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

+ **W.P.(C) 8416/2018 & CM No. 32328-32329/2018**

HARJINDER PAL SINGH Petitioner
Through Mr Rajat Aneja, Ms Chandrika Gupta,
Advocates.

versus

THE COLLECTOR OF STAMPS SUB-DIVISIONAL
MAGISTRATE, VASANT VIHAR Respondent
Through Mr Gautam Narayan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **04.09.2018**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Article 226 of the Constitution of India impugning the order dated 09.07.2018 (hereafter 'the impugned order') passed by the ADJ, Patiala House Court (hereafter 'the District Court').

2. By the impugned order, the District Court has rejected the appeal preferred by the petitioner under Section 47A(4) of the Indian Stamp Act, 1899 (hereafter 'the Stamp Act'), against the order dated 24.11.2017 passed by the respondent. The District Court has upheld the decision rendered by the respondent directing the petitioner to deposit the deficient stamp duty of ₹36,86,949/-.

3. The controversy involved in the present petition pertains to the Stamp

Duty payable on a Sale Deed with respect to the roof rights of the property bearing no. C-3/1, Vasant Vihar, New Delhi along with the proportionate title/interest in the land measuring 344.44 square meters (hereafter ‘the Property’). The said immovable property comprised of a plot of land and a building constructed thereof. The petitioner has acquired the roof rights over the second floor of the building and the proportionate rights in the land beneath. The petitioner claims that the stamp duty is required to be assessed on the consideration as stated in the Sale Deed or the market value of the Property, as on the date when the concerned parties entered into an agreement to sell and purchase the Property. The respondent (Collector of Stamps) disputes the same and contends that the stamp duty is payable on the basis of the market value of the Property as on the date of the execution of the Sale Deed.

4. On 08.05.2012, the petitioner entered into the Agreement to Sell with the one Mr Onkar Singh (the Vendor) for purchasing the Property. The petitioner states that the purchase consideration for the Property was agreed at ₹52,00,000/-. He also claims that that the said amount was paid; however, the Vendor refused to execute the Sale Deed. This led the petitioner to file a Civil Suit for specific performance before this Court – CS (OS) 689/2013 titled “*Harjinder Pal Singh v. Onkar Singh*” – in April, 2013.

5. In July, 2013, the petitioner and the Vendor filed a joint application under Order 23 Rule 3 of the Civil Procedure Code, 1908, wherein the said parties agreed that the petitioner would pay a further sum of ₹10 lakhs and the Vendor (the defendant in the suit) would execute a sale deed in respect of the Property. The petitioner claims that even though he paid the additional

consideration of ₹10 lakhs as agreed, the Vendor failed to comply with the terms of the settlement and did not execute the Sale Deed in respect of the Property. Consequently, in October, 2012, the petitioner filed a petition for execution of the decree – being Ex. P. 235/2013 captioned “*Harjinder Pal Singh v. Onkar Singh*” – before this Court. On 15.12.2015, this Court passed an order appointing Sh Rajeev Kumar Bhardwaj, an officer of this Court to execute the Sale Deed in respect of the Property.

6. The Sale Deed was executed on 10.05.2015 by Sh Rajeev Kumar Bhardwaj and on 11.05.2016, was presented for registration before the office of the concerned Sub-Registrar.

7. The petitioner paid a stamp duty of ₹3,12,000/-, which was assessed on the consideration of ₹52,00,000/- as stated in the Sale Deed. The Sub-Registrar found that the value of the Property computed on the Circle rates was in excess of the value as disclosed in the Instrument (Sale Deed) and, therefore, made a reference to the respondent under Section 47-A of the Stamp Act for assessing the duty chargeable in respect of the Property.

8. Before the respondent, the petitioner submitted that he was always ready and willing to execute the Sale Deed but the same had been delayed on account of the Vendor. He submitted that the Property only consisted of terrace rights over the second floor, which was unbuilt at the time of execution of the Agreement to Sell and could not be built without the consent of the other occupants/owners of the building. He submitted that market value of the Property could not be assessed on the basis of the value of vacant land. In any event, the stamp duty was required to be assessed as

on the date of execution of the Agreement to Sell and not at the Notified Circle Rates as on the date of execution of the Sale Deed. The petitioner relied upon the decision of this Court in ***Manu Narang v. The Lieutenant Governor of NCT of Delhi & Ors: W.P. (C) No. 5975 of 2013, decided on 23.12.2015*** as well as the decision of the Supreme Court in ***Residents Welfare Association, Noida v. The State of U.P. and Ors: (2009) 14 SCC 716*** in support of his contention.

9. The respondent did not accept the contentions advanced on behalf of the petitioner and computed the value of the Property based on the Circle Rates as notified on 22.09.2014 by a notification issued under the Delhi Stamp (Prevention of Under Valuation of Instruments) Rules, 2007. In terms of the said notification, the Circle Rates for valuation of land for residential use in Category “A” was notified at ₹7,74,000/- per sq. meter. Accordingly, the value of the Property was computed at ₹6,66,49,140/- (being 1/4th of the plot of land measuring 344.44 sq metres). Accordingly, the stamp duty was assessed at ₹39,98,949/-. After adjusting ₹3,12,000/, the petitioner was called upon to pay the remaining stamp duty of ₹36,86,949/-.

10. Aggrieved by the aforesaid order dated 24.11.2017, the petitioner preferred an appeal under Section 47-A of the Stamp Act before the District Court in December, 2017.

11. The petitioner’s appeal was rejected by the impugned order.

12. Mr Aneja, the learned counsel appearing for the petitioner contended that the stamp duty ought to have been assessed on the basis of the Circle Rates, as applicable on 08.05.2012. He submitted that at the material time,

the notified Circle Rate was ₹2,15,000/- per sq. metre for residential land located in “A” Category Colonies. He earnestly contended that the market value of the Property is required to be assessed on the date of the transaction and not on the date when the Sale Deed was executed.

13. Mr Gautam Narayan, the learned counsel appearing on behalf of the respondent countered the aforesaid submission. He cited the decision of the Supreme Court in ***State of Rajasthan and Ors. v. M/s Khandaka Jain Jewellers: (2007) 14 SCC 339*** and contended that the Property was required to be valued on the date of execution of the Sale Deed. He submitted that the Stamp Act is a taxing statute and such duty was payable at the time of execution of the Sale Deed. He submitted that, therefore, the relevant market value of the Property would have to be ascertained as on that date and not on a date prior thereto.

Reasons and Conclusion

14. A plain reading of the impugned order indicates that the District Court has rejected the petitioner’s contention that the stamp duty was assessable on the Circle Rates as applicable on 08.05.2012, essentially, for three reasons. First, the court observed that the final payment for the Property was made by the petitioner on 13.07.2013 and, therefore, the petitioner could not claim that the stamp duty was payable at the rates as prevalent prior to that date. The court also found that there was unexplainable delay of six months from 15.12.2015 – the date on which the order for executing the Sale Deed was passed by this Court. Second, the court observed that the learned counsel for the petitioner had made a categorical statement before this Court – as

recorded in the order dated 15.12.2015 passed in Ex. P. 235/2013 titled “*Harjinder Pal Singh v. Onkar Singh*” – that the stamp duty would be fixed in accordance with the Circle rates of the area. And third, there was nothing on record to indicate that the petitioner had handed over a draft copy of the Sale Deed to the judgment debtor (Sh Onkar Singh) on or before 10.12.2015.

15. The District Court also held that the decision in the case of ***Manu Narang v. The Lieutenant Governor of NCT of Delhi & Ors*** (*supra*) was not applicable as in that case the court had held that the value of the basement in a property for residential use may be lower than the value of the property on upper floors and the same could be established before the concerned authority. The District Court held that in the present case, the Property was the third floor with roof rights, which would fetch a higher amount than other floors.

16. It is relevant to note that the reference was made by the Sub-Registrar under Section 47-A of the Stamp Act, as it appeared that the value of the consideration stated in the Sale Deed was less than the market value of the Property. This was examined by the respondent and he concluded that the value of the Property was to be assessed on the Circle Rates. The decision of the respondent as well as the District Court holding that the consideration for the Property as stated in the Sale Deed was less than the market value, cannot be faulted. As noticed by the District Court in the impugned order, even according to the Circle Rates as applicable under the rules as notified in the year 2011 (₹2,15,000 per sq. metres), the value of the Property would be ₹1,85,13,650/- (1/4th of ₹7,40,54,600/-).

17. The contention that the stamp duty as assessable on the market value of the Property as on the date of execution of the Sale Deed may not be entirely correct. It is trite law that the stamp duty is payable on the consideration as stated in the Sale Deed. It is important to note that the stamp duty is levied not on the transaction but on the Instrument. Entry 23 of Schedule-I to the Stamp Act which prescribes the amount of duty payable, clearly provides that the same is assessed on the “*value of the consideration for such conveyance as set forth therein*”. The Supreme Court in the case of **Himalaya House Co. Ltd. v. The Chief Controlling Revenue Authority: (1972) 1 SCC 726** had authoritatively held that stamp duty was chargeable only on the basis of consideration as set forth in the instrument to be stamped. This was further reiterated by the Supreme Court in its later decision in **Collector of Stamps v. Hemlata & Anr.: JT 2003 (6) SC 91** wherein the Court held as under:-

“4. In our judgment, the views taken by the learned single judge and the Division Bench of the High Court are perfectly justified and unexceptionable. This Court in **Himalaya House Co. Ltd. v. The Chief Controlling Revenue Authority and Anr.** had occasion to consider almost a similar situation. This Court noticed that Article 23 of Schedule 1A to the Indian Stamp Act 1899 had come up for consideration before various High Courts on a number of occasions. Approving the view taken in **Raman Chetty v. Mohammed Ghouse, Sakham Shankar v. Ramchandra Babu Mohire, Mohammed Muzaffar Ali and Sitaram Kamalia v. State of Bihar**, it was held by this Court that the question which arose for decision was settled by a series of judgments that stamp duty was chargeable only on the basis of the consideration set forth

in the instrument to be stamped. It was also held that the collector under the Indian Stamp Act had no jurisdiction to embark upon an enquiry with regard to the market value of the property assigned by the document nor did he have the power to adjudicate further stamp duty on the basis of his own evaluation. This Court expressed its agreement with the view taken in the aforesaid decisions. In view of the long line of decisions it was observed that the legislature may have had good reasons not to empower the revenue to make an independent enquiry as regards the valuation of the right sought to be assigned.”

18. In order to address the mischief of undervaluing or incorrectly set forth the consideration in a sale deed or other instruments for transfer of interest in immovable property, for avoiding stamp duty, Section 47-A was introduced in the Stamp Act as applicable to Delhi by virtue of the Indian Stamp (Delhi Second Amendment) Act, 2001. Section 47-A of the Stamp Act (as applicable to Delhi) reads as under:-

“47A Instruments under-valued how to be dealt with

(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.

(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, 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 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 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.”

19. It is apparent from the plain language of Section 47-A of the Stamp Act (as applicable to Delhi) that the machinery provided therein would be triggered if the Registering Authority found any reason to believe that the value of the property or the consideration has not been truly set forth in the instrument to be stamped. As noticed above, in the present case, there is sufficient reason for the Sub-Registrar to have formed a belief that the consideration was not truly set forth in the Sale Deed.

20. On a reference made under Section 47-A of the Stamp Act, the Collector is required to determine the value of the property or the consideration and assess the deficient duty, if any.

21. It is also apparent that the market value of the property has to be assessed in reference to the sale deed as to supplant the correct value instead of the one as stated therein.

22. At this stage, it has also been necessary to mention that in ***Ramesh Chand Bansal and Others v. District Magistrate/Collector Ghaziabad and Others: (1999) 5 SCC 62***, the Supreme Court had observed that the imposition of the stamp duty on sale deeds is the actual market value of such property and not the value described in the instrument. The said observation has also been referred to in other decisions. However, the said observation must be read in the context in which the same was made. The relevant observations were made in the context of a circular issued under sub-rule (a) of Rule 340A of the U.P. Stamp Rules, 1942, whereby the Circle Rates

provided for automatic enhancement in the prescribed rates by 20%. The Registering Authority after registering the sale deed pertaining to certain lands at village Surajpur had referred the same to the Additional District Magistrate (Finance and Revenue) under Section 47-A of the Stamp Act, as applicable in the State of Uttar Pradesh. Thus, the decision of the Supreme Court was rendered while examining the controversy in relation to fixing of the market value of the property in question. In the aforesaid context, the Supreme Court had observed as under:-

“5. The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is matter for common knowledge that in order to escape such duty by unfair practice, many a time undervaluation of a property or lower consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds is on the actual market value of such property and not the value described in the instrument. Thus, an obligation is cast on authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument.....”

23. As is apparent, the aforesaid observation was made in the context where the sale deed did not refer to the correct value of the transaction. The said decision is thus not an authority for the proposition that measure of the stamp duty is the market value of the property being conveyed and not the consideration stated in the Instrument being stamped.

24. The next question to be examined is whether the respondent was required to assess the stamp duty on the value of the Property existing on the date of the parties entering into the Agreement to Sell (i.e. 08.05.2012) or on

the date when the Sale Deed was presented for registration (i.e. 11.05.2016). In the case of ***State of Rajasthan and Others v. Khandaka Jain Jewellers: (2007) 14 SCC 339***, the Supreme Court considered the question “*whether the valuation should be assessed on the market rate prevailing at the time of registration of the sale deed or when the parties entered into agreement to sell.*” The Court observed that the Stamp Act is in the nature of the taxing statute and the taxing statute is not dependent on any contingency. The Court further proceeded to hold as under:-

“22. In this background if we construe Section 17 read with Section 2(12) then there is no manner of doubt that at the time of registration, the registering authority is under an obligation to ascertain the correct market value at that time, and should not go by the value mentioned in the instrument.”

25. In a later decision – ***Residents Welfare Association, Noida v. State of Uttar Pradesh and Others*** (*supra*) – the Supreme Court took a somewhat different view. It held that there cannot be any straitjacket formula for determining whether the market value as on the date of the agreement or on the date of execution of the Instrument was to be adopted. And, the said question would depend on the facts and circumstances of the case. The relevant extract of the said decision is set out below:-

“54. Having decided the aforesaid questions raised in this case, we now proceed to deal with the question as to the date of determination of the consideration mentioned in the document. The respondents contended that the consideration mentioned should be the market value of the property on the date of execution of the deed and not on the date when the agreement to sell the land was executed. The appellants on the contrary argued that the relevant date in order to

calculate the consideration would be the market value on the date when the agreement to transfer the land was entered and registered.

55. We have heard the argument of the parties and referred to various cases dealing with this matter. In this regard, we would like to observe that there cannot be a straitjacket formula devised for determining the same. It would depend on the various facts and circumstances of a particular case. In situations where the delay is caused on the part of a party intentionally while executing a deed after entering into an agreement of sale or lease as the case may be, the market value should be determined on the date when the deed is executed and not when an agreement to sale the property or lease the property had been registered. But in cases where a person is not at fault and the delay is caused due to the lessor as in this case, the market value should be determined on the date when the agreement to lease the property was entered. The lessee or the sub lessee should not suffer due to the inability of the lessor in handing over transfer memorandums as is required under the lease.

56. For this, a reference can be made to *S.P. Padmavathi v. State of T.N.* (1977) 2 SCC 308 which is similar to the present case and to which we are in respectful agreement where the property could not be registered due to no fault of the transferee and where the consideration was frozen earlier, as in the current case. The Madras High Court held that the relevant date for calculation of market value and the stamp duty is the date on which the consideration was frozen.”

26. It follows from the plain language of Entry 23 to Schedule-I of the Stamp Act as well as various decisions rendered by the Supreme Court that the stamp duty is to be calculated on the value of the consideration set forth in the sale deed. The only exception is if the Registering Authority while registering any instrument, transferring the property has reason to believe

that the value of the property or the consideration has not been truly set forth in the instrument. In such cases, the Registering Authority can make a reference under Section 47A(1) of the Stamp Act to the Collector for determination of the value/consideration. It is relevant to note that such reference is to be made only after Registering Authority has registered the sale deed.

27. As noticed above, Section 47-A of the Stamp Act (as applicable in Delhi) was enacted to address the mischief of the parties under valuing the property or understating the consideration in the instrument to be registered. And the determination of the market value of the property must be made considering the said objective.

28. In order to introduce further objectivity in determining the value, the Government of NCT of Delhi has made rules – Delhi Stamp (Prevention of Under Valuation of Instruments) Rules, 2007 (hereafter ‘the Rules’) – under Section 75 of the Stamp Act to carry out the purposes of the Act. The Circle rates are notified in terms of Rule 4 of the Rules. Rule 4(3) of the Rules also makes it clear that the rates notified under Rule 4 of the Rules are to act as a guide for the purposes of assessing the duty chargeable on the value or consideration of any immovable property. Rule 4(3) of the Rules is set out below:-

“4. Notification of minimum rates for valuation of land by the Government.-

XXXX

XXXX

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(3) The valuation so fixed by the Government shall act as guide/indicator for the purposes of assessing the duty chargeable on the value or the consideration of any immovable property.”

29. Rule 7 of the Rules also expressly provides the procedure to be followed by the Collector once a reference has been made under Section 47A of the Stamp Act. Rule 7(2) of the Rules requires the Collector to assess the amount of deficient duty after making such enquiry as he may deem fit including by taking into account the value as per circle rates notified under Rule 4. Rule 7 of the Rules is set out below:-

“7. Assessment of duty. - (1) On receipt of reference under sub-section (1) of Sections 47-A, the Collector shall serve on the person or persons concerned, a notice in Form B, requiring him on a date and at a place to be specified therein, either to attend in person or through an authorised agent, to produce or to cause to be produced any evidence on which such person or persons may rely in his or their support.

(2) The Collector, after taking such evidence as the person or persons may produce and after making such enquiry as he may deem proper including taking into account the prices determined as per rule 4, shall, determine the value of property or consideration, as the case may be, and assess the amount of deficient duty recoverable from the person concerned.

(3) If the person or persons fails or fail to attend in response to the notice served under sub-rule (1), the Collector shall proceed ex-parte and assess the deficient amount of duty, if any, to the best of his judgment.”

30. It is amply clear from the plain language of Rule 7(2) of the Rules that the Collector is not required to act mechanically and simply apply the circle

rates. He has to determine the value of the property or consideration and assess the deficient duty by making such enquiry as is necessary in the facts of the case.

31. The said enquiry would also entail the determination of the date in reference to which the market value is required to be determined. Thus, in given cases, the Collector may consider a date prior to the date of execution of the sale deed, as the appropriate date for determining the valuation of the property that was required to be set forth in the Instrument required to bear stamp duty. This determination has to be made bearing in mind the object of enacting Section 47-A of the Stamp Act (as applicable in Delhi); that is, to counter the mischief of deliberately understating the consideration/value of the property set forth in the instrument to be stamped.

32. In the facts of the present case, the District Court had expressed a view that the date when the final payment was made – i.e. 13.07.2013 – should be considered for calculating the stamp duty. The relevant extract of the impugned order is set out below:-

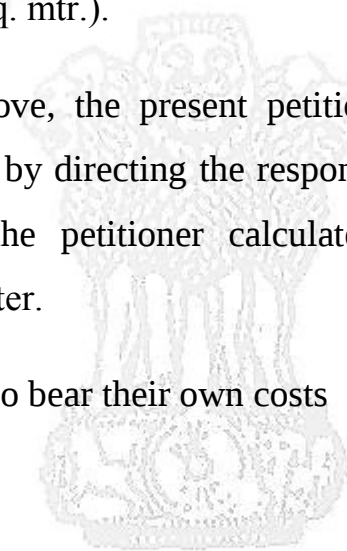
“13..... As per the compromise application sale deed was to be executed, within one week, subject to payment of balance consideration amount of Rs.10 lacs. It is the appellant’s case that he made the final payment on 13.07.2013 by way of pay order no.255202. In my considered opinion, it is at least this date, the day when the final payment was made i.e. 13.07.2013 which is the date to be considered for calculating the stamp duty to be paid as per the prevalent circle rate.”

33. Having concluded that that the relevant date for determining the correct consideration was 13.07.2013, the District Court could not,

thereafter, have proceeded to assess the market value/consideration at the Circle rates applicable as on 10.05.2016 (the date of execution of sale deed). It is necessary to note that the Circle Rate notified by the Government of NCT had been revised in November, 2012, whereby the Circle Rate for property located in category “A” areas was fixed at ₹6,45,000/- per sq. mtr. This was subsequently revised in September, 2014. Thus, the District Court was required to direct assessment of stamp duty payable by determining the true consideration/value of the property at the rate of ₹6,45,000/- per sq. mtr. (and not ₹7,75,000/- per sq. mtr.).

34. In view of the above, the present petition alongwith the pending application is disposed of by directing the respondent to reassess the stamp duty recoverable from the petitioner calculated at the Circle rate of ₹6,45,000/- per square meter.

35. The parties are left to bear their own costs



VIBHU BAKHRU, J

SEPTEMBER 04, 2018

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