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(2020) 09 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15205 Of 2020 (O&M)

M/S Lotus Realtech Pvt. Ltd. — APPELLANT

Vs

State Of Haryana And Others — RESPONDENT

Date of Decision : 23-09-2020

Acts Referred:

Real Estate (Regulation And Development) Act, 2016 — Section 18(1), 19, 43(5)
Punjab Value Added Tax Act, 2005 — Section 62(5)
Bombay Provincial Municipal Corporations Act, 1949 — Section 406(2)(e), 506
Income Tax Act, 1922 — Section 18(7), 30, 46(1)
Delhi Municipal Corporation Act, 1957 — Section 170(b)
Rajasthan Stamp Act, 1998 — Section 65(1)
Indian Stamp Act, 1899 — Section 47A(1)
Delhi Municipal Corporation Act, 1957 — Section 170(b), 457
Code Of Civil Procedure, 1908 — Section 151, Order 41 Rule 5
Code Of Criminal Procedure, 1973 — Section 482
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 17(2)
Constitution Of India, 1950 — Article 14, 226

Citation : (2020) 09 P&H CK 0194

Hon'ble Judges : Ravi Shanker Jha, CJ;Arun Palli, J

Bench : Division Bench

Advocate : Abhishek Singh, Deepak Balyan, Satya Pal Jain, Dheeraj Jain, Tanvi Jain

Final Decision : Dismissed

Judgement

Ravi Shanker Jha, CJ

1. With the consent of learned counsel for the parties, the matter is being taken up and heard via video conferencing.

2. This petition has been filed by the petitioner, assailing the constitutional validity of the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act of 2016') which stipulates and lays down that any appeal filed by a promoter before the appellate

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authority against the order of the authority or adjudicating officer, shall not be entertained without the promoter first having deposited at least 30% of the penalty or such higher percentage as may be determined by the appellate authority, or the total amount to be paid to the allottee, including interest and compensation imposed on him, if any, or with both, as the case may be.

3. Brief facts leading to the filing of the present petition are that the petitioner, which is a company incorporated under the provisions of the Companies Act, 1956 and is involved in developing a group housing complex, had entered into an agreement with the private respondent on 04.10.2013 in respect of a flat admeasuring 1450 sq. feet for a total consideration of Rs.55,23,950/- to be paid as per the construction linked payment plan incorporated in the agreement.

4. As the flat has not been delivered to the respondent, therefore, the respondent filed a complaint before the Haryana Real Estate Regulatory Authority (HRERA) alleging that he had already paid a sum of Rs. 44,84,346/- out of the total sale consideration as per the construction linked payment plan and the due date of delivery has lapsed, which was four years from the date of start of construction or execution of the agreement, whichever was later, as incorporated in clause 3.1 of the agreement and therefore, HRERA should direct the petitioner to pay interest for every months delay at the prescribed rate from the due date of delivery of possession till the date of handing over the possession of the same to the respondent and to further direct the petitioner to complete the construction and hand over the possession of the flat to the respondent.

5. The authority by order dated 04.02.2020, allowed the complaint and held that the complainant-respondent is entitled to the delayed possession charges at the prescribed rate of interest of 10.20% per annum w.e.f. 04.10.2017, which was the due date for delivery of possession, till the date of offer of possession and the said arrears of interest accrued till the date of passing of the order by the authority shall be paid to the complainant-respondent within 90 days and thereafter monthly payment of interest shall be made to the respondent by the 10th of each month till the date of offer of possession.

6. The petitioner being aggrieved by the order dated 04.02.2020 passed by the HRERA filed an appeal before the Real Estate Appellate Tribunal, Haryana, on 28.06.2020. It is submitted by the petitioner that in accordance with the proviso to Section 43(5) of the Act of 2016, the petitioner is required to make certain pre-deposits for entertainability of the appeal before the Appellate Tribunal. It is submitted that the Appellate Tribunal by an order dated 03.05.2019 passed in appeal No.60/2019 Ansal Housing Ltd. v. Sushil Kumar Batra waived the condition of pre-deposit contained in the proviso to Section 43(5) of the Act of 2016 relying upon the decisions of this High Court rendered in the cases of Punjab State Power Corporation Ltd. v. State of Punjab and others 2016(2) RCR(C) 559, Maruti Suzuki India Ltd. v. Union of India and others CWP No. 12922 of 2014 decided on 27.10.2016 and M/s Mahesh Kumar Singla and others v. Union of India and others CWP No. 23368 of 2015 decided on 27.03.2017.

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However, subsequently, the Appellate Tribunal vide order dated 29.07.2019 passed in appeal No. 74 of 2018 Ramprastha Promoters and Developers Pvt. Ltd. v. Ishwar Chand Garg and 94 connected matters, vide order dated 11.04.2019 passed in appeal No. 4 of 2018 Bestech India Ltd. v. Mridula Parti and thereafter in appeal No. 375 of 2019 did not allow the waiver of the condition of pre-deposit by holding that the Appellate Tribunal had no power to grant the waiver by diluting the mandate of the law.

7. It is submitted by the petitioner that on account of the aforesaid conflicting views taken by the Appellate Tribunal ignoring the law laid down by this Court in the case of Punjab State Power Corporation Ltd. v. State of Punjab and others (supra), the petitioner instead of pursuing the appeal before the Appellate Tribunal, wherein time has been granted to the petitioner to remove the defects, has filed the present petition challenging the constitutional validity of the proviso to Section 43(5) of the Act of 2016 which requires pre-deposit of certain amounts before entertaining the appeal as well as the impugned order passed by the HRERA dated 04.02.2020 allowing the complaint filed by the respondent.

8. Learned counsel for the petitioner submits that the stipulation of pre-deposit contained in the proviso to Section 43(5) of the Act of 2016 is arbitrary and violative of Article 14 of the Constitution of India and amounts to denial of the right of appeal. He has relied upon the decision in the case of Mardia Chemicals Ltd. and others v. Union of India and others 2004(4) SCC 311 in support of his submissions. It is contended that the Appellate Tribunal be directed to follow the law laid down by this Court in the case of Punjab State Power Corporation Ltd. v. State of Punjab and others (supra), wherein it has been held that the Appellate Tribunal has the power to waive the condition of pre-deposit which power is inherent in the Tribunal and for which the existence of a specific statutory provision is not necessary.

9. The learned counsel for the petitioner further contends that the requirement of pre-deposit is imposed by the impugned provision only upon the promoters who file an appeal before the Appellate Tribunal and this onerous condition has not been prescribed in respect of the appeals filed by all others including the allottees and therefore, the said condition of pre-deposit is discriminatory and violates Article 14 of the Constitution of India. The petitioner has also assailed the order passed by HRERA dated 04.02.2020 on various grounds.

10. The main issue involved in the petition is the constitutional validity of the condition of pre-deposit contained in the proviso to Section 43(5) of the Act of 2016 which is in the following terms:-

"43(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the

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Appellate Tribunal atleast thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation.-For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

11. At the very outset, it is pertinent to note that the decision of this Court rendered in the case of Punjab State Power Corporation Ltd. v. State of Punjab and others (supra) relying upon the Full Bench decision of this Court rendered in the case of Ranjit Singh v. State of Haryana and others 2012(2) RCR (C) 353, to the extent that it was held therein that the Appellate Authority had the inherent powers to waive the condition of pre-deposit even if no such power was specifically conferred upon the Appellate Authority under the statutory provision, has been over ruled by the Supreme Court on this point in the case of M/s Technimont Pvt. Ltd. (formerly known as Technimont ICB Private Ltd.) v. State of Punjab and others 2019 AIR SC 4489.

12. A statutory provision of appeal providing for a condition of pre-deposit has been held to be constitutionally valid by the Supreme Court by discussing the law at length in a series of decisions and therefore, we need not burden this judgment with repetitive precedents except for quoting the relevant portion of a recent decision of the Supreme Court rendered in M/s Technimont Pvt. Ltd. v. State of Punjab (supra) wherein after considering all the previous decisions, Section 62(5) of the Punjab Value Added Tax Act, 2005 requiring pre-deposit before hearing the appeal has been held to be intra-vires and constitutionally valid in the following terms:-

"10. In The Anant Mills Co. Ltd. v. State of Gujarat4, (1975(2) SCC 175), a Bench of four Judges of this Court considered inter alia, challenge to the validity of Section 406 of the Bombay Provincial Municipal Corporations Act, 1949 as amended by Gujarat Act No. 5 of 1970. As per the relevant provision, no appeal against the ratable value or tax would be entertained unless the amount claimed was deposited with the Commissioner. The proviso to said Section however empowered the Judge considering the appeal to relieve the appellant from the rigour of pre-deposit if in the opinion of the Judge it would cause undue hardship to the appellant. The discussion in that behalf was as under:-

"40. After hearing the learned counsel for the parties, we are unable to subscribe to the view taken by the High Court. Section 406(2)(e) as amended states that no appeal against a rateable value or tax fixed or charged under the Act shall be entertained by the Judge in the case of an appeal against a tax or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, unless the amount claimed from the appellant has been deposited by him with the

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Commissioner. According to the proviso to the above clause, where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit. The object of the above provision apparently is to ensure the deposit of the amount claimed from an appellant in case he seeks to file an appeal against a tax or against a rateable value after a bill for any property tax assessed upon such value has been presented to him. Power at the same time is given to the appellate Judge to relieve the appellant from the rigour of the above provision in case the Judge is of the opinion that it would cause undue hardship to the appellant. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal which seeks to challenge the imposition or the quantum of that tax, in our opinion, has not the effect of nullifying the right of appeal, especially when we keep in view the fact that discretion is vested in the appellate Judge to dispense with the compliance of the above requirement. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the above provision is to keep in balance the right of appeal, which is conferred upon a person who is aggrieved with the demand of tax made from him, and the right of the Corporation to speedy recovery of the tax. The impugned provision accordingly confers a right of appeal and at the same time prevents the delay in the payment of the tax. We find ourselves unable to accede to the argument that the impugned provision has the effect of creating a discrimination as is offensive to the principle of equality enshrined in Article 14 of the Constitution. It is significant that the right of appeal is conferred upon all persons who are aggrieved against the determination of tax or rateable value. The bar created by Section 406(2)(e) to the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate Judge that the deposit of the amount would cause him undue hardship arises out of his own omission and default. The above provision, in our opinion, has not the effect of making invidious distinction or creating two classes with the object of meting out differential treatment to them; it only spells out the consequences flowing from the omission and default of a person who despite the fact that the deposit of the amount found due from him would cause him no hardship, declines of his own volition to deposit that amount. The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid.

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Such a provision was on the statute book in Section 30 of the Indian Income Tax Act, 1922. The proviso to that section provided that ". . . no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax had been paid". Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the Legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to Article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission."

11. In Seth Nand Lal v. State of Haryana (1980 (Supp) SCC 574), the Constitution Bench of this Court was called upon to consider whether the condition of pre-deposit for exercise of right of appeal was valid or not. A submission was raised that unlike the provision which was considered in The Anant Mills Co. Ltd. (1975(2) SCC 175), the Appellate Authority was not empowered to relieve the appellant of the requirement of pre-deposit. The submission was considered thus:-

"22. It is well settled by several decisions of this Court that the right of appeal is a creature of a statute and there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory (vide : the latest decision in Anant Mills Ltd. v. State of Gujarat (1975(2) SCC 175). Counsel for the appellants, however, urged that the conditions imposed should be regarded as unreasonably onerous especially when no discretion has been left with the appellate or revisional authority to relax or waive the condition or grant exemption in respect thereof in fit and proper cases and, therefore, the fetter imposed must be regarded as unconstitutional and struck down. It is not possible to accept this contention for more than one reason. In the first place, the object of imposing the condition is obviously to prevent frivolous appeals and revision that impede the implementation of the ceiling policy; secondly, having regard to sub-sections (8) and (9) it is clear that the cash deposit or bank guarantee is not by way of any exaction but in the nature of securing mesne profits from the person who is ultimately found to be in unlawful possession of the land; thirdly, the deposit or the guarantee is correlated to the landholdings tax (30 times the tax) which, we are informed, varies in the State of Haryana around a paltry amount of Rs. 8 per acre annually; fourthly, the deposit to be made or bank guarantee to be furnished is confined to the landholdings tax payable in respect of the disputed area i.e. the area or part thereof which is declared surplus after leaving the

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permissible area to the appellant or petitioner. Having regard to those aspects, particularly the meagre rate of the annual land-tax payable, the fetter imposed on the right of appea1/revision, even in the absence of a provision conferring discretion on the appellate/revisional authority to relax or waive the condition, cannot be regarded as onerous or unreasonable. The challenge to Section 18(7) must, therefore, fail."

12. The principles laid down in The Anant Mills Co. Ltd. (1975(2) SCC 175) and in Seth Nand Lal (1980 (Supp) SCC 574) have consistently been followed, for instance in (i) Vijay Prakash D. Mehta v. Collector of Customs (Preventive), Bombay (1988 (4) SCC 402) (ii) Shyam Kishore v. Municipal Corporation of Delhi (1993(1) SCC 22, (iii) Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad (1999(4) SCC 468), (iv) State of Haryana v. Maruti Udyog Ltd. (2000(7) SCC 348), (v) Government of Andhra Pradesh v. P. Laxmi Devi (Smt.) (2008(4) SCC 720), (vi) Har Devi Asnani v. State of Rajasthan (2011(14) SCC 160), and (vii) S.E. Graphites Private Limited v. State of Telangana (2019 (SCC Online) SC 842).

13. The decisions of this Court can broadly be classified in two categories, going by the width and extent of the concerned provisions:-

a) Under the first category are the cases where, the concerned statutory provision, while insisting on pre-deposit, itself gives discretion to the Appellate Authority to grant relief against the requirement of pre-deposit if the Appellate Authority is satisfied that insistence on pre-deposit would cause undue hardship to the appellant. The decisions in this category are The Anant Mills Co. Ltd.4, Vijay Prakash D. Mehta6, Gujarat Agro Industries8 and Maruti Udyog9

b) On the other hand, the decisions in said Seth Nand Lal5, Shyam Kishore7, P. Laxmi Devi10, Har Devi Asnani11 and S.E. Graphites12 dealt with cases where the statute did not confer any such discretion on the Appellate Authority and yet the challenge to the validity of such provisions was rejected.

14. The decision of the Constitution Bench of this Court in Seth Nand Lal (1980 (supp) SCC 574) did consider whether the requirement of pre-deposit would cause undue hardship. However considering that the liability in question and consequential requirement of pre-deposit was a meagre rate of the annual land-tax payable, the fetter imposed on the right of appeal/revision, even in the absence of a provision conferring the discretion on the appellant/revisional authority to relax or waive the condition was not found to be onerous or unreasonable.

15. In Shyam Kishore v. Municipal Corporation of Delhi (1993(1) SCC 22, the provision that came up for consideration was Section 170(b) of the Delhi Municipal Corporation Act, 1957 under which the amount in dispute relating to property tax is required to be deposited before the appeal can be entertained. Said Section 170(b) is as under:

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"S.170 Conditions of right to appeal - No appeal shall be heard or determined under Section 169 unless-

(a) .....

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation."

16. After considering relevant decisions on the point, a modality was suggested under which some relief could be granted to the concerned appellant but finally a Bench of three Judges of this Court suggested that the solution lay in having the statute itself amended. The discussion in that behalf was as under:-

"44. ..... The appellate judge's incidental and ancillary powers should not be curtailed except to the extent specifically precluded by the statute. We see nothing wrong in interpreting the provision as permitting the appellate authority to adjourn the hearing of the appeal thus giving time to the assessee to pay the tax or even specifically granting time or instalments to enable the assessee to deposit the disputed tax where the case merits it, so long as it does not unduly interfere with the appellate court's calendar of hearings. His powers, however, should stop short of staying the recovery of the tax till the disposal of the appeal. We say this because it is one thing for the judge to adjourn the hearing leaving it to the assessee to pay up the tax before the adjourned date or permitting the assessee to pay up the tax, if he can, in accordance with his directions before the appeal is heard. In doing so, he does not and cannot injunct the department from recovering the tax, if they wish to do so. He is only giving a chance to the assessee to pay up the tax if he wants the appeal to be heard. It is, however, a totally different thing for the judge to stay the recovery till the disposal of the appeal; that would result in modifying the language of the proviso to read: "no appeal shall be disposed of until the tax is paid". Short of this, however, there is no reason to restrict the powers unduly; all he has to do is to ensure that the entire tax in dispute is paid up by the time the appeal is actually heard on its merits. We would, therefore, read clause (b) of Section 170 only as a bar to the hearing of the appeal and its disposal on merits and not as a bar to the entertainment of the appeal itself.

46. We only wish that the statute itself is soon amended to make this position clear. After all, under the D.M.C. Act, the appellate authority is a high judicial officer, being the District Judge, and there is no reason why the Legislature should not trust such a high judicial officer to exercise his discretion in such a way as to safeguard the interests of both the Revenue and the assessees. We think that, until this is done, the provision requires a liberal interpretation so as to preserve such interests and should not be so rigidly construed as to warrant the throwing out of an appeal in limine merely because the tax is not paid before the appeal is filed."

17. In Government of Andhra Pradesh v. P. Laxmi Devi (Smt.) (2008(4) SCC 720), validity of the proviso to Section 47A of the Indian Stamp Act, 1899 was in

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issue. The High Court had held said provision to be unconstitutional, which view was reversed by this Court. The proviso to said Section 47A reads:-

"Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned."

18. The relevant discussion was as under:-

"18. In our opinion, there is no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by A.P. Amendment Act 8 of 1998. This amendment was only for plugging the loopholes and for quick realisation of the stamp duty. Hence it is well within the power of the State Legislature vide Entry 63 of List II read with Entry 44 of List III of the Seventh Schedule to the Constitution."

19. It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly. As often said, there is no equity in a tax vide CIT v. V.MR.P. Firm Muar (AIR 1965 SC 1216). If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute. Hence the High Court fell in error in trying to go by the supposed object and intendment of the Stamp Act, and by seeking to find out the hardship which will be caused to a party by the impugned amendment of 1998.

20. In Partington v. Attorney General (1869) LR 4 HL 100), Lord Cairns observed as under:

"If the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind. On the other hand if the court seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be."

The above observation has often been quoted with approval by this Court, and we endorse it again. In Bengal Immunity Co. Ltd. v. State of Bihar (AIR 1955 SC 661), this Court held that if there is hardship in a statute it is for the legislature to amend the law, but the court cannot be called upon to discard the cardinal rule of interpretation for mitigating a hardship.

21. It has been held by a Constitution Bench of this Court in ITO v. T.S. Devinatha Nadar (AIR 1968 SC 623), (vide AIR paras 23 to 28) that where the language of a taxing provision is plain, the court cannot concern itself with the intention of the legislature. Hence, in our opinion the High Court erred in its approach of trying to find out the intention of the legislature in enacting the impugned amendment to the Stamp Act.

22. In this connection we may also mention that just as the reference under Section 47-A has been made subject to deposit of 50% of the deficit duty,

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similarly there are provisions in various statutes in which the right to appeal has been given subject to some conditions. The constitutional validity of these provisions has been upheld by this Court in various decisions which are noted below.

23. In Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad (1999(4) SCC 468), this Court referred to its earlier decision in Vijay Prakash D. Mehta v. Collector of Customs (1988(4) SCC 402), wherein this Court observed: (Vijay Prakash case, SCC p. 406, para 9)

"9. Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant."

19. While dealing with the submission that in terms of said proviso, no relief could be granted even in cases where the requirement of pre-deposit may result in great prejudice, this Court went on to observe:-

"28. We may, however, consider a hypothetical case. Supposing the correct value of a property is Rs. 10 lakhs and that is the value stated in the sale deed, but the registering officer erroneously determines it to be, say, Rs. 2 crores. In that case while making a reference to the Collector under Section 47-A, the registering officer will demand duty on 50% of Rs. 2 crores i.e. duty on Rs. 1 crore instead of demanding duty on Rs. 10 lakhs. A party may not be able to pay this exorbitant duty demanded under the proviso to Section 47-A by the registering officer in such a case. What can be done in this situation?

29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/ or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution vide Maneka Gandhi v. Union of India17. Hence, the party is not remediless in this situation."

20. In Har Devi Asnani (2011(4) SCC 160), the validity of proviso to Section 65(1) of the Rajasthan Stamp Act, 1998 came up for consideration in terms of which no revision application could be entertained unless it was accompanied by a satisfactory proof of the payment of 50% of the recoverable amount. Relying on the earlier decisions of this Court including in P. Laxmi Devi10, the challenge was rejected and the thought expressed in P. Laxmi Devi10 was repeated in Har Devi Asnani11 as under:-

"27. In Govt. of A.P. v. P. Laxmi Devi, (2008(4) SCC 720), this Court, while upholding the proviso to sub-section (1) of Section 47-A of the Stamp Act

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introduced by Andhra Pradesh Amendment Act 8 of 1998, observed: (SCC p. 737, para 29)

"29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/ or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution (vide Maneka Gandhi v. Union of India, (1978(1) SCC 248). Hence, the party is not remediless in this situation."

28. In our view, therefore, the learned Single Judge should have examined the facts of the present case to find out whether the determination of the value of the property purchased by the appellant and the demand of additional stamp duty made from the appellant by the Additional Collector were exorbitant so as to call for interference under Article 226 of the Constitution.

21. These decisions show that the following statements of law in The Anant Mills Co. Ltd. v. The State of Gujarat (1975(2) SCC 175), have guided subsequent decisions of this Court:

"...The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal.

...It is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid.

....It is open to the Legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation."

22. In the light of these principles, the High Court rightly held Section 62(5) of the PVAT Act to be legal and valid and the condition of 25% of pre-deposit not to be onerous, harsh, unreasonable and violative of Article 14 of the Constitution of India. Now we turn to question (c) as framed by the High Court and consider whether the conclusions drawn by the High Court while answering said question were correct or not.

23. It is true that in cases falling in second category as set out in paragraph 11 hereinabove, where no discretion was conferred by the Statute upon the Appellate Authority to grant relief against requirement of pre-deposit, the challenge to the validity of the concerned provision in each of those cases was rejected. But the decision of the Constitution Bench of this Court in Seth Nand Lal v. State of Haryana (1980 (Supp) SCC 574), was in the backdrop of what this Court considered to be meagre rate of the annual land-tax payable. The decision

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in Shyam Kishore v. Municipal Corporation of Delhi, (1993(1) SCC 22), attempted to find a solution and provide some succour in cases involving extreme hardship but was well aware of the limitation. Same awareness was expressed in P. Laxmi Devi10 and in Har Devi Asnani11 and it was stated that in cases of extreme hardship a writ petition could be an appropriate remedy. But in the present case the High Court has gone a step further and found that the Appellate Authority would have implied power to grant such solace and for arriving at such conclusion reliance is placed on the decision of this Court in Kunhi1.

24. Income Tax Officer v. M.K.Mohammed Kunhi (1969(2) SCR 65), undoubtedly laid down that an express grant of statutory power carries with it, by necessary implication, the authority to use all reasonable means to make such grant effective. But can such incidental or implied power be drawn and invoked to grant relief against requirement of pre-deposit when the statute in clear mandate says - no appeal be entertained unless 25% of the amount in question is deposited? Would not any such exercise make the mandate of the provision of pre-deposit nugatory and meaningless?

25. While dealing with the scope and width of implied powers, the Constitution Bench of this Court in Matajog Dubey v. H.C. Bhari (1955(2) SCR 925), also touched upon the issue whether exercise of such power can permit going against the express statutory provision inhibiting the exercise of such power. The discussion was as under:-

"Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution. If in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with common sense and does not seem contrary to any principle of law. The true position is neatly stated thus in Broom's Legal Maxims, 10th Ed., at page 312 : "It is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command."(Emphasis added)

26. The same principle was adverted to in Shyam Kishore v. Municipal Corporation of Delhi (1993(1) SCC 22), What is noteworthy is that the decision in Kunhi1 was also considered and it was observed:-

"40. We have set out the terms of Section 170(b) earlier. This has been interpreted by the Corporation to mean that an appeal preferred by an assessee has to be dismissed in limine unless the tax in dispute has been paid and that there is no scope for the appellate authority exercising any powers of stay pending disposal of the appeal. Prima facie, the contention of the Corporation that to read a power in the District Judge to grant stay of collection of the

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disputed tax pending disposal of the appeal will run counter to Section 170(b) appears to be well founded. Though the normal rule is that the incidental and ancillary powers of an appellate authority will include a power to grant stay of the order under appeal - vide, ITO v. M.K. Mohammed Kunhi1 - that power cannot be read into Section 170(b) for such an interpretation would render Section 170(b) totally unworkable. An argument was addressed before us that such a power can be ascribed to the District Judge in view of the provisions of Section 457 of the Act reproduced earlier. Reliance was placed on the Single Bench's decision of the Delhi High Court in Punj Sons (P) Ltd. v. Municipal Corporation of Delhi19 where a learned Single Judge of the Delhi High Court took the view that the District Judge, in view of Section 457 of the Act, has powers to take recourse to Order 41 Rule 5 of the Code of Civil Procedure in the appeal under Section 169 of the Act. With all due respect we do not agree with the reasoning of the learned Single Judge in the said case. In fact in the judgment under appeal all the three Judges have also dissented from this view of the learned Single Judge in the matter of Punj Sons19. The reason is simple as Section 457 itself states that the procedure provided in the Code of Civil Procedure in regard to suits are to be followed "as far as it can be made applicable". The other provisions of the statute totally bar the grant of such relief. The other provisions have to be harmoniously read with it and not in derogation thereto. Section 457 itself, therefore, does not help the assessee whose case depends entirely on the construction to be placed on Section 170(b). But still one has to examine Section 170(b) carefully to see whether, short of dismissing an appeal for default of payment of tax, the District Judge has any latitude in the matter." (Emphasis added)

27. Similar limitation has always been read into the width of inherent powers acknowledged by provisions like Section 151 of the CPC20 and Section 482 of the Cr.P.C.21 In Vinod Sethi v. Devinder Bajaj, (2010(8) SCC 1), the discussion was as under:-

"28. As the provisions of the Code are not exhaustive, Section 151 is intended to apply where the Code does not cover any particular procedural aspect, and interests of justice require the exercise of power to cover a particular situation. Section 151 is not a provision of law conferring power to grant any kind of substantive relief. It is a procedural provision saving the inherent power of the court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court. It cannot be invoked with reference to a matter which is covered by a specific provision in the Code. It cannot be exercised in conflict with the general scheme and intent of the Code. It cannot be used either to create or recognise rights, or to create liabilities and obligations not contemplated by any law.

29. Considering the scope of Section 151, in Padam Sen v. State of U.P. AIR (1961 SC 218), this Court observed: (AIR p. 219, paras 8-9)

"8. ... The inherent powers of the court are in addition to the powers specifically

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conferred on the court by the Code. They are complementary to those powers and therefore it must be held that the court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the legislature. ...

9. ... The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the courts for passing such orders which would affect such rights of a party."

(emphasis supplied)

30. In Manohar Lal Chopra v. Seth Hiralal24, this Court held: (AIR p. 533, para 21)

"21. ... that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in Section 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the legislature."

31. In Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava AIR 1966 SC 1899, this Court reiterated that the inherent power of the court is in addition to and complementary to the powers expressly conferred under the Code but that power will not be exercised if its exercise is inconsistent with, or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of the Code. Section 151 however is not intended to create a new procedure or any new right or obligation.

32. In Nain Singh v. Koonwarjee (1970(1) SCC 732), this Court observed: (SCC p. 735, para 4)

"4. ... Under the inherent power of courts recognised by Section 151 CPC, a court has no power to do that which is prohibited by the Code. Inherent jurisdiction of the court must be exercised subject to the rule that if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked. In other words the court cannot make use of the special provisions of Section 151 of the Code where a party had his remedy provided elsewhere in the Code...."

28. In respect of powers exercisable under Section 482 of the Cr.P.C., it was observed in Sooraj Devi v. Pyare Lal (1981(1) SCC 500) "Now it is well settled that the inherent power of the Court cannot be exercised for doing that which is specifically prohibited by the Code." The principle was followed in Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee (1990(2) SCC 437), and in State v. K.V. Rajendran (2008(8) SCC 673).

29. If the inherent power the existence of which is specifically acknowledged by

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provisions such as Section 151 of the CPC and Section 482 of the Cr.P.C. is to be read with the limitation that exercise of such power cannot be undertaken for doing that which is specifically prohibited, same limitation must be read into the scope and width of implied power of an appellate authority under a statute. In any case the principle laid down in Matajog Dobey v. H.C.Bhari (1955(2) SCR 925), states with clarity that so long as there is no express inhibition, the implied power can extend to doing all such acts or employing such means as are reasonably necessary for such execution. The reliance on the principle laid down in Kunhi1 cannot go to the extent, as concluded by the High Court, of enabling the Appellate Authority to override the limitation prescribed by the statute and go against the requirement of pre-deposit. The High Court was clearly in error in answering question (c).

30. As stated in Government of Andhra Pradesh v. P. Laxmi Devi (2008(4) SCC 720), and Har Devi Asnani v. State of Rajasthan (2011(14) SCC 160), , in genuine cases of hardship, recourse would still be open to the concerned person. However, it would be completely a different thing to say that the Appellate Authority itself can grant such relief. As stated in Shyam Kishore v. Municipal Corporation of Delhi (1993(1) SCC 22), any such exercise would make the provision itself unworkable and render the statutory intendment nugatory.

31. In the premises, we accept the conclusions drawn by the High Court as regards questions (a) and (b) are concerned but set aside the view taken by the High Court as regards question (c). The appeals preferred by the assesses are therefore dismissed and those preferred by the State against the decision in respect of question

(c) are allowed. No costs." (emphasis supplied).

(citations mentioned in bracket by this Court)

13. Though the petitioner has placed reliance on the decision of the Supreme Court in the case of Mardia Chemicals Ltd. and others v. Union of India and others 2004(4) SCC 311 in support of the contention that the provision for pre-deposit is onerous and oppressive as it renders the remedy of appeal illusory, nugatory and constitutionally invalid, however, the said contention is noticed only to be rejected as the Supreme Court has rejected such a contention distinguishing the decision in the case of Mardia Chemicals Ltd. and others (supra) on the ground that the Supreme Court in that case was dealing with a provision which required pre-deposit at the stage of first adjudication of the demand and not at the appellate and revisional stage (as in the present case) in the case of Hardevi Asnani v. State of Rajasthan and others (2011) 14 Supreme Court Cases 160, while upholding the constitutional validity of Section 65(1) of the Rajasthan Stamp Act, 1988, in the following terms:-

"23. We also find that in the impugned order the High Court has relied on an earlier Division Bench judgment of the High Court in Choksi Heraeus (P) Ltd. v. State [AIR 2008 Raj 61] for rejecting the challenge to the proviso to Section

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65(1) of the Act. We have perused the decision of the Division Bench of the High Court in Choksi Heraeus (P) Ltd. v. State [AIR 2008 Raj 61] and we find that the Division Bench has rightly taken the view that the decision of this Court in Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311] is not applicable to the challenge to the proviso to Section 65(1) of the Act inasmuch as the provision of sub-section (2) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requiring deposit of 75% of the demand related to deposit at the stage of first adjudication of the demand and was therefore held to be onerous and oppressive, whereas the proviso to Section 65(1) of the Act in the present case requiring deposit of 50% of the demand is at the stage of revision against the order of first adjudication made by the Collector and cannot by the same reasoning held to be onerous and oppressive."

14. The law laid down by the Supreme Court in the aforesaid decisions is that the right of appeal is the creature of a statute and therefore, is and can be made conditional upon fulfilling certain conditions by the statute itself and therefore, any requirement of fulfillment of a condition imposed by the statute itself before a person can avail the remedy of appeal is a valid piece of legislation. It has further been held that the Appellate Authority does not have the inherent powers to waive the limitation or pre-condition prescribed by the statute for filing an appeal as the inherent incidental or implied powers vested in the Appellate Authority cannot be invoked to render a statutory provision nugatory or meaningless. The Supreme Court has also held that in genuine cases of hardship, an aggrieved person can take recourse to the remedy of filing a writ petition under Article 226 of the Constitution of India. However, even in such genuine cases of hardship, no relief of waiver of pre-deposit can be granted by the Appellate Authority. The challenge to the impugned provision of Section 43(5) proviso of the Act of 2016 on this ground, being meritless, is therefore, rejected.

15. As far as the second contention of the petitioner regarding discrimination between the promoters and others is concerned, it is settled law that Article 14 permits reasonable classification for the purpose of legislation and at the same time also permits persons falling in different classes to be dealt with differently and that it permits invocation of the equality clause only in cases where persons falling within the same well defined class are dealt with differently or unequally. It is also settled law that any classification made by the legislature must not be arbitrary, unreasonable or capricious and must pass the two fold test, that is, (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a reasonable and rational nexus and relation to the object sought to be achieved by the statute in question. The law in this regard has been laid down in Kathi Raning Rawat v. State of Saurashtra AIR 1952 SC 123 and Budhan Chowdhry v. State of Bihar AIR 1955 SC 191 and has thereafter been consistently followed and reiterated. The challenge based on Article 14 of the Constitution of India by the petitioner has to be examined on

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the basis of the aforesaid law.

16. The object and purpose, for which the Act of 2016 has been enacted, as stated in its long title, is "to protect the interest of the consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto".

17. The statement of object and reasons of the Act of 2016 make it clear that the Act seeks to provide for, amongst other things, to "ensure greater accountability towards consumers and significantly reduce frauds and delays as also the current high transaction costs" and "to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any obligations imposed on him under the proposed legislation".

18. A perusal of the provisions of the Act make it clear that while limited and few rights and duties are prescribed for allottees under Section 19 of the Act of 2016, several onerous duties and obligations have been imposed on the promoters, namely, registration, duties of promoters, obligations of promoters adherence to the sanctioned plans, insurance of real estate, payment of penalty, interest and compensation etc., under Chapter III and VIII of the Act of 2016. This classification between consumers and promoters is based upon intelligible differentia between the rights, duties and obligations of the allottees/consumers and the promoters and is in furtherance of the very object and purpose of the Act to protect the interest of the consumers viz.-a-viz. promoters in the real estate sector. It is for this reason that the duties, liabilities, obligations and penalties imposed on the promoters are much more onerous as against those imposed upon the allottees. A perusal of the provisions of the Act of 2016 makes it apparent that promoters and the allottees form two distinctly identifiable separate class of persons and have also been differently and separately dealt with under the various provisions of the Act of 2016, therefore, the question of discrimination between the promoters and the allottees as alleged by the petitioner does not arise as they fall under two distinct and different categories/ classes.

19. From the object and purpose of the Act of 2016, it is further evident that the Act seeks to reduce fraud and delays resorted to by the promoters. For this purpose, adjudication through an authority established under the Act has been provided and thereafter with a view to deter promoters from protracting the dispute by involving the allottees/consumers in lengthy litigation and with a view to discourage them to file frivolous appeals only with an intention of delaying the delivery of possession to the allottees, the onerous condition of pre-deposit has been imposed upon the promoters in case they file appeals before the Appellate Tribunal against the orders passed by the authorities. Evidently, the condition of pre-deposit imposed upon the promoters is inconsonance with and in furtherance

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of the object and purpose of the Act which seeks to eradicate fraud and delays and ensure prompt delivery of the real estate to the allottees within the time frame prescribed.

20. We are of the considered opinion that as the promoters form a distinct and separate class and as the prescription of the condition of pre-deposit upon the promoters is in furtherance of the object of the legislation, therefore, the imposition of the condition of pre-deposit upon the promoters satisfies the test of Article 14 of the Constitution of India.

21. It is reiterated that as we have already held the condition of pre-deposit contained in the proviso to Section 43(5) of the Act of 2016 to be valid in view of the law laid down by the Supreme Court in the case of M/s Technimont Pvt. Ltd. (supra) and as the promoters form a separate distinct class and category as opposed to the allottees, we do not find any merit in the challenge to the said provision based on Article 14 of the Constitution of India by the petitioner on the ground of discrimination.

22. From a perusal of the law laid down by the Supreme Court in M/s Tecnimont Pvt. Ltd. (supra) while it is apparent that the Supreme Court has held that the provision of appeal incorporating a condition of pre-deposit is not onerous, harsh, unreasonable and violative of Article 14 of the Constitution of India, it has also been held therein that in cases where the statute does not confer any discretion on the Appellate Authority to waive or reduce the amount of pre-deposit, in those cases the High Court under Article 226 of the Constitution of India can interfere in exceptional cases of genuine hardship. In para-14 of the judgment rendered in M/s Tecnimont Pvt. Ltd. (supra) quoted above, the Supreme Court has quoted an illustrative instance of prejudice or hardship on account of exorbitant demand by way of an example that was given in Writ Petition (C) No. 212 of 2014 decided on 16.04.2019 Nokia India Pvt. Ltd. v. State of Chattisgarh and another giving an hypothetical situation requiring pre-deposit of duty of Rs. 1 crore for filing an appeal in respect of a dispute involving a property of Rs.10 lacs. Similarly, in the case of Hardevi Asnani (supra), it has been held by the Supreme Court that the High Court can entertain a petition permitting bypassing of the remedy of appeal requiring pre-deposit only after examining and satisfying itself that the case is an exceptional one involving genuine hardship.

23. In the light of the above, we proceed to examine the impugned order dated 04.02.2020 passed by the Haryana Real Estate Regulatory Authority with a view to examine as to whether the present case is an exceptional one involving genuine hardship thereby permitting the petitioner to directly invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India by bypassing the provision of appeal which requires pre-deposit. We proceed to examine the impugned order passed by the authority on this limited aspect.

24. From a perusal of the impugned order passed by the authority on 04.02.2020, it is apparent that the petitioner entered into an agreement on

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04.10.2013 for purchase of a flat admeasuring 1450 sq. feet for a consideration of Rs. 55,23,950/- which was to be paid as per the construction linked payment plan and that out of the said amount the respondent has already paid an amount of Rs. 44,84,346/-. It is also evident that as the agreement was entered into on 04.10.2013, and even if the date of 2014 as stated by the petitioner as the date of start of the construction is accepted, the possession of the flat was required to be handed over to the respondent by 2017-18, whereas even after a lapse of long period of 6 to 7 years, the flat has not been delivered to the respondent. It is also evident from a perusal of the order dated 04.02.2020 that no penalty, compensation or other amount has been levied or imposed upon the petitioner except for directing him to pay interest in terms of the statutory provision of Section 18(1) proviso of the Act of 2016. In other words, the authority has only imposed interest on the petitioner at the prescribed rate of 10.20% per annum which is required to be paid by the statutory provision itself on account of the delay in handing over the possession of the flat w.e.f. 04.10.2017 which is the date, rightly or wrongly, determined by the authority for delivery of possession of the flat.

25. In the circumstances, we are of the considered opinion that the present case is not one of genuine hardship or imposition of an exorbitant impossible to pay, amount calling upon this Court to interfere in the matter in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

26. In the facts and circumstances of the present case, without expressing any opinion on the merits of the challenge to the impugned order dated 04.02.2020 passed by the authority, the petitioner is relegated to pursue the remedy of appeal, which he has already filed, by making the necessary pre-deposit, if so advised. It is clarified that any observation made by this Court in respect of the impugned order dated 04.02.2020 is only for the limited purpose of examining the question of genuine hardship and not in respect of the correctness thereof and therefore, the Appellate Authority would be at liberty to examine all the issues raised in the appeal without being influenced by any observation made herein in relation to the impugned order dated 04.02.2020.

27. In view of the aforesaid discussion, the petition filed by the petitioner is dismissed with the aforesaid observations.

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