay Grover as well as to the Tehsildar to furnish the valuation of the property. The Tehsildar in his report dated 19th August, 2008 assessed the value of the property at ₹1,34,72,050/- on the basis of “current market rate of land” @s ₹35,000/- per sq. mtr. and construction cost in the year 2006 at ₹300 per sq. ft. However the report does not give any basis for the rates taken. Sh. Sanjay Grover of course supported the valuation at ₹19 lacs on which stamp duty had been paid at the time of registration.

4. The Collector of Stamps in his order dated 19th August, 2008 observed/held:-

- (i) That the Govt. cannot be a mere spectator in such cases of evasion and has to be a watchdog of revenue in public interest;
- (ii) That as on 1st May, 2006 the circle rates had not been notified and which came to be notified for the first time only on 18th July, 2007;
- (iii) That under Sections 27 and 47-A of the Act it was obligatory on the part of the executants of the Deeds to pay duty on the market value or consideration whichever was higher and to give all the facts of market value for the purposes of chargeability of the stamp duty, which had not been done;
- (iv) That the Registration had been obtained at the value of ₹19 lacs on the basis of a report of a registered government valuer but which report did not even claim the said value to be the then market value of the property; there was thus nothing before the Sub-Registrar while registering the Deed to conclude the market value of the property as ₹19 lacs;
- (v) The valuation report was on the basis of rate of land at ₹ 5,926/-

per sq.mtr. and of which there was no basis and was an eyewash;

- (vi) That even the circle rates notified on 18th July, 2007 are not market rates which are much above the circle rates;
- (vii) That as per the circle rates notified on 18th July, 2007, the market value of the property was ₹1,25,92,351/- and even if the same was reduced @ 20% per year, the market value as on 1st May, 2006 would not be less than ₹75,55,411/-;
- (viii) That similarly even if the market value assessed by the Tehsildar at ₹1,34,72,050/- was also reduced @ 20% per year, the market value in 2006 was ₹80,83,230/-;
- (ix) The Collector thus, by giving benefit of reduction in market value @ 20% per year backwards from 18th July, 2007 when the circle rates were notified, arrived at the market value of the property at ₹75,56,000/- on which stamp duty of ₹6,04,480/- was payable and thus held the stamp duty paid on the Gift Deed to be deficit by ₹4,52,480/-.

- (x) The Collector of Stamps further held that it being a case of evasion of stamp duty, penalty under Section 35 of the Act was levyable and taking a lenient view imposed penalty of ₹2,82,800/;

The Collector of Stamps thus directed Sh. Sanjay Grover to deposit ₹7,35,280/- i.e. ₹4,52,480/- + ₹2,82,800/- within fifteen days and failing which threatened proceedings under Section 64 read with Section 27 of the Act and under other provisions of law.

5. Aggrieved from the aforesaid order of the Collector of Stamps, Sh. Sanjay Grover first preferred a revision petition under Section 56 of the Act before the Chief Controlling Revenue Authority and upon being informed of the availability of the remedy of appeal under Section 47-A of the Act to the District Court, thereafter preferred the appeal which has been allowed by the Additional District Judge vide order dated 1st July, 2009 impugned in these petitions.

6. Ms. Seema Grover Seth also appealed against the order of the Collector contending that the valuation of the property at the time of gift was

more than as assessed by the Collector.

7. The Additional District Judge in the order impugned:

- (a) Held that Section 47-A(3) of the Act which empowers the Collector to *suo moto* within two years from the date of registration of any instrument call for and examine the instrument for the purpose of satisfying himself as to the correctness of its values or consideration, included a case where such *suo moto* powers are exercised on a complaint;
- (b) Held Ms. Seema Grover Seth to have made the complaint within two years of registration of the subject Gift Deed and the action of the Collector of Stamps to be thus justified;
- (c) Held that the test as per explanation to Section 47-A was of the price which in the opinion of the Government or the Appellate Authority, the property would have fetched if sold in the open market on the date of execution of the instrument relating to transfer of property;
- (d) Held that the market value of the property, besides being

governed by the cost of land and cost of construction would also be affected by various other circumstances enveloping the particular property like the encumbrances, vacant possession, charges, disputes etc.;

- (e) Held, that though the property aforesaid was self acquired property of Sh. Chander Bhan Grover who was carrying on business in the name and style of M/s Capital Engineers therein but subsequently had converted the business from that of sole proprietor to that of partnership of Sh. Chander Bhan Grover and Sh. Sanjay Grover; that Sh. Sanjay Grover was in possession of the property and even if Sh. Chander Bhan Grover had sold the property at that time, he could not have delivered the vacant possession thereof and which would have depressed the price of the property;
- (f) Held that the relationship between the donor and the donee also has to be kept in mind by those determining the value of the property;

- (g) That the circle rates are mere guidelines and not last word on the valuation of the property. Reliance in this regard was placed on ***R. Sai Bharathi Vs. J. Jayalalitha*** (2004) 2 SCC 9;
- (h) That the construction of the property was old, of the year 1985;
- (i) That the leasehold rights in the land underneath the property had been converted into freehold on 5th April, 2006 on payment of ₹2,88,567/- to DDA which was 50% of the un-earned increase on the value of the property;
- (j) That the valuation report of ₹19 lacs had taken into consideration the CPWD rate of construction in the year of construction;
- (k) That it could not be said that the executants had tried to play down the market value of the property;
- (l) That the Collector had thus erred in holding that the property had been undervalued;
- (m) That the valuation at which the Deed was registered could not be said to be so low as to raise suspicion and for the registering

Sub-Registrar to have referred the matter to the Collector of Stamps;

- (n) Consequently, the appeal of Sh. Sanjay Grover was allowed and the appeal of Ms. Seema Grover Seth was dismissed.

8. Though the counsel for Sh. Sanjay Grover has also urged that the powers under Section 47-A could have been exercised only within two years of the registration of the document and the order dated 29th August, 2008 of the Collector of Stamps after two years from the date of registration i.e. 1st May, 2006 was bad but there is no merit in the said contention. The order of the Collector records that the complaint was received from petitioner Ms. Seema Grover Seth on 24th May, 2008 i.e. well within two years of 1st May, 2006. Once the power under Section 47-A had been invoked within the prescribed time of two years, it cannot be said that the Collector is bound to complete the proceedings within two years only. The proceedings in the present case are found to have been conducted and concluded expeditiously.

9. Before adverting to the aspect of stamp duty, it is deemed expedient to first deal with the order of the Collector of Stamps and insofar as imposing

penalty of ₹2,82,800/-. Though the learned Additional District Judge in appeal has not dealt separately with the aspect of penalty but it is the contention of Sh. Sanjay Grover that the Collector of Stamps in exercise of powers under Section 47-A could not have imposed penalty and could have at best directed making up of deficiency if any found in stamp duty. Reliance in this regard is placed on *Vardhman Properties Ltd. Vs. Collector of Stamps, Govt. of NCT of Delhi* AIR 2007 Delhi 214 holding that the power under Section 40 of the Act to impose penalty can be exercised only when the Collector impounds any instrument under Section 33 of the Act or receives any instrument sent to him under Section 38(2) of the Act and not otherwise. Per contra, the counsel for Ms. Seema Grover Seth contends that the said judgment has not considered Section 47-A of the Act and is thus not applicable; he contends that the power to impose penalty is implicit in Section 47-A.

10. Though undoubtedly Section 47-A of the Act has not been considered in the judgment supra but Section 47-A also does not empower the Collector to levy penalty. I see no reason to take a different view from that already

taken by this Court. The Legislature having restricted the power to impose penalty to the eventualities under Sections 33 and 38(2) only, the Collector cannot be held empowered to do something is not provided. Section 47-A(3) expressly refers to deficient amount of duty only and not to any penalty. Thus, it has to be necessarily held that exercise of power under Section 47-A is limited only to imposition and recovery of deficient stamp duty and not to penalty.

11. On the aspect of assessment of the market price, I am unable to accept the reasoning given by the learned Additional District Judge. The market price of the property subject matter of the Gift Deed could not by any stretch of imagination be held to be depressed for the reasons of Sh. Sanjay Grover being a partner in the business being carried on in the property or otherwise being in possession of the said property. The Additional District Judge had nothing on record to conclude that in the event of the property being sold as on 1st May, 2006, it would not have been possible to deliver the physical possession to the purchaser. A Gift Deed is always in consideration of, and the subject Gift Deed expressly records the consideration thereof being the

natural love and affection between the donor and the donee. The presumption drawn by the learned Additional District Judge of the donee even if already being in possession of the property not delivering the same to the purchaser of the property from the donor is directly contrary to the express contents of the document. In the face of such bonhomie between the donor and the donee, there was no occasion for presumption that the sale of the property would have been without physical possession. Moreover, as contended by the counsel for Ms. Seema Grover Seth, the Gift Deed expressly records that the possession of the property as on that date was of the donor and had been delivered to the donee in pursuance to the gift. The same also belies the presumption of the donee being in possession of the property.

12. Unfortunately, the only other material before the Collector of Stamps and the Additional District Judge for determination of the market value of the property was the circle rate which had come into force a little over one year before the date of registration, and the report of the Tehsildar. The Tehsildar also as aforesaid did not give any basis for the rates at which the

computation was made. The rate of construction of the year 2006 considered by the Tehsildar in any case was an error when construction was admittedly old.

13. The Additional District Judge also has rightly not taken the said report into consideration and the Collector of Stamps has used the same only in support of backward calculation done on the basis of the circle rates declared subsequently.

14. Both counsels have cited a number of judgments on the aspect of valuation; though I do not find the same to be of much relevance but to complete the record, mention must be made thereof.

15. The counsel for Ms. Seema Grover Seth has referred to:

- (i) ***Lal Chand Vs. Union of India*** (2009) 11 SCALE 627 though on the aspect of determination of compensation for acquisition of land but holding that circle rates when determined statutorily and by expert committees constituted for the said purpose can form the basis for determination of the market value unless rebutted;

- (ii) ***Govt. of Andhra Pradesh Vs. Smt. P. Laxmi Devi*** AIR 2008 SC 1640 holding Section 47-A of the Stamp Act as applicable in Andhra Pradesh imposing precondition for deposit of 50% of the deficit duty before hearing the appeal to be not unconstitutional. I may notice that it has been the contention of the petitioners that the Collector and Additional District Judge has committed an error in not directing Sh. Sanjay Grover to deposit the 50% of the deficit stamp duty before hearing the appeal. However there is no provision in this regard in Section 47-A as applicable to Delhi or in the Delhi Stamp (Provision of Undervaluation of Instrument) Rules, 2007. Moreover, this Court has been approached after the order of the Additional District Judge in appeal and at which stage the said question has no relevance;
- (iii) ***U.P. Jal Nigam, Lucknow Vs. Kalra properties Pvt. Ltd.*** AIR 1996 SC 1170 again on the principles of market value of land acquisition cases;

- (iv) ***Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad*** (1994) 4 SCC 595. The counsel has been unable to show as to how the same is of any assistance;
- (v) ***Duncans Industries Ltd. Vs. State of U.P.*** AIR 2000 SC 355 on the scope of judicial interference in the stamp duty determined by the authorities under the Stamp Act;
- (vi) ***R. Rajalakshmi Vs. The Revenue Divisional Officer*** AIR 1989 Madras 96 laying down that no presumption can be drawn in the matter of valuation;
- (vii) ***Kaka Singh Vs. The Additional Collector*** AIR 1986 Allahabad 107 also laying down that the Collector in exercise of power under Section 47-A is not to levy any penalty;
- (viii) Though the Guidelines for Valuation of Immovable Properties, 2009 of the Directorate of Income Tax are also filed but no reliance thereon has been placed.

16. The counsel for Sh. Sanjay Grover referred to:

- (i) ***V.N. Devadoss Vs. Chief Revenue Control Officer-cum-***

Inspector 2009 XI AD (SC) 608 laying down that for power under Section 47-A to be invoked there must a reason to believe that the market value of the property has not been truly set out in the instrument and it is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration; that without any evidence to show lack of *bona fides* of the parties to the document or fraudulent attempt to under value the subject of conveyance with a view to evade payment of proper stamp duty and cause loss to the revenue, power under Section 47-A cannot be exercised.

- (ii) ***State of Punjab Vs. Mohabir Singh*** AIR 1996 SC 2994 holding that guidelines prescribed for valuation of property are inconsistent to exercise the power under Section 47-A.
- (iii) ***Sitaram Vs. The State of Madhya Pradesh*** AIR 1980 Madhya Pradesh 4 holding that Section 47-A has no retrospective operation.
- (iv) ***Ponnavolu Sasidar Vs. Sub-Registrar, Hayatnagar*** AIR 1992

Andhra Pradesh 198 relating to the local statute and having no application here.

- (v) ***Abhinav Kumar Vs. State of Haryana*** 2001 (1) Punjab Law Reporter 598 holding that reference under Section 47-A can be made immediately after registration of the document and not thereafter. However the present is not a case of reference but of the Collector of Stamps taking up the matter on a complaint.
- (vi) ***Mulakh Raj Vs. State of Haryana*** AIR 2001 Punjab and Haryana 61 also relating to the local statute but laying down that the Collector in exercise of power under Section 47-A has to arrive at objective satisfaction and on reasonable belief that the valuation set out in the instrument is not true.
- (vii) ***Smt. Shanti Devi Prasad Vs. The State of Bihar*** AIR 2001 Patna 161 holding that powers under Section 47-A can be exercised only in case of fraudulent evasion of payment of stamp duty.
- (viii) ***S. Jayalakshmi Vs. Government of Tamil Nadu*** AIR 2003

Madras 142 laying down that without any material to indicate undervaluation or fraudulent evasion of stamp duty power under Section 47-A cannot be invoked.

- (ix) ***State of M.P. Vs. P.B. Menon*** AIR 2004 Madhya Pradesh 117 holding that the Court in exercise of power under Articles 226 & 227 cannot substitute valuation unless it is shown to be wholly perverse and unrealistic.
- (x) ***S.R. Sengotavelu Vs. District Collector, Namakkal*** AIR 2004 Madras 233 holding the guidelines for valuation as maintained in that State to be not statutory.
- (xi) ***Sarvahitkarini Sahkari Awas Samiti Ltd. Vs. State of Uttar Pradesh*** AIR 2006 Allahabad 29 holding that market value has to be determined on the date of transaction and not on the basis of subsequent events.
- (xii) ***Brij Nandan Singh Vs. State of Bihar*** AIR 2007 Patna 4 also on the aspect of valuation to be of the date of transaction.
- (xiii) ***Vijaya Vs. The Inspector General of Registration*** AIR 2007

Madras 276 not at all relevant to the controversy.

(xiv) ***Shailendra Vs. Chief Controlling Revenue Authority*** AIR

2007 (NOC) 174 Allahabad also laying down that in exercise of power under Section 47-A no penalty can be levied.

17. In the aforesaid state of affairs, the option of setting aside both, the order of the Additional District Judge as well as of the Collector of Stamps has been considered. However the Supreme Court recently in ***State of Uttaranchal Vs. Sunil Kumar Vaish*** 2011 (9) SCALE 131 has criticized the practice of Courts remanding the matters and has laid down that an endeavour should be made to decide the controversy finally. I have therefore proceeded to consider the matter.

18. The Collector of Stamps in the present case held the valuation of ₹19 lacs on which stamp duty was paid to be grossly inadequate in the light of the circle rates which had come into force a little over one year after the date of registration in the present case. The Registrar also gave a rebate at the rate of 20% per year for two years in such valuation though the transaction as aforesaid was only a little over one year old. Such mode of valuation is

not unknown. The whole purpose of prescribing the circle rates was to address the malaise of undervaluation of properties. Sh. Sanjay Grover has not challenged the said circle rates. It is an admitted fact that with effect from the circle rates coming into force the instruments are being accepted for registration at valuation not below the said circle rates. The Additional District Judge has not given any reason whatsoever for disagreeing with the said formula applied by the Collector of Stamps. It cannot be lost sight of that the Collector of Stamps is the statutory body empowered to determine the valuation. Though the appeals against the orders of the Collector of Stamps have been provided under Section 47-A to the District Court but the District Court ought not to interfere lightly with the findings of such expert. The Additional District Judge in the present case has given only the reason of the donee being in possession of the property for disagreeing with the valuation arrived at by the Collector of Stamps. It can also not be lost sight of that even the Tehsildar, though without giving any basis arrived at about the same valuation as arrived at by such backward calculation from the date of coming into force of the circle rates.

19. The judgments aforesaid relied upon by the counsel for Sh. Sanjay Grover to contend that the power under Section 47-A are to be exercised only in case of fraudulent undervaluation turn on their own facts. The same were transactions either of public auction or by government bodies and in which context the Court observed that there was no material to show that the valuation was not genuine. The same is not the position here. The averment of Ms. Seema Grover Seth is that Sh. Sanjay Grover illegally got the Gift Deed executed from the father shortly before the demise of the father. A gift even otherwise is a transaction in which the two parties are not adversarial but are in unison. An endeavour to save on the stamp duty is not uncommon and judicial notice thereof can be taken. From the fact that the respondent Sh. Sanjay Grover got the Gift Deed executed from his father shortly before his demise on payment of stamp duty by incurring stamp duty shows that he was expecting trouble from Ms. Seema Grover Seth. In the circumstances, an attempt at undervaluation cannot be ruled out.

20. I may notice that it was the case of Ms. Seema Grover Seth in the year 2008 that the market value of the property was over ₹3 crores and she had

offered to pay ₹1,50,00,000/- to Sh. Sanjay Grover towards his 50% (as per Ms. Seema Grover Seth) share in the same. The same also according is a reliable indice of the market value of the property and which has been ignored by the Additional District Judge. The Additional District Judge without reaching any finding that the market value of the property was anything lower than that determined by the Collector of Stamps ought not to have set aside the same.

22. The petitions therefore partly succeed; the order of the Additional District Judge insofar as setting aside the order of the Collector of Stamps qua deficiency in stamp duty is set aside and Sh. Sanjay Grover is directed to within one month hereof deposit the deficient stamp duty of ₹4,52,480/- with the Collector of Stamps together with interest at the rate of 10% per annum from 1st May, 2006 and till the date of payment, failing which the Collector of Stamps shall proceed in accordance with law.

21. As far as the order of the Additional District Judge dismissing the appeal preferred by Ms. Seema Grover Seth is concerned, she has been unable to bring any material before the Court to justify that the valuation

was anything more than as determined by the Collector. Her offer of ₹3 crores alone, when she is litigating with Sh. Sanjay Grover cannot be a ground for interfering with the order of the Collector of Stamps.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

NOVEMBER 08, 2011
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