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

\+ **W.P.(C) 7180/2019**

MKJ DEVELOPERS LTD. AND ANR. ..... Petitioners

Through: Mr Jayant Mehta, Mr Debarjan Mandal, Mr Vikrant Pachnanda, Mr Iram Hassan, Ms Naina Pachnanda and Ms Prishti, Advocates.

versus

COLLECTOR OF STAMPS GOVERNMENT OF THE NATIONAL CAPITAL TERRITORY OF DELHI ..... Respondent

Through: Mr Ramesh Singh, Standing Counsel, GNCTD with Mr Shlok Chandra, Mr Chirayu Jain, Ms Roopali Wadhawan and Mr Ishan Agrawal, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **09.07.2019**

CM No.29912/2019

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "(a) A writ of and/or in the nature of mandamus do issue calling upon the respondent authority to determine the duty chargeable on the instrument dated 6th September, 2000.
>
> (b) A writ of and/or in the nature of mandamus do issue calling upon the respondent to adjudicate as to proper stamp duty payable on the instrument dated 6th September, 2000 as

> requested by the application dated 25th March, 2019 being Annexure "P-8" of the petition.
>
> (c) Rule Nisi in terms of prayers above.
>
> (d) An order of direction do issue calling upon the respondent authority to determine the duty chargeable on the instrument dated 6th September, 2000.
>
> (e) An order of direction do issue calling upon the respondent to adjudicate as to proper stamp duty payable on the instrument dated 6th September, 2000 as requested by the application dated 25th March, 2019 being Annexure "P-8" of the petition."

3. The petitioner companies claim that the minutes of a meeting held between various parties on 06.09.2000 constitute a Memorandum of Understanding in respect of certain immovable properties. Mr Jayant Mehta, learned counsel appearing for the petitioner clarifies that according to the petitioner, the said minutes of meeting record an agreement to sell/purchase certain immovable properties.

4. Although, the said document was recorded on or about 06.09.2000, the petitioner and other parties have taken no steps to pay the stamp duty on the same. It is also clear from the averments made in the petition that the petitioners seek to rely on the said document in a suit filed by the petitioners before the Calcutta High Court.

5. The petitioners state that they had approached the Collector of Stamps for payment of stamp duty and penalty, but no action has been taken by the Collector/SDM on their request.

6. This led the petitioners to file the present petition.

7. Mr Ramesh Singh, learned counsel appearing for the respondents

states that no application, which is tenable in law, has been made by the petitioners and therefore, no action is required to be taken by the respondents. He points out that the petitioners had made an application under Section 40 of the Indian Stamp Act, 1899 (hereafter 'the Act') and the said application is misconceived. He states that in terms of Section 31 of the Act, the concerned authority is empowered to adjudicate the stamp duty payable but not the penalty. He further states that any such an adjudication would also not be binding on either party.

8. Plainly, Section 40 of the Act is not applicable, as the same provides for the procedure to be followed when a collector impounds an instrument under Section 33 of the Act or receives such instrument which is impounded under Section 38 of the Act.

9. Mr Mehta readily concedes that the contentions advanced by Mr Singh are merited. He states that the application filed by the petitioner ought to have been filed under Section 31 of the Act and ought to have been accompanied with the original document sought to be stamped.

10. In view of the above, no orders are required to be passed in this petition. The petitioners are at liberty to file an application under Section 31 of the Act for adjudication of the stamp duty payable, if any, in respect of the said document. The concerned authority shall consider the same in accordance with law and pass an appropriate order.

11. It is clarified that this Court has not expressed any opinion on the nature of the documents sought to be stamped. Nothing stated in this order should be construed as an expression of opinion by this Court in that regard. It is further clarified that this Court has also not examined whether the said documents is required to be stamped at all.

12. This Court is also of the opinion that the present petition is a frivolous one and deserves to be dismissed with costs. The petition is, accordingly, dismissed with costs amounting to ₹10,000/- which shall be deposited with the Delhi High Court Bar Clerks Association within a period of two weeks from today.

VIBHU BAKHRU, J

JULY 09, 2019
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