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

\+ W.P.(C) 10588/2015 & CM No. 26918/2015

SAJI VARGHESE ..... Petitioner

Through: Mr Aman Gupta and Ms Neha Jain, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS ..... Respondents

Through: Mr Gautam Narayan, ASC, Mr R. A. Iyer and Ms Mahamaya Chatterjee, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

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

% **16.02.2018**

<u>VIBHU BAKHRU, J</u>

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 03.09.2015 (hereafter 'the impugned order') passed by respondent no. 2 (hereafter 'the Collector'), whereby the Collector has computed the deficit stamp duty at ₹4,35,000/- and had also held that the petitioner would be liable to pay interest at the rate of 2% p.m. on compounded basis on the aforesaid deficit stamp duty from the date of execution of the Deed (i.e. 03.06.2013) till the date of preparing the challan.

2. The principal controversy involved in the present petition relates to the method of calculation of value of a residential flat at the notified circle rates.

3. Briefly stated, the relevant facts necessary to address the controversy involved are as under:-

3.1. The petitioner purchased a built up floor (the third floor) in a building constructed on property bearing no. RZ-320, Gali No. 20, Third Floor, Tughlakabad Extn., New Delhi by way of a Registered Sale Deed dated 03.06.2013. The said Deed reflected the total consideration paid by the petitioner at ₹19,00,000/-. The said Deed was presented for registration on 03.06.2013 before respondent no. 3 (the Registering Authority) and was examined by the Collector.

3.2. On 02.07.2013, a notice was issued to the petitioner stating that the Sale Deed presented by the petitioner before respondent no.3 had been impounded under Section 33 of the Indian Stamp Act, 1899 (hereafter 'the Act') and had been referred to the Collector. Thereafter, by a notice dated 12.07.2013, the petitioner was also called upon to show cause why penalty should not be imposed on him under Section 26 of the Act.

3.3. Subsequently, by an order 23.05.2014, the Collector assessed the deficit stamp duty as ₹2,83,440/- and also imposed a penalty of ₹1,00,000/-

3.4. Aggrieved by the aforesaid order, the petitioner preferred a

Revision Petition (Revision Petition No. 54/2015 captioned "*Saji Varghese v. Collector of Stamps & Anr.*") before the Chief Controlling Authority. The said Revision Petition was disposed of by the impugned order.

4. A plain reading of the impugned order indicates that the Chief Controlling Authority had noticed that there are two methods for valuation of a built up property on the basis of the notified circle rates. The first method is by calculating the cost of land (that is, area of land multiplied by land rate per unit area) and then adding the value of construction (that is built up area multiplied by construction rate per unit area). And, the second method is by multiplying the built up area of flat by minimum rates for built up flats rate. The Chief Controlling Authority had proceeded on the basis that valuation carried out by either of the two methods only provides the floor limit of the value of the property and, therefore, the higher of the two valuations must be adopted as that alone would satisfy the requirement of Rule 4 of the Delhi Stamp (prevention of Undervaluation of Instruments) Rules 2007 (hereafter 'the Rules').

5. In terms of Section 3 of the Act, stamp duty is chargeable with the amount as indicated in Schedule I of the Act. In terms of the said Schedule, the stamp duty is chargeable *ad valorem* at the specified rate on the consideration as set forth in the instrument (in this case the sale deed).

6. Section 27 of the Act as applicable in Delhi is relevant and is set

out below:-

> "**27. Facts affecting duty to be set forth in instrument.**– The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.
>
> 2.(1) In the Indian Stamp Act, 1899 (2 of 1899) as in force in the National Capital Territory of Delhi (hereinafter referred to as "principal Act"), in section 27,-
>
> (a) in sub-section (1), after the words and brackets "the consideration (if any)", the words "and the market value" shall be inserted;
>
> (b) after sub-section (2), the following sub-section shall be inserted, namely:-
>
> (3) In the case of instruments relating to land, chargeable with ad valorem duty, the Government may notify minimum rates for valuation of land."

7. In terms of Section 27(3) of the Act, the Government may notify the minimum rates for valuation of land.

8. Section 47A of the Act provides for the manner in which the under-valued instruments are to be dealt with. Section 47A(1) provides that if the Registering Officer has the reason to believe that the value of the property or the consideration has not been truly set forth, he may refer the same to the Collector for determination of the value or consideration as the case may be. In terms of Section 47A(2) of the Act, the Collector has to determine the value of the property or the consideration in the manner as set forth in the Rules.

9. Rule 4 of the Rules expressly provides that the Government may from time to time notify the minimum rates for valuation of land through a notification in the Official Gazette. Rule 4 of the said Rules is set out below:-

> "**4. Notification of minimum rates for valuation of land by the Government.** - (1) (a) The Government may, from time to time, notify the minimum rates for valuation of land through a notification in the official Gazette, for various districts/areas forming part of the district, on recommendation of Deputy Commissioner concerned or otherwise which shall be effective from the date of the publication of the notification in the Official Gazette or as specified in the notification.
>
> (b) Before notifying these rates, the Government may, at its discretion, place these rates in the public domain for a period of fifteen days for inviting objections/suggestions thereon, and take a decision on the objections/suggestions so received.
>
> (c) Any instrument setting forth the market value of the land described in such instrument below such valuation shall be referred by the Registering Officer to the Collector as provided herein below.
>
> (2) As far as possible, once in two years in the month of April, the Deputy Commissioner of each District shall undertake the exercise of valuation of the following categories of immovable properties, in consultation with MCD, NDMC, Cantonment Board, DDA, L & DO, etc. (as appropriate), and such other land owning authorities of the Government of India and the Government of National Capital Territory of Delhi, namely:-
>
> (A) In case of immovable properties (land rates)
>
> (a) in rural areas-
>
> (i) Agricultural

(ii) Commercial

(iii) Residential

(iv) Industrial

(b) in urban areas-

(i) Agricultural

(ii) Commercial

(iii) Residential

(iv) Industrial

(B) Rates of construction in flats and buildings (fully built/semi-built), on above categories of immovable properties.

(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."

10. It is apparent from the plain reading of the above that the valuation fixed by the Government is only to be used as a guide or as an indicator for the purposes of assessing duty chargeable on the value or the consideration of immovable property.

11. Rule 7 of the said Rules provides for the assessment of duty on receipt of reference under Section 47A. Rule 7 of the said 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."

12. It is apparent from the plain reading of Rule 7(2) that the minimum value of the immovable property as indicated in the notification issued under Section 27(3) of the Act and/or Rule 4 of the Rules is only one of the factors that is required to be taken into account while determining the value of property or consideration for the purposes of assessment of stamp duty.

13. The notification dated 04.12.2012 issued by the Government of NCT of Delhi fixing the minimum rates (circular rates) for valuation of land must be read in the aforesaid context.

14. The question of assessing deficit duty under Section 47A(1) of the Act would arise only if the Registering Officer has any reason to believe that the value of the property or the consideration has not been fully set forth in the instrument. Since the circle rates notified are to be used as a guide, it would be apposite for the Registering Officer to

consider the minimum value of the property below which the Registering Officer could reasonably believe that the consideration/value of the property has not been correctly stated in the instrument. Since the minimum circle rates are only to be used when the consideration as disclosed in the instrument appears to be below the said value, it would be apposite for the Registering Officer to give maximum leeway to the parties executing the instrument while considering whether the value disclosed is truly set forth in the Instrument. Thus, the approach that if two methods are available for valuing a property, the one that results in the higher value must be adopted is plainly flawed. As stated above, the purpose of notifying the minimum rates is to set a floor level below which, the Registering Officer may conclude that the value as disclosed in the instrument may not be true. Even so, it is always open for the concerned parties to point out any special circumstances to justify that the consideration or the value of the property as stated in the instrument has been correctly recorded.

15. The notification dated 04.12.2012 (hereafter 'the Notification') notifying the circle rates for determination of the value of the immovable property may now be examined in the above context. The relevant extract of Annexure-1 to the Notification is set out below:-

> "Minimum Rates (Circle Rates) for valuation of Land and Properties for purposes of Registration under the Registration Act, 1908 in Delhi:-
>
> 1. Minimum Land Rates for Residential use:-

Table-1

Category of Locality	Minimum rate for valuation of land for residential use (in Rupees per square meter)
A	645000
B	204600
C	133200
D	106400
E	58400
F	47200
G	38500
H	19400

XXXX XXXX XXXX XXXX

3. Minimum rates for cost of constructions:

3.1 The base unit rate of cost of construction will be:

Table 1.2

Category of the Locality	Minimum rate of construction for residential Use (in Rs. per sq. mtr.)	Minimum rate of construction for Commercial use (In Rs. Per sq. mtr.)
(1)	(2)	(3)
A	18300	21000
B	14500	16600
C	11600	13300
D	9300	10700
E	7800	9000

F	6850	7900
G	5800	6700
H	2900	3300

XXXX XXXX XXXX XXXX

4. Minimum rates for built-up flats upto four storeys:

Table 1.3

Category of flat Depending on Plinth & Area (square meters)	Minimum Built up rate (In Rs. Per Sq. mtr.) for DDA Colonies/Co-operative and Group Housing Societies (in case of residential use)	Minimum Built up rate (In Rs. Per sq. mtrs. for DDA Colonies/Co-Operative & Group Housing Societies/flats by private builders (in case of commercial use)	Multiplicative factors for Private Colonies
Upto 30 square meters	42000	48200	1.10
Above 30 and up to 50 square meters	45400	52100	1.15
Above 50 adn up to 100 square meters	55200	63300	1.20
Above 100 square metes	63500	72800	1.25

A. For the flats having more than four storeys, a uniform rate per sq. metre of Rs.73200/- will be taken as a minimum value of built up rate for residential purpose, whereas in case where the same is used for commercial purpose, a uniform rate per sq. metre of Rs.84000/- will be taken as a minimum value of built up rate for commercial purpose. For multistoried flats by private builders a multiplicative factor of 1.25 shall be employed.

B. Where part plinth area, say one floor, of an independent property other than a flat is sold, the relevant minimum land cost may be taken for the proportionate plinth area sold, and minimum cost of construction applied on plinth area sold"

16. The Chief Controlling Authority has determined the value of the residential flat by applying the rates as specified in paragraph 4A as quoted above; that is, ₹73,200/- per Sq. Meter. A plain reading of paragraph 4A of the Notification indicates that the said rate is applicable only in cases of building having more than four storeys.

17. In the present case, it is not in dispute that the building consists of stilt parking, and four floors built above the Stilt Parking. Thus, if the stilt parking is not considered as a floor of the building, the circle rates for any flat in the building cannot be assessed on the basis of paragraph 4A of the Notification.

18. Clearly, the stilt parking is only a facility and cannot be considered as a separate floor. The respondents have also filed an affidavit, whereby it has been clearly affirmed that the respondents do not consider stilt parking as a floor for calculating the minimum value of the property as per circle rates.

19. The second column of the table set out in paragraph 4 of the Notification (table 1.3) indicates that the uniform rate per sq mtr of built up flat is applicable only in cases of DDA colonies/Cooperative and Group Housing Societies (in case of residential use). The above rates are not applicable for computing the value of floors in residential buildings constructed by private builders. Undisputedly, the building in question is neither a DDA Colony nor a part of a Co-operative or a Group Housing Society

20. In view of the above, the impugned order is not sustainable. The minimum value of the property as per circle rates, for the purpose of assessing the stamp duty, ought to have been computed in accordance with paragraph 4 B of the Notification.

21. It does appear that the valuation provided by the petitioner was in conformity with paragraph 4B of the Notification. However, this Court considers is apposite to set aside the impugned order and remand the matter to the Collector to verify whether the consideration as set forth in the Sale Deed is greater than the value as determined in accordance with paragraph 4 B of the Notification. It is so directed.

22. In the event, the consideration as disclosed exceeds the minimum value of the property as computed in accordance with paragraph 4 B of the Notification, respondent no. 3 shall register the Sale Deed and return the registered documents as expeditiously as possible and preferably within a period of eight weeks from today. However, if the consideration value as disclosed is less than the

minimum value of the property as determined, respondent no. 3 shall register the Sale Deed and make a reference to the Collector in accordance with Section 47A(1) of the Act. Needless to state that the Collector shall assess the value in accordance with Rule 7 of the Rules, *inter alia*, having regard to the minimum value of the property as determined under paragraph 4 B of the Notification.

23. The petition and the pending application are disposed of.

24. Order *dasti*.

VIBHU BAKHRU, J

FEBRUARY 16, 2018
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