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

\+ CM(M)1088/2018 and CM No.37214/2018

Date of Decision: 14.09.2018

GOVT. OF NCT OF DELHI ..... Appellant

Through: Mr.Ramesh Singh, CGSC and Mr.Ankur Chhiber, Advocate

Versus

SUBHASH SHARMA & ANR …Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

1. The additional affidavit of the present Magistrate, District North-East) Ms.Shashi Kaushal dated 13.9.2018 has been submitted in her official capacity along with the copies of documents detailed as under:-

> *" i . Copy of Report of the SDM (Yamuna Vihar) in compliance of Hon'ble Court order dated 27.02.2018.*
>
> *ii. Copy of Demand Notice dated 26.4.2018 in compliance of order dated 19.02.2015 (Annexure-C2)*
>
> *iii. Copy of Stamp Duty paid vide e-stamp dated 05.05.2018 in compliance of Demand Notice dated 26.04.2018. (Annexure-C3).*
>
> *iv. Copy of Reply to Show-Cause Notice dated 15.5.2018 submitted by Deputy*

Commissioner/District Magistrate, Sh. K. Mahesh, (Annexure-C4)

*v. Copy of Screenshot of Delhi Govt. Website (http://delhi.gov.in/ wps/wcm/connect/doit_dceastupdated/DC+of + East + Delhi + updated / e /District+ Registration + Office/ Collector + of + Stamps) inter alia recognizing concerned SDM as Collector of Stamps in respect of their respective sub-divisions (**Annexure-C5**)"*

2. The petitioner assails the impugned order dated 17.5.2018 of the learned Additional District Judge, North-East-01, Karkardooma in CS No.476298/2015 vide which it has been observed *inter alia* to the effect that in relation to the direction of the Court in the proceedings of the suit pursuant to impounding of documents filed by the plaintiff of the said suit under Section 33 of the Indian Stamps Act with direction to the plaintiff thereof to file the penalty amount with ten times of the stamp duty **the directions to the Revenue Collector for recovery of the amount from the plaintiff**, the same were not complied with in terms of the said order till the period when the SDM (Seelampur) appeared before the learned Trial Court on 3.8.2017 and submitted that that process for recovery of the Stamp Duty and penalty had been initiated and had subsequently been complied with. It has been observed vide the impugned order to the effect that a report had been called from

the office of DC concerned qua the show cause notice to appear before the learned Trial Court in person and to explain as to why there had been no previous compliance which had been called for in terms of order dated 21.3.2017 when the reminders had been issued in terms of order dated 16.8.2016.

3. A bare perusal of the certified copies of the proceedings sheet of the said suit indicate that vide order dated 19.2.2015, as observed already herein above, the documents filed by the plaintiff were impounded under Section 33 of the Indian Stamp Act with a penalty imposed thereon and of ten times of the stamp duty and it was directed that in the event of the failure of the payment of the penalty amount, the Revenue Collector, would recover an amount the plaintiff with having been renotified the matter for the date 12.3.2015.

4. Vide the proceedings dated 12.3.2015, the matter was renotified for compliance to be made by the plaintiff of the direction dated 19.2.2015 for the date 10.4.2015. Vide order dated 10.4.2015, the plaintiff sought one week more time for the payment of the Court fees with the matter having been renotified for 17.4.2015. Vide the proceedings dated 17.4.2015, it is indicated that the revision petition had been filed apparently by the plaintiff, however, it was observed to the effect that the proceedings had not been stayed by the High Court, i.e., by this Court and that the learned Trial Court would pass an appropriate order of dismissal of the suit and non-

prosecution in the event of non-compliance, with the matter having been renotified for the date 2.5.2015.

5. The proceedings dated 2.5.2015 indicate that Advocates were apparently abstaining from appearance and thus no adverse orders had been passed against any of the parties for their non-appearance and the matter was renotified for a last and final opportunity in terms of the previous order for the date 6.7.2015 for the compliance of the payment of the penalty amount and the court fees qua the impounding documents filed by the plaintiff.

6. Vide proceedings dated 6.7.2015 an order dated 5.5.2015 of this Court had been received by the learned Trial court and a last and final opportunity was granted to the plaintiff to pay the appropriate court fee, failing which it was directed that the suit be dismissed in default and for non-prosecution without fail with the matter having been renotified for the date 7.8.2015.

7. On 7.8.2015 court fees of Rs.1,06,500/- was filed by the plaintiff and the plaintiff also filed an application under Section 151 CPC for validation of documents filed by him and the matter was renotified for payment of the remaining court fees by the plaintiff in compliance of order dated 19.2.2015 for 1.9.2015.

8. On 1.9.2015, the learned counsel for the plaintiff sought time to inspect the court file and to comply and the matter was renotified for 30.9.2015.

9. On 30.9.2015, an application under Section 38 of Indian Stamp Act, 1899 r/w Section 151 CPC was filed by the plaintiff with the matter having been renotified for 3.11.2015.

10. During the course of the proceedings on 3.11.2015, before the learned Trial Court the documents were directed to be sent to Revenue Collector for recovery of the appropriate stamp duty with the report having been called for the date 7.12.2015. It is submitted on behalf of the petitioner that the proceeding sheet dated 3.11.2015 brought forth the report of the Ahlmad of the Court concerned that the documents filed were photocopies.

11. The proceedings dated 7.12.2015 of the learned Trial Court indicate that the said report dated 3.11.2015 was perused by the learned Trial court and the plaintiff was directed to produce the original documents for the compliance of the previous order with the matter having been renotified for the date 14.1.2016 and it was indicated as per the noting of the Ahlmad concerned that the original documents were filed on 21.12.2015.

12. Vide the proceedings dated 14.1.2016 in view of the documents having been filed in original by the plaintiff i.e. the

document which had been impounded, the same were directed to be sent to the Revenue Collector for recovery of the proper stamp duty in sealed envelope with the matter having been renotified for the date 29.2.2016.

13. The report of the Ahlmad concerned, on the proceedings sheet dated 14.1.2016 indicate that the documents were sent to the Revenue Collector (North-East) on 19.1.2016 and the receipt of the said documents was placed on record on 21.1.2016. On the date 29.2.2016, the matter was renotified for the report for the date 23.4.2016. On 23.4.2016, the report having not been received, the matter was renotified for the date 5.7.2016. The report having not been received for the date 5.7.2016 as well from the Revenue Collector, in relation to the information and status of the recovery of the stamp duty for the date 16.8.2016 vide the proceedings dated 16.8.2016, as the notice issued to the Revenue Collector was received back 'unserved', a fresh notice was directed to be issued to the Revenue Collector regarding information and status of recovery of stamp duty in view of the previous order for the date 28.9.2016.

14. Vide proceedings dated 28.9.2016, a representative, UDC from the Office of the SDM (Seelampur) was present and undertook to produce the report on the next date of the hearing with the matter having been renotified for 15.11.2016. On 15.11.2016, it was informed on behalf of the office of the SDM

(Seelampur) to the effect that the records were available with the SDM (Karawal Nagar) with the matter having been renotified for 19.12.2016.

15. The proceedings dated 19.12.2016 indicate as the learned Presiding Officer was on half day leave on that day , the matter could not be taken up and renotified for the date 19.1.2017.

16. Apparently in view of the transfer of record, the matter was renotied for 21.3.2017 for report as per order dated 15.11.2016 to be called from the SDM(Karawal Nagar) by the transferee Court. Vide the proceedings dated 19.1.2017, service is indicated to have been effected on the SDM concerned, i.e., SDM(Karawal Nagar), as per the note on the proceedings dated 19.1.2017.

17. Vide the proceedings dated 21.3.2017, the representative of SDM (Karawal Nagar) was present stating that nothing had been received of any kind in his office.

18. The proceedings dated 21.3.2017 of the learned Trial Court observed to the effect that the record showed that some documents were impounded and were sent to the Revenue Collector, DC, North-East on 23.8.2016 and since the stamp duty was to be recovered by the SDM concerned there was a possibility that the document might have been referred to the SDM for doing the necessary action and it was informed by the representative of the SDM that the property fell in the area of

SDM (Seelampur) and the documents might have been gone there and was directed to check the record of his office and coordinate with the office of DC, North East to ensure that the report was received and reminders were issued to the DC concerned to submit the report regarding recovery of Stamp duty pursuant to the order which had been duly received in his office on 23.8.2016.

19. Vide the proceedings dated 21.3.2017 itself a reminder had been directed to be issued to the SDM(Karawal Nagar) for the report for the date 26.5.2017.

20. Vide the proceedings dated 26.5.2017 it is indicated that no report was received from the office of the DC concerned in compliance of order dated 21.3.2017 and a show cause notice was directed to be issued to the DC concerned to show cause as to why the order dated 23.8.2016 had not been complied with. The representative, i.e., UDC from the concerned SDM office was present who reported that the concerned property did not fall in the jurisdiction of SDM (Seelampur) and the document should be sent to the concerned SDM after due verification from the concerned Patwari and the report was called for for the date 3.8.2017.

21. It is submitted on behalf of the petitioner by the learned counsel present that the report of the Ahlmad concerned of the learned Trial Court dated 3.8.2017 when the matter had been renotified for the date 3.8.2017categorically states that the

Ahlmad had forgotten to issue the notice in terms of order dated 23.5.2017 for the date and to show cause as to why the order dated 23.8.2017 had not been complied with. The proceedings dated 3.8.2017 indicate that Mr.Anil Sirohi, SDM (Seelampur) was present and reported that the suit property fell under the territorial jurisdiction of SDM, Yamuna Vihar and therefore, the relevant documents were directed to be forwarded to him for action and reported that the documents received from the Court of the office of the SDM (Seelampur) be also forwarded for necessary action in the matter and as a consequence thereof, the SDM (Seelampur) vide order dated 3.8.2017 of the learned Trial Court was discharged with a copy of the order dated 19.2.2015 having been given dasti to the SDM for information and necessary compliance to be sent to SDM Yamuna Vihar for information and necessary compliance with the matter having been renotified for the report of the SDM Yamuna Vihar and for remaining plaintiff's evidence for 31.10.2017.

22. The proceedings dated 31.10.2017 indicate that the SDM Yamuna Vihar was present in person and sought time to comply with the order dated 19.12.2017 with the matter having been adjourned for submitting the complete compliance report of the order dated 19.2.2015 for the date 6.2.2018.

23. The proceedings dated 6.2.2018 reflect that no report was received from the SDM, Yamuna Vihar and thus a show cause notice was directed to be issued afresh to the SDM to show

cause as to why the previous orders had not been complied with. The show cause notice to the SDM was directed to be served through the office of the DC, North-East for the next date of hearing i.e., 27.2.2018 when it was submitted on behalf of the petitioner that the SDM concerned, i.e., SDM Yamuna Vihar,

24. The proceedings dated 27.2.2018 indicate that Sh. Devender Kumar Singh, SDM, Yamuna Vihar was present in person and sought time for compliance of the directions and to submit the complete report for which he was granted time for a period of 10 days and vide the said order dated 27.2.2018 a fresh show cause notice was directed to be issued to the DC concerned to appear in Court for the next date of hearing and also to show cause as to why the previous orders of that Court had not been complied with with the matter having been renotified for filing the complete reports and for remaining plaintiff's evidence as a last opportunity for the date 4.4.2018.

25. Pursuant to the show cause notice issued on 27.2.2018 to the concerned DC (North-East), Mr.K.Mahesh, DC (North-East) to appear with the copy of the order dated 27.2.2017 having been given to Mr.Devender Kumar, SDM, Yamuna Vihar, before the learned Trial Court on 4.4.2018, it was reported by the SDM Yamuna Vihar that all the original documents impounded by the Court vide order dated 19.2.2015 were not available on the record and that the further

proceedings regarding realization of the deficient Court fees and penalty amount shall be taken in due course and the DC (North-East) and Shahdara Sh. K. Mahesh sought time to submit the complete reply to the show cause notice issued to him vide order dated 27.2.2018 and was also called upon to furnish all the details of the previous officials who were supposed to comply with the orders dated 19.2.2015 and 28.9.2016 to be submitted by the SDM for the date 17.5.2018 with copy of the order having been given dasti to the DC and the SDM concerned for necessary information and compliance.

26. Vide the proceedings dated 17.5.2018 which is the impugned order assailed by the petitioner, it is indicated that it was reported on 17.5.2018 that the previous orders regarding the realization of the stamp duty and penalty had been complied with and executed.

27. Vide the report that had been submitted by the Deputy Commissioner, Shahdara/North-East dated 15.5.2018, it was submitted vide paragraph 7 thereof:

> *i) "Sh. Azimul Haque had assumed the charge as Deputy Commissioner/District Magistrate of District North-East, Delhi with effect from 26.12.2013 and served till 6.01.2016.*
> *ii) Sh. S. R. Kataria had served as Deputy Commissioner/District Magistrate of District North-East, Delhi with effect from and 6.01.2016 till 31.01.2017.*
> *iii) Sh. G.L.Meena had served as Deputy*

Commissioner/District Magistrate of District North-East, Delhi with effect from 6.02.2017 till 14.12.2017."

and vide the impugned order thereof it was observed to the effect:

> *"Perusal of the reply further shows that Sh. Azimul Haque had served as DC/DM, North-East District, w.e.f. 26.12.2013 to 06.01.2016, Sh. S.R.Kataria had served as DC/DM, North-East District, w.e.f. 06.01.2016 to 31.01.2017 and Sh. G.L.Meena had served as DC/DM, North-East District, w.e.f. 06.02.2017 to 14.12.2017."*

28. It was further observed vide the impugned order to the effect:

> *"Perusal of the record clearly indicates that the aforesaid thee officers have neglected to comply the previous Court orders and have not discharged their duties properly. They have not cared even to look into the Court orders and the notices which were issued to them by this Court on various dates, as mentioned above."*

29. It was further directed to the effect that:

> "*In these circumstances, a copy of this order be sent to the Cadre-Controlling Authority of the aforesaid three officers, namely Sh. Azimul Haque, Sh. S. R. Kataria and Sh. G.L.Meena, for initiating appropriate*

> *disciplinary action against all of them for his deliberate, intentional and wilful dereliction of duties, as mentioned above, and for not complying the previous Court orders.*
>
> *A copy of this order along with the copies of the orders dated 19.02.2015, 3.11.2015, 14.01.2016, 05.07.2016, 16.8.2016, 21.3.2017, 26.05.2017, be also sent to the Principal Secretary, Ministry of Home Affairs, Govt. of India, New Delhi for information and necessary compliance.*
>
> *A compliance report be submitted to his Court by the Principal Secretary, Ministry of Home Affairs, Govt. of India, to this Court on or before the next date of hearing.*"

30. The petition has been taken up for consideration and it has not been considered essential to issue notice thereof to the respondents as apparently they are not in any manner concerned with the direction that had been given by the learned Trial Court in relation to the disciplinary action directed to be taken against Mr.Azimul Haque, Mr.S.R.Kataria and Mr.G.L.Meena, DC (North-East) who served during the period 26.12.2013 to 6.1.2016, 6.1.2016 to 31.1.2017 and 6.2.2017 to 14.12.2017, respectively as submitted vide the report dated 15.5.2018 of the present incumbent of the post of the DC/ Shahdara-North-East. As already observed elsewhere herein above, the reminder directed to be issued to the DC concerned to submit the report regarding recovery of stamp duty pursuant to an order which was

reported to have been received into the office of the DC on 23.8.2016 qua which it has been submitted on behalf of the petitioner that as per the noting for the proceedings dated 26.5.2017 it is indicated that the said notice i.e., the reminder to the DC concerned had inadvertently not been issued by the Ahlmad, who even apologized for the same, but despite the same there was a show cause notice issued vide order dated 26.5.2017 to the DC to report to show cause as to why the order dated 23.8.2016 had not been complied with and the proceedings dated 21.3.2017 further indicated that Prashant Kumar, LDC, from the office of the SDM (Karawal Nagar) had put in appearance for the said date and it was observed that since the stamp duty was to be recovered by the SDM concerned there was a possibility that the documents might have been referred to the SDM for doing the necessary action.

31. Taking into account the fact that the requisite reminders having been directed to be sent in terms of the proceedings dated 21.3.2017 were not infact issued to the office of the DC concerned, as indicated by the proceedings of the learned Trial Court itself that apparently the show cause notice dated 26.5.2017 had not been issued inadvertantly, taking into account also the factum that the requisite court fee and has now already been realized on impounding of documents of the plaintiff, with the deposit of the same on 5.5.2018 as per the report dated 15.5.2018 of the DC-Shahdara/North-East and as apparently the DCs North-East concerned Mr.Azimul Haque, S.R.Kataria and Mr.G.L.Meena as per the report are not indicated to have been served with the notice of the order of the learned Trial Court qua issuance of

reminders for compliance of directions coupled with the factum that the proceedings dated 21.3.2017 also reflect to the effect that the documents had been sent to the SDM concerned for necessary action, in as much as it cannot be held that there was deliberate, intentional and wilful dereliction of duties by the three DCs (North-East) named herein above in as much as they had not been served with the orders, the impugned order dated 17.5.2018 to the extent of initiation of disciplinary proceedings against them and calling for a report from the Principal Secretary, Ministry of Home Affairs, Govt. of India, New Delhi is thus set aside.

However, greater co-ordination between the offices of the DCs and Revenue Collectors of Delhi was and is expected.

A copy of the order be sent to the learned Trial Court.

ANU MALHOTRA, J

SEPTEMBER 14, 2018/SV