IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
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CWP No.2737 of 2014
Date of Decision:06.05.2016

M/s Indiabulls Buildcon Ltd. and anr. .....Petitioners

Vs.

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Sumeet Mahajan, Senior Advocate with
Mr. Rohit Khanna, Advocate for the petitioners.

Mr. V. Ramswaroop, Addl. Advocate General, Punjab.

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<u>RAKESH KUMAR JAIN, J.(Oral)</u>

The question involved in this case is as to whether the respondent- State could deduct (ten nai paise) for each rupee or portion of a rupee, at the time of refunding the amount of the stamp paper purchased by the petitioner, which has become useless and cannot be put to immediate use, relying upon Section 54 of the Indian Stamp Act, 1899?

The brief facts of this case are that petitioner No.1 entered into an agreement to purchase 10 acres of land owned by three brothers namely, Jaidev Inder Singh, Yashdev Inder Singh and Jagdev Inder Singh. The agreement was entered into by petitioner No.1 through the power of attorney of the three brothers which was in the name of one of the brothers, namely, Jaidev Inder Singh. In order to get it registered, the petitioner deposited ₹5,68,00,000/- in the State Bank of India, Amritsar on 30.4.2008 for the issuance of a certificate of e-stamp. The aforesaid amount was

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deposited because the total sale consideration was of ₹71 crores and the stamp duty was charged @ 8% of the sale consideration. The petitioners were issued a receipt dated 30.4.2008 by the State Bank of India showing that the amount paid by the petitioners has been credited to the account of the Government of Punjab towards stamp duty. The sale deed was ultimately executed on 27.5.2008 and it was presented before the Sub Registrar, Amrtisar on the same day when the e-stamp of ₹5,68,00,000/- bearing Stamp Paper No.RB/1/557145 was credited to the account of the Government of Punjab on 30.4.2008. The Sub Registrar initially agreed to register the sale deed but later on the same day, he refused to register the same on the ground that the land in question has already been sold. Aggrieved against the decision of the Sub Registrar, the petitioners filed the statutory appeal on 30.10.2008 before the Collector, Amritsar, which was dismissed on 6.11.2008. Thereafter, the petitioner filed an application dated 15.1.2009 to Sub Registrar, Amritsar for refund of the stamp duty. The application remained pending for a long time and ultimately, the petitioners approached this Court by way of CWP No.12016 of 2012 which was disposed of on 6.7.2012 with the following order:-

> "The only grievance of the petitioner is that there is an excess payment of stamp duty which needs to be refunded but despite the representation made to this effect the same has not been refunded.
>
> In view of the aforesaid, I deem it appropriate to dispose of the instant petition at this stage without issuance of notice of motion to the respondents, as resorting to this process is likely

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to delay the matter further.

Accordingly, the respondent No.4 who is said to be exercising the power of Collector and to whom the representation has been made, shall consider and decide the same within a period of two months from the date of receipt of certified copy of this order.

Petition stands disposed of.

Thereafter, in pursuance of the order passed by this Court, the respondents decided to refund the stamp duty deposited by the petitioners and a refund voucher was given to the petitioners on 31.5.2013 for a sum of ₹5,11,20,000/- out of the amount deposited by the petitioners to the tune of ₹5,68,00,000/-, after deducting 10%, in terms of Section 54 of the Act. The petitioners were aggrieved of the action of the respondents and thus filed a representation cum appeal which was rejected by the respondents vide their reply dated 7.8.2013 in which reliance was placed upon Section 49(d)(5) and Section 54 of the Act.

Still aggrieved, the petitioners have approached this Court by way of present writ petition in which prayer has been made for issuance of a direction to the respondents to refund the balance amount of ₹56,80,000/- which was allegedly illegally and arbitrarily deducted by the respondents. After notice, the respondents have filed their reply in which they have tried to justify their action for deducting 10% as per Section 54 of the Act. Counsel for the petitioners has submitted that Section 54 of the Act is not applicable to the facts and circumstances of the present case. It is submitted that Section 54 of the Act can be invoked by the respondents only in case

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when any person is possessed of a stamp or stamps, which have not been spoiled or rendered unfit or useless for the purpose intended but is of no immediate use then the Collector may deduct 10% of the stamp duty and return the remaining amount especially when the Collector is satisfied that the stamp was purchased by such a person with a bonafide intention to use them. It is submitted that in their reply dated 2.9.2013 given by the respondents to the legal notice filed by the petitioners, they have specifically observed that "in the present case, the intention of the party was to execute the sale deed but the sale deed presented by the parties was refused because of the defect in the title meaning thereby that the stamps were useless for the purpose intended."

On the other hand, counsel for the petitioners has also prayed that in case the writ petition succeeds, then the direction may be also be issued for payment of simple interest on the amount which has been retained by the respondents illegally for such a long time.

Counsel for the respondents has argued that firstly there is no delay on their part for which the petitioners can ask for interest and secondly, the action has been taken by the respondents in conformity with the provisions of Section 54 of the Act, because the stamps have been returned to the petitioners which have been used by them for the purpose of registration of the sale deed.

I have heard both the counsel for the parties and perused the record. In order to appreciate the respective arguments, it would be relevant to refer to Section 49(d)(1)(2)(5) and Section 54 of the Act:-

(d) the stamp used for an instrument executed by any party

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thereto which-

(1) has been afterwards found to be absolutely void in law from the beginning;

(2) has been afterwards found unfit by reason of any error or mistake therein, for the purpose originally intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

xx xx xx xx xx xx

54. Allowance for stamps not required for use.-

When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which, he has not immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting [ten naye paise] for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction:-

(a) that such stamp or stamps were purchased by such person with a bona fide intention o use them; and

(b) that he has paid the full price thereof, and

(c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

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Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the re-payment of the sum actually paid by the vendor without any such deduction as aforesaid."

There is no dispute that the petitioners had purchased stamp of ₹5,68,00,000/- for the purpose of registration of the sale deed but the sale deed was not registered by the Sub Registrar on the ground that the land in question had already been sold and even FIR has been registered by Deputy Commissioner, Amritsar, bearing FIR No.326 dated 16.6.2008 at Police Station Civil Lines under Sections 420, 467, 468, 471, 120-B IPC on the complaint of vendors of the petitioners against some unknown persons and also the Sub Registrar Rajesh Kumar Sharma. On account of this fact, the petitioners could not get the sale deed registered and the stamp paper which was purchased by the petitioners became useless for the purpose for which it was registered.

The respondents have admittedly deducted 10% from the amount of the stamp by following Section 54 of the Act which provides that a person who is in possession of stamp or stamps which he has not been spoiled, made unfit or useless for the purpose for which it was purchased and the stamp is not required for immediate use by the said person, then he can apply to the Collector for representing the value of the such stamp in money which may be returned by the Collector after deducting ten naya paise for each rupee or portion of a rupee, on such person delivering the stamp to the Collector for the purpose of cancellation. In this case, it is the own case of the respondents that the stamps purchased by the petitioners

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had become useless for the intended purpose, therefore, Section 54 of the Act, does not apply to the case of the petitioner and cannot be invoked by the respondents for the purpose of deducting the amount claimed by the petitioners.

Thus, I have found merit in the arguments of counsel for the petitioners and its entitlement to the refund of the entire amount which has been retained by the respondents. Now the question arises as to whether the petitioners are also entitled to interest. It is no doubt true that the money of the petitioners has been illegally retained by the respondents after invoking the provisions of Section 54 of the Act. The petitioners would be entitled to 9% simple interest from the date at least when this Court had passed the order dated 6.7.2012 because in that order, this Court had directed the respondents to decide the representation of the petitioners which was not being decided despite the fact that the petitioners had made various efforts and after the order was passed, the respondents became active and ultimately passed the order against the petitioner on 2.9.2013. Hence, in my considered opinion, the petitioners are entitled to simple interest @ 9% on the amount of ₹56,80,000/-. This amount shall be paid to the petitioners within two months from the date of passing of this order.

May 06, 2016 **(RAKESH KUMAR JAIN)**
renu **JUDGE**

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