

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

% **Date of decision: 23rd December, 2015**

+ **W.P.(C) No.5975/2013**

MANU NARANG & ANR **Petitioners**

Versus

**THE LT. GOVERNOR, GOVERNMENT NATIONAL
CAPITAL TERRITORY OF DELHI AND ORS** ... **Respondents**

+ **W.P.(C) No.3591/2014, CM No.7330/2014 , CM No.16198/2014
(both for interim relief), CM No.6076/2015 (u/O-1 R-10 CPC) &
CM No.6094/2015 (u/S 151 CPC).**

AMIT GUPTA **Petitioner**

Versus

GOVT OF NCT OF DELHI & ORS. **Respondents**

+ **W.P.(C) No.10328/2015 & CM No.25753/2015 (for stay).**

ATUL GUPTA **Petitioner**

Versus

**LT. GOVERNOR, NATIONAL CAPITAL TERRITORY
OF DELHI AND ORS** **Respondents**

Counsels for the petitioners:-

Mr. Manav Gupta along with Ms. Esha Dutta, Adv. in W.P.(C) No.5975/2013.

Mr. Kumar Dushyant Singh, Adv. in W.P.(C) No.10328/2015.

Mr. Arvind Datar, Sr. Adv. with Mr. Anirudh Wadhwa along with Mr. Vipul Kumar, Adv. in W.P.(C) No.3951/2014.

Counsels for the respondents:-

Mr. Sanjay Poddar, Sr. Adv. with Mr. Sanjoy Ghosh, ASC

Mr. Rakesh Mittal, Adv. for DDA.

Mr. Rahul Chaudhary, Adv. for R-5.

Ms. Mini Pushkarna with Ms. Yoothika Pallavi, Adv. for SDMC.

Ms. Uttara Babbar with Mr. Vinod Kapoor, Adv. in CM No.2385/2015 in W.P.(C) No.3591/2014

Mr. Anshuman Sood, Adv. for Intervener.

Mr. Akshay Makhija, Standing Counsel with Mr. Vikas Bhadauria and Ms. Mahima Behl, Adv. for UOI.

Mr. Rajeev Kumar Yadav, Adv. for Mr. Gaurang Kanth, Adv for SDMC in W.P.(C) No.3591/2014.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. W.P.(C) No.5975/2013 was filed, (i) for declaration that the policy/practice of construing the basements of residential properties at par with the other floors for the purpose of evaluating the applicable stamp duty, under the (a) Indian Stamp Act, 1899; (b) Delhi Stamp (Prevention of Under Valuation of Instruments) Rules, 2007; and, (c) the Notification dated 4th December, 2012, is violative of Articles 14 & 19 of the Constitution of India; (ii) for a direction to the respondent Government of National Capital

Territory of Delhi (GNCTD) to prescribe for equitable stamp duty charges applicable in case of sale/purchase of basements in residential properties which are otherwise purely meant for parking or storage purposes; and, (iii) for a direction to the respondent GNCTD to modify the existing method for calculating the applicable stamp duty in case of sale of a floor of a residential property by taking into consideration the maximum permissible plinth area instead of the existing plinth area.

2. The petition was entertained and notice thereof issued.

3. W.P.(C) No.3591/2014 was filed in public interest for (i) declaration that a) the Delhi Stamp (Prevention of Under-Valuation of Instruments) Rules, 2007; b) the Circle Rate Notifications being Notification bb) No.7.2(12)/Fin.(E.I)/Part File/Vol.1 (ii)/3548 dated 18th July, 2007; bbb) No.F.1 (281)/Regn.Br./HQ/Div.Com./09/45 dated 4th February, 2011; and, bbbb) No. F.1 (152)/Regn.Br./Div.Com./HQ/2011/780 dated 4th December, 2012 are beyond the scope of the Stamp Act as applicable to Delhi; (ii) for declaration of the three Circle Rate Notifications aforesaid as discriminatory, arbitrary, unreasonable and having been framed without proper application of mind; (iii) for declaration that the exercise of valuation of properties in Delhi has not been undertaken with due consultation or application of mind;

(iv) for declaration that the frequency of revision of Circle Rates in Delhi is against the mandate of Rule 4(2) of the 2007 Rules supra; and, (v) for declaring Rule 4(2)(B) of the 2007 Rules as well as the Notifications as beyond the scope of Section 27(3) of the Stamp Act etc.

4. The said petition was also entertained and notice thereof issued.

5. W.P.(C) No.10328/2015 was filed, (i) impugning the Rule 4 of the 2007 Rules as unconstitutional and violative of Article 14 of the Constitution of India; and, (ii) impugning the Notification bearing no.F.1(953) Regn.Br./Div.Com./HQ/2014/5943 dated 22nd September, 2014 of the respondent GNCTD and seeking a mandamus to the respondents to determine the circle rates on the basis of basic amenities and infrastructure as provided to the areas in various parts of Delhi.

6. Though W.P.(C) No.5975/2013 was pending before a learned Single Judge of this Court but was also called before this Bench finding the questions involved therein to be identical to the questions raised in the W.P.(C) No.3591/2014 filed as a Public Interest Litigation and pending before this Bench.

7. After the completion of pleadings, arguments in the two petitions were commenced together and the senior counsel for the petitioner in W.P.(C)

No.3591/2014 was heard from 8th April, 2015 onwards. The arguments on behalf of the petitioners were concluded on 23rd April, 2015 and the matters posted for arguments on behalf of the respondent GNCTD. WP(C) 10328/2015 came up first on 4th November, 2015 and the questions therein being also identical, the counsel for the petitioner therein also joined in the hearing already underway. After several requests for adjournment, the senior counsel for the respondent GNCTD commenced his arguments on 19th November, 2015. However, finding that he was not addressing the contentions of the counsel for the petitioners, we on that date asked the counsel for the petitioners to submit their written submissions with advance copy to the counsel for the respondent GNCTD to enable the counsel for the respondent GNCTD to respond thereto. The matter was accordingly adjourned to 4th December, 2015.

8. The gravamen of the contentions of the petitioners was/is that the respondents, by ordering/directing (in the impugned circulars/orders) that in the eventuality of consideration declared in the transfer document (Deed of Conveyance/Sale etc.) being less than the minimum value (Circle Rates) of the property as prescribed from time to time, the stamp duty shall be charged on the basis of the minimum rates/circle rates, have taken away the

discretion vested in the authorities concerned *inter alia* under Section 47-A of the Stamp Act as applicable to Delhi.

9. The said Section 47-A is as under:-

“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.

(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.”

10. It was the argument of the senior counsel for the petitioner in W.P.(C) No.3591/2014 as well as of counsels in other petitions and reiterated on 19th November, 2015 that Section 47-A requires the Registering Officer, if has reason to believe that the value of the property or the consideration as set out in the instrument presented for registration is not truly set forth and/or that the property is under valued, to “after registering such instrument” refer the same to the Collector for determination of the value of consideration and the proper duty payable thereon. It was further the contention of the petitioners that even if the consideration as set forth in the transfer document/instrument presented for registration was/is below the prescribed circle rates, the Registering Officer cannot refuse to register the document or require the parties thereto to pay the stamp duty as per the circle rate, as required under

the impugned orders/circulars. It was contended that Section 47-A required the Registering Officer to, notwithstanding being of the view that the document is under-valued and the stamp duty is under-paid, register the document/instrument and to only thereafter refer the same to the Collector for determination of the appropriate value/stamp duty. Hence it was contended that the procedure which the impugned orders/circulars require the Registering Officers to follow is contrary to Section 47-A supra.

11. During the hearing on 19th November, 2015, finding that the senior counsel for the respondent GNCTD was not addressing the said issue/contention, we had invited his attention thereto and on his request adjourned the matter.

12. On 4th December, 2015 the senior counsel for the respondent GNCTD stated that the GNCTD had re-examined the matter in the aforesaid light and was prepared to issue a further order clarifying / amending the impugned orders/circulars. A draft order to be issued was handed over in the Court and a copy thereof also handed over to the counsel for the petitioners.

13. The counsels for the petitioners on going through the draft order proposed to be issued were not satisfied with the language thereof and contended that the same was likely to perpetuate the ambiguity.

14. Though the senior counsel for the respondent GNCTD suggested some changes to the draft/proposed order but no consensus could be arrived at.

15. Finding, that the respondent GNCTD, though after elaborate hearing, had realised the mistake in its impugned orders/circulars aforesaid, we suggested to the counsels that instead of respondent GNCTD issuing any clarificatory/amendatory order, we will dispose of these petitions by directing the procedure to be followed.

16. The counsel for the petitioner in W.P.(C) No.3591/2014 and the counsel for the respondent GNCTD were agreeable thereto.

17. However the counsels for the petitioners in other two petitions contended that they were placed differently.

18. However we pointed out to them that once it is clarified by this Court that the stamp duty paid on a transfer document need not always be in accordance with the prescribed circle rates and that if the valuation and stamp duty is below the circle rates, the procedure as prescribed in Section 47-A supra is to be followed, the grievances of the said petitioners would also be redressed, they were agreeable thereto.

19. The counsel for the Municipality also stated that the determination of valuation for the payment of transfer duty to the Municipality would also be as the determination for the purposes of stamp duty.

20. We accordingly reserved judgment.

21. We now proceed to dispose of all the writ petitions in the light of the developments as aforesaid on 4th December, 2015.

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,

- 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;
- 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.

23. We dispose of W.P.(C) No.5975/2013 by further clarifying that the parties presenting instruments/transfer document of basements of residential properties for registration, if of a consideration lower than the consideration / valuation in accordance with the circle rates, shall upon their instruments/transfer documents after registration, under Section 47-A supra being referred to the Collector, be entitled to satisfy the Collector of the consideration/valuation of the subject basement in residential properties

being lower than the consideration applicable to instruments/transfer documents of other floors in the same property and the Collector shall proceed to determine the same.

24. No other arguments/prayer/plea in the petitions was pressed during the hearing on 4th December, 2015.

25. The petitions are disposed of in terms above.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

DECEMBER 23, 2015

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