

**Court No. - 2**

**Case :-** WRIT - C No. - 31499 of 2022

**Petitioner :-** Golfgreen Residency Pvt. Ltd.

**Respondent :-** Additional District Magistrate (Finance And Revenue) And 3 Others

**Counsel for Petitioner :-** Siddharth Singhal

**Counsel for Respondent :-** CSC

**Hon'ble Piyush Agrawal, J.**

1. Supplementary affidavit files today on behalf of the petitioner, is taken on record.
2. Heard Sri Siddharth Singhal, learned counsel for the petitioner, and Sri Siddharth Singh, learned Standing Counsel for the State-respondents.
3. By means of instant writ petition, the petitioner has made the following prayer:-

*"i. Issue a writ, order or direction in the nature of Certiorari calling for the records and quashing the impugned order dated 29.04.2022 passed by respondent no.1 (Annexure No.1);*

*ii. Issue a writ, order or direction in the nature of Certiorari calling for the records and quashing the impugned recovery citation dated 15.06.2022 issued by the respondent no.4 (Annexure No.2);*

*fiii. Issue a writ, order or direction in the nature of Mandamus commanding the respondents not to take any coercive steps against the petitioner in pursuance of the impugned order dated 29.04.2022 (Annexure No.1) passed by the respondent no.1 and recovery citation dated 15.06.2022 (Annexure No.2) issued by the respondent no.4;*

*iv. ....*

*v. ...."*

4. Learned counsel for the petitioner submits that the petitioner is a company registered under the provisions of the Indian Companies Act, 1956, having its registered office at K. No. 403/268/2 H.No. C-239, New Ashok Nagar, Kali Badi Mandir Marg, New Delhi- 96. The New Okhla Development Authority (herein after referred to as "NOIDA") by way of sealed two bid tender system allotted a plot

bearing no. Sport City Plot NO. SC-01-01, Sector 78 and Sector 79 in favour of M/s Xanadu Estates P. Ltd (consortium) vide allotment letter bearing No. NOIDA/Commercial/2011/478 dated 04.05.2011. Thereafter, the said allotted area was sub-divided into six parts vide letter No. NOIDA/Commercial/2011/1537 dated 24.10.2011 and further one of the parts thereof, which was numbered as SC-01/D1, was divided into four parts vide letter No. NOIDA/Commercial/2012/1182, dated 03.10.2012, to be developed by (1) M/s Kindle Developers Pvt. Ltd. and (2) M/s Golfgreen Residency Pvt. Ltd (100% owned subsidiary company of /s Kindle Developers Pvt. Ltd.), (3) M/s Golfgreen Estates Pvt Ltd. (100% owned subsidiary company of M/s Kindle Developers Pvt Ltd) and (4) M/s Golfgreen Mansions Pvt. Ltd. (100% owned subsidiary of M/s Kindle Developers Pvt. Ltd.) respectively. In compliance of the approvals granted above, sub-lease deed of sub-divided sports city, numbered as plot no. SC-01/D2 was executed on 19.10.2012 in favour of the petitioner which is registered in the office of Sub-registrar-III, NOIDA, in Book NO.1, Volume No.3351, Page No.1 to 54 as documents no. 5079 on 19.10.2012 and the premium, agreed to be for the plot, was stands fully paid. On 18.09.2012, after a period of more than seven years, on the basis of report dated 10.10.2019 prepared by Assistant Inspector General Registration (First), the proceedings were drawn against the petitioner for evasion of stamp duty in respect of cost sharing agreement dated 18.09.2012 and thereafter, treating the said agreement as an instrument of conveyance, passed an ex-parte order dated 16.09.2021 in terms of entry 23 contained in Schedule 1-B of the Indian Stamp Act, 1899. The said order was challenged before this Court by way of filing a Writ Petition No. 1844 of 2022 and vide order dated 09.02.2022, the order dated 16.09.2021 was dismissed and the matter was remanded for fresh consideration. Consequent to the matter being remitted, an impugned order was passed holding the deficiency of stamp duty along with interest @ 1.5% per annum from the date of execution of deed as well imposed the penalty.

5. He further submits that the cost sharing agreement cannot be treated as a conveyance for levy of stamp duty as neither any right is created nor any transfer is made in favour of the petitioner. He further submits that the impugned orders have wrongly been passed without any application of mind as reproduced para no.1 of the Notice dated 10.10.2019. He further submits that once neither the possession nor the instrument create any right in favour of the petitioner, the same cannot be treated as a conveyance, making the petitioner liable for the payment of stamp duty.

6. In support of his submission, he has placed reliance upon the judgment of this Court passed in the case of ***Raj Kumar Vs. The Commissioner Jhansi Division, Jhansi & Others, decided on 03.02.2012.***

7. *Per contra*, learned Standing Counsel supports the impugned orders.

8. After hearing the parties, the Court has perused the record.

9. It is not in dispute that the the petitioner is 100% subsidiary of M/s Kindle

Developers Pvt. Ltd. in which favour, the plot was allotted by the NOIDA. The petitioner in pursuance of cost sharing agreement get authorized to develop the plot in 'phase manner'. The cost sharing agreement dated 16.09.2021 has been treated as an instrument of conveyance in terms of entry 23 contained in Schedule 1-B of the Indian Stamp Act, 1899 and the proceedings have been drawn against the petitioner.

10. The record shows that vide letter dated 28.08.2012, a copy of which has been filed as Annexure No.- SA-1, a request was made by M/s Kindle Developers Pvt. Ltd., before the NOIDA for sub-dividing the plot for developing the are allotted in four phases in terms of general terms & conditions, which was allowed by the NOIDA.

11. Record shows that by cost sharing agreement, no right or possession is transferred in favour of the petitioner except for developing the same, and therefore, the instrument in question cannot be treated to be covered under entry 23 contained in Schedule 1-B of the Indian Stamp Act, 1899.

12. This Court in the case of **Raj Kumar Vs. The Commissioner Jhansi Division, Jhansi & Ors. (Writ-C No.1125 of 2006)** whereof in paragraph nos.11, 12 and 13 to 21 has held as under:-

*"11. The Explanation to Article 23 of Schedule 1-B of the Indian Stamp Act, as incorporated in the State of Uttar Pradesh, reads as under:- " For the purposes of this Article, in the case of an agreement to sell an immovable property, where possession is delivered before the execution or at the time of execution, or is agreed to be delivered without executing the conveyance, the agreement shall be deemed to be a conveyance and stamp duty thereon shall be payable accordingly: Provided that the provisions of Section 47-A shall mutatis mutandis apply to such agreement: Provided further that when conveyance in pursuance of such agreement is executed, the stamp duty paid on the agreement shall be adjusted towards the total duty payable on the conveyance."*

*12. A bare perusal of the Explanation to Article 23 of Schedule 1-B of the Indian Stamp Act, as incorporated in the State of Uttar Pradesh, goes to show that an agreement to sell an immovable property shall be deemed to be a "conveyance" for the purpose of stamp duty, if any, of the following conditions are fulfilled: (i) where the possession is delivered before the execution of the agreement; or (ii) where the possession is delivered at the time of execution of the agreement; or (iii) where the possession is agreed to be delivered without executing the conveyance.*

*13. From the record of the instant case I find that the agreement for sale does not disclose that the possession was delivered before its execution or at the time of its execution. The agreement also does not disclose that it was agreed between the parties that the possession would be delivered to the purchaser without execution of the deed of conveyance. Rather the agreement clearly states that the possession was not being delivered, and that there would be a period of two years for execution of the sale deed,*

*and if the sale deed is not executed within the said period the vendee would have a right to sue for specific performance.*

*14. The Additional District Magistrate (Finance and Revenue) Jalaun, as well as the Commissioner, Jhansi Division, Jhansi, has proceeded to invoke the provisions of the Explanation to Article 23 of Schedule 1B of the Indian Stamp Act on the basis of the report submitted by the Sub Registrar, Orai.*

*15. I have perused the report of the Sub Registrar carefully. This report was based on an inspection carried out by him after more than three years from the date of execution of the agreement. Even otherwise the report is based on hearsay material. The petitioner has denied his possession. There is no admissible evidence on record to show that possession was delivered before, or at the time of execution of the agreement in question. In fact there is a recital in the agreement that the possession has not been delivered. Thus, there was no material to infer that possession was delivered either before or at the time of the execution of the agreement to sell.*

*16. Assuming that the petitioner, after execution of the agreement for sale, had entered into possession over the subject matter of the agreement, even then the provisions of the Explanation to Article 23 of Schedule 1-B would not be attracted inasmuch as there was no provision in the agreement in question to deliver possession to the petitioner on any future date without the execution of a deed of conveyance.*

*17. At this stage the standing counsel appearing for the state respondents contended that if such vendees are not charged with stamp duty payable as on a conveyance then it would become a novel method to evade stamp duty thereby causing loss to revenue. This argument of the standing counsel cannot be accepted. Indian Stamp Act is a taxing statute. Under section 3 of the Indian Stamp Act, 1899 it is the "Instrument" which is chargeable to duty, and not the transaction. If the "Instrument", as in the present case, cannot fall under the import of the Explanation to Article 23 of Schedule 1-B, the revenue authorities, on the basis of their own assumed transaction, cannot impose stamp duty. This court in the case of Nand Kumar Agarwal v. State of UP reported in 2009 (107) RD 438, in paragraph no.13, observed as under: "It is an acknowledged legal position that there are two guiding principles for applicability of the Stamp Act in respect of a particular document. They are:- (1) The Court is not bound by the apparent tenor of an instrument, it shall decide according to the real nature or substance of the document; and (2) The duty is on the instrument and not on the transaction".*

*18. A Special Bench of this court consisting of three Hon'ble Judges in the case of In Re The Incorporation of Swadeshi Cotton Mills Company, Ltd. reported in AIR 1932 Allahabad 291, emphasising upon the freedom of the parties to have their own method for transactions, as also the limitations in power of the revenue department in chasing those transactions for generating additional revenue, observed: "It seems to us that if the parties chose to be satisfied with a mere contract for sale, without an actual deed of sale, stamp duty payable on a conveyance*

cannot be demanded. By entering into a mere contract short of an actual conveyance they run a certain amount of risk. If either party resiles from the contract, the other party may have to institute a suit for specific performance of the contract. Trouble may also arise if the vendors subsequently convey the property to a bona fide transferee for value. But if in spite of this risk the parties refrain from getting an actual deed of conveyance prepared, they can successfully evade the payment of higher duty." While making the above observations the Special Bench noted with approval the observations made by Lord Esher in the case of *Commissioners of Inland Revenue V. G. Angus and Co.* reported in [1889] 23 Q.B.D. 579, which is being reproduced below: "But it is said that if the appeal be decided against the commissioners purchasers will rest satisfied with an agreement of which specific performance would be decreed and will not go on to execute a conveyance, and so the Crown will lose the stamp duty and it is rather suggested that this would be cheating the Crown and committing a fraud. The Crown however must make out its right to the duty, and if there be a means of evading the stamp duty, so much the better for those who can evade it. It is no fraud upon the Crown, it is the thing which they are perfectly entitled to do so. The Crown cannot have the stamp duty unless the parties to the sale choose to effectuate the transaction by an instrument which of itself conveys the property, and if they chose to be satisfied with something less, the matter is not brought within S.70 (of the Stamp Act of 1870)".

19. From the decisions noted above it is clear that the department of revenue cannot dictate the parties to transact in a particular manner. Only when the Instrument is executed evidencing a transaction that the chargeability to stamp duty can be assessed depending on its nature, as evidenced by the Instrument, and not by the transaction that might be found from a source other than the Instrument itself.

20. In view of the aforesaid discussion I'm of the considered opinion that the respondents committed manifest error of law by invoking the Explanation to Article 23 of the Schedule 1-B of the Indian Stamp Act so as to treat the agreement for sale dated 21.8.2001 as a deed of conveyance. The agreement in question was liable to stamp duty as payable under sub clause (b-1) of Article 5 to Schedule 1-B that is, on the consideration set forth in the instrument. Accordingly, the proceedings under sections 33 & 47-A of the Indian Stamp Act for determining the market value of the subject matter of the instrument are not justified in law.

21. In the result, the writ petition succeeds and is allowed. The orders dated 10.5.2005 and 22.11.2005 passed by the Additional District Magistrate (F & R), Jalaun at Orai and the Commissioner, Jhansi Division, Jhansi respectively are hereby quashed and set aside. Amount, if any, deposited by the petitioner in pursuance of the impugned orders shall be refunded to the petitioner within a period of two months from the date of production of a certified copy of this order. There shall be no order as to costs."

13. In view of the above facts as stated as well as law laid down in the aforesaid

judgment, matter require requires re-consideration.

14. Accordingly, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.

15. The writ petition is **allowed**. The matter is **remanded** to the respondent no. 3 for deciding afresh by passing a reasoned and speaking order, after hearing all the stakeholder, within a period of three months from the date of production of certified copy of this order.

16. Any amount deposited by the petitioner pursuant to the impugned orders, shall be subject to the outcome to the fresh order to be passed by the respondent no.3.

**Order Date :- 5.2.2025**

Pravesh Mishra