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

\+ W.P.(C) 2758/2016 & C.M.Nos.11596-11597/2016

GAURAV GANDOTRA & ANR. ..... Petitioners

Through Ms.Sharddha Bhargava, Advocate.

versus

COLLECTOR OF STAMPS (VASANT VIHAR) & ORS. ..... Respondents

Through Mr.Rahul Sharma with Mr.Ankit Roy, Advocates for R- 1 & 2.

Date of Decision : 30th March, 2016

**CORAM:**
**HON'BLE MR. JUSTICE MANMOHAN**

**J U D G M E N T**

**MANMOHAN, J: (Oral)**

1. Present writ petition has been filed challenging the order dated 16th November, 2015, whereby the respondent No.1-Collector of Stamps has returned a finding that the petitioners have not paid adequate stamp duty for registration of Sale Deed pertaining to property bearing Flat No.9551, Sector-C, Pocket-9, Vasant Kunj, New Delhi. The respondent No.1 has also imposed a penalty at 10% on the ground of delay in payment of stamp duty.

2. Learned counsel for petitioners states that though the Agreement to Sell with regard to the abovementioned property was executed in 2004, yet the sellers (respondents No.3 and 4) resiled from their

obligations. She also states that the petitioners, who are the buyers, filed a Suit for Specific Performance which was decreed and it was only on 6th August, 2015, that the respondents No.3 and 4 executed a Sale Deed in favour of the petitioners.

3. Learned counsel for the petitioners further states that the petitioners have paid stamp duty according to rates prevalent in 2015 i.e. stamp duty at 3%, transfer duty at 3% and registration fee at 1% (total of 7%) amounting to Rs.2,27,500/. However, in the impugned order, the respondent no.1 has calculated the stamp duty as per rates prevalent in 2004 i.e. stamp duty at 5%, transfer duty at 3% and registration fee at 1% (total of 9%). She contends that the respondent no.1 in the impugned order has erroneously held that the petitioners have paid stamp duty amounting to Rs.1,95,000/- instead of Rs.2,27,500/-.

4. Learned counsel for the petitioners also states that the respondent no.1 has erroneously levied penalty @ 10% on the ground of delay. She states that the Sale Deed was executed on 6th August, 2015 and was presented for registration before the respondent no.2 on 13th August, 2015, which is within the prescribed statutory period. Hence, according to her, the levy of penalty at 10% on the ground of delay in presenting the document for registration is devoid of any merit and is liable to be set aside.

5. Learned counsel for the petitioners lastly contends that the respondent no.1 in the impugned order has erroneously calculated Rs.2,50,521/- as duty due and payable by the petitioners.

6. This Court with the assistance of counsel for both the parties has perused the impugned order and finds that there is a basic fallacy in the impugned order inasmuch, as the distinction between Agreement to Sell

and the Sale Deed has been lost.

7. Further, the Sale Deed has to be registered in accordance with the extant law i.e. at the rates prevalent on the date the Sale Deed is registered. Consequently, the 2015 rates will apply and not 2004.

8. This Court also finds merit in the petitioners' argument that no penalty could have been levied on the petitioners as there was no delay.

9. Keeping in view the aforesaid, the impugned order dated 16th November, 2015 is set aside and the matter is remanded to the respondent no.1 for re-determination of the stamp duty.

10. The respondent no.1-Collector of Stamps is directed to recalculate/re-determine the stamp duty in respect of the property in question after considering the aforesaid observations, within a period of six weeks.

**MANMOHAN, J**

**MARCH 30, 2016**
**KA**