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

\+ W.P.(C) 5754/2018

SH. JAGMANT SINGH SODHI AND ANR. ..... Petitioners

Through: Mr P. K. Bhardwaj, Advocate.

versus

SH. KAKU SINGH AND ORS. ..... Respondents

Through: Mr W. R. Khan and Mohd. Rasheed, Advocates for R-2 and R-4.
Mr Sumeer Nath, proxy advocate for Mr Deepak Gaupta, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **30.07.2019**

CM No.22307/2018

1. Allowed, subject to all just exceptions.

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2. The petition was passed over as none had appeared for respondent no.5 (Collector of Stamps/SDM). None appears for respondent no.5 on the second call as well. This Court does not consider it necessary to defer the matter awaiting representation on behalf of respondent no.5.

3. The petitioners have filed the present petition, *inter alia,* impugning an order dated 18.02.2016 passed by respondent no.5 (Collector of Stamps) determining the stamp duty on the document in question (Agreement to Sell dated 31.07.2001) at ₹9,25,000/-. In addition to the above, respondent no.5 has also determined the penalty payable at ₹1,48,000/- on the said instrument.

4. The stamp duty has been computed at the rate of 8% on the consideration as disclosed in the said document in terms of the office order dated 22.10.2001.

5. It is the petitioners' case that at the material time, the stamp duty on the said instrument could not be levied at the rate applicable on a conveyance. He states that the said document became compulsorily registerable by an amendment introduced on 24.09.2001. Correspondingly, Entry 23A was introduced in Schedule I to the Indian Stamp Act, 1899 providing for stamp duty payable on contracts for transfer of immovable property in the nature of part performance, in any union territory, under Section 53A of the Transfer of Property Act, 1882. It is the petitioners case that prior to the said amendments, the said duty was not payable on an instrument pertaining to an agreement to sell.

6. It is seen that none of the contentions as advanced by the petitioners have been considered by respondent no.5. The impugned order simply proceeds on the basis that 8% *ad valorem* duty is payable on the consideration as reflected in the instrument in question.

7. In view of the above, the petition is allowed and the impugned order is set aside. The matter is remanded to respondent no.5 to consider afresh. Respondent no.5 shall pass a fresh order within a period of eight weeks from today after affording the petitioner an opportunity of hearing.

8. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

JULY 30, 2019/MK