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

% **Date of decision: 26th October, 2017**

\+ **CM(M) 69/2016 & CM No.2405/2016 (for stay)**

COLLECTOR OF STAMPS/SDM ..... Petitioner

Through: Ms. Palak Rohmetra, Adv. for Mr. Sanjay Dewan, Adv.

Versus

RAMAN KUMAR ..... Respondent

Through: Mr. V.S. Rana, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 12th October, 2017, the following order was passed:

> "1. This petition under Article 227 of the Constitution of India impugns the judgment (dated 4th July, 2015 in MCA No.08/14 of the Court of Additional District Judge-01 (West), Tis Hazari Courts, Delhi) allowing the appeal preferred by the respondent under Section 47A of the Indian Stamp Act, 1899 as amended for the State of Delhi.
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> 2. The petition was entertained and notice thereof ordered to be issued.
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> 3. The counsels have been heard.
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> 4. The position which emerges from hearing counsels, is as under:-
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> (i) that on 29th December, 2006, an Agreement to Sell with respect to property no. GC-11, Second

Floor, Shivaji Enclave, New Delhi – 110 027 was registered by the owner thereof in favour of Anita Sharma wife of the respondent and since at the time of Agreement to Sell possession of the property was delivered to the purchaser in part performance of the Agreement to Sell, in accordance with Article 23A of the Schedule to the Stamp Act as applicable to Delhi, out of 6% Stamp Duty leviable on a conveyance, Stamp Duty of 5.7% was paid on the agreement to sell accompanied with delivery of possession in part performance;

(ii) on 4th March, 2010, a Sale Deed of the same property was presented for registration, by the owner thereof, in favour of, according to the counsel for the petitioner, the respondent and according to the counsel for the respondent, the aforesaid Anita Sharma only (the counsel for the petitioner states that he is presuming the Sale Deed to be in favour of the respondent because it was the respondent who preferred the appeal);

(iii) the said Conveyance Deed / Sale Deed on 23rd March, 2010 was impounded by the Sub Registrar to whom it was presented and sent to the Collector of Stamps, Delhi;

(iv) the Collector of Stamps, Delhi, though issued show cause notice to the parties on 27th July, 2010 and to which a reply was filed, but no speaking order was passed and the Collector of Stamps, Delhi on 10th November, 2010 merely prepared a challan for deficient Stamp Duty and penalty thereon;

(v) according to the Collector of Stamps, Delhi, the Stamp Duty payable on the Conveyance Deed / Sale Deed ought to have been in accordance with the circle rates prevalent on 4th March, 2010 and not as per the circle rates prevalent in December, 2006; and,

(vi) the respondent preferred an appeal under Section 47A(4) of the Indian Stamp Act as applicable to Delhi to the District Court and the learned Additional District Judge has vide the impugned judgment allowed the appeal and held the Stamp Duty payable on the Sale Deed to be only the remaining 0.3% Stamp Duty of what was left after paying the Stamp Duty on the Agreement to Sell i.e. as per the circle rates prevalent in December, 2006.

5. The first contention of the counsel for the petitioner is that the action of the Sub Registrar, of impounding the Conveyance Deed / Sale Deed presented on 4th March, 2010 and sending it to the Collector of Stamps, Delhi was in exercise of powers under Section 33(1) of the Indian Stamp Act which is as under:-

> ***"33. Examination and impounding of instruments.*** *— (1) Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a pubic office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same."*

and the remedy thereagainst is as provided under Section 56 of the Act which is as under:-

> ***"56. Control of, and statement of case to, Chief Controlling Revenue-Authority.*** *— (1) The powers exercisable by a Collector under Chapter IV and Chapter V [and under clause (a) of the*

first proviso to section 26] shall in all cases be subject to the control of the Chief Controlling Revenue-Authority.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-Authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector who shall proceed to asses and charge the duty (if any) in conformity with such decision."

6. It is argued that the appeal filed by the respondent to the District Court under Section 47A supra as under:-

"47A(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 duly 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, suomotu 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 setforth 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 30 days of the date of the order sought to be appealed against.

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

Explanation:-

For the purpose of this section, value of any property shall be estimated to be 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."*

was thus misconceived and reliance is placed on ***Trideshwar Dayal Vs. Maheshwar Dayal*** (1990) 1 SCC 357.

7. It is further argued that the learned Additional District Judge has erred in entertaining the appeal, notwithstanding the aforesaid judgment being cited before her.

8. I have considered the aforesaid contentions and am unable to agree with the same. Though Section 33(1) supra undoubtedly empowers every person in charge of a public office, and which would include the Sub Registrar, to impound a document chargeable with Stamp Duty and produced before him and the said Section 33 is placed in Chapter-IV of the Stamp Act covered by Section 56(1) supra but the same remains a 'general provision'. The legislature having introduced Section 47A in the Act, as far as applicable to the city of Delhi, has by providing for the procedure to be followed by the Sub Registrar acting as Registering Officer, before whom an instrument undervalued is presented for registration of any property, the procedure to be followed as far as the city of Delhi is concerned, by the Sub Registrar, would be under the special provision i.e. 47A and not under the general provision i.e. Section 33. Section 47A was introduced vide Notification dated 2nd November, 2001 and was thus not for consideration in ***Trideshwar Dayal*** supra. The said judgment cannot for this reason alone, be a binding precedent.

9. As far as Section 47A is concerned, Sub-Section (4) thereof provides for appeal, against the

determination under Sub-Section (1) by the Collector, to the 'District Court'.

10. Thus there is no merit in the contention, of the appeal, against the judgment wherein this petition has been preferred, having been wrongly entertained.

11. As far as the merits are concerned, I have put it to the counsel for the petitioner, that even if his contention that the Conveyance Deed / Sale Deed presented on 4th March, 2010 was chargeable as per the circle rates applicable then and not as per the circle rates as prevalent at the time of registration of the Agreement to Sell on 29th December, 2006 were to be accepted as correct, circle rates, in ***Manu Narang Vs. The Lt. Governor, Government National Capital Territory of Delhi*** 226 (2016) DLT 1 and ***Amit Gupta Vs. Govt. of NCT of Delhi*** 229 (2016) DLT 385, have been held by the Division Bench of this Court to be only raising a presumption and to be not binding. It was held that an opportunity has to be given to the concerned parties to prove that the consideration as disclosed in the document, even if below the circle rate, is the genuine consideration.

12. The counsel for the respondent informs, that the property was leasehold and thus on 29th December, 2006 the Sale Deed could not have been registered and time of four years till 4th March, 2010 was owing to the said reason.

13. Without the petitioner contending, that the Sale Deed was not in pursuance to the Agreement to Sell dated 29th December, 2006 and which is not the contention save as hereunder mentioned, the Stamp Duty payable on the Conveyance Deed / Sale Deed as per Article 23 of the Act would again have to be on the consideration disclosed in the Sale Deed.

14. I, even otherwise find it inequitable that the State, after making the purchaser put in possession of the property agreed to be purchased in part performance of the Agreement to Sell liable to pay 90% of the Stamp Duty as payable on the Conveyance Deed should at the time of registration of the Conveyance Deed / Sale Deed require him to pay the Stamp Duty as per any higher rates. Either the State should not have provided for payment of 90% of the Stamp Duty and for registration of the Agreement to Sell when possession in part performance has been delivered and in which case the State could possibly have been heard to contend that the Stamp Duty on the Sale Deed should be on the consideration prevalent on the date of presentation of the Sale Deed and not on the consideration fixed earlier or should be satisfied with the consideration / rates prevalent at the time of collection of 90% of the duty.

15. Be that as it may, in view of the dicta aforesaid of the Division Bench, the consideration for the Sale Deed has to be accepted as disclosed therein and not as per the prevalent values in March, 2010.

16. The counsel for the petitioner has then contended that the Sale Deed is not in pursuance to the Agreement to Sell, since the Agreement to Sell was in favour of the wife of the respondent and the Sale Deed is in favour of the respondent.

17. The counsel for the respondent controverts and states that the Sale Deed also is in favour of the wife of the respondent and the respondent has as holder of Power of Attorney of the owner, executed the Sale Deed in favour of his wife.

18. Neither have the Agreement to Sell, Sale Deed or other documents if any in this connection been placed on record nor are either of the counsels carrying the same.

> 19. The counsel for the petitioner also seeks time to study the dicta aforesaid of the Division Bench in ***Manu Narang*** and ***Amit Gupta*** supra.
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> 20. Without examining the said documents, the said question cannot be determined.
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> 21. List on 26th October, 2017."

2. Ms. Palak Rohmetra, Advocate for the petitioner states that Mr. Sanjay Dewan, Advocate is busy in another Court and that the file could not be received owing to the Delhi Government having declared today as a holiday. On enquiry, she states that the file will be received tomorrow.

3. The counsel for the respondent has handed over in the Court, photocopies of a bunch of documents sought on the last date of hearing and which indeed show that the sale deed is in favour of Smt. Anita Sharma, being the wife of the respondent.

4. There is no reason to doubt the documents handed over by the counsel for the respondent, particularly when Mr. Sanjay Dewan, Advocate also on 12th October, 2017 was not sure in whose favour the sale deed was and fairly stated that he presumed the sale deed to be in favour of the respondent because of the appeal having been filed by the respondent, being the husband of Smt. Anita Sharma and not by the said Smt. Anita Sharma.

5. I have enquired from Ms. Palak Rohmetra, Advocate, whether any arguments are to be addressed with respect to the judgments to which attention of the counsel for the petitioner was drawn on the last date of hearing.

6. The counsel for the petitioner states that Mr. Sanjay Dewan, Advocate has gone through the said judgments and has nothing to say with respect thereto.

7. The position thus emerges is that the sale deed is in pursuance to the agreement to sell which was registered and on which requisite stamp duty was paid and this is not a case of the sale deed being in favour of an assignee of the agreement purchaser.

8. I have already in order dated 12th October, 2017 reproduced hereinabove held that once 90% of the stamp duty has been collected on the agreement to sell, after being satisfied with the valuation thereof, merely on account of delay, the valuation cannot be objected at the time of registration of the sale deed in pursuance thereto.

9. There is thus no merit in this petition.

10. The petition fails and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 26, 2017

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(Corrected and released on 25th November, 2017)