

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

Date of decision: 24th February, 2012

+ LPA 140/2012

% M/S ASAS INVESTMENT P. LTD. Appellant
Through: Mr. Sanjeev Rajpal, Adv.

Versus

COLLECTOR OF STAMPS & ORS. Respondents
Through: Ms. Anjana Gosain, Adv. for R-1&2.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the order dated 20.01.2012 of the learned Single Judge of this Court dismissing W.P.(C) No.395/2012 preferred by the appellant. The said writ petition was preferred impugning the order dated 28.11.2011 of the Collector of Stamps, Kapashera, New Delhi finding the appellant liable for payment of deficit stamp duty of ₹7,71,940/- on the “impounded document” and also levying one time penalty of ₹7,71,940/- and thus raising a demand of ₹15,43,880/- on the appellant.

2. The impounded document is an “Office Buyers Agreement” dated 04.03.2010 whereunder respondent No.3 M/s Suncity Projects Ltd., as the perpetual lessee under the DDA and developer of Plot No. A, situated at Community Centre, Pocket V, Sector B, Vasant Kunj, Delhi, has agreed to sell office No.S-2 on the Second Floor having Super Area of 1286.73 sq. ft. to the appellant for a total sale consideration of ₹1,28,67,300/-. The said Office Buyers Agreement was executed on a Stamp Paper of ₹100/- and was unregistered. It is not in dispute that in pursuance to the said Office Buyers Agreement, the respondent No.3 M/s Suncity Projects Ltd. has put the appellant into possession of the aforesaid office unit. The appellant after being so put into possession thereof, vide Lease Deed dated 21.01.2011, let out the said office unit to one M/s Steel Strips Wheels Ltd. The appellant at the time of registration of the said Lease Deed and to satisfy the Sub-Registrar of its title / capacity to so execute the Lease Deed produced the Office Buyers Agreement dated 04.03.2010 and when it was impounded under Section 33 of the Indian Stamps Act, 1899 and forwarded to the Collector of Stamps for charging of requisite stamp duty.

3. The Collector of Stamps after hearing the appellant found the said Office Buyers Agreement to be in the nature of part performance and chargeable with stamp duty under Article 23A of Schedule-IA of the Act as applicable to Delhi and vide order dated 14.03.2011 held the appellant liable for deficit stamp duty and penalty as aforesaid.

4. The appellant then filed W.P.(C) No.2786/2011 before this Court contending that sufficient opportunity of hearing had not been given to it. The said writ petition was disposed of vide order dated 29.04.2011 by directing the Collector of Stamps to give proper hearing to the appellant.

5. It appears that at that stage, notice was issued by the Collector of Stamps to respondent No.3 M/s Suncity Projects Ltd. also which stated that the liability for payment of deficit stamp duty if any was of the appellant and not theirs. The appellant contended that similar agreements had been executed in favour of others; that the land underneath the property was leasehold in the process of being converted into freehold and also offered to pay the deficit stamp duty if any. However, the stamp duty was not paid. The Collector of Stamps not finding any merit in any contentions of the appellant reiterated the earlier order dated 14.03.2011.

6. In the second writ petition from which the present appeal arises, the appellant contended that it had merely acquired the right of ingress and egress in the aforesaid office unit and subject to various conditions and was thus not liable for stamp duty; that the doctrine of part performance was not attracted; that the land underneath was leasehold and thus no title thereunder could be conveyed to the appellant.

7. The learned Single Judge in a detailed reasoned order has found the appellant to have obtained the possession of the office unit and paid the

entire sale consideration and thus having become liable to pay ninety percent of the stamp duty and accordingly dismissed the writ petition.

8. The office unit aforesaid is an apartment within the meaning of the Delhi Apartment Ownership Act, 1986. Under the provisions of Sections 5&6 thereof, the said apartment is a transferable unit. It would not cease to be an apartment merely because the land underneath the building in which the said apartment is situated is leasehold.

9. As per Article 23A of the Schedule to the Stamp Act (supra), contracts for transfer of immovable property in the nature of part performance under Section 53-A of the Transfer of Property Act, 1882 attract 90% of the duty as on a conveyance. Similarly under Section 17(1A) of the Registration Act, 1908 such agreements are compulsorily registrable. The counsel for the appellant also has not been able to controvert that the appellant has been put into possession of the office unit bought by him and has paid the entire purchase price. In fact, the question of the appellant letting out the same would arise only upon the appellant being put into possession and realizing the rent thereof. As far as the contention of the appellant of various limitations under the Office Buyers Agreement on his right to use the said flat is concerned, the same do not in any way negate the said agreement being an Agreement to Sell by respondent No.3 M/s Suncity Projects Ltd. in favour of the appellant of the said office unit. Rather, the appellant in the Lease Deed which was sought

to be registered, has itself stated that it is the sole, rightful, legal and absolute owner of the said office unit.

10. Similarly, the argument, of the stamp duty being not payable for the reasons of land underneath being lease hold, has no merit. The status of the land does not and did not come in the way of the office unit being agreed to be sold and once it is so, stamp duty became payable.

11. The counsel for the appellant has also argued that the Office Buyers Agreement is not a conveyance. Even though the same is found to have all the ingredients of a conveyance but even if the said argument is to be accepted and the said agreement is to be held to be merely an Agreement to Sell, possession in part performance having been taken thereunder, the same still becomes liable for stamp duty. Moreover, the stamp duty payable at this stage is deductible from the stamp duty payable on the conveyance.

12. The counsel for the appellant has relied on *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana* (2012) 340 ITR 1 (SC). However, the same is found to have no application to the matter in controversy.

13. No error can thus be found in the order of the Collector of Stamp (upheld by the learned Single Judge) holding the said Agreement to Sell to be leviable to stamp duty under Article 23A of the Act and which had

admittedly not been paid. No error can also be found in the order insofar as levying penalty inasmuch as the appellant is found to have evaded paying the stamp duty and which attempt is continuing by filing the present proceedings. It cannot be lost sight of that penalty of upto ten times the deficit stamp duty can be levied. The penalty imposed on the appellant is of one time only of the deficit stamp duty.

14. The appeal is therefore devoid of any merits and is dismissed. We refrain from imposing any costs on the appellant.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

FEBRUARY 24, 2012

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