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

\+ **<u>W.P.(C) 2663/2017</u>**

SANTOSH JAIN ..... Petitioner

Through Mr Mahesh Prasad, Advocate.

versus

LT. GOVERNOR NCT OF DELHI & ORS ..... Respondents

Through Mr Satyakam, Advocate ASC GNCTD for R1 to R3.

Mr Pawan Kr. Bansal, Advocate for R4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **12.01.2018**

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to respondent nos. 1 to 3 to register a sales certificate relating to the property bearing no. 26 and 27 admeasuring 400 sq yards in Khasra No. 22/25/2 and 22/35 situated in village Samaypur (now known as Samaypur Extension area), Samaipur Badli. The petitioner claims to have purchased the said property by way of an e-Auction conducted by Punjab National Bank, for a consideration of ₹1,05,00,000/- (One Crore Five Lakhs only).

2. The petitioner's apprehension is that the petitioner would be called upon to pay stamp duty on circle rates, which is higher than the rate at which the petitioner has purchased the said property. The petitioner had also filed applications under the Right to Information Act, 2005 seeking information in this regard and the response received from respondents have also

confirmed the apprehensions of the petitioner.

3. Mr Mahesh Prasad, learned counsel for the petitioner states that in terms of Section 47-A of the Indian Stamp Act, 1899 (hereafter 'the Act') the Registering authority is empowered to refer the matter to the Collector of Stamps for determination of the value of the property and accordingly the petitioner's case should also be referred to the Collector. Mr Mahesh Prasad relied on the decision of a Division Bench of this Court in ***Manu Narang & Anr. v. The Lt. Governor, Government of NCT of Delhi & Ors.***: ***W.P. (C) No. 5975/2013 rendered on 23.12.2015*** in support of his contention.

4. Section 47A of the Act was introduced by the Indian Stamp (Second Amendment) Act, 2001 as applicable to NCT of Delhi and is set out below:-

> "**47-A**. (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 truly 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.
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> (2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties 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.
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> (3) The Collector may, suo moto, 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 set forth 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 to 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 is situated.

(5) An appeal under sub-section (4) shall be filed within thirty days of the date of the order sought to be appealed against.

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

Explanation.-for the purpose of this section, value of any property shall be estimated to be the price 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."

5. Mr Satyakam, learned counsel appearing for the respondents has rightly contended that the provisions of Section 47A of the Act are triggered only at the time of registering the instrument. If at that time of registration of a document, the Registering Officer is of the opinion that the instrument does not reflect the correct value or consideration of the property concerned, he is enabled – in terms of Section 47A of the Act to refer the same to the Collector for determination of the value or consideration as the case may be.

In the present case, the petitioner has not presented the sale certificate for registration before the registering officer and, therefore, the question of Section 47A of the Act being applied has not arisen as yet.

6. In ***Manu Narang & Anr.*** (*supra*), the Division Bench of this Court had disposed of the writ petition by issuing certain directions. Para 22 and 23 of the said decision are relevant and are set out below:-

> "22. W.P.(C) No.3591/2014 and W.P.(C) No.10328/2015 are disposed of by directing/clarifying that notwithstanding anything contained in any order/circular of the respondent GNCTD including those impugned in these petitions, in the event of the consideration mentioned in the instrument/transfer document presented for registration being less than the valuation as per the prescribed circle rates, the Registrar /Sub Registrar entrusted with the responsibility of registration of the documents, shall,
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> A) notify the parties presenting the instrument/document for registration that the consideration set forth in the instrument and the stamp duty computed on the basis thereof is less than the valuation as per the circle rates;
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> B) give them an opportunity to amend the document/instrument, to bring the valuation thereof for the purpose of payment of stamp duty, in consonance with the circle rates and make up deficiency in stamp duty;
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> C) if parties do not amend/revise the valuation and do not pay the deficient stamp duty/transfer duty in terms of the circle rates, follow the procedure as prescribed in Section 47-A supra i.e. register the document/instrument (instead of returning the same to the parties) with endorsement of registration and forward the same to the Collector of Stamps for determination of value or consideration as the case may be and the proper duty payable thereon; and
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> D) the Collector thereafter shall proceed in accordance with

> law including Section 27 of the Stamp Act.
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> 23. We dispose of W.P.(C) No.5975/2013 by further clarifying that the parties presenting instruments/transfer document of basements of residential properties for registration, if of a consideration lower than the consideration / valuation in accordance with the circle rates, shall upon their instruments/transfer documents after registration, under Section 47-A supra being referred to the Collector, be entitled to satisfy the Collector of the consideration/valuation of the subject basement in residential properties being lower than the consideration applicable to instruments/transfer documents of other floors in the same property and the Collector shall proceed to determine the same."

7. This Court is of the view that the said directions would be equally applicable to the petitioner's case as and when the petitioner applies for registration of the said property.

8. The petition is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

JANUARY 12, 2018
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