IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 23.09.2019

\+ **W.P.(C) 9243/2018**

ABHISHEK JAIN ...... Petitioner

versus

LT. GOVERNOR NCT OF DELHI AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Mahesh Prasad and Mr Alok K. Prasad.
For the Respondents : Mr Anjum Javed, ASC – GNCTD with Mr Devendra Kumar.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning a communication dated 29.12.2017 addressed by the Sub-Registrar II (Basai Darapur) to the Collector of Stamps/SDM, Patel Nagar, Old School Building, Ram Pura, New Delhi, impounding the sale deed dated 11.12.2009, executed in favour of the petitioner and one Sh. Subodh Anand in respect of the property bearing No. WZ-15, Kailash Park, Najafgarh Road, Khasra No. 2778/738, Village Basai Darapur, New Delhi. The said communication – a copy of which was also forwarded to the petitioner – indicates that the Sub-Registrar was of the opinion that the stamp duty paid on the said instrument was deficient. Therefore, the Registrar had impounded the same under

Section 33 of the Indian Stamp Act, 1899 (hereafter referred to as 'the Act').

2. The Registering Authority had found that the said property falls in category 'F' and the circle rate for such properties, as prevailing at the material time, was notified at ₹70,080/-. The area of the said property is 437.5 sq. yards (365.79 sq. meters). Accordingly, the Registering Authority had computed the value of the property as per the existing circle rate at ₹2,56,34,563.20/- and the stamp duty payable thereon at ₹15,38,073.79/-.

3. Thereafter, the petitioner was issued a notice dated 18.01.2018, confirming that the Registering Authority had impounded the sale deed entered into between the parties under Section 33 of the Act. The petitioner was further called upon to appear before the Collector of Stamps with all relevant documents.

4. The petitioner contends that the stamp duty payable on the sale deed cannot be computed on the basis of the circle rate for property falling in category 'F', as the petitioner had already paid stamp duty in respect of the said property. Thereafter, the Collector of Stamps passed an order dated 06.03.2018, whereby he directed the Registering Authority to follow the procedure as laid down in Paragraph 22 of the judgment of the Division Bench of this Court in ***Manu Narang & Anr. v. The Lieutenant Governor, Government of National Capital Territory of Delhi: W.P.(C) 5975/2013, decided on 23.12.2015***. In terms of the said decision, the Registering Authority is required to

notify the parties presenting the instrument for registration that the consideration mentioned in the instrument is less than the valuation as per the circle rate and to further grant them an opportunity to amend the said documents.

5. According to the petitioner, he is not required to pay the stamp duty as per the value of the property as computed on the basis of the circle rate as, he had already paid the requisite stamp duty at the time of registration of the Agreement to Sell on 11.12.2009 (hereafter referred to as 'the Agreement').

6. The petitioner states that he and one Mr Subodh Anand had entered into the Agreement for purchasing the said property for a consideration of ₹67,50,000/-. It is stated that the Agreement was presented for registration to the Registering Authority on 11.12.2009. However, the same was registered subsequently on 22.05.2010 (by registration No. 12406, in additional book no.1, volume no. 17672, pages 88 to 95). At the material time, the petitioner had also paid aggregate stamp duty at the rate of 6% of the stated consideration (amounting to ₹4,05,000/-). It is the petitioner's case that he is not required to pay the stamp duty once again at the time of the registration of the sale deed as the requisite stamp duty was paid at the time of registration of the Agreement.

7. It is in the aforesaid context that the petitioner had prayed that directions be issued to the respondents to register the sale deed in view of the Agreement.

Discussion and Reasons

8. At the outset, it is relevant to note that the sale deed was presented to the Registering Authority for registration on 11.12.2009. The said sale deed could not be impounded under Section 33 of the Indian Stamp Act, 1899 (the Act) as such a recourse is not available to the Registering Authority in such circumstances. Section 47A of the Act, as applicable to Delhi, incorporates the complete code to address a case where the Registering Authority is of the view that the consideration is incorrectly set forth in the sale deed. In order to address the mischief of avoiding payment of stamp duty by under-valuing the property or incorrectly setting forth the consideration in the instrument for sale of an immovable property, by virtue of the Indian Stamp (Delhi Second Amendment) Act, 2001, Section 47A was introduced in the Act, as applicable to Delhi. Section 47A is set out below:-

> "47-A. (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.
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> (2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties 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 to 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 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."

9. It is apparent from the above that in the event the Registering Authority has reason to believe that the value of the property or consideration has not been truly set forth in the instrument to be stamped; the Registering Authority is required to, after registering such an instrument, refer the same to the Collector of Stamps for determination of the value of consideration and the proper stamp duty payable thereon. Plainly, there is no option for the Registering Authority to impound the instrument in question and decline registering the same.

10. The controversy in the present petition, essentially, relates to the quantum of stamp duty payable on a conveyance deed considering that the parties have already paid 6% stamp duty on the consideration as set forth in the instrument at the time of entering into the Agreement. There does not appear to be any dispute that the stamp duty payable on the consideration set forth in the sale deed has been paid. The sale deed has been impounded by the Registering Authority only for the reason that the value of the consideration set forth is below the notified circle rates, as prevailing at the material time. Clearly, in this case, the Registering Authority was required to follow the procedure under Section 47A of the Act, as applicable to Delhi.

11. As is clear from the language of Section 47A(1) of the Act, the Registering Authority was required to first register the instrument and thereafter, refer the same to the Collector of Stamps. In this view, the contention that the sale deed is required to be registered is merited.

12. It is also relevant to note that by an order dated 06.03.2018, the Collector of Stamps had also remanded the matter to the Registering Authority with the direction to follow the procedure as set down by this Court in Paragraph 22 of the judgment of this Court in ***Manu Narang*** (*supra*). At this stage, it is relevant to refer to Paragraph 22 of the said judgment, which is set out below:-

> "22. W.P.(C) No.3591/2014 and W.P.(C) No.10328/2015 are disposed of by directing/clarifying that notwithstanding anything contained in any order/circular of the respondent GNCTD including those impugned in these petitions, in the event of the consideration mentioned in the instrument/transfer document presented for registration being less than the valuation as per the prescribed circle rates, the Registrar /Sub Registrar entrusted with the responsibility of registration of the documents, shall,
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> A) notify the parties presenting the instrument/document for registration that the consideration set forth in the instrument and the stamp duty computed on the basis thereof is less than the valuation as per the circle rates;
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> B) give them an opportunity to amend the document/instrument, to bring the valuation thereof for the purpose of payment of stamp duty,

in consonance with the circle rates and make up deficiency in stamp duty;

C) if parties do not amend/revise the valuation and do not pay the deficient stamp duty/transfer duty in terms of the circle rates, follow the procedure as prescribed in Section 47-A supra i.e. register the document/instrument (instead of returning the same to the parties) with endorsement of registration and forward the same to the Collector of Stamps for determination of value or consideration as the case may be and the proper duty payable thereon; and

D) the Collector thereafter shall proceed in accordance with law including Section 27 of the Stamp Act."

13. Thus, even according to the respondents, the Registering Authority is required to register the document and follow the procedure prescribed under Section 47A of the Act, in the event the parties choose not to modify the instrument and pay the stamp duty as per prevailing circle rates. In the present case, the petitioner disputes that the stamp duty is payable as per circle rate as computed by the Registering Authority. Thus, the Registering Authority is required to take an informed decision as to whether, in his opinion, the consideration for the transfer of the property in question has been incorrectly set forth in the instrument and the parties have undervalued the same. The Registering Authority is also required to examine the petitioner's contention that the stamp duty is required to be paid on the consideration as set forth in the Agreement and due credit for the duty paid on the Agreement is available to the parties.

14. If the Registering Authority has reason to believe that the value of the property or the consideration has not been truly set forth in the instrument, he is required to refer the same to the Collector of Stamps for determination of the value/consideration of the property and the proper duty payable thereon. However, the Registering Authority is required to first register the instrument before making any such reference. In either case, the registration of the instrument cannot be withheld.

15. In view of the above, the Registering Authority is directed to consider the petitioner's averments, as made in the present petition, as his representation as to the manner in which the stamp duty payable on the sale deed is required to be computed. If the Registering Authority is of the view that the value or the consideration for the sale of the property has not been correctly set forth in the sale deed, he is required to register the sale deed and make a reference to the Collector of Stamps in terms of Section 47A(1) of the Act.

16. It is relevant to note that the relief sought by the petitioner in the present petition is limited to seeking a direction to the Registering Authority to register the sale deed in question. This Court does not consider it necessary to examine the question as to the correct stamp duty payable on the sale deed at this stage.

17. In the first instance, the Collector of Stamps is required to determine the same if the Registering Authority does not accept the contentions advanced by the petitioner. The Collector of Stamps is

required to pass a reasoned order and if the petitioner is aggrieved by the said order, he has a remedy of an appeal before the District Court in terms of Section 47A(4) of the Act.

18. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AUGUST 23, 2019
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