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

\+ W.P.(C) 17407/2022 & CM APPLs. 2885/2023, 50141/2023 & 50142/2023

CTA APPARELS PVT LTD. ..... Petitioner

Through: Mr. Ashish Mohan, Mr. Hemant Manjari, Ms. Sagrika Tanwar and Mr. Digvijay Singh, Advocates.

versus

GOVT OF NCT OF DELHI ..... Respondent

Through: Mr. Anupam Srivastava, ASC for GNCTD with Ms. Vasuh Misra, Advocate.
Mr. Tanuj Gulati, Advocate for Intervenor.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **06.02.2024**

1. The Petitioner has approached this Court challenging the Order dated 07.11.2022 passed by the Respondent/Collector of Stamps assessing the value of the property bearing No.66-A, Friends Colony, New Delhi-110065 (admeasuring 1100 sq. yds.) (*hereinafter referred to as "property in question"*) only on the basis of circle rate and without taking into account any other factors.

2. The facts, in brief, are that the property in question was purchased by the Petitioner for a sum of Rs.36,00,00,000/- by way of a Sale Deed. The Sale Deed was registered on 12.09.2016 and a stamp duty for a sum of Rs.2,16,00,000/- was paid by the Petitioner. The registering authority

objected that there was under valuation in the transaction as the prevailing circle rate is higher. The registering authority, thereafter, referred the matter to the Collector for fixing the market value of the property in question under Section 47A of the Indian Stamp Act, 1899. The Collector *vide* Order dated 22.07.2017 passed an Order on the basis of the circle rate. The Collector in that round did not compare the Sale Deeds of surrounding properties for the reason that it was not supplied by the Petitioner. The Petitioner, thereafter, preferred an appeal before the Additional District Judge which was dismissed *vide* Order dated 16.03.2018. Being aggrieved by the Order dated 22.07.2017 passed by the Collector and the Order dated 16.03.2018 passed by the Additional District Judge, the Petitioner preferred a writ petition being W.P.(C) 3587/2018 before this Court. A Co-ordinate Bench of this Court allowed the said writ petition *vide* Judgment dated 14.03.2019. The learned Single Judge held that the circle rate alone cannot be the only measure to calculate the value of the property for fixing the stamp duty to be paid. The leaned Single Judge held that the circle rate can only be one of the factors to calculate the stamp duty. The learned Single Judge, after analysing the law, observed as under:

> *"41. This Court is of the view that the aforesaid approach is erroneous. There may be cases where the parties may not wish to contest the levy of stamp duty on the basis of values of circle rates. It may not be worthwhile for a party to contest the same if the difference of the value is not significant. However, that does not mean that the transaction value is less than the market value of the property. The five sale deeds produced by the petitioner and three of the five sale deeds relied upon by the Collector clearly indicate that the transaction values of the properties were less than the circle rates. Clearly, the said material could not be*

brushed aside only for the reason that the concerned parties had not contested the levy of stamp duty in excess of that which was payable on the consideration as set forth in the documents.

42. In view of the above, this Court is of the view that the impugned order cannot be sustained. The impugned order as well as the order dated 22.07.2017 passed by the Collector are set aside and the matter is remanded to the Collector to consider afresh in accordance with law. The Collector shall issue a fresh notice to the petitioner in accordance with Rule 7(1) of the Rules and decide afresh after affording the petitioner an opportunity to be heard."

3. The aforesaid Judgment was challenged by the Respondent by filing an appeal being LPA No.278/2019. The Division Bench of this Court *vide* Judgment dated 15.11.2019 upheld the Order passed by the learned Single Judge and held that the circle rate alone cannot be the only measure to calculate the stamp duty and that the valuation of the property depends upon the several factors like area of the plot in question, use of the property in question, nature of property in question whether it is a new property or old property, the width of the road upon which the property is situated, the nature of the adjacent properties etc. The Division Bench, thereafter, remanded the matter back to the Collector and directed the Collector to once again determine the value of the property in question and the the stamp duty to be paid. Paragraph Nos.6 to 10 of the Judgment dated 15.11.2019 reads as under:

"6. Counsel for the respondent (original petitioner) has also relied upon several decisions. As the matter is being remanded by the learned Single Judge and as we are dismissing this appeal, without going into the

*details of the judgments, **but**, <u>suffice it to say that the circle rates are not the only factors to be kept in mind by the Collector. The circle rate can be one of the factors to be kept in mind by the Collector for determination of the value under Section 47A of the Indian Stamp Act, 1899</u>, **especially**, when the <u>person</u> who has approached for registration of the sale deed <u>is disputing the valuation pointed out by the registering authority</u>. In such an eventuality, detailed procedure ought to have been followed by the Collector as per Section 47-A(2) of the Act, 1899 keeping in mind the aforesaid aspects of the matter as well as the principles propounded by the Hon'ble Supreme Court, for determination of the value of the property. <u>The mechanical approach of the Collector only to follow the circle rate is hereby deprecated.</u>*

*7. With the aforesaid observations, <u>this Letters Patent Appeal is hereby dismissed as we see no reason to interfere with the judgment and order</u> **dated 14th March, 2019** passed by the learned Single Judge in **W.P.(C) 3587/2018** since no error was committed by the learned Single Judge in appreciating the aforesaid facts of the matter.*

8. The money deposited by the respondent (original petitioner) with this Court as per the order dated 12th April, 2018 passed by the learned Single Judge shall remain deposited with the Registrar General of this Court and will be invested in a nationalised bank, since the matter is being remanded to the Collector for fresh determination of the valuation, and if any additional stamp duty is required to be paid by this respondent (original petitioner), the amount of ₹1,06,87,791/- will be adjusted towards the same. If more amount is to be deposited by the original petitioner, the aforesaid amount will be adjusted.

If lesser amount is to be paid by the original

> *petitioner, rest of the amount will be returned to the original petitioner.*
>
> *9. <u>Appellant as well as original petitioner can move appropriate application for withdrawal of the amount in this Letters Patent Appeal</u>. They are also permitted to move an application in this Letters Patent Appeal in case of any difficulty.*
>
> *10. The Collector will determine value of the property in question, in accordance with law and keeping in mind the aforesaid decisions of the Hon'ble Supreme Court and will keep in mind the principles mentioned in this judgment for arriving at value of the property."*
>
> *(emphasis supplied)*

4. Pursuant to the remand, the Collector of Stamps has passed the Impugned Order dated 07.11.2022. The relevant portion of the said Order reads as under:

> *"In this matter the quantum of stamp duty is on a very higher side i.e, in Crores (Rs. 2,13,69,582/-). This being so, the undersigned has to be very cautious and careful in calculating the stamp duty so that there is no revenue loss to the Government Exchequer. There is one more apprehension that once the valuation of properties are started to be done on the variety of factors as laid upon by the Hon'ble High Court of Delhi, then the same would become pre-cedent and in future, everyone would start challenging the valuation based on circle rates.*
>
> *This being so, the undersigned prepared a comprehensive note with all the details of this case (alongwith another similar case) and submitted the same to Inspector General, Registration, Revenue Head Quarters O/o Divisional Commissioner / Pr.*

Secretary (Revenue), GNCT of Delhi, 5 Sham Nath Marg, Delhi-110054 for appropriate guidance and advice as to bow to proceed further in both these cases, while sending the file for advice, ***it was also suggested that an SOP be got prepared at Revenue headquarter level in this regard so as to maintain uniformity in all the Revenue Districts of GNCT of Delhi in disposing such cases.***

The above file has now been returned by Revenue (HQ) on 02.11.2022 with the following advice:

"Most of the Factors which can affect the Price/Rate of the properties are taken into consideration during (the process of notification/revision-of circle Rates. Accordingly, it is submitted that the notified Circle Rates are the best way to adjudicate the Stamp Duty for the Registration of Properties".

Accordingly, in terms of above. I hereby assess the value of the subject property on the basis of prevalent notified Circle Rates which comes to the tune of Rs. 71,61,59,700/-. which is chargeable to Stamp Duty and Transfer Duty amounting of Rs. 4,29,79,482/, Since, the Party/applicant has already paid stamp duty of Rs. 2,16,00.000/-, the instrument is found' to be deficient of Stamp Duty amounting to Rs. 2,13,69,582/-.

The party/applicant is directed to deposit the deficit stamp duty for getting his Sale Deed registered."

(emphasis supplied)

5. Learned Counsel appearing for the Petitioner contends that the Judgment dated 14.03.2019 passed by the Co-ordinate Bench of this Court in W.P.(C) 3587/2018 and the Judgment dated 15.11.2019 passed by the

Division Bench of this Court in LPA No.278/2019 has not been followed in letter and spirit by the Collector. He states that no reasons have been assigned as to what are the factors have been taken into account while calculating the stamp duty.

6. The Division Bench remanded the matter back to the Collector to re-assess the value of the property in question by taking into account various factors before ascertaining the market value for assessing the stamp duty. Learned Counsel appearing for the Respondent vehemently contends that an alternate efficacious remedy is available to the Petitioner inasmuch as an appeal is maintainable under Section 47-A(4) of the Indian Stamp Act. The fact that an appeal is maintainable against the Impugned Order will not come in way of the Petitioner for the reason that it is incumbent upon the Collector to follow the Judgment passed by this Court. Just because an alternate remedy is available does not mean that a writ Court does not have the jurisdiction to entertain a writ petition. The Apex Court in Radha Krishan Industries v. State of H.P., **(2021) 6 SCC 771** has held as under:

> *"**27.4.** An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law."*

7. A perusal of the Impugned Order shows that the Judgment dated 15.11.2019 passed by the Division Bench of this Court in LPA No.278/2019 has not been followed by the Collector and none of the factors pointed out by the Division Bench have been considered while fixing the market value of the property in question.

8. In view of the above, the Order dated 07.11.2022 is set aside and the

matter is remanded back to the Collector to determine the value of the property and the stamp duty to be paid and pass a reasoned Order taking into account various factors.

9. In view of the above, the writ petition is allowed. Pending applications, if any, stand disposed of.

SUBRAMONIUM PRASAD, J

FEBRUARY 6, 2024
S. Zakir