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

+ **W.P.(C) 9479/2017**

MANJU JAIN

..... Petitioner

Through: Shri Venkatesh and Mr Varun Singh,
Advocates.

versus

GOVERNMENT OF NCT DELHI & ANR Respondents

Through: Mr Satyakam, ASC, GNCTD.

AND

+ **W.P.(C) 9546/2017**

NEELAM JAIN

..... Petitioner

Through: Shri Venkatesh and Mr Varun Singh,
Advocates.

versus

GOVERNMENT OF NCT DELHI & ANR Respondents

Through: Mr Satyakam, ASC, GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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31.10.2017

JUSTICE VIBHU BAKHRU, J

CM No. 38559/2017 in W.P.(C) 9479/2017

CM No. 38840/2017 in W.P.(C) 9546/2017

1. Allowed, subject to all just exceptions.
2. The application are disposed of.

W.P.(C) 9479/2017 & W.P.(C) 9546/2017

3. The petitioners have filed these petitions challenging the communication dated 04.08.2017 (hereafter 'the impugned letter') passed by respondent no.2 pursuant to their respective applications for refund of stamp duty.

4. The controversy involved in the present petitions is identical and, therefore, the same have been taken up together. For the sake of brevity, only the facts relating to W.P. (C) 9546/2017 are noticed for addressing the issues involved. Briefly stated, the said facts are as under:-

4.1 The Government of NCT of Delhi (respondent no.1) issued a notification, being notification no. F.1(1953)/Regn.Br./Div.Com/HQ/2014/191 (Land Revenue Notification) dated 04.08.2015, in exercise of the powers conferred under sub-section 3 of Section 27 of the Indian Stamp Act, 1899 and Rule 4 of the Delhi Stamp (Prevention of Under-valuation of Instruments) Rules, 2007 reducing the minimum rates for valuation of agricultural lands in Delhi.

4.2 The aforesaid notification was challenged in a Public Interest Litigation titled *Naresh Kumar v. GNCTD & Ors: W.P. (C) 7934/2015, 232(2016) DLT 196*. The principal challenge to the aforesaid notification was on the ground that the decision of Council of Ministers was not placed before the Lieutenant Governor, Delhi for his concurrence/views and was therefore, illegal and unconstitutional. The said contention was accepted and a Division Bench of this Court quashed the said notification in the above mentioned matter.

4.3 Ms Neelam Jain (the petitioner in W.P. (C) 9546/2017 and hereafter 'the petitioner') claims that after the said judgment was rendered, her

brother-in-law, Mr Ashok Kumar Jain, gifted certain agricultural lands measuring 11 Biswas, bearing Khasra No. 11/8/3 (0-11) situated in the revenue estate of Village Chhawla, Tehsil Kapashera, New Delhi, to her and also executed a gift deed dated 26.09.2016 (hereafter 'the gift deed') for the said purpose.

4.4 The gift deed was presented before respondent no.2 for registration along with the necessary stamp duty, which was calculated on the value of the agricultural land computed on the basis of the notification dated 04.08.2015.

4.5 On 24.10.2016, the Lieutenant Governor of Delhi revoked the notification dated 04.08.2015 by issuing another notification (Notification No. F.1(953)/Regn.Br./Div.Com/HQ/2014/2617). Thereafter, on 22.03.2017, the petitioner sent a letter to the office of respondent no.2 requesting for refund of the excess stamp duty paid with respect to the gift deed. The petitioner's request for refund of stamp duty was rejected by the impugned order dated 04.08.2017, on the ground that the stamp duty had been calculated on the self-declaration made in the gift deed dated 26.09.2016.

4.6 In the gift deed, the agricultural land in question was valued at ₹40,11,000/-. This value was calculated at the rate of ₹3.50 crore per acre as per the minimum rates by the notification dated 04.08.2015. Accordingly, Stamp duty at the rate of 4% of the said declared value amounting to ₹1,60,440/- was paid. In addition, registration fee at the rate of 1% of the land value computed at ₹40,233/-, was also paid. Thus, in aggregate a total amount of ₹2,00,673/- was paid as stamp duty and registration fee.

4.7 With the withdrawal of notification dated 04.08.2015, the minimum rates for valuation of agricultural land as notified earlier reverted back to the earlier notified rates, which in this case was ₹53 lakhs per acre. If the agricultural land gifted to the petitioner under the gift deed was valued at ₹53 lakhs per acre, the total value of the agricultural land would work out to be ₹6,07,380/- on which the petitioner would be liable to pay stamp duty of ₹24,295/- and registration fee of ₹6,074/-; that is, in aggregate the petitioner would have been required to pay ₹30,369/-. Since the petitioner had paid a sum of ₹2,00,673/- on account of stamp duty and registration fee, she demanded refund of ₹1,70,304/-, being the difference in the stamp duty and registration fee payable on minimum value of the lands as computed under the two notifications.

5. Learned counsel appearing for the petitioner relied upon the decision of this Court in *Piyush Aggarwal & Anr. v. Government of NCT of Delhi & Ors. : 2005 (81) DRJ 186* in support of his contention that even if Section 52 of the Indian Stamp Act, 1899 (hereafter 'Stamp Act') was not attracted, the refund of the excess stamp duty paid could be granted.

6. I have heard the learned counsel for the parties at length.

7. Concededly, there is no provision in the Stamp Act, which expressly provides for refund of stamp duty in a case such as this. Section 52 of the Indian Stamp Act, which provides for refund of stamp duty in certain cases reads as under:-

"52. Allowance for misused stamps:-

- (a) When any person has inadvertently used for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value

than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty; or

- (b) When any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13, the Collector may, on application made within six months after the date of the instrument, or , if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless."

8. Plainly, the above provision is not applicable in the facts of this case. It is not the petitioner's case that the petitioner has paid a stamp duty, which is greater than what is prescribed for in respect of the instrument in question (the gift deed). In the present case, stamp duty was payable at the rate of 4% of the value of the land in question. In the gift deed, the value of the agricultural land was declared at ₹ 40,11,000/- and, concededly, the stamp duty was computed at the correct rate (4%) and paid. Undisputedly, it would not be permissible to state the value of the property at ₹ 40,11,000/-and pay a duty lower than what was paid. Undoubtedly, the petitioner had valued the land in question based on the notification dated 04.08.2015 and perhaps the petitioner could have valued the property at a lower amount. However, having declared the value at ₹ 40,11,000/-, the petitioner had no option but to pay the stamp duty as per the said valuation.

9. It is trite law that the stamp duty is paid on the instrument. In this case the parties to the instrument in question - the gift deed – had declared the value of the property being conveyed as ₹ 40,11,000/- and therefore, the

stamp duty and registration fee were computed accordingly.

10. The decision in the case of *Piyush Aggarwal & Anr. v. Govt. Of NCT of Delhi* (*supra*) is inapplicable in the facts of the present case. In that case, the petitioners had deposited stamp and transfer duty at the rate of 13% (8% + 5% respectively) amounting to ₹1,70,770/- in aggregate. The said duty was paid on 18.03.2003; the conveyance was executed on 30.06.2003; and the conveyance was registered on 08.08.2003. Prior to the execution of the conveyance deed, the Government had issued a notification dated 19.05.2003 reducing the stamp duty on conveyance from 8% to 5%. In the given facts, it was clear that the petitioner had paid excess duty of ₹67,810/-. It is in the aforesaid context that the court held as under:-

“Further as noticed earlier dehors the applicability of Section 52 of the Act, stamp duty collected without authority of law cannot be retained in terms of Article 265 of the Constitution of India in the absence of any statutory provision requiring refund application to be submitted within a specified period or prohibiting the refund unless made within the specified period.”

11. In the present case, it is not open for the petitioner to contend that the stamp duty has been collected without authority of law. The stamp duty has been paid at the correct rate on the value as declared by the concerned parties in the gift deed. It is also not disputed that the declaration of the value of the land gifted was made voluntarily and was not compelled by any authority. It was always open for the parties to the gift deed to declare a value different from that as computed on the basis of the notified circle rates; but, the stamp duty would have been computed on the basis of the land value calculated at the notified circle rates if the value of the land was

declared less than such minimum value. Thus, if the donor and the petitioner felt that the value of the land was less than ₹40,11,000/- there was nothing that prevented them to state that value in the gift deed. The stamp duty, ofcourse would be payable at the value so declared or as computed at circle rates whichever was higher. Thus, the petitioner cannot now claim that excess stamp duty was collected without authority of law.

12. There is yet another aspect that is required to be noted. Admittedly, the notification dated 04.08.2015 had been struck down by the Division Bench of this Court in *Naresh Kumar v. GNCTD & Ors.* (*supra*), which was rendered on 04.08.2016. The gift deed in question was executed after the said notification had been struck down. In this view also it is not open for the petitioner to contend that she was compelled to evaluate the land at the minimum circle rates as notified under the notification dated 04.08.2015 as was done in the gift deed.

13. Thus, this Court finds no infirmity with the impugned order passed by respondent no. 2 declining refund of the stamp duty and registration fee paid in respect of the gift deed.

14. The facts in W.P. (C) 9479/2017 are almost identical except that the agricultural lands gifted in that case and the value thereof are different. The representation made by the petitioner in W.P. (C) 9479//2017 seeking refund of stamp duty and registration fee is identically worded as the representation made by the petitioner in W.P. (C) 9546/2017. The order dated 04.08.2017 impugned in W.P. (C) 9479/2017 is also identically worded. Thus the decision in W.P.(C) 9546/2017 is equally applicable in this case as well.

15. In view of the above, these petitions are dismissed. No order as to costs.

VIBHU BAKHRU, J

OCTOBER 31, 2017/pkv

