(2020) 11 DEL CK 0213

In the Delhi High Court

Case No : Civil Writ Petition No. 5242 Of 2020

Kewal Kishore APPELLANT

Vs

Asst Director Mig(H) & Anr RESPONDENT

Date of Decision : 25-11-2020

Acts Referred:
Constitution Of India, 1950 — Article 265
Indian Stamp Act, 1899 — Section 49, 49(d)(6), 53

Citation : (2020) 11 DEL CK 0213

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Sanjoit Ray, Akshita Goyal, Satyakam

Final Decision : Allowed

Judgement

Prathiba M. Singh, J

1. This hearing has been done by video conferencing.

2. The Petitioner was allotted Flat no. K-33, 1st Floor, New Mahavir Nagar, New Delhi â?" 110018, by the DDA in 2001. The conveyance deed was

executed by the DDA in his favour on 13th August, 2001 and the Petitioner was to register the same. He purchased stamp duty of Rs.94,790/- vide

challan no.50798 dated 13th August, 2001 for the conveyance deed. However, for reasons which are unknown and not pleaded in this petition or

convincingly argued before this Court, the Petitioner chose not to register the conveyance deed with the said stamp duty.

3. Sometime in 2011, the Petitioner again approached the DDA in order to get the conveyance deed executed when he was informed that the

conveyance deed, which was issued in 2001, would not be in operation anymore and that he would require a fresh conveyance deed. Accordingly, the

DDA executed a fresh conveyance deed in favour of the Petitioner in 2011 and he got the same registered with a lesser amount of stamp duty of

Rs.43,765/- as per the extant notified rates.

4. The Petitioner, thereafter, sought refund of the earlier stamp duty amount of Rs.94,790/- as the same remained unused. The Petitioner approached

the DDA initially and was referred to the Collector of Stamps. However, it appears that since the refund was not granted due to various reasons,

despite repeated reminders, he has approached this Court by way of the present writ petition seeking recovery of Rs.94,790/- along with interest and

damages.

5. Mr. Sanjoit Ray, ld. counsel appearing for the Petitioner has pleaded various grounds and facts in the rejoinder, which he has taken the Court

through. Mr. Ray relies upon the judgment of the ld. Single Judge of this Court in Vinod Kumar Saigal v. Office of Collector of Stamp & Ors., [W.P.

(C) 9699/2016, decided on 16th January, 2020] as also Committee GFIL v. Libra Build Tech Pvt. Ltd. & Ors., (2015) 16 SCC 31. He submits that any

collection of stamp duty without refund of the earlier stamp duty is contrary to Article 265 of the Constitution of India as the stamp duty cannot be

collected twice.

6. On behalf of the GNCTD, Mr. Satyakam, ld. counsel submits that the Petitioner has failed to give any explanation till date as to why the Petitioner

did not register the conveyance deed in 2001. It is further submitted that the normal time period for seeking the refund is 6 months from the execution

of the conveyance deed. He submits that the request is also belated. In any event, he relies on Section 49(d)(6) of the Indian Stamp Act, 1899 to

argue that if the subsequent registration is with a stamp of a lesser value then refund is not liable to be given.

7. On behalf of the DDA, it is submitted that the DDA had informed the Petitioner in 2001 itself by letter dated 19th June, 2001 that the conveyance

deed ought to be registered within a particular time frame. Thus, it is totally inexplicable why the Petitioner did not get the conveyance deed registered

in 2001 itself.

8. After going through the records and pleadings, as also the judgments cited by the Petitioner, it is found that the issue in the present case is clearly

covered by the judgment of this Court in Vinod Kumar Saigal (supra). In the said case, a similar plea was raised on behalf of the Petitioner therein

who had applied for refund of the stamp duty. The Court has, after considering the circular and the application, held as under:

â??15. A reading of the above Circular would clearly show that the instructions had been issued to the Collector of Stamps and Sub

Registrars, including DDA, that instead of revalidating the Conveyance Deed, DDA is to execute fresh Conveyance Deed, and after getting

the same registered, the allottees can get the refund of the Stamp Duty paid on the previous instruments. In fact, a direction had been issued

to the Collector of Stamps to refund the Stamp duty to the allottees on the previous instruments within a period of six months from the date of

the registration of the substituted instruments by placing reliance on Section 49(d)(6) read with Section 53 of the Act.

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21. The learned counsel for the petitioner further submits that even the Circular dated 03.01.2003 clearly provided for applicability of

Section 49(d)(6) of the Act to cases where fresh Conveyance Deed is executed for any reason whatsoever. He submits that in view of such

Circular, the petitioner had a legitimate expectation for the refund of the Stamp Duty.

22. As far as the reduction in the Stamp Duty for the subsequent Conveyance Deed is concerned, he submits that as the refund was being

sought of the lesser amount, no loss was caused to the respondents and the refund of the Stamp Duty should not be refused on such

hypertechnical ground.

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30. In my opinion, the words â??bearing a Stamp of not less valueâ? are intended only to ensure that the person seeking refund of the

Stamp Duty does not execute the subsequent document merely to save on the Stamp Duty. In the present case, no such intention is being

attributed to the petitioner. The petitioner had clearly erred in not having the earlier Conveyance Deed registered and therefore, did not

acquire good title in the Unit in absence of such registration. It is for this reason that the subsequent Conveyance Deed was required to be

executed between the petitioner and the DDA. By this time, the rates of the

Stamp Duty had been reduced by the Government of NCT of

Delhi and therefore, the petitioner paid the lesser amount of the Stamp Duty. The petitioner, however, is also seeking refund of the lesser

amount of the Stamp Duty from the respondent no.1 thereby not intending to make any gain in the transaction.

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32. I am mindful of the principle of law that a fiscal statute must be interpreted strictly and considerations of hardship or equity are not

relevant for construing such statute, at the same time, Section 49 of the Act needs to be interpreted in conformity with Article 265 of the

Constitution of India. The respondents cannot be entitled to retain the amount of the Stamp Duty for the same transaction, twice.â??

9. Interpretation having already been given in respect of Section 49(d)(6) of the Indian Stamp Act, 1899 and the applicability thereof, this Court need

not re-interpret the said provision. The ld. Single Judge has considered the legislative intent behind the said provision and has held that the same is

meant only to ensure that unscrupulous persons do not seek refund of stamp duty by registering with a subsequent stamp duty of lesser amount. This

being the intention of the said provision, the same would have no application in the present case as the Petitioner in the present case does not seem to

have a dishonest intention. The Petitioner approached the Collector of Stamps within 6 months from the date of execution of the second substituted

conveyance deed. While there is no explanation as to why the Petitioner did not register the conveyance deed in 2001, since the subsequent

conveyance deed executed by the DDA has been registered in accordance with the stamp rate prevalent at the time, as per notification dated 13th

November, 2007 and 19th November, 2017, Section 49(d)(6) would not be applicable.

10. Thus, the Petitioner is entitled to a refund in the present case. Accordingly, refund of stamp duty of Rs.94,790/- is directed to be given along with

5% interest with effect from 12th October, 2011 i.e., the date when refund was requested. The prayer for damages for mental agony is not made out

in the present case. The refund is directed to be given to the Petitioner on or before 31st December 2020.

11. The petition is allowed in the above terms. All pending applications are also

disposed of.