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

Reserved on: 05.04.2016

% Pronounced on: 17.05.2016

\+ W.P.(C) 3012/2016

JOGINDER KUMAR GOYAL ..... Petitioner

Through Mr.Sudhir Nandrajog, Sr.Advocate with Mr.J.K.Goyal, Mr.Gaurav Goyal & Mr.Ayushya Kumar, Advs.

Versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondents

Through Ms.Jyoti Dutt Sharma, Mr.Rahul Sharma & Mr.Ankit Roy, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

CM No. 12634/2016 (exemption)

Allowed subject to all just exceptions.

W.P.(C) 3012/2016 and CM No. 12633/2016 (directions)

1. The present Public Interest Litigation is filed seeking the relief of mandamus to direct respondent No.1 to enquire into the issue of evasion of stamp duty subsequent to 11.11.2011 in the offices of the Sub-Registrars being respondents No. 4 to 20 pertaining to General Power of Attorneys executed in favour of persons other than blood relations under Article 48 (c) of Schedule IA of the Indian Stamp Act (as applicable to Delhi) which otherwise ought to have been registered under Article 23A or 23 of the Schedule. Other connected reliefs are also sought.

2. The petitioner is a practicing advocate. He submits that in Delhi there are two modes of conveyance/transfer of immovable properties i.e. by execution of the sale deed or by Special Power of Attorney (SA)/General Power of Attorney (GPA)/WILL.

3. A reference is made to the judgment of the Supreme Court in the case of ***Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana & Anr., 2012 (1) SCC 656*** where the Supreme Court held that an immovable property could be legally and lawfully transferred/conveyed only by registered deed of conveyance and that GPA sales did not convey any title.

4. Reliance is also placed on two circulars dated 12.11.2014 and 26.02.2015 issued by respondent No.1 regarding caution in registering GPAs.

5. The petitioner points out that one of his client presented a GPA for registration on 07.11.2013 in the office of respondent No.16. The said GPA was presented and stamped with a stamp duty of Rs.100/- i.e. the stamp duty payable for a GPA. On 04.07.2014 the petitioner's client received information that the GPA has been impounded under Section 33 of the Indian Stamp Act and the original document has been sent to respondent No.3 for necessary action under Section 40 of the Act. Respondent No.3 pursuant to the orders passed by this High Court on 29.09.2014 in W.P.(C) No. 6708/2014 filed by the petitioner's client passed an order on 02.12.2014. By the said order, the impounded GPA of the petitioner's client was held to be a sale of immovable property requiring the stamp duty under Article 23(A) of Schedule IA of the Indian Stamp Act. A penalty was also imposed on the petitioner's client. Thereafter, the petitioner's client is said to have filed a revision petition before respondent No.2 wherein respondent No.2

vide order dated 02.07.2015 waived the penalty but imposed interest@ 2% per annum on the amount of Rs.3,41,435 from the date of the execution of the GPA up to the date of payment.

6. It is the contention of the petitioner that the GPA of the petitioner's client was impounded whereas other similar GPAs were being allowed to be registered in favour of persons other than blood relations by paying stamp duty as a GPA. However, respondent No.2 allowed the petitioner to inspect the documents pertaining to November 2013 to July 2014 in the office of respondent No. 16.

7. It is the further contention of the petitioner that GPA's are being executed for fulfillment of certain contractual obligations by and between executants for valuable considerations. It is further submitted that on inspection, he was able to discover 48 GPA's pertaining to immovable properties which have been registered as GPA resulting in a loss of approximately of Rs.15 crores to the Government Exchequer. It is urged that this was only in one of the offices of the Sub-Registrar and that the total loss of all the Sub-Registrar Offices would be enormous. It is in this background that the present writ petition has been filed seeking enquiry into GPA's executed in favour of the persons other than blood relations which otherwise ought to have been registered under Article 23 A or 23 of the Act.

8. We have heard the learned Senior Counsel for the petitioner and perused the record.

9. A power of attorney is defined in the Indian Stamp Act, 1899, which reads as follows in Section 2(21):

> " "Power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being

in force) empowering a specified person to act for and in the name of the person executing it."

10. In State of Rajasthan v. Basant Nahata MANU/SC/0547/2005MANU/SC/0547/2005: (2005) 12 SCC 77 the Supreme Court held as follows:

> "13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.
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> 52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

11. GPA is chargeable for stamp duty in Delhi under article 40 of Schedule I(A) of the said Stamp Act. For the purpose of determining the applicable entry of the schedule to the Stamp Act to the document for the purpose of assessing stamp duty payable, reference may be had to a Division Bench Judgment of the M.P. High Court in ***'Shiv Kumar Saxena & Ors., v. Manishchand Sinha & Ors.', 2004(2) MPJR 269/(MANU/MP/0321/2004).*** Relevant portion of the said judgment reads as follows:

> "…………..The following cardinal principles laid down by Courts should always be kept in view, before considering any question relating to stamp duty:--
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> (i) Stamp duty is leviable on the instrument and not the transaction.
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> (ii) The substance of the transaction embodied in the instrument determines the stamp duty and not the form or title of the instrument.
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> (iii) In order to determine the nature of document and whether it is sufficiently stamped, the Court shall only look to the contents of the document as it stands and not any collateral circumstances which may be placed by way of evidence. In other words, for purposes of stamp duty, the intention of the parties is to be gathered only from the contents of the instrument and not any outside material. (But where the stamp duty depends on the market value, outside material can be considered in the manner provided in the relevant stamp law).
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> (iv) To find out the true character of an instrument for purpose of stamp duty, the document should be read as a whole and the dominant purpose of the instrument should be identified.
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> (v) The instrument must be stamped according to its tenor though it cannot be given effect for some independent cause.
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> (vi) The Revenue cannot contend that the object of the transaction was to achieve a purpose not disclosed in the document and, therefore, the document should be stamped as per such deemed, but undisclosed purpose. Similarly, the party liable to pay stamp duty cannot contend that the purpose

> disclosed in the instrument is not the actual purpose and therefore, he is not liable to pay stamp duty on the apparent tenor of the instrument.
> (vii) Once a document containing effective words of disposition is executed, it attracts stamp duty. The taxable event cannot be postponed by contending that it was intended to come into effect on a future date, on the happening of a particular contingency."

12. Clearly, the character/nature of the document for the purpose of stamp duty would vary on the facts of each case depending on the substance of the transactions as stated in the instrument itself. There can be no sweeping conclusion as sought to be argued by the petitioner, that every power of attorney executed in favour of a person other than a relative by a grantor to deal with immovable property is *per se* a conveyance deed and not a power of attorney. Merely because some clauses are introduced in some power of attorney holding it to be irrevocable or authorizing the attorney holder to effect sale of the immovable property on behalf of the grantor would *ipso facto* not change the character of the document transforming it into a conveyance deed.

13. The legal position regarding any attempt to effect a transfer of title vide a power of attorney was dealt with by the Supreme Court in the case of ***Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana & Anr., (supra)*** the court held as follows:-

> "13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable

at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

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An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

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15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain vs. Canara Bank MANU/DE/1304/2001 : 94 (2001) DLT 841 that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintended misleading the general public into thinking that SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of lease. It is time that an end is

> put to the pernicious practice of SA/GPA/WILL transactions known as GPA Sales."

14. To the same effect is the judgment of the Supreme Court in ***Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012 8 SCC 706*** which followed the earlier judgment of the Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana & Anr.***(supra).

15. Reference may also be had to a recent judgment of the Supreme Court in ***Kasthuri Radhakrishnan & Ors. v. M.Chinniyan & Anr., (2016) 3 SCC 296,*** the Supreme Court reiterated the aforesaid judgments of the Supreme Court cited above and stated as follows:

> "36. The Law relating to power of attorney is governed by the provisions of the Powers of Attorney Act, 1982. It is well settled therein that an agent acting under a power of attorney always acts, as a general rule, in the name of his principal. Any document executed or thing done by an agent on the strength of power of attorney is as effective as if executed or done in the name of principal i.e. by the principal himself. An agent, therefore, always acts on behalf of the principal and exercises only those powers, which are given to him in the power of attorney by the principal. Any act or thing done by the agent on the strength of power of attorney, is therefore, never construed or /and treated to have been done by the agent in his personal capacity so as to create any right in his favour but is always construed as having done by the principal himself. An agent, therefore, never gets any personal benefit of any nature…"

16. Hence, merely because a person executes an SA/GPA/Will that would not ipso facto imply that any transfer of property has taken place. The legal position is quite clear, i.e. any general power of attorney even if it provides for power to the attorney holder to convey title on behalf of the guarantor or

is deemed to be irrevocable cannot be recognized as a deed of title. Hence, merely because respondents No. 4 to 16 have in certain cases permitted registration of GPA/SA/Will in favour of persons other than the blood relatives of the grantor, that ipso facto will not lead to any transfer of title in favour of the attorney holder/grantee. The contentions of the petitioner are without merit.

17. Further, the motive for filing the present petition appears to be more out of spite. The tenor of the pleadings in the petition show that the petitioner appears to have been aggrieved by the fact that a power of attorney that was presented for registration by the petitioner as an Advocate acting for and on behalf of his client was impounded and directed to be charged as a conveyance deed. According to the petitioner/petitioner's client there are several power of attorneys registered and available on record which are similar or akin to the power of attorney presented by the petitioner on behalf of his client which were registered on payment of stamp duty as power of attorney under Article 40 of Schedule I(A) of the said Stamp Act i.e. as a Power of Attorney. These were the issues which the petitioner's client ought to have raised before the appropriate appellate authority. In view thereof we are also not inclined to grant any relief to the petitioner.

18. The writ petition is accordingly dismissed.

(JAYANT NATH)
JUDGE

MAY 17, 2016/rb **CHIEF JUSTICE**