



2023:DHC:8359-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22.11.2023

+ **W.P.(C) 10786/2019**

RAMESH CHANDRA KALRA

..... Petitioner

Versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Parvinder Chauhan & Mr. Aman Ghawana, Advs.
Mr. Rajat Joseph, Adv.

For the Respondents : Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Ms. Kunjala Bhardwaj & Mr. M Bajaj, Advs. for UOI.

Mr. Gautam Naryan & Ms. Asmita Singh,
Advs. for GNCTD.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition being aggrieved by the order dated 12.02.2019 (hereafter '**the impugned order**') whereby, his application for refund of stamp duty (E-stamp Certificate) for an amount of ₹15,00,000/- was rejected on the ground that the same was filed beyond the period of six months from the date



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of its purchase. In the aforesaid context, the petitioner impugns Section 50(2) of the Indian Stamp Act, 1899 (hereafter '**the Act**') as being *ultra vires* Articles 14 and 265 of the Constitution of India. The petitioner also impugns Section 54(c) of the Act as *ultra vires* to Article 14 of the Constitution of India.

FACTUAL CONTEXT

2. The petitioner entered into an Agreement to Sell dated 10.06.2011 (hereafter '**the Agreement**') for the purchase of an immovable property bearing the address, 27-A, Malviya Nagar, Delhi-110017, admeasuring 100 sq.yds. (hereafter '**the subject property**') at a total sale consideration of ₹3,40,00,000/- with one Sh. Inder Mohan Kapur. Thereafter, disputes arose between the parties in respect of the Agreement. The petitioner lodged an FIR (FIR No.537/2014) under Sections 406/420 of the Indian Penal Code, 1860 with the Malviya Nagar Police Station, New Delhi. He also instituted civil proceedings in respect of the Agreement.

3. Sh. Inder Mohan Kapur filed a bail application (Bail Application No.1337/2014) before this Court, which was taken up on 06.06.2014. During the course of those proceedings, the learned counsel appearing for Sh. Inder Mohan Kapur submitted that he was willing to transfer the subject property to the petitioner, subject to the terms and conditions as may be settled between the parties. He also submitted that Sh. Inder Mohan Kapur had agreed to deposit a sum of ₹60,00,000/-, which he had received from the petitioner. On that date,



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the petitioner was also present in Court and had also expressed his willingness to settle the matter through mediation.

4. After hearing the Assistant Public Prosecutor, the Court directed that Sh. Inder Mohan Kapur not be arrested subject to his depositing a sum of ₹60,00,000/- with the Registrar General of this Court. Since the parties had expressed their willingness to settle the disputes through mediation, the Court directed the parties to appear before the Delhi High Court Mediation and Conciliation Centre on 09.06.2014 for an amicable resolution of their disputes.

5. The petitioner claims that in the mediation proceedings Sh. Inder Mohan Kapur expressed his willingness to convey the subject property. Since, the parties were in advance stage of mediation and it appeared that the disputes would be resolved with conveyance of the subject property; on 10.08.2015, the petitioner purchased stamp duty (E-stamp Certificate No. DL41156694838388N) of a value of ₹15,00,000/-. Thereafter, on 30.10.2015, this Court allowed Sh. Inder Mohan Kapur's bail application.

6. Although, the aforesaid mediation proceedings continued, the same did not fructify in a settlement entailing conveyance of the subject property to the petitioner. In the circumstances, on 11.04.2016, the petitioner filed an application with respondent no.3, Collector of Stamps, Government of National Capital Territory of Delhi (hereafter '**the Collector**') seeking a refund of the stamp duty paid.



7. However, the petitioner's application was not processed. In the circumstances, the petitioner was constrained to file a writ petition [W.P.(C) No.12104/2018 captioned **Ramesh Chandra Kalra v. GNCT of Delhi & Anr.**], *inter alia*, praying that the Collector be directed to process the petitioner's application for the refund of ₹15,00,000/- against purchase of e-stamp paper along with interest, at the rate of 12% per annum. The said petition was disposed of by an order dated 14.11.2018 directing the respondents to either refund the e-stamp duty within a period of two weeks from that date or communicate the reasons for refusing to do so.

8. Thereafter, by the impugned order dated 12.02.2019, the Collector rejected the petitioner's application for refund of e-stamp duty by referring to Section 50(2) and Section 49 of the Act, on the ground that the petitioner had submitted the application after the expiry of six months from the date on which the same was purchased.

REASONS & CONCLUSION

9. Chapter-V of the Act contains provisions regarding allowance of stamps in certain cases. Section 54 of the Act postulates that where a person is possessed of a stamp or stamps which has/have not been spoiled or rendered unfit or useless for the purpose intended but for which he has no immediate use, the Collector shall repay the value of the stamp or stamps after deducting 10% of the value upon the person delivering the stamps to the Collector. However, this is subject to the Collector being satisfied that the stamp or stamps were purchased with



the *bona fide* intention to use them; that the person has paid full price of the same; and that the same were purchased within a period of six months, next preceding the date on which the same was delivered.

10. The petitioner claims that withholding of refund of stamp duty violates Article 265 of the Constitution of India as it amounts to exacting tax without authority of law. The petitioner rests his case on the decision dated 18.03.2019 of a Coordinate Bench of this Court in ***Govt. of NCT of Delhi & Anr. v. Dr. Poornima Advani & Anr*¹**. In that case, the Court had rejected the said appeal and upheld the decision of the learned Single Judge in ***Dr. Poornima Advani & Anr. v. Govt. of NCT of Delhi & Anr.*²** In the said case, the respondents had rejected the application for refund of stamp duty that had been lost. The Court noted that in cases where the stamp duty has been lost, the Act did not expressly provide for refund of the same. However, the expression ‘obliterate’ as used in Section 49(a) of the Act ought to be read as including cases where the stamp paper was lost before its use. The Court also observed that the stamp duty was in the nature of a tax and therefore, the respondents could not collect tax as the taxing event had not occurred. The Court noted that stamp duties are payable on instruments and where the instruments are not executed there is no levy of stamp duty. And, in absence of levy, the tax could not be collected. The Court thus, held that the respondents could not retain the amount paid towards anticipated stamp duty.

¹ LPA 188/2019 dated 18.03.2019

² Neutral Citation No.2018:DHC:5219



11. It is contended on behalf of the petitioner that since stamp paper had not been used for engrossing the Agreement – the purpose for which it was purchased – the amount of stamp duty is required to be refunded notwithstanding that the application has been filed beyond the period of six months from the date of purchase of the same.

12. It is the respondents' case³ that the challenge as laid to Section 54 of the Act does not arise as the said section has no application in the facts of the present case. It is contended on behalf of the respondents that Section 54 of the Act is applicable only in cases where the stamp paper is not spoiled or rendered unfit or useless for the purpose intended but for which a person has no immediate use. It is contended that in the facts of the present case, the stamp paper has been spoiled as the petitioner has put a mark on it (his initials /signature). It is thus contended that, the provisions of Section 49(a) of the Act cannot be applied.

13. At this stage, it is relevant to refer to the statutory provisions of the Act. As noted above, Chapter-V of the Act contains provisions regarding allowance for stamps in certain cases. Section 49 of the Act provides for allowance for spoiled stamps. Section 51 of the Act provides for allowance in cases of printed forms which are no longer required by Corporations. Section 52 of the Act provides for allowance for misused stamps and Section 54 of the Act provides for stamps which are not required for immediate use but have not been

³ Supplementary Affidavit affirmed on 04.12.2020



spoiled or rendered unfit for the purpose intended. Sections 54A and 54B of the Act contain provisions regarding allowances for stamps in the denominations of *annas* and the allowance for Refugee Relief Stamps, respectively. Section 55 of the Act provides for allowance on renewal of certain debentures.

14. Sections 49, 50 and 54 of the Act are relevant and are set out below:

“49. Allowance for spoiled stamps. — Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases herein after mentioned, namely: —

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person:

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto:

(c) in the case of bills of exchange [payable otherwise than on demand] or promissory notes—

(1) the stamp on [any such bill of exchange] signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance: provided that the paper on which any such stamp is impressed, does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon:

(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands:



(3) the stamp used or intended to be used for 1 [any such bill of exchange] or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee: provided that another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, or note;

(d) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found to be absolutely void in law from the beginning:

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed:

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value:

(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value:



(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped: Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable, has been paid is an impressed stamp within the meaning of this section.

50. Application for relief under section 49 when to be made.—

The application for relief under section 49 shall be made within the following periods, that is to say, —

- (1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument:
- (2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled:
- (3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

Provided that, —

- (a) when the spoiled instrument has been for sufficient reasons sent out of 1 [India], the application may be made within six months after it has been received back in [India];
- (b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

54. Allowance for stamps not required for use. — When any person is possessed of a stamp or stamps which have not been



spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting [ten naye paise] for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

(a) that such stamp or stamps were purchased by such person with a bona fide intention to use them; and

(b) that he has paid the full price thereof; and

(c) that they were so purchased within the period of six months next preceding the date on which they were so delivered: Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.”

15. According to the respondents, Section 49(a) of the Act is applicable. It is stated that e-stamp certificate has been inadvertently and undesignedly spoiled by writing on the stamp paper.

16. Although, this Court has certain reservations whether the stamp paper can be stated to have been spoiled by a party initialling the same, however, the learned counsel appearing for the petitioner did not seriously contest the said contention. Therefore, for the purpose of the present petition, we consider it apposite to proceed on the basis that e-stamp certificate has been spoiled.

17. It is also contended on behalf of the respondents that the stamp paper can also be considered as spoiled in terms of Section 49(d)(5) of the Act on account of refusal of any person to act under the same.



18. Clearly, Section 49(d)(5) of the Act is inapplicable because an instrument has not been engrossed on e-stamp certificate. Clause (d) of Section 49 of the Act is applicable only in cases where an instrument has been executed and, undisputedly, no instrument has been executed in this case.

19. In terms of Section 50(2) of the Act, an application for relief under Section 49 of the Act is required to be made within a period of six months from the date “*after the stamp has been spoiled*”. However, in the present case, the petitioner’s application has been rejected on the ground that the application was filed six months after the date of purchase of the stamp certificate.

20. It was contended on behalf of the petitioner that the stamp paper was marked just prior to applying for its refund. In view of the above, the impugned order dated 12.02.2019 is liable to be set aside as the petitioner’s application would not be barred in terms of Section 50(2) of the Act.

21. In the present case, the petitioner has purchased the e-stamp certificate while the parties were in mediation, in anticipation that the same would fructify in a settlement entailing conveyance of the subject property in his favour. Undisputedly, the petitioner had engaged in the said proceedings with the *bona fide* intention of resolving the disputes. He had purchased the stamp certificate by paying the full consideration for the *bona fide* purpose of using the same for conveyance of the subject property.



22. It is also apparent that there has been no undue delay or laxity on the part of the petitioner in applying for refund. The order dated 30.10.2015 passed by this Court in Bail Application No.1337/2014 captioned ***Inder Mohan Kapoor v. State*** records that the parties have been trying to arrive at an amicable resolution of their disputes with regards to the subject property. The petitioner's application was filed within a period of six months thereafter.

23. In the case of ***Committee- GFIL v. Libra Buildtech Private Limited & Ors.***⁴ the stamp papers were purchased by the applicants on 02.09.2011 and the same were handed over to the Committee constituted by the Supreme Court in ***Securities and Exchange Board of India v. Golden Forests India Limited***⁵ (referred to as the GFIL Committee). Sale deeds in respect of certain properties were executed on 23.12.2011, however, the properties were not handed over to the applicants. Subsequently, by an order dated 09.07.2012, the High Court directed the GFIL Committee to refund the amount deposited by the bidders since they were not in a position to handover the possession of the properties. The review petition against the said order was rejected. The GFIL Committee challenged the orders by filing Special Leave Petitions before the Supreme Court. One of the questions that arose for consideration was regarding refund of the stamp duty. The applicants had applied for refund of the stamp duty on 22.10.2012 and 02.11.2012. The same was rejected, *inter alia*, on

⁴ (2015) 16 SCC 31

⁵ (2009) 16 SCC 206



the ground of limitation. The Supreme Court held in favour of the applicants and directed the concerned authority to refund the entire stamp duty spent by the applicants for purchasing the stamp papers for the execution of sale deeds. The Supreme Court directed the refund of stamp duty for several reasons as is evident from the following extracts of the said decision:

“24. In our considered opinion, keeping in view the undisputed facts mentioned above, the applicants are also entitled to claim the refund of entire stamp duty amount of Rs 6.22 crores from the State Exchequer, which they spent for execution of sale deeds in their favour in relation to the properties in question. This we say for the following reasons.

25. In the first place, admittedly the transaction originally intended between the parties i.e. sale of properties in question by GFIL Committee to the applicants was not accomplished and failed due to reasons beyond the control of the parties. Secondly, this Court after taking into consideration all facts and circumstances also came to the conclusion that it was not possible for the parties to conclude the transactions originally intended and while cancelling the same directed the seller (GFIL Committee) to refund the entire sale consideration to the applicants and simultaneously permitted the applicants to claim refund of stamp duty amount from the State Government by order dated 26-9-2012. Thirdly, as a result of the order of this Court, a right to claim refund of amount paid towards the stamp duty accrued to the applicants. Fourthly, this being a court-monitored transaction, no party was in a position to take any steps in the matter without the permission of the Court. Fifthly, the applicants throughout performed their part of the contract and ensured that transaction in question is accomplished as was originally intended but for the reasons to which they were not responsible, the transaction could not be accomplished. Lastly, the applicants in law were entitled to claim restoration of all such benefits/advantages from the State once the transaction was cancelled by this Court on 26-9-2012 in the light of the principle contained in Section 65 of the Contract Act which enable the party to a contract to seek restoration of all such advantage from other party which they took from such contract when the contract is discovered to be void or becomes void. This was a case where contract in



question became void as a result of its cancellation by order of this Court dated 26-9-2012 which entitled the applicants to seek restitution of the money paid to the State for purchase of stamp papers.”

24. In the aforesaid case, the Supreme Court also held that the case of the applicants could be considered under Section 49(d)(2) of the Act as the said interpretation would advance the cause of justice. Paragraph 30 of the said decision is relevant and is set out below:

“30. Even apart from what we have held above, when we examine the case of the applicants in the light of Sections 49 and 50 of the Act, we find that the case of the applicants can be brought under Section 49(d)(2) read with Section 50(3) of the Act to enable the State to entertain the application made by the applicants seeking refund of stamp duty amount. The interpretation, which advances the cause of justice and is based on the principle of equity, should be preferred. We hereby do so.”

25. It is also relevant to refer to the decision of the Supreme Court in *Rajeev Nohwar v. Chief Controlling Revenue Authority Maharashtra State, Pune & Ors.*⁶ In the said case, the appellant had booked a residential flat in a project being developed in Pune for a consideration of ₹1,68,88,095/-. The appellant had also paid ₹1,58,28,221/- out of the agreed sale consideration. The appellant had purchased e-stamp paper for an amount of ₹8,44,500/- from IDBI Bank, Aundh, Pune for execution of the Agreement to Sell. However, thereafter, disputes arose between the appellant and the developer. The appellant filed a complaint before the National Consumer Disputes Redressal Commission, which was allowed by an order dated 06.05.2016. The appellant was given an option to execute the

⁶ 2021 SCC OnLine SC 863 decided on 24.09.2021



agreement with the developer in which case the developer would pay compensation at the rate of ₹10,00,000/-. In the alternative, the developer was directed to refund the entire sale consideration together with interest at the rate of 12% per annum as well as compensation of ₹10,00,000/-. The appellant elected to receive refund of the amount paid along with interest at the rate of 12% per annum. The said amount was received by the appellant on 11.07.2016. Thereafter, on 16.07.2016, the appellant applied for refund of the stamp duty of ₹8,44,500/- which was lying unused. The appellant's application was rejected on the ground that the same was made beyond the period of six months as required under Section 48(3) of the Maharashtra Stamp Act, 1958. The Supreme Court held that the case was not covered by any statute. And, rejection of the application for refund would violate equity, justice and fairness. Accordingly, the Supreme Court directed the concerned authority to refund the stamp duty along with 6% interest per annum.

26. As stated above, in the facts of the present case, most of the issues sought to be agitated do not arise since it is the respondents' case that the stamp paper stands spoiled and is covered under Clause (a) of Section 49 of the Act. Mr Joseph, learned counsel for the petitioner, did not press the challenge to Section 53(c) of the Act, which postulates a deduction of ten per cent of the value of stamps.

27. As noted above, according to the respondents, the present case is covered under Section 49(a) of the Act. Thus, concededly, the period of limitation, as specified under Section 50(2) of the Act for



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applying for refund would be applicable. It is, therefore, not open for the respondents to thus, deny the petitioner's application for refund on the ground that it has been made after a period of six months from the date of purchase of the e-stamp certificate.

28. As noted above, the period of limitation for cases covered under Section 49(a) of the Act would be six months from the date on which the stamp paper was spoiled. No enquiry as to when the stamp paper was spoiled was undertaken by the respondents. However, the petitioner's contention that the stamp paper had been marked just prior to making an application for refund is also not seriously contested. It must, therefore, be accepted. It is also relevant to consider that there has been no delay in filing the application after the concerned parties (petitioner and Sh. Inder Mohan Kapur) could not arrive at a settlement entailing conveyance of the subject property.

29. In view of the above, we consider it apposite to dispose of the present petition by directing the respondents to refund 90% of the stamp duty, that is ₹13,50,000/-, along with interest, at the rate of 6% per annum, from the date of application till the date of payment. It is so directed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 22, 2023

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