

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 27.08.2014

+ **W.P.(C) 9053/2011 & CM No. 20632/2011**

INDERJEET SINGH

..... Petitioner

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Maninder Acharya, Sr. Advocate with
Ms Sumedha Tuli and Mr Yashish Chandra.

For the Respondents : Mr Rajiv Nanda, ASC, Govt. of NCT of Delhi
with Mr Ramesh Kumar, SDM, Rajouri
Garden.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Article 226 of the Constitution of India *inter alia* praying for setting aside an order dated 30.11.2010 passed by the respondent no. 3, whereby the stamp duty and penalty payable by the petitioner with respect of deeds for sale of the property bearing no. J-129 Rajouri Garden, New Delhi was assessed at ₹38,90,000/- and after adjusting the stamp duty already paid, the petitioner was called upon to pay a sum of ₹33,38,000/-. The petitioner has also assailed an order dated 28.10.2011 passed by respondent no. 2 rejecting the appeal preferred by the petitioner against the above mentioned order dated 30.11.2010. The said orders dated 28.10.2011 and 30.11.2010 are

separately referred to as 'impugned order', and collectively referred to as 'impugned orders'.

2. Briefly stated the relevant facts are as under:-

2.1. On 17.06.2010, the petitioner acquired undivided 50% share of property bearing no. J-129, situated at Rajouri Garden, New Delhi, measuring 311 sq. yds. (hereinafter referred to as the 'said property'), for a consideration of ₹45,00,000/-. The sale deed executed with respect to the said transaction on 17.06.2010 was registered and the original deed was returned to the petitioner.

2.2. On 05.07.2010, the Petitioner entered into an Agreement to Sell for purchase of the balance undivided 50% share of the said property for a consideration of ₹47,00,000/-. Pursuant to the said Agreement to sell dated 05.07.2010, a sale deed was executed on 05.08.2010.

2.3. On 09.08.2010, a Deficiency Memo was issued by the Sub-Registrar-II to the Petitioner, *inter alia*, seeking clarifications in respect of the registration of the sale deed dated 05.08.2010. The said deficiency memo also indicated that a complaint by one Amritpal Singh and legal notice from his advocate has been received, objecting to the registration of the said sale deed in respect of the said property and a letter dated 03.08.2010 sent by Amritpal Singh was enclosed. The petitioner was also provided a photocopy of an alleged Agreement to Sell dated 07.04.2010, entered into by the Petitioner with Sh. Harminder Singh Bedi, Sh. Varinder Singh Bedi and Sh. Saranjit Singh, for purchase of the said property for a consideration of ₹5,75,00,000/-.

2.4. Thereafter, by letter dated 28.08.2010, the Petitioner intimated the Sub-Registrar-II that an Agreement to Sell dated 05.07.2010 was entered into by the Petitioner with Sh. Saranjit Singh and Sh. Virender Singh Bedi, for purchase of undivided 50% share of the said property for a consideration of ₹47,00,000/- and on that basis a sale deed was executed on 05.08.2010. The Petitioner, by letter dated 03.09.2010 letter to the Sub-Registrar-II, re-iterated the contents of letter dated 28.08.2010.

2.5. Subsequently, by letter dated 23.09.2010, Amritpal Singh informed the respondent No. 3 - Collector of Stamps that someone had misused his name to file a complaint against the registration of the said property and requested to withdraw the same. Amritpal Singh again by a letter dated 30.09.2010 requested respondent No. 3 to disregard the said complaint.

2.6. Respondent No. 3 issued a notice dated 15.10.2010 stating that the Sub-Registrar-II had impounded/forwarded the sale deed dated 05.08.2010 with respect to the said property. The said notice also referred to an earlier notice dated 25.09.2010. The Petitioner was directed to appear in person before Respondent No. 3 within 3 days of receipt of the said notice.

2.7. The Petitioner appeared before respondent No. 3 and presented the Agreement to Sell dated 05.07.2010 for the said property. The petitioner also furnished copies of sale deeds of two properties – sale deed dated 22.09.2010 for property bearing no. J-127, Rajouri Garden measuring 304 sq. yds. registered for ₹46 lakhs and a sale deed dated 29.11.2010 for property bearing no. J-3/76B, measuring 214 sq. yds. registered for ₹50 lakhs.

2.8. By the impugned order dated 30.11.2010, respondent no. 3 - on the basis of the consideration for the Agreement to Sell to be ₹5,75,00,000 - assessed the amount payable by the petitioner to be ₹33,38,000. The said amount was computed by assessing the stamp duty at ₹33,90,000/-, penalty at ₹5,00,000/- and adjusting ₹5,52,000/- as duty already paid.

2.9. The petitioner, thereafter, filed an appeal dated 03.01.2011, before the Chief Controlling Revenue Authority (respondent No. 2), against the impugned order dated 30.11.2010. By the impugned order dated 28.10.2011, respondent no. 2 dismissed the appeal filed by the Petitioner and upheld the impugned order dated 30.11.2010.

2.10. On 19.11.2011, the petitioner received a demand notice dated 15.11.2011 issued by the respondent no. 3, directing the Petitioner to deposit ₹33,38,000/- within 15 days of receipt of notice.

3. Ms. Acharya, learned Senior Advocate appearing for the petitioner contended that the respondents did not have the jurisdiction to impose stamp duty, other than on the basis of the consideration as declared in the conveyance deed. She contended that the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act') did not empower the respondents to determine the value of the property or the consideration exchanged between the vendor and the purchaser and were obliged to calculate the stamp duty on the basis of the consideration that was disclosed in the conveyance deed. In support of her contention, the learned senior counsel relied on the decision of the of the Supreme Court in **Collector of Stamps vs. Hem Lata & Anr.** : JT 2003 (6) SC 91.

4. It was further contended on behalf of the petitioner that the deed in question was only with respect to one half undivided share of the said property. The other half of the undivided share of the property had already been purchased by the petitioner earlier and the sale deed with respect to the same was already registered and returned to the petitioner. The said transaction was not the subject matter of registration before the Sub-registrar. Nonetheless, respondent no.3 has assessed the duty payable on the entire property by accepting the consideration of ₹5,75,00,000/- as reflected in a photocopy of the alleged Agreement to Sell which was allegedly sent by Amritpal Singh. It was contended that the Sub-registrar or respondent no.3 were *functus officio* in respect of the earlier conveyance deed that had already been registered and respondent no. 3 did not have the jurisdiction to assess any stamp duty in respect of any instrument that was not before him

5. The learned senior counsel also pointed out that by virtue of the Indian Stamp (Delhi Second Amendment) Act, 2001, Section 47A had been introduced in the Indian Stamp Act, 1899. Under the said provision, a Registering Officer could refer the instrument to the Collector for determination of the value or consideration in the event he had reason to believe that the value of the property or consideration had not been truly set forth in the conveyance deed. She submitted that although Section 47A of the Act did grant certain powers to the Registrar or the Collector, these power were not exercised by the Registering Officer or the Collector in the present case and respondent no.3 had simply proceeded on the basis of a photocopy of an alleged Agreement to Sell which disclosed the

consideration at ₹5,75,00,000/-. She submitted that respondent no.3 had not conducted any exercise to determine the fair value of the property but had simply proceeded on the basis of a complaint, which had been withdrawn subsequently.

6. The learned counsel appearing for the respondent submitted that as the impugned orders did not indicate that any exercise under Section 47A of the Act had been conducted, the matter should be remanded to respondent no.2 or 3 for a fresh determination. He further submitted that respondent no.3 had proceeded on the basis of an agreement to sell which has disclosed the correct consideration exchanged between the petitioner and the vendors and the subsequent sale deeds did not truly reflect the consideration paid by the petitioner for acquisition of the said property. The respondents had accepted the figure as disclosed in that agreement to sell and had imposed the stamp duty accordingly. It was contended that since the deed in question had been undervalued and the correct consideration had not been disclosed therein, respondent no.3 imposed a penalty of ₹5,00,000/-, which was reasonable in the given circumstances of the case.

7. The controversy that has to be addressed is whether the Collector of Stamps can assess the value of stamp duty on a value other than that which is disclosed in the conveyance deed. And, whether in the given facts and circumstances of the case, the Collector of Stamps had exercised the power vested with him under Section 47A of the Act.

8. The law, as it stood prior to the Indian Stamp (Delhi Second Amendment) Act, 2001, is well settled. The jurisdiction of the Collector under Section 31 of the Indian Stamp Act extends to adjudicating the proper stamp fees which could be levied on the basis of the consideration that was declared in a deed. The Collector is not empowered, under Section 31 of the Act, to assess the value of the property by ignoring or rejecting the value declared in the deed and calculating the stamp duty payable on the value as assessed by him.

9. The Supreme Court in the case of *Hemlata* (*supra*) upheld the views of the Single Bench as well as the Division Bench of this Court holding that the Collector did not have the power to assess the proper stamp duty on the basis of a consideration other than that stated in the conveyance deed. The Supreme Court referred to an earlier decision on the subject and held that stamp duty was chargeable only on the basis of consideration set forth in the instrument to be stamped. The relevant extract from the said decision is quoted below:-

"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.** 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, Sakharan Shankar v. Ramchandra Babu Mohire, Mohammed Muzaffar Ali 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."

10. This position changed with the enactment of the Indian Stamp (Delhi Second Amendment) Act, 2001 and introduction of Section 47A in the Act. Section 47A of the Act reads as under:-

"47A Instruments under-valued how to be dealt with

(1) If the Registering Officer, while registering any instrument transferring any property, has reason to believe that the value of the property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value or consideration as the case may be, and the proper duty payable thereon.

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, by order, determine the value of the property or the consideration and the duty aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty and, on the payment of such duty, the Collector shall endorse a certificate of such payment on the instrument under his seal and signature.

(3) The Collector may, suo moto within two years from the date of registration of any instrument not already referred to him under

sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon, and if after such examination he has reason to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty aforesaid in accordance with the procedure provided for in sub-section (2), and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty and, on the payment of such duty, the Collector shall endorse a certificate of such payment on the instrument under his seal and signature.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may appeal to the District Court within whose jurisdiction the property transferred is situated.

(5) An appeal under sub-section (4) shall be filed within thirty days of the date of the order sought to be appealed against.

(6) The District Court shall hear and dispose of the appeal in such manner as may be prescribed by rules under this Act.

Explanation - For the purpose of this section, value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched, if sold in the open market on the date of execution of the instrument relating to the transfer of such property."

11. It is apparent that Section 47A is a complete code in itself. Sub-section (1) of Section 47A of the Act empowers the Registering Officer to refer an instrument to the Collector for determination of the value of consideration, if he has reason to believe that the value of the property or the consideration has not been truly set forth in the instrument. By virtue of Sub-section (2), the Collector has to conduct an enquiry in accordance with

the Rules and after giving an opportunity to the concerned parties, determine the value of the property or the consideration and assess the stamp duty accordingly. By virtue of Sub section (6), the decision of the Collector can be appealed before the District Court.

12. The Explanation to Section 47A of the Act is also important and it specifies that the value of the property to be estimated would be a price which in the opinion of the Collector or the Appellate Authority would be fetched if the property was sold in the open market. Thus, before assessing the consideration or the value of the property, respondent no.3 had to determine the consideration or the value that the said property would fetch if it was sold by way of an open auction. The impugned order passed by respondent no.3 does not disclose that any such exercise had been conducted. Respondent no.3 had merely accepted the price that was set forth in the alleged copy of the agreement to sell. The impugned order dated 30.11.2010 passed by respondent no.3 also refers to a sale deed registered in respect of another property. However, the endeavour of respondent no.3 was not to assess the value the said property would fetch in the open market but to find out the highest price as recorded in any instrument to support the value as reflected in the alleged Agreement to Sell. This, was clearly not an exercise under Section 47A of the Act.

13. It is also relevant to note that respondent no.2 entertained an appeal from the impugned order passed by respondent no.3. In the event, the impugned order dated 30.11.2010 had been passed under Section 47A of the Act, respondent no.2 would not be the appellate authority and the appeal would, by virtue of Section 47A(6) of the Act, lie to a District Court.

This also indicates that the impugned order passed by respondent no.3 was not in exercise of his powers under Section 47A of the Act. The learned counsel for the respondent also accepted that the impugned order dated 30.11.2010 was not passed in exercise of powers under Section 47A of the Act.

14. Concededly, the impugned order passed by respondent no.3 was not in exercise of powers under Section 47A of the Act. Thus, the only question that remains to be answered is whether respondent no.3 could, dehors the provisions of section 47A of the Act, impose a stamp duty on the basis of the consideration as recorded in the photocopy of the alleged Agreement to Sell that was furnished alongwith a complaint filed by Amritpal Singh.

15. In my view, the impugned order passed by respondent no.3 is not only without authority but also flawed. First of all, except as provided under Section 47A of the Act, the respondent no.3 did not have the authority to assess the stamp duty on the basis of a consideration that was not declared on the deed/instrument which was submitted for registration. The authority of respondent no.3 was limited to calculating the stamp duty payable on the basis of the value of the said property that was declared in the conveyance deed. And, concededly, the impugned order was not passed in exercise of Section 47A of the Act.

16. Secondly, even if it is assumed that respondent no.3 acted within the parameters of Section 47A of the Act, it is clear that neither the procedure nor the consideration that respondent no.3 came to bear, were in accordance

with that provision. In the first instance, the Collector had to evaluate the value that the property would fetch in an open auction. This clearly, was not the nature of enquiry conducted by respondent no.3.

17. Thirdly, the proceedings by respondent no.3 are also flawed because though respondent no.3 relied upon a registered deed in respect of another property, the same was not disclosed to the petitioner at the material time. Thus, the petitioner had no opportunity to respond to whether the said registered deed should be considered in the facts of the case.

18. Fourthly, the complaint filed by Amritpal Singh had itself been withdrawn. The alleged agreement to sell was also highly disputed and admittedly, the signature of the petitioner did not appear on the last page of the said agreement. The petitioner had stoutly disputed that such a document had ever been executed. In the given circumstances, the least that respondent no.3 could have done was to make further enquiries to determine the veracity of the said document.

19. Thus, for the reasons stated above, in my view, the impugned order passed by respondent no.3 is not only without authority but is also fundamentally flawed. The impugned order passed by respondent no.2 is also cryptic and does not address the controversy in question.

20. The impugned orders are accordingly set aside. The demand notice dated 15.11.2011 is also set aside and the respondents are directed to return the original sale deed to the petitioner. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AUGUST 27, 2014/RK