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

Date of decision: 17.07.2019

+ W.P.(C) 7061/2012

CHIRAG ASSOCIATES PVT LTD THROUGH ITS DIRECTOR
P.S.KALRA Petitioner

Through Mr.R.K. Gupta, Adv. with Mr.Ujjal
Banerjee & Mr.Sanat Garg, Advs.

versus

GOVT. OF NCT, DELHI AND ORS Respondents

Through Mr.Santosh Kr. Tripathi, ASC with
Mr.Rishabh Ostwal, Mr.Shashank
Tiwari, Mr.Arpit Bisht &
Ms.Shivangi Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction directing the respondents to allow the petitioner to have the conveyance deed executed by paying the stamp duty @ 0.5 % (balance of then existing stamp duty of 8% on the conveyance deed) under Article 23 of the Scheduled A of the Indian Stamp Act, 1969 on the sale consideration of ₹7,20,00,000/-.

2. The brief facts of the case are that the petitioner is a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 36, Sant Nagar, East of Kailash, New Delhi-110065. Mr.P.S. Kalra is one of the Directors of the petitioner company and has been duly authorised by the company to file the present petition vide the board resolution dated 30.07.2012 for and on behalf of the petitioner.

3. During the normal course of its business on 31.08.2005, the petitioner entered into an Agreement to Sell with M/s Allied Metal and Engineering Works (hereinafter referred to as '*Vendor*') a partnership firm having its office at 235, Okhla Industrial Estate, Phase-III, New Delhi 110020 to purchase of the leasehold of industrial plot No. 235 admeasuring 2461 sq. yards or thereabout and the entire building constructed thereon (hereinafter referred to as the '*Property*') at a consideration of ₹7,20,00,000/-.

4. The Agreement to sell was duly registered before the Sub Registrar V, Deeds and Assurances, New Delhi and Stamp duty under Article 5 in Schedule 1A was paid @ 4.5% and Corporation tax @ 3% on the sale consideration by the petitioner aggregating to ₹54,00,000/-. Upon registration of the Agreement to Sell, the Vendor also handed over the

peaceful vacant and physical possession of the said property to the petitioner.

5. Further case of the petitioner is that the petitioner was ready and willing to execute the conveyance deed. However, since the property in question is a lease-hold property allotted to the Vendor by the President of India by perpetual lease deed dated 15.11.1969, the petitioner could not execute the conveyance deed. However, the petitioner paid 7.5% stamp duty on the total sale consideration of ₹7,20,00,000/- and stamp duty aggregated to ₹54,00,000/-. On or about 13.08.2007, the Vendor filed an application for conversion of property from lease hold to freehold and deposited a sum of ₹32,21,578/- with the office of the Commissioner (Industries), Government of NCT, i.e. Respondent No.3. The Vendor and the petitioner pursued the matter diligently with the office of the Commissioner of Industries and with great efforts were finally able to have the conversion done on the property and a Conveyance Deed was executed on 03.05.2011 between the President of India through the Secretary-Cum-Commissioner (Industries), Government of NCT and the Vendor herein. Immediately thereafter, the petitioner and the Vendor agreed to execute the conveyance deed of the property in question wherein an agreement to sell was already executed on 31.08.2005.

However, when the petitioner inquired from office of respondent No.4 for paying the balance stamp duty of 0.5% as it had already paid 7.5% of stamp duty on the agreement to sell, respondent No.4 informed the petitioner that the stamp duty on the conveyance deed will be payable on the current circle rate and not on the sale consideration mentioned in the agreement to sell dated 31.08.2005. Accordingly, the petitioner submitted to the office of the Sub-Registrar that when the agreement to sell in respect of the property was executed on 31.08.2005, the stamp duty payable on the conveyance deed was payable at 8% of the sale consideration and since the conveyance deed could not be executed as the property in question was not a freehold property, an agreement to sell was executed by paying 7.5% of the stamp duty on the total sale consideration of ₹7,20,00,000/- which was in any case higher than circle rate at that point of time. Accordingly, the petitioner requested that if at all he was to be directed to pay the balance 0.5% of the stamp duty for executing the conveyance deed then the 0.5% stamp duty should be collected on the sale consideration of ₹7,20,00,000/- and not on the current circle rate.

6. The petitioner further submitted that sometime in the year 2007 the respondent No. 1 has reduced the stamp duty on conveyance deed from 8%

to 6%. However, the petitioner is being asked to pay the stamp duty @ 6% for execution of the conveyance deed on the circle rate and not on the sale consideration of ₹7,20,00,000/- agreed between the petitioner and Vendor i.e. M/s Allied Metal and Engineering Works.

7. Being aggrieved by the act of the respondents, the petitioner submitted a representation to the respondent No.2 on 20.09.2012 to consider and direct respondent No. 4 to register the conveyance deed between the Vendor and the petitioner by allowing the petitioner to make payment of balance 0.5% of the stamp duty on the total sale consideration of ₹7,20,00,000/- and not on current circle rate which is ₹1,61,31,167/-. It was submitted that the petitioner has already paid 7.5% of the stamp duty on the sale consideration of ₹7,20,00,000/- at the time of execution of registration of conveyance deed on 31.08.2005. It was further submitted that equity demanded that the petitioner be directed to pay the remaining 0.5% as stamp duty on the sale consideration of ₹7,20,00,000/- and not @ 6% on the current circle rate of ₹1,61,31,167/-.

8. Learned counsel appearing on behalf of the petitioner submits that the petitioner cannot be forced to pay stamp-duty on the conveyance deed at the circle rate as *fait accompli* in view of the time taken at the office of

respondent No.3-for conversion of property from lease hold to freehold which took almost four years. To resolve the grievance, the petitioner made representation and despite the receipt of the representation, no directions have been issued by respondent No.2 to the Sub-Registrar for allowing the petitioner to have the conveyance deed executed at the sale consideration mentioned in the conveyance deed. At the same time, reply has also not been received on the representation made by the petitioner. Moreover, the petitioner has reliably learnt that the respondent nos.1 & 2 are once again contemplating to revise the circle rate upwards in the near future which will further cause hardship to the petitioner as the petitioner will be forced to pay the stamp duty on the new circle rate which is very high as compared to the rate prevailing when the petitioner executed the agreement to sell on 31.08.2005.

9. The respondents have filed the counter affidavit whereby Agreement to Sell was registered with the office of the Sub-Registrar and stamp duty under Article 5 in Schedule 1A was paid @ 4.5 % and a Corporation Tax @ 3% on the sale consideration by the petitioner aggregating to ₹54,00,000/- i.e. 7.5 % of the stamp duty. The said property was a leasehold property and after getting the necessary paperwork done, the same was converted into a

free hold property and finally on 03.05.2011 a conveyance deed was executed in favour of the Vendor i.e. M/s Allied Metal & Engineering Works. The petitioner thereafter sought to get the conveyance deed/sale deed in his favour executed by the Vendor mentioned above and was informed by the office of the Sub-Registrar that the Stamp Duty on the Sale Deed/Conveyance Deed is payable as per the prevalent circle rate, however, not on the sale consideration mentioned in the Agreement to Sell. The petitioner was called upon to pay stamp duty as per the prevalent circle rates as the Delhi Government vide notification dated 18.07.2007 which mandates that no document after the date of the said notification, qua land would be registered on a rate lower than the prevalent minimum circle rate of that respective area. Since the document which was sought to be registered is a document "*executed*" after the issuance of the said notification dated 18.07.2007, therefore, the parties are under a statutory obligation to pay the stamp duty as per the prevalent circle rate and as per the Delhi Stamp (Prevention of Under-Valuation of Instruments) Rules, 2007.

10. Learned counsel on behalf of the respondents submits that the case of the petitioner is that he has already paid 7.5% of the consideration so mentioned in the Agreement to Sell as the stamp duty while getting the

Agreement to Sell registered and is, at best, liable to pay only balance 0.5% stamp duty and is not liable to pay stamp duty in terms of the notification dated 18.07.2007, meaning thereby that the "*Agreement to Sell*" dated 31.08.2005 should be equated with "*Sale*" as defined in the Transfer of Property Act, 1882. The said proposition is fallacious as the Vendor was never legally capable to "*Sell*" the subject property before 03.05.2011 i.e. the date on which the subject property was converted into a Freehold Property.

11. To strengthen his argument, counsel for the respondents has relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Suraj Lamps & Industries (P) Ltd. vs. State of Haryana: 2009(7) SCC 363*** whereby it has been clarified by the Apex Court that an agreement to sell cannot be equated with a registered deed of conveyance. Therefore, the State cannot be put to a loss of exchequer because the vendor chose to enter into an "*Agreement to Sell*" without being legally permitted to do so qua the subject property as the same was being held by it in the capacity of lease holder at the time of the execution of the Agreement to Sell dated 31.08.2005. The Sub-Registrar office has nothing to do as to when vendor applied for conversion of the subject property from leasehold to freehold and how much time it took.

12. However, in compliance of the order dated 01.02.2013 passed by this Court, the Conveyance Deed has been registered vide Registration No.1104 in Book no.1, Volume No.12665 on Page 121 to 136 on 20/02/2013 subject to final outcome of the petition.

13. Learned counsel for the respondents thus submitted that the petitioner is liable to pay the stamp duty on the value of the property as per circle rates calculated by the respondents as per Annexure R-3. Thus, there is no merit in the case of the petitioner and the present petition is liable to be dismissed.

14. I have heard learned counsel for the parties at length and perused the material available on record.

15. It is pertinent to mention here that there is no dispute regarding the facts of the case. The only issue before this court is, whether the petitioner is liable to pay as demanded by the respondents or to pay 0.5% which is balance of the 8% at the time of agreement to sell?

16. Similar issue came before this court in CM(M) No.69/2016 in case of Collector of Stamps/SDM vs. Raman Kumar decided on 26.10.2017. The facts of the aforesaid case were that on 29.12.2006, an Agreement to Sell with respect to property no. GC-11, Second Floor, Shivaji Enclave, New Delhi-110027 was registered by the owner thereof in favour of Anita

Sharma wife of the respondent and since at the time of Agreement to Sell, possession of the property was delivered to the purchaser in part performance of the Agreement to Sell, in accordance with Article 23A of the Schedule to the Stamp Act as applicable to Delhi and out of 6% Stamp Duty leviable on a conveyance, Stamp Duty of 5.7% was paid on the agreement to sell accompanied with delivery of possession in part performance. On 04.03.2010, a Sale Deed of the same property was presented for registration, by the owner thereof, in favour of, according to the counsel for the petitioner, the respondent and according to the counsel for the respondent, the aforesaid Anita Sharma only (the counsel for the petitioner states that he is presuming the Sale Deed to be in favour of the respondent because it was the respondent who preferred the appeal). The said Conveyance Deed/Sale Deed on 23.03.2010 was impounded by the Sub Registrar to whom it was presented and sent to the Collector of Stamps, Delhi. The Collector of Stamps, Delhi, though issued show cause notice to the parties on 27th July, 2010 and to which a reply was filed, but no speaking order was passed and the Collector of Stamps, Delhi on 10th November, 2010 merely prepared a challan for deficient Stamp Duty and penalty thereon. According to the Collector of Stamps, Delhi, the Stamp Duty payable on the Conveyance

Deed/Sale Deed ought to have been in accordance with the circle rates prevalent on 4th March, 2010 and not as per the circle rates prevalent in December, 2006. The respondent preferred an appeal under Section 47A(4) of the Indian Stamp Act as applicable to Delhi to the District Court and the learned Additional District Judge, vide the impugned judgment has allowed the appeal and held the Stamp Duty payable on the Sale Deed to be only the remaining 0.3% Stamp Duty of what was left after paying the Stamp Duty on the Agreement to Sell i.e. as per the circle rates prevalent in December, 2006.

17. Though Section 33(1) undoubtedly empowers every person in charge of a public office and which would include the Sub-Registrar, to impound a document chargeable with stamp duty and produced before and the said Section 33 is placed in Chapter-IV of the Stamp Act covered by Section 56(1) but the same remains a “*general provision*”. The legislature having introduced Section 47A in the Act, as far as applicable to the city of Delhi, has by providing for the procedure to be followed by the Sub Registrar acting as Registering Officer, before whom an instrument undervalued is presented for registration of any property. Accordingly, the procedure to be followed as far as the city of Delhi is concerned, by the Sub-Registrar,

would be under the special provision i.e. 47A and not under the general provision i.e. Section 33. Section 47A was introduced vide Notification dated 02.11.2001 and was thus not for consideration in ***Trideshwar Dayal vs. Maheshwar Dayal: (1990) 1 SCC 357***. As far as section 47A is concerned, sub-section (4) thereof provides for appeal, against the determination under sub-section(1) by the Collector, to the ‘*District Court*’.

18. This court in judgment dated 26.10.2017 in para 11 observed as under:

“As far as the merits are concerned, I have put it to the counsel for the petitioner, that even if his contentin that the Conveyance Deed/Sale Deed presented on 4th March, 2010 was chargeable as per the circle rates applicable then and not as per the circle rates as prevalent at the time of registration of the Agreement to Sell on 29th December, 2006 were to be accepted as correct, circle rates in Manu Narang vs. The Lt. Governor, Government National Capital Territory of Delhi: 226 (2016) DLT 1 and Amit Gupta vs. Govt. of NCT of Delhi: 229(2016) DLT 385, have been held by the Division Bench of this Court to be only raising a presumption and to be not binding. It was held that an opportunity has to be given to the concerned parties to prove that the consideration as disclosed in the document, even if below the circle rate, is the genuine consideration.”

19. The case of the respondents herein is that the property was registered on 31.08.2005 and the sale deed could not be registered for more than 4 years. Even otherwise, the state after making the purchaser put in possession

of the property, agreed to be purchased, in part performance of the Agreement to Sell liable to pay 90% of the stamp duty as payable on the conveyance deed at the time of registration of the Conveyance Deed/Sale Deed require him to pay stamp duty as per any higher rates. Either the state should not have provided for payment of 90% of the stamp duty and for registration of the Agreement to Sell when possession in part performance has been delivered and in which case the State could possibly have been heard to contend that the stamp duty on the Sale Deed should be on the consideration prevalent on the date of presentation of the Sale Deed and not on the consideration fixed earlier or should be satisfied with the consideration/rates prevalent at the time of collection of 90% of the duty. The consideration for the Sale Deed has to be accepted as disclosed therein and not as per the prevalent values in March, 2010.

20. It is not in dispute that at the time of registration of Agreement to Sell, the petitioner paid 7.5% stamp duty out of 8% applicable at the relevant time. Had the respondents registered sale deed, the petitioner would have paid 8% on that date. Since for no fault of the petitioner, the sale deed could not be registered for more than 4 years, however, has been disputed by counsel for the respondents without any relevant document or law. Since the

petitioner has paid 7.5% out of 8% at the relevant time, therefore, in my considered view, the petitioner is liable to pay only 0.5% on the date of registration of Agreement to Sell. The total sale consideration was ₹7,20,00,000/- and the petitioner has already paid 7.5% of the stamp duty i.e. ₹54,00,000/- against 8% prevalent on that date, thus the petitioner has paid ₹3,60,000/- on 31.08.2005. The present demand of the respondents on the circle rate prevalent is ₹35,88,55,783/- in the year 2011 to pay 6% of the sale consent justified, however, since the petitioner had to pay 0.5% i.e. balance ₹3,60,000/- on 31.08.2005, therefore, I hereby direct the petitioner to pay an amount of ₹3,60,000/- with interest @ 7.5% from 31.08.2005 till the date of deposit of the amount.

21. As stated by the counsel for the petitioner that pursuant to order dated 07.11.2012, the petitioner had deposited an amount of ₹1,61,31,167/- with Registry of this court, which is not disputed by the counsel for the respondents, therefore, Registry is directed to release the entire amount with interest accrued thereon, if any, in favour of the petitioner and the petitioner shall pay balance 0.5% stamp duty with interest as directed by this court to the respondents within four weeks, failing which the petitioner shall be liable to pay 12% interest on the delayed payment.

22. In view of above, the petition is allowed and disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 17, 2019/ab

