

:1:

W.P.No.10376-2019

THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH

SINGLE BENCH

Writ Petition No.10376 / 2019

Brilliant Foundation

vs.

State of Madhya Pradesh and others

Coram :

Hon'ble Ms. Justice Vandana Kasrekar

Shri Mudit Maheshwari, learned counsel for the petitioner

Shri Vikas Yadav, learned Government Advocate for the
respondents/State.

ORDER

(Passed on 05 / 06 / 2020)

By this petition under Article 226 of the Constitution of India, the petitioner/Company has challenged order dated 19.3.2019 (Annexure P/10) passed by the respondent No.4 whereby the respondent/Authority denied refund of excess amount of stamp duty in terms of provision (c) to Article 25 of Schedule I-A of the Indian Stamps Act, 1989.

2. That, the respondent No.4 passed the impugned order rejecting the application for refund of stamp duty filed by the petitioner/company on the ground that the said provision does not apply to the case of the petitioner/company as ad-valorem duty was paid at 1% and not at 5% of the market value.

3. Learned counsel for the petitioner has submitted that the impugned order suffers from the following illegalities:-

(a) Respondent No.4 miserably failed in construing the true interpretation of Proviso (c) to Article 25 of the Indian Stamp Act. Proviso (c) categorically stipulates that, if stamp duty is paid by any person at the time of Agreement to sell then the same is liable to be adjusted at the time of Registered Sale Deed.

(b) Respondent No.4 erred in imposing a precondition of payment of Stamp Duty at the rate of 5% for availing benefit of Proviso (c) to Article 25. A bare perusal of Proviso (c) to Article 25 would reveal that no such pre-condition is imposed by the Legislature and therefore, imposition of such precondition for adjustment on the Stamp Duty is not only arbitrary but also illegal and de-hors the Statutory Provision, and thus, bad in law.

(c) Respondent No.4 erred in not considering the fact that ad-valorem duty of 1% was paid by the petitioner/company in

accordance with the then prevailing Article 5(e)(ii) and the same was liable to be adjusted in terms of Proviso (c) to Article 25.

(d) Respondent No.4 erred in not considering Clause 2 of the Agreement to sell wherein it is categorically agreed between the parties that possession will be given to the petitioner/company after execution of registered sale deed, meaning thereby that the possession was not given at the time of execution of the Agreement to sell.

4. In the reply filed by the State Government an objection as to availability of alternative remedy has been taken. It is submitted that there is no provision of appeal under the Indian Stamp Act against order passed under Section 45 of the Indian Stamps Act and no specific provision of appeal/revision is mentioned in the reply filed by the State Government. In absence of statutory provision for appeal/revision the ground of availability of alternative remedy is devoid of merits. Relying on the judgments passed by the Apex Court in the case of **Whirlpool Corporation vs. Registrar of Trade Mark** : reported in (1998) 8 SCC 1; **Popcorn Entertainment vs. City Industrial Development Corporation** : reported in (2007) 9 SCC 593; **Harbanslal Sahnia vs. Indian Oil Corporation Ltd.** : reported in (2003) 2 SCC 107. It is submitted that, in all these judgments the Apex Court has held that alternative remedy is

not a bar on exercise of powers conferred upon this Court under Article 226 of the Constitution of India. Section 45 of the Indian Stamps Act provides for refund of excess amount of stamp duty. The State Government in its reply has further stated that option of adjustment was available in *e-sampada* software, the same is categorically denied by the petitioner. No evidence or material has been produced by the respondent in support of this plea. In fact, the petitioner has categorically stated in its application that the said option was not available in respect of adjustment of stamp duty.

5. Heard the learned counsel for the parties and also perused the record.

6. Extract of proviso (c) to Article 25 of the Indian Stamps Act is reproduced as under:-

“Provided that – (c) where an agreement to sell an immoveable property is stamped with ad-valorem duty required for conveyance and a sale deed in pursuance of such agreement is subsequently executed, the duty on such sale deed shall be the duty payable under the article less the duty already paid subject to a minimum of Rs.1000/-.”

According to the said proviso, where an agreement to sell an immoveable property is stamped with ad-valorem duty required for conveyance and a sale deed in pursuance of such

agreement is subsequently executed, the duty on such sale deed shall be the duty payable under the article less the duty already paid. Thus, as per this section, if the stamp duty has been paid on a conveyance and a sale deed in pursuance of such agreement is subsequently executed and if the duty has been paid in subsequently executed sale deed is more or less then the stamp duty payable for conveyance that can be refundable if the same is paid in excess.

7. In the present case, the stamp duty paid on sale deed in pursuance to the agreement has not been refunded to the petitioner/company. The petitioner/company had already paid a sum of Rs.8,50,000/- being 1% stamp duty of the total sale consideration of Rs.8,50,000/- (towards agreement to sell executed on 18.3.2010 without possession) by virtue of the then existing provision of Section 5(e)(ii) of the Indian Stamps Act, 1989 which was inserted and remained in the statute book from 13.8.2002 to 31.3.2013. The said amount of Rs.8,50,000/- was liable to be adjusted in the stamp duty payable on the sale deed executed on 14.8.2018 by virtue of the aforesaid provision when the petitioner applied for refund of the said amount and the same was dismissed by the respondent No.4 vide impugned order dated 19.3.2019.

8. In the present case, the petitioner/company has earlier entered into an agreement to sell in respect of a plot No.16, PSP admeasuring 8320-585 sq.ft situated at Scheme No.78 Part-II, Indore for its use as educational purpose for a total consideration of Rs.8,50,000/-. Prior to that, an agreement of sell was executed between the parties on 18.3.2010. Due to deficit stamp duty paid under the said Agreement, the Collector of Stamps, Indore-3 had passed order dated 23.6.2017 and directed the petitioner to pay a sum of Rs.8,50,000/- and also imposed penalty of Rs.50,000/-. In compliance of the said direction passed in order dated 23.6.2017 by the Collector of Stamps, Indore-3, the petitioner deposited a sum of Rs.9,00,000/-.

Provision of the Article 25 of the Indian Stamps Act, 1899 is reproduced as under:-

“25. Conveyance, no being a transfer charged or exempted under No.61 – Five percent of the market value of the property which is the subject matter of conveyance or the amount of consideration set forth therein, whichever is higher.”

As the petitioner has already paid the stamp duty of Rs.8,50,000/- on the said agreement, the said amount was liable to be adjusted, but according to the respondents, the

same could not be adjusted as there was no such option in the e-registration *sampada* software.

9. That, from a plain reading of provision of the Article 25 (c) of Schedule I-A of the Indian Stamps Act, 1899 which is extracted herein below and its applicability to the State of Madhya Pradesh, it is manifest that if a sale deed is executed pursuant to an agreement to sell, the Stamp Duty paid on agreement to sell is liable to be adjusted in the subsequently sale deed. Extract of proviso (c) to Article 25 of the Indian Stamp Act is reproduced as under:-

“25 (c)- Where an agreement to sell an immovable property is stamped with ad-volerm duty required for a conveyance and a sale deed in pursuance of such agreement in subsequently executed, the duty on such sale deed shall be the duty payable under the article less the duty already paid, subject to a minimum of Rs.1000/-.”

10. That, by virtue of Section 45 of the Indian Stamps Act, 1899 and its *applicability* to the State of Madhya Pradesh, the Chief Controlling Revenue Authority is empowered to refund penalty or excess duty paid in the instrument upon application in writing made within one year from the date of payment. The respondent No.2 being the Chief Controlling Revenue Authority in the State of M.P., the petitioner submitted an application along with all relevant documents before the respondent No.2

on 6.10.2018 for refund of the excess stamp duty of Rs.8,50,000/- and penalty of Rs.50,000/-.

11. That, the respondent No.4 without giving any opportunity of personal hearing to the petitioner rejected the petitioner's application vide impugned order dated 19.3.2019.

12. Thus, the impugned order dated 19.3.2019 is liable to be set aside on the following grounds:-

(i) Respondent No.4 miserably failed in construing the true interpretation of Proviso (c) to Article 25 of the Indian Stamp Act. Proviso (c) categorically stipulates that if stamp duty is paid by any person at the time of Agreement to sell then the same is liable to be adjusted at the time of Registered Sale Deed.

(ii) Respondent No.4 erred in imposing a precondition of payment of Stamp Duty at the rate of 5% for availing benefit of Proviso (c) to Article 25. A bare perusal of Proviso (c) to Article 25 would reveal that no such precondition is imposed by the Legislature and therefore, imposition of such precondition for adjustment on the Stamp Duty is not only arbitrary but also illegal and de-hors the Statutory Provision, and thus, bad in law.

(iii) Respondent No.4 erred in not considering the fact that ad-valorem duty of 1% was paid by the

petitioner/company in accordance with the then prevailing Article 5(e)(ii) and the same was liable to be adjusted in terms of Proviso (c) to Article 25.

(iv) Respondent No.4 erred in not considering Clause 2 of the Agreement to sell wherein it is categorically agreed between the parties that possession will be given to the petitioner/company after execution of registered sale deed, meaning thereby that the possession was not given at the time of execution of the Agreement to sell.

13. So far as contention of the learned Government Advocate that option of adjustment was available on e-smapada software is totally incorrect. The respondent has not produced any evidence or material in support of this plea. The petitioner in his application has stated that there is no other provision in respect of adjustment of stamp duty. Even in the impugned order the respondent has not stated that the option was available at the relevant point of time. Even if it is assumed that such option is available to the petitioner then also the concerned authority has not exercised the said option in favour of the petitioner.

14. In the light of the aforesaid, the present writ petition deserves to be allowed and is hereby allowed. Impugned order dated 19.3.2019 (Annexure-P/10) is quashed. It is further directed to refund the amount of Rs.9,00,000/- to the petitioner

:10:

W.P.No.10376-2019

which was paid by him towards excess stamp duty in terms of proviso (c) to Article 25 of Indian Stamps Act, 1899 within a period of six months from the date of receipt of the certified copy of this order.

(Ms. Vandana Kasrekar)

JUDGE

moni

WWW.TAXSCAN.IN

THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH

W.P.No.10376 / 2019

Indore, Dated: 29/02/2020

Shri Mudit Maheshwari, learned counsel for the petitioner.

Shri Vikas Yadav, learned Govt. Advocate for the respondents/State.

Arguments heard.

Reserved for orders.

(Ms. Vandana Kasrekar)

JUDGE

Indore, Dated: 05 / 06/2020

Order passed, signed and dated.

(Ms. Vandana Kasrekar)

JUDGE

moni