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

Date of Decision: 26th April, 2023

\+ **W.P.(C) 2052/2023 and CM APPL. 7765/2023**

SMT. RACHANA ASWAL AND ORS ..... Petitioners

Through: Mr. Manish Kumar & Ms. Aparajita Jha, Advocates. (M:8287387799)

versus

GOVT. OF NCT OF DELHI AND ANR ..... Respondents

Through: Mr. Satyakam, ASC with Ms. Pallavii Singh, Advocate. (M:7300767116)
Ms. Manika Tripathy (SC for DDA), Mr. Ashutosh Kaushik, Mr. Chirantan Saha, Advocates. (M:9804239379)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

2. The Petitioner No.1- Ms. Rachana Aswal who is the wife of Late Mr. Deependar Singh Patni ('*the deceased*'), along with the two minor children Petitioner No. 2-Master Aarav Singh Patni and Petitioner No. 3-Master Atharv Singh Patni has filed the present petition seeking the following prayer:

> *"a. issue a writ/order or direction in the nature of mandamus, certiorari directing issuance of fresh e-Stamp papers or in the alternate refund of entire amount alongwith interest accrued thereon @ 12 % per annum to the Petitioners enabling the Petitioners to purchase e-stamp paper afresh to Respondent no.1*
> *b. direct Respondent No.2 to execute Conveyance Deed in favour of the Petitioners as expeditiously as possible*

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upon Petitioners furnishing fresh e-Stamp Paper issued by Respondent No.1; and
c. Pass any such further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case"

3. The Petitioner and her deceased husband, had applied with the Respondent No. 2-DDA for an MIG flat and were allotted Flat no. 544, Fourth Floor, Pocket-2, Sector-19, Phase 1, Dwarka, New Delhi (*'said premises'*). A total consideration of Rs.79,73,360/- has been paid on 26th January 2019. The Petitioner and the deceased had purchased e-stamp paper for the value of Rs.3,98,700/- on 28th June 2019 for completion of the purchase formalities and for execution of the conveyance deed *qua* the said premises in their favour. The date was fixed for execution of the conveyance deed by the Respondent No. 2-DDA on 3rd March, 2020, however, with the outbreak of Covid-19 pandemic the said date was moved vide communication dated 25th August, 2020 to 23rd September 2020. In the meantime, during the second wave of COVID-19 pandemic, the husband of the Petitioner unfortunately passed away on 11th May, 2021. The Petitioner, meanwhile, has had to complete various formalities and, finally, obtained mutation *qua* the said premises from the Respondent No. 2-DDA on 22nd November, 2022 in favour of herself and her two minor children.

4. The difficulty that the Petitioners now face is that the e-stamp paper which is now purchased, is more than six months old and the Petitioner, therefore, either seeks refund of the stamp duty or for directions to the Respondent No. 2-DDA to execute the conveyance deed on the basis of the earlier purchased e-stamp paper itself.

5. Notice was issued in this matter and Mr. Satyakam, ld. Counsel for the

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Respondent No. 1-GNCTD has filed an affidavit on record submitting that refund cannot be permitted in view of Section 54(c) of the Indian Stamp Act, 1899 which prescribes a six months period from the date of purchase for an application for refund to be made. On the other hand, Mr. Manish, ld. Counsel for the Petitioner relies upon the decisions of this Court in ***Rohit Khurana v. Govt. of NCT of Delhi [2022/DHC/005485]*** and also the judgment of the Supreme Court in ***Rajeev Nohwar v. Chief Controlling Revenue Authority Maharashtra State, Pune [C.A 5970/21 decision dated 21st September 2021]*** to establish that the e-stamp paper has not expired in terms of Section 54(c) of the Indian Stamp Act, 1899.

6. Heard ld. counsels for the parties.

7. A perusal of the present petition would show that the Court is dealing with extenuating circumstances owing to two reasons. ***Firstly***, the outbreak of the COVID-19 pandemic and, ***secondly***, the demise of the Petitioner's husband in whose name the e-stamp paper was jointly purchased by the Petitioner No.1 on 28th June 2019.

8. There is no doubt as to the fact that the e-stamp paper dated 28th June 2019 was in fact purchased and stamped in both the names of the Petitioner and the deceased. Upon the demise of the husband, obviously, the e-stamp paper cannot be rendered completely redundant and useless inasmuch as the Petitioner being the joint purchaser, should be permitted to use the e-stamp paper for the purpose of the execution of the conveyance deed of the said premises. Moreover, the e-stamp paper does not have any expiry date as held by the Supreme Court in ***Thiruvengada Pillai v. Navaneethammal [2008 (3) SCR 23]***.

9. The question as to whether the six-month limitation period for refund

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under Section 54(c) of the Stamp Act, 1899 would apply in this case or not is thus doubtful, since there is no expiry date for e-stamp paper. Therefore, the six-month time-line as prescribed under Section 54(c) of the Stamp Act, 1899 would not apply for reusing the e-stamp paper, so long as the genuineness of the said e-stamp paper is not in question.

10. On this issue the judgment of the Supreme Court in ***Thiruvengada Pillai (supra)*** holds as under:

> *"11. The Trial Court and the High Court have doubted the genuineness of the agreement dated 5.1.1980 because it was written on two stamp papers purchased on 25.8.1973 and 7.8.1978. The learned counsel for first respondent submitted that apart from raising a doubt about the authenticity of the document, the use of such old stamp papers invalidated the agreement itself for two reasons. Firstly, it was illegal to use stamp papers purchased on different dates for execution of document. Secondly, as the stamp papers used in the agreement of sale were more than six months old, they were not valid stamp papers and consequently, the agreement prepared on such 'expired' papers was also not valid. We will deal with the second contention first.* ***<u>The Indian Stamp Act, 1899 nowhere prescribes any expiry date for use of a stamp paper</u>****<u>. Section 54 merely provides that a person possessing a stamp paper for which he has no immediate use (which is not spoiled or rendered unfit or useless), can seek refund of the value thereof by surrendering such stamp paper to the Collector provided it was purchased within the period of six months next preceding the date on which it was so surrendered. The stipulation of the period of six months prescribed in section 54 is only for the purpose of seeking refund of the value of the unused stamp paper, and not for use of the stamp paper. Section 54 does not require the person who has purchased a stamp paper, to use it within six months. Therefore, there is no</u>*

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impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for a document".

11. Therefore, as held in ***Thiruvengada Pillai (supra)***, the e-stamp paper cannot be said to have expired. In the Petitioners' case as well, the e-stamp papers cannot be said to have expired.

12. In view of the above facts and circumstances, considering the extenuating circumstances of the Petitioners, it is directed that the original e-stamp paper dated 28th June 2019 be returned to the Petitioners. The Respondent No. 2-DDA shall execute the conveyance deed subject to other formalities being completed by the Petitioners in terms of its own mutation letter dated 22nd November, 2022 in favour of the two Petitioner-minor children with the Petitioner No.1 as their guardian. The said conveyance deed shall be executed on the already jointly purchased e-stamp paper dated 28th June 2019, purchased in the name of the Petitioner and her deceased husband. It is made clear, that this order is being passed in the peculiar facts of this case.

13. The e-stamp paper dated 28th June 2019 be returned to the Petitioner within two weeks upon the Petitioner approaching the Collector of Stamps.

14. With these observations, the present petition, along with all pending applications, are disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 26, 2023
dj/dn

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