

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 20699 of 2020
Date of decision: 04.12.2020

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M/s. Revital Reality Pvt. Ltd.Petitioner (s)

Versus

The State of Haryana and others ...Respondent(s)

AND

CWP No. 20652 of 2020

M/s. Revital Reality Pvt. Ltd.Petitioner (s)

Versus

The State of Haryana and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Amit Jain, Advocate,
for the petitioner.

(Proceedings are conducted through video
conferencing as per instructions).

G.S.SANDHAWALIA, J.

The present judgment shall dispose of two writ petitions i.e. CWP No. 20699 and 20652 of 2020, since common questions of facts and law are involved in both the petitions. Facts are being taken from ***CWP No. 20699 of 2020, M/s. Revital Reality Pvt. Ltd. vs. State of Haryana and others.***

Challenge in the present writ petition is to the order dated 06.02.2020 (Annexure P-5) passed by respondent no. 2 whereby, he has upheld the order of respondent no. 3 whereby, the petitioner has been directed to pay stamp duty of Rs.2,21,900/- and registration fee of

Rs.14,900/- under Section 47 of the Indian Stamp Act, 1899 (in short '1899 Act'). Challenge accordingly has been raised to the proceedings on the strength of judgments of this Court in ***Iqbal Singh and others vs. State of Haryana and others, 2011 (3) RCR (Civil) 365; Zile Singh vs. Commissioner, Hisar Divn., Hisar and others, 2016 (3) PLR 492; Kirti and another vs. State of Haryana and others, 2018 (1) PLR 559 and Rajesh Goyal and others vs. State of Haryana and others, 2018 (4) PLR 636*** to contend that the proceedings have been initiated on account of the objection put by the stamp Auditor and, therefore, there is no application of mind by the Registering Officer.

The said argument is only to be noticed and rejected as it is a case of a transfer of immovable property inter se the builders and the registration of the documents is being done of valuable land for a princely sum of Rs.500/-.

It is to be noticed that a Joint Development Agreement (JDA) was entered into by the petitioner being the developers of the land owned by one Mapsko Builders Pvt. Ltd. (Annexure P-1). The said builder as such was owner of the land measuring 1 kanal 4.5 marlas falling in the revenue estate of Naurangpur, Sector 78, Tehsil Manesar, District Gurgaon. The petitioner being the developer was obtaining a license for development and, therefore, was granted the right on the land on 'as is where basis' to develop and construct and sell the project on the said land as per clause 1.1 of the said agreement, which reads thus:-

“1.1 The Owner hereby grants, transfers, conveys and assigns exclusive, irrevokable and unequivocal right to the Developer of the Development and Sales Rights over the said Land on what is known

as “as is where is basis” for the development of the Project, along with such other ancillary and incidental rights, benefits, interests, easements, privileges and appurtenant thereto, free from any incumbrances, and to develop, construct, launch, market and sell the Project on the said Land and the Developer accepts the same for the consideration and subject to the terms and conditions herein provided.”

He was also given the marketing rights of the project and in lieu of the said right, the owner was granted certain share in the residential component to be developed. The said clause reads thus:-

“3. CONSIDERATION

3.1 In consideration of the Owner granting exclusive Development and Sales Rights to the Developer under this Agreement, the Owner is entitled to 10% share in the residential component to be developed by the Developer only on the Owner's Land including unconstructed areas, proportionate rights in the land underneath and right to use in the common areas and common facilities (“Owner's Share”). The balance 90% of the entire built up structure including unconstructed areas, proportionate rights in the land underneath and right to use in the common areas and common facilities shall belong to the Developer, including but not limited to the commercial area and other non-residential areas (“Developer's Share”) and the Developer shall have right to appropriate the Developer's Share in any manner as may deem fit by the Developer.”

As per clause 5.2, the developer was also entitled to hand over on behalf of the owner any area of the land which fell under reservation or set back to relevant authorities. The same reads thus:-

“5.2 The Developer shall also be entitled to hand over, on behalf of the Owner, any area of the said land, which falls under reservation and/or set-back and/or requisition or acquisition to the relevant authorities in the event the same becomes necessary on receiving proper notice from the authorities and for that purpose, the Owner shall grant suitable powers and authorities in the said Power of Attorney to be granted to the Developer and/or his nominee.”

Thus, it is apparent that possession of the land was handed over to the petitioner in terms of the said JDA, which was got registered on 12.08.2014 with the Sub Registrar. On objection being raised by the Stamp Auditor, Gurgaon regarding deficiency of stamp duty of Rs.2,21,900/- and of registration fee of Rs.14,900/-, the Sub Registrar sent the same to the Court of the Collector under Section 47 of the 1899 Act for decision.

Respondent no.3 has noticed that the land measured 750 square yards and the rate was Rs.6,000/- per square yard which worked out to Rs.44,40,000/-, on which, 5% stamp duty was leviable as per notification of the Government dated 01.10.2013. In such circumstances, it was observed that the objection raised by the Stamp Auditor was correct and, therefore, recovery has been ordered. The appeal filed has been dismissed by the Commissioner on the ground that a provision has been inserted for regulating stamp of such type of agreements in Schedule 1A Article 5(d) of the Indian Stamp (Haryana Amendment) Act, 2013 and the same duty was leviable as on a conveyance against Article 23 of the market value of the property mentioned in the agreement. The same reads thus:-

“(d) If relating to giving authority or power to a promoter or a developer, by whatever name called, for

construction on, development of or, sale or transfer (in any manner whatsoever) of, any immovable property. The same duty as is leviable on a conveyance against article No.23 on the market value of the property mentioned in agreement.”

In such circumstances, it is apparent that the authorities have applied their mind independently on the basis of the objection raised by the Stamp Auditor. Thus, it cannot be said that there is no application of mind by the authorities.

The judgments which have been relied upon would also go on to show that the audit party is not authorized to assess and determine the nature of any such document or stamp duty. The assessment as such has, thus, been done by the competent authority under Section 47-A, which is the Registering Officer. The said Section provides that after registration of the instrument also, the matter can be referred to the Collector for determination of the value or consideration. The order, thus, has been passed on 30.08.2016 (Annexure P-2) by the Collector, Gurgaon on the reference which had been made by the Sub Registrar, Manesar. The Collector has thereafter found that the market value, as such, was Rs.44,40,000/- of the land which, as noticed, had been transferred to the petitioners from M/s. Mapsko Builders Pvt. Ltd. The necessary clauses have already been reproduced above to show that possession had also been transferred. The agreement as such was registered at the initial stage for a sum of Rs.500/- and, therefore, in the above facts and circumstances, the petitioner wants to benefit regarding the transfer of the prime piece of land which is situated in the National Capital Region and for which the Collector rate was over Rs.44,00,000/-.

It is in such circumstances, the Revenue Authority is correct in coming to the conclusion that the stamp duty was payable for the Joint Development Agreement and no illegality or irregularity is apparent on the face of the order which would warrant interference in extra ordinary writ jurisdiction of this Court.

Resultantly, in view of the above discussion, the writ petitions stand dismissed in limine.

04.12.2020
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(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No