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

\+ W.P.(C) 2808/2017 & CM No. 12224/2017

GAURAV GANDOTRA & ANR ..... Petitioners

Through: Ms Shraddha Bhargava, Advocate.

versus

COLLECTOR OF STAMPS & ORS ..... Respondents

Through: Ms Jyoti Taneja, Advocate for GNCTD.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 08.01.2019

VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia,* impugning an order dated 22.11.2016 passed by respondent no.1 (hereafter 'the Collector'), whereby, he has adjudicated the deficient stamp duty payable in respect of the Sale Deed of the property described as *"SFS CAT-III, Flat No.9551 on ground + first floor (Duplex) in Sector-C, Pocket 09, Vasant Kunj, New Delhi-110070"* (hereafter 'the said property') at ₹5,30,460/-.

2. Petitioner no.2 had entered into an Agreement to Sell (hereafter 'the Agreement') dated 31.03.2004 with respondent nos. 3 and 4 (hereafter 'the vendors') for purchasing the said property at a

consideration of ₹32,50,000/-. Out of the aforesaid consideration, a sum of ₹1,00,000/- was paid at the time of signing of the Agreement. In terms of the Agreement, the vendors were obliged to take steps for conversion of the said property from lease hold to free hold and, thereafter, execute the conveyance deed. Since, the vendors had failed and neglected to discharge the said obligations, petitioner no.2 filed a suit for specific performance – being CS(OS) 901/2004 captioned *'Kuldip Gandotra v. S. N. Endlay & Anr* – in this Court. The said suit was decreed in favour of petitioner no.2 (plaintiff therein) in terms of a judgment dated 04.07.2006.

3. The vendors impugned the aforesaid judgment by filing an appeal – being RFA(OS) 88-89/2006 captioned '*S. N. Endlay & Anr. v. Kuldip Gandotra'*. During the course of the said proceedings, this court passed an order putting petitioner no.2 in possession of the said property as a Court Receiver. The vendors sought to impugn the said order before the Supreme Court by filing a Special Leave Petition (SLP), however, the same was dismissed.

4. Thereafter, the appeal preferred by the vendor against the decision of the Coordinate Bench of this Court rendered on 04.07.2006 was rejected by the Division Bench of this Court by a judgement dated 13.05.2011. The review petition filed by the vendors seeking review of the said decision was also dismissed by an order dated 07.11.2014.

5. The vendors sought to impugn the aforesaid decision of the Division Bench by filing a SLP before the Supreme Court, however, that too was dismissed on 12.05.2015.

6. Petitioner no.2 filed an execution petition being Ex.P. No.314/2011 captioned *'Kuldip Gandotra v. S. N. Endlaw & Anr.'* for an execution decree to be passed in his favour. Since, the vendors did not come forward to execute the necessary documents, this Court by an order dated 16.12.2014 appointed a Local Commissioner to act on behalf of the vendors for completing all formalities for conversion of the said property from lease hold to free hold.

7. On 03.07.2015, the Local Commissioner obtained a Conveyance Deed in respect of the said property, which was duly registered with the Sub-Registrar-VII, New Delhi.

8. Thereafter, the petitioner no.2 called upon the vendors to execute the Sale Deed in their favour. On 06.08.2015, the vendors executed the Sale Deed in favour of petitioner no.1 (who is the son of petitioner no.2). On execution of the Sale deed, the petitioners paid the balance consideration of ₹29,64,000/- to the vendors. It is stated that the petitioners paid the stamp duty of ₹2,27,500/-, which was computed at 7% of the sale consideration. This also included the registration fee computed at 1% of the value of the sale consideration.

9. The petitioner states that the Sale Deed was not registered and returned to the petitioners. On approaching, respondent no.2 (Sub-Registrar-IX), the petitioners were informed that the Sale Deed had been impounded under Section 33 of the Stamp Act, 1899 and the same had been sent to the Collector on the ground that it was deficiently stamped.

10. On 16.11.2015, the Collector computed the deficient duty at ₹2,50,521/- and directed the same to be paid. The Collector proceeded

on the basis that 90% of the stamp duty payable on the consideration as set forth in the Agreement was liable to be paid by the petitioners upon execution of the said instrument. The Collector further examined the value of the said property on the basis of contemporaneous transactions, and found that consideration as stated in the Agreement, was the highest amongst other documents registered in respect to similar properties. The Collector computed the stamp duty payable at the rates prevailing in the year 2004 (5% + 3%), additionally, the collector also held that interest at the rate of 10% per annum was payable on the stamp duty from the date of execution of the Agreement (that is, 31.03.2004). After accounting for the stamp duty already paid, the collector computed the deficient stamp duty at ₹2,50,521/-.

11. Aggrieved by the aforesaid order, the petitioners preferred a writ petition before this Court, being W.P.(C) 2758/2016 captioned '*Gaurav Gandotra & Anr. v. Collector of Stamps & Others*. The said writ petition was allowed by an order dated 30.03.2016. This Court held that the order dated 16.11.2015, passed by the Collector was flawed, inasmuch as, the collector had failed to draw a distinction between the Agreement to Sell and the Sale Deed. The Court further held that the Sale Deed was required to be registered in accordance with the extant law, that is, at the rates prevalent on the date of registration of the Sale Deed. The Court also held that no penalty could be imposed on the petitioners, as there was no delay on their part. The order dated 16.11.2015 passed by the Collector was set aside and the matter was remanded to the Collector for re-

determination of the stamp duty.

12. On the matter being remanded by this Court, the Collector now proceeded on the basis that the consideration as recorded in the Sale Deed was deficient as it was lower than the Circle rates, as notified. The value of the said property as computed on the basis of the notified Circle rates worked out to ₹91,44,000/-. The Collector determined the stamp duty payable on the said amount at ₹5,48,640/-. After adjusting the sum of ₹1,95,000/- paid by the petitioner, the Collector computed the deficient stamp duty at ₹3,53,640/-. He further held that the petitioners were liable to pay a penalty, as they had failed to register the Agreement in terms of the legislative amendments introduced by virtue of the Registration and Other Related Laws (Amendment) Act, 2001. On this count, the Collector imposed a penalty equivalent to the amount of deficient stamp duty (₹1,76,820/-).

13. Aggrieved by the same, the petitioners had filed the present petition.

14. Ms Bhargava, the learned counsel appearing for the petitioners contended that the Collector had examined the value of the said property in the earlier round, and had found that the consideration as set forth in the Sale Deed was higher than the consideration reflected in transfer documents pertaining to other similarly placed properties. She submitted that in this view, there could be no dispute that the consideration set forth in the Sale Deed was the correct consideration.

15. Next, she contended that the Collector had erred in proceeding on the basis that the petitioners had paid only a sum of ₹1,95,000/- as stamp duty. She submitted that in fact the petitioner had paid a total

amount of ₹2,27,500/- as stamp duty and other charges.

16. Lastly, she submitted that the Collector had erred in imposing any penalty on the basis that the Agreement was required to be compulsorily stamped and registered. She submitted that the possession of the said property was not handed over at the time of entering into Agreement and, therefore, the provisions relating to registration of the Agreement on payment of 90% of the stamp duty payable on a conveyance deed was not applicable. She further submitted that the levy of penalty was also contrary to the express observations made by this Court in the order dated 30.03.2016.

17. Ms Taneja, learned counsel appearing for the respondents countered the submission that the stamp duty was payable on the consideration as set forth in the Sale Deed. She contended that the consideration was required to be determined on the basis of the notified Circle rates and, therefore, the decision of the Collector in this regard could not be faulted.

18. I have heard the learned counsels appearing for the parties.

19. The first and foremost contention to be considered is whether the provisions of Section 47A of the Indian Stamp Act are applicable, given that it is alleged that the consideration set forth in the sale deed has been undervalued. Section 47A of the Act was introduced in the Stamp Act as applicable to Delhi by virtue of the Indian Stamps (Delhi Second Amendment) Act, 2001 and the said Section is set out below:-

> “**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."

20. Indisputably, Section 47A (as applicable to Delhi) is applicable if the Registering Authority is of the view that the consideration for the said property has not been truly set forth in the Instrument. Admittedly, the petitioners had paid the Stamp duty commensurate with the consideration as set forth in the Sale Deed. There is no dispute that the Registering Authority (respondent no.2) was of the opinion that the Sale Deed was insufficiently stamped on account of the consideration being lower than the Circle rates. He had, therefore, impounded the Sale Deed and referred the same to the Collector.

However, he had not registered the Sale Deed. Sub-section (1) of Section 47A (As applicable to Delhi) is unambiguous and requires the Registering Officer to register the instrument before referring the same to the Collector.

21. The Collector is, thereafter, required to hold an inquiry and determine the value of the property or the consideration and the duty payable thereon. In ***Harjinder Pal Singh v. The Collector of Stamps Sub-Divisional Magistrate, Vasant Vihar: W.P.(C) 8416/2018***, this Court had considered the issue whether the Collector was required to determine the stamp duty on the basis of the value of the property as existing on the date the Agreement to Sell or on the date when the sale deed was presented for registration. This Court had held that Section 47A of the Stamp Act was enacted to address the mischief of the parties undervaluing the property or understating the consideration and, therefore, the determination of the value of the property was required to be made considering the aforesaid objection.

22. In the present case, there appears to be no dispute that the correct consideration was set forth in the Agreement. In the earlier round, the Collector had found the same to be the highest amongst the considerations reflected in transfer documents pertaining to other similarly placed properties. Thus, the Collector was required to determine the deficient stamp duty, bearing the aforesaid in mind.

23. The contention that the petitioners were not required to pay stamp duty at the rate of 90% of the sale consideration at the time of entering into the Agreement, as the same was not coupled with handing over of possession, is merited. The Collector has erred in

proceeding on the basis that the petitioners were obliged to compulsorily register the Agreement at the time when it was executed. Thus, the decision of the Collector to levy penalty is wholly unsustainable.

24. In view of the above, the impugned order is set aside and respondent no.2 is directed forthwith to register the Sale Deed. If the registering authority (respondent no.2) is of the view that the consideration has not been truly set forth in the Sale Deed, he is at liberty to refer the same to the Collector. It is clarified that in the event the reference is made, the Collector shall determine the stamp duty in terms of sub-section (2) of Section 47A of the Indian Stamp Act as applicable to Delhi having regard to the decision of this Court in ***Harjinder Pal Singh*** (*supra*).

25. The petition is disposed of in the above terms. The pending application is also disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JANUARY 08, 2019
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