

(2019) 04 MP CK 0090

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1777 Of 2019

Narendra Patel And Anr

APPELLANT

Vs

State Of Madhya Pradesh & Anr

RESPONDENT

Date of Decision : 10-04-2019

Acts Referred:

Sea Customs Act, 1878 — Section 193
Uttar Pradesh Bhoodan Yagna Act, 1952 — Section 14
Employee's State Insurance Act, 1948 — Section 85(a)(i)(b)
Bihar Value Added Tax Act, 2005 — Section 52(2)
Indian Stamp Act, 1899 — Section 2(10)
Code Of Civil Procedure, 1908 — Order 7 Rule 14(4), Order 8 Rule 1 A(4)
Constitution Of India, 1950 — Article 227
Indian Stamp Act, 1899 — Article 5, 5(2), 5(e)(i), 5(e)(ii), 14, 23

Citation : (2019) 04 MP CK 0090

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : R.S. Tomar, R.K. Soni

Final Decision : Dismissed

Judgement

Heard on the question of admission.

1. This petition under Article 227 of the Constitution of India has been filed against the order dated 5-9-2018 passed by Board of Revenue in PBR/Revision/Gwl/Stamp Act/2017/3011, thereby affirming the order dated 27-5-2005 passed by Collector, in 15/B-103/2014-15/33, by which the Collector, Stamps while impounding the agreement to sell has held that Stamp Duty of Rs.4,69,000/- with Penalty of Rs.4,68,900/- is payable.

The necessary facts for the disposal of the present petition in short are that the petitioners have filed a suit for specific performance of Contract, on the basis of an agreement to sell dated 2-4-2011. As the agreement to sell was not properly stamped, therefore, the Trial Court directed the Collector to impound the document.

The Collector, by order dated 27-5-2015, came to a conclusion that since, the possession of the property was already with the petitioners (intending purchasers), therefore, the agreement to sell is chargeable as per the provisions of Article 5(e)(i) of Schedule 1-A of Stamp Act. Being aggrieved by the order of the Collector, Stamps, the petitioners filed an appeal, which too has been dismissed by the Board of Revenue by order dated 5-9-2018. Accordingly, this petition has been filed.

Challenging the orders passed by Collector of Stamps, Gwalior and Commissioner, Gwalior, it is submitted by the Counsel for the Petitioners, that the agreement to sell was executed on 2-4-2011 and at that time Schedule 1-A as substituted by M.P. Act 12 of 2002 was in force and as the possession of the property in question was not delivered to the petitioners by virtue of agreement to sell, and they were already in possession of the same, even prior to the execution of the agreement to sell, therefore, their case is covered by Article 5(e) (ii) of Schedule 1-A of Stamp Act and not by Article 5(e)(i) of Schedule 1-A of Stamp Act, and thus, only one percent of the total consideration of the property set forth in the agreement or memorandum of agreement was payable.

Per contra, it is submitted by the Counsel for the State that the Collector of Stamps, Gwalior has not committed any mistake in charging the agreement to sell in accordance with Article 5(e)(i) of Schedule 1-A of Stamp Act.

Whether stamp duty as prescribed on the date of impounding shall be payable or not, is not being considered, because the Collector of Stamps, Gwalior has considered the case of the petitioners in the light of the Schedule 1-A of Stamp Act, which was in force on the date of agreement to sell. However, as there is no difference in the duty payable on the date of agreement to sell and on the date of impounding (although Schedule 1-A was already amended), therefore, this question being academic in nature, is not being considered.

Heard the learned Counsel for the parties.

In order to understand the real controversy involved in the present case, it would be appropriate to consider the various amendments which have taken place in Schedule 1-A of Stamp Act.

The agreement to sell was executed on 2-4-2011 and on that date, the Schedule 1-A of Stamp Act, which was substituted by M.P. Act 12 of 2002 as amended from time to time and lastly by 13 of 2008 and 8 of 2011 was in force. Prior to that, the Schedule 1-A of Stamp Act, which was substituted by M.P. Act 20 of 1997 as amended from time to time and lastly by Act 11 of 2000 was in force. The said agreement to sell was taken up for impounding on 27-5-2015, when Schedule 1-A substituted by M.P. Act 2 of 2015, which came into force w.e.f. 7-1-2015, was in vogue.

Explanation to Article 23 of Schedule 1-A of Stamp Act, which remained in force till 2002 reads as under :

"Explanation :- For the purpose of this article, where in the case of agreement to sell immovable property, the possession of any immovable property is transferred to the purchaser before execution or after execution of, such agreement without executing the conveyance in respect thereof then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable."

It is submitted that after new Schedule 1-A of Stamp Act substituted the old one, a separate Article for agreement to sell was incorporated as Article 5 and Article 5(e) of Schedule 1-A of Stamp Act, which reads as under :-

"5(e) If relating to sale of immovable property

(i) When possession of the of the property is delivered or is agreed to be delivered

The same duty as a conveyance (No.200) on the market value of the property without executing the conveyance

(ii) When possession of the property is not given

One percent of the total consideration of the property set forth in the agreement or memorandum of agreement."

It is submitted that since, the possession was already delivered prior to execution of agreement to sell, therefore, the case of the petitioners was governed by Article 5(e)(ii) of the Schedule 1-A of Stamp Act and not Article 5(e)(i) of the Schedule 1-A of Stamp Act.

It is submitted that earlier in Article 23, there was a specific provision to deal with a situation, where the possession was already delivered prior to execution of agreement to sell and it was specifically mentioned that the agreement to sell would be a conveyance, however, the explanation has been deliberately excluded, which means that now the intention of the legislature is to take out such agreement to sell, out of the purview of "conveyance", where the possession was already delivered prior to execution of agreement.

Per contra, it is submitted by the Counsel for the State that 5(e)(i) and (ii) are two different categories. Where the possession is still with the owner, then such agreement to sell would fall in Article 5(e)(ii) otherwise, all other agreements to sell, where the possession is delivered to the intending purchaser, whether prior to execution of agreement to sell, or by virtue of agreement to sell or where agreed to do so in future without execution of conveyance, would be conveyance, and therefore, the Collector of Stamps has rightly treated the said agreement to sell as a "conveyance" under Article 5(e)(i) of the Schedule 1-A of Stamp Act.

Heard the learned Counsel for the parties.

Before considering the submissions made by the Counsel for the parties, this Court feel it appropriate to consider some of the judgments of the Supreme Court on the question of interpretation of law :-

The Supreme Court in the case of Commissioner of Customs Vs. Dilip Kumar and Co. Reported in (2018) 9 SCC 1 has held as under :-

25. At the outset, we must clarify the position of "plain meaning rule or clear and unambiguous rule" with respect to tax law. "The plain meaning rule" suggests that when the language in the statute is plain and unambiguous, the court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "*cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio*". Following such maxim, the courts sometimes have made strict interpretation subordinate to the plain meaning rule, though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilise strict interpretation in the event of ambiguity is self-contradictory.

26. Next, we may consider the meaning and scope of "strict interpretation", as evolved in Indian law and how the higher courts have made a distinction while interpreting a taxation statute on one hand and tax exemption notification on the other. In Black's Law Dictionary (10th Edn.) "strict interpretation" is described as under:

Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more. Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; *interpretatio stricta*; *interpretatio restricta*; *interpretatio verbalis*. 3. The philosophy underlying strict interpretation of statutes. Also termed as close interpretation; *interpretatio restrictive*. See strict constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).

"Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case." William M. Lile et al., *Brief Making and the Use of Law Books* 343 (Roger W. Cooley & Charles Lesly Ames eds., 3d Edn. 1914).

"Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e. narrow) sense is not necessarily the strict (i.e. literal) sense." John Salmond, *Jurisprudence* 171 n. (t) [Glanville L. Williams (Ed.), 10th Edn. 1947].

27. As contended by Ms Pinky Anand, learned Additional Solicitor General, the principle of literal interpretation and the principle of strict interpretation are sometimes used interchangeably. This principle, however, may not be sustainable

in all contexts and situations. There is certainly scope to sustain an argument that all cases of literal interpretation would involve strict rule of interpretation, but strict rule may not necessarily involve the former, especially in the area of taxation.

28. The decision of this Court in Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court, made the said distinction, and explained the literal rule: (SCC p. 715, para 67)

"67. The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning, whatever the result may be. Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time."

That strict interpretation does not encompass strict literalism into its fold. It may be relevant to note that simply juxtaposing "strict interpretation" with "literal rule" would result in ignoring an important aspect that is "apparent legislative intent". We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, "strict interpretation" does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then "strict interpretation" can be implied to accept some form of essential inferences which literal rule may not accept.

29. We are not suggesting that literal rule dehors the strict interpretation nor one should ignore to ascertain the interplay between "strict interpretation" and "literal interpretation". We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

30. Justice G.P. Singh, in his treatise Principles of Statutory Interpretation (14th Edn. 2016 p. 879) after referring to Micklethwait, In re; Partington v. Attorney General, Rajasthan Rajya Sahakari Spg. & Ginning Mills Federation Ltd. v. CIT, State Bank of Travancore v. CIT and Cape Brandy Syndicate v. IRC, summed up the law in the following manner:

"A taxing statute is to be strictly construed. The well-established rule in the familiar words of Lord

Wensleydale, reaffirmed by Lord Halsbury? and Lord Simonds, means:

"The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words."

In a classic passage Lord Cairns stated the principle thus:

'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 to be. On the other hand, if the Crown 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 law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.'

Viscount Simon quoted with approval a passage from Rowlatt, J. expressing the principle in the following words: (Cape Brandy case, KB p. 71)

'... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'

31. It was further observed:

"In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to legal entities not referred to in the Act as there is no equity in matters of taxation...."

32. Yet again, it was observed:

"It may thus be taken as a maxim of tax law, which although not to be overstressed ought not to be forgotten that, 'the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax [on] him', (Russell v. Scott, AC p. 433).

The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible [Ormond Investment Co. v. Betts]. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity [Mapp v. Oram]. It has also been said that if taxing provision is 'so wanting in clarity that no meaning is reasonably clear, the

courts will be unable to regard it as of any effect [IRC v. Ross and Coulter]'. "

33. Further elaborating on this aspect, the learned author stated as follows:

"Therefore, if the words used are ambiguous and reasonable open to two interpretations benefit of interpretation is given to the subject [Central India Spg. and Wvg. & Mfg. Co. Ltd. v. Municipal Committee, Wardha]. If the legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as such arises [CIT v. Jalgaon Electric Supply Co. Ltd.]. But equitable considerations are not relevant in construing a taxing statute, [CIT v. Central India Industries Ltd.], and similarly logic or reason cannot be of much avail in interpreting a taxing statute [Azam Jah Bahadur v. Expenditure Tax Officer]. It is well settled that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for the legislature to determine the same [Kapil Mohan v. CIT]. Similarly, hardship or equity is not relevant in interpreting provisions imposing stamp duty, which is a tax, and the court should not concern itself with the intention of the legislature when the language expressing such intention is plain and unambiguous [State of M.P. v. Rakesh Kohli]. But just as reliance upon equity does not avail an assessee, so it does not avail the Revenue."

34. The passages extracted above, were quoted with approval by this Court in at least two decisions being CIT v. Kasturi and Sons Ltd. and State of W.B. v. Kesoram Industries Ltd. (hereinafter referred to as "Kesoram Industries case", for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:

"(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly."

* * *

53. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity

must be strictly interpreted in favour of the Revenue/State.

55. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualising different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the Revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion."

The Supreme Court in the case of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* reported in (2010) 8 SCC 24 has held as under:-

"21. There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance with a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation

to procedural provisions than with reference to substantive provisions.

21.1. Maxwell on Interpretation of Statutes (12th Edn., p. 228), under the caption "modification of the language to meet the intention" in the chapter dealing with "Exceptional Construction" states the position succinctly:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

This Court in *Tirath Singh v. Bachittar Singh* approved and adopted the said approach.

21.2. In *Shamrao V. Parulekar v. District Magistrate, Thana* this Court reiterated the principle from Maxwell: (AIR p. 327, para 12)

"12. ... if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided."

21.3. In *Molar Mal v. Kay Iron Works (P) Ltd.* this Court while reiterating that courts will have to follow the rule of literal construction, which enjoins the court to take the words as used by the legislature and to give it the meaning which naturally implies, held that there is an exception to that rule. This Court observed: (SCC p. 295, para 12)

"12. ... That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning."

21.4. In *Mangin v. IRC* the Privy Council held: (AC p. 746 E)

"... the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended."

If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted."

21.5. A classic example of correcting an error committed by the draftsman in legislative drafting is the substitution of the words "defendant's witnesses" by this Court for the words "plaintiff's witnesses" occurring in Order 7 Rule 14(4) of the Code, in Salem Bar (II). We extract below the relevant portion of the said decision: (SCC pp. 368-69, para 35)

"35 . Order 7 relates to the production of documents by the plaintiff whereas Order 8 relates to production of documents by the defendant. Under Order 8 Rule 1-A(4) a document not produced by the defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with a document during cross-examination. By mistake, instead of 'defendant's witnesses', the words 'plaintiff's witnesses' have been mentioned in Order 7 Rule 14(4). To avoid any confusion, we direct that till the legislature corrects the mistake, the words 'plaintiff's witnesses', would be read as 'defendant's witnesses' in Order 7 Rule 14(4). We, however, hope that the mistake would be expeditiously corrected by the legislature."

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the statute, in his treatise Principles of Statutory Interpretation (12th Edn., 2010, Lexis Nexis, p. 144) from the decision of the House of Lords in Stock v. Frank Jones (Tipton) Ltd.: (WLR p. 237 F-G)

"... a court would only be justified in departing from the plain words of the statute when it is satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly."

The Supreme Court in the case of Girdhari Lal & Sons v. Balbir Nath Mathur, reported in (1986) 2 SCC 237 has held as under:-

"9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary."

The Supreme Court in the case of *Bhatia International v. Bulk Trading S.A.* reported in (2002) 4 SCC 105 has held as under:-

"15. It is thus necessary to see whether the language of the said Act is so plain and unambiguous as to admit of only the interpretation suggested by Mr Sen. It must be borne in mind that the very object of the Arbitration and Conciliation Act of 1996, was to establish a uniform legal framework for the fair and efficient settlement of disputes arising in international commercial arbitration. The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the court has to choose that interpretation which represents the true intention of the legislature. This task often is not an easy one and several difficulties arise on account of variety of reasons, but all the same, it must be borne in mind that it is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. It is in such a situation the court's duty to expound arises with a caution that the court should not try to legislate. While examining a particular provision of a statute to find out whether the jurisdiction of a court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the court arrives at the same when such a conclusion is the only conclusion. Notwithstanding the conventional principle that the duty of Judges is to expound and not to legislate, the courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the courts would adopt, particularly in areas such as, constitutional adjudication dealing with social and defuse (sic) rights. Courts are therefore, held as "finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing" (see *Corocraft Ltd. v. Pan American Airways*, All ER at p. 1071 D, WLR at p. 732, *State of Haryana v. Sampuran Singh*, AIR at p. 1957). If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. (See *Johnson v. Moreton and Stock v. Frank Jones (Tipton) Ltd.*) In selecting out of different interpretations, the court will adopt that which is just, reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. In *Shannon Realities Ltd. v. Ville de St Miche*, AC at pp. 192-93, Lord Shaw stated:

"Where words of a statute are clear, they must, of course, be followed, but in Their Lordships' opinion where alternative constructions are equally open that

alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system."

This principle was accepted by Subba Rao, J. while construing Section 193 of the Sea Customs Act and in coming to the conclusion that the Chief of Customs Authority was not an officer of Customs. (*Collector of Customs v. Digvijaysinhji Spg. & Wvg. Mills Ltd.*)

The Supreme Court in the case of *Indian Performing Rights Society Ltd. v. Sanjay Dalia*, reported in (2015) 10 SCC 161 has held as under:-

"24. If the interpretation suggested by the appellant is accepted, several mischiefs may result, intention is that the plaintiff should not go to far- flung places than that of residence or where he carries on business or works for gain in order to deprive the defendant a remedy and harass him by dragging to distant place. It is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. The said principle was explained in Heydon's case . According to the mischief rule, four points are required to be taken into consideration. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. Heydon's mischief rule has been referred to in *Interpretation of Statutes* by Justice G.P. Singh, 12th Edn., at pp. 124-25 thus:

"(b) Rule in Heydon's case; purposive construction: mischief rule

When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words 'of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)' is the rule laid down in Heydon's case which has now attained the status of a classic (*Kanai Lal Sur v. Paramnidhi Sadhukhan*). The rule which is also known as "purposive construction" or "mischief rule" (*Anderton v. Ryan*), enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act; (ii) What was the mischief or defect for which the law did not provide; (iii) What is the remedy that the Act has provided; and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy". The rule was explained in *Bengal Immunity Co. Ltd. v. State of Bihar* by S.R. Das, C.J. as follows: (AIR p. 674, para 22)

'22. It is a sound rule of construction of a statute firmly established in England as far back as in 1584 when Heydon's case was decided that: (ER p. 638)

"... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st: What was the common law before the making of the Act.

2nd: What was the mischief and defect for which the common law did not provide.

3rd: What remedy Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th: The true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.' (Bengal Immunity Co. Ltd. v. State of Bihar)."

* * * *

32. Justice G.P. Singh in Principles of Statutory Interpretation, 12th Edn., has observed that regard be had to the subject and object of the Act. The court's effort is to harmonise the words of the statute with the subject of enactment and the object the legislature has in view. When two interpretations are feasible, the court will prefer the one which advances the remedy and suppresses the mischief as envisioned. The relevant portion is extracted below:

"As stated earlier (Chapter 1, Title 2 'Intention of the Legislature', text and Notes 57 to 69, pp. 14 to 17) and as approved by the Supreme Court:

'9. ... "the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained."

(Workmen v. Dimakuchi Tea Estate , AIR p. 356, para 9.) The courts have declined "to be bound by the letter, when it frustrates the patent purposes of the statute".

(Cabell v. Markham), (Judge Learned Hand). In the words of Shah, J.:

'8. ... It is a recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute and which effectuate the object of the legislature.'

(New India Sugar Mills Ltd. v. CST, AIR p. 1213, para 8.) Therefore when two interpretations are feasible the court will prefer that which advances the remedy and suppresses the mischief as the legislature envisioned. (Carew & Co. Ltd. v. Union of India, SCC p. 804, para 40.) The Court should adopt an object-oriented

approach keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits. [Busching Schmitz (P) Ltd. v. P.T. Menghani, SCC pp. 843-44, para 17.] The object-oriented approach, however, cannot be carried to the extent of doing violence to the plain language used by rewriting the section or substituting words in place of the actual words used by the legislature. (CIT v. N.C. Budharaja and Co., SCC p. 288, para 13.)

Having regard to the object of the U.P. Bhoodan Yagna Act, 1953 to implement the Bhoodan movement, which aimed at distribution of land to landless labourers who were versed in agriculture and who had no other means of subsistence, it was held that the expression 'landless persons' in Section 14, which made provision for grant of land to landless persons, was limited to landless labourers as described above and did not include a landless businessman residing in a city. (U.P. Bhoodan Yagna Samiti v. Braj Kishore.)"

33. In Busching Schmitz (P) Ltd. v. P.T. Menghani, it has been observed that purposive interpretation may be made having regard to the object of the provisions and to avoid any obvious lacuna.

34. The learned author Justice G.P. Singh in Interpretation of Statutes, 12th Edn. has also observed that it is the court's duty to avoid hardship, inconvenience, injustice, absurdity and anomaly while selecting out of different interpretations. The doctrine must be applied with great care and in case absurd inconvenience is to be caused that interpretation has to be avoided. Cases of individual hardship or injustice have no bearing for enacting the natural construction. The relevant discussion at pp. 132-33 and 140-42 is extracted here-under:

"(a) Hardship, inconvenience, injustice, absurdity and anomaly to be avoided

In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things' (Holmes v. Bradfield Rural District Council, All ER p. 384) as it may be presumed 'that the legislature should have used the word in that interpretation which least offends our sense of justice'. (Simms v. Registrar of Probates, AC p. 335.) If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity and inconsistency. (Grey v. Pearson, HLC p. 106.) Similarly, a construction giving rise to anomalies should be avoided. (N.T. Veluswami Thevar v. G. Raja Nainar, AIR SC pp. 427 and 428.) As approved by Venkatarama Aiyar, J.:

'7. ... Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.' (Tirath Singh v. Bachittar Singh, AIR p. 833, para 7.)"

* * *

"Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. 'The argument ab inconvenienti', said Lord Moulton, 'is one which requires to be used with great caution'. (Vacher & Sons Ltd. v. London Society of Compositors.) Explaining why great caution is necessary Lord Moulton further observed: (AC p. 130)

'... There is a danger that it may degenerate into mere judicial criticism of the propriety of the Acts of legislature. We have to interpret statutes according to the language used therein, and, though occasionally the respective consequences of two rival interpretations may guide us in our choice between them, it can only be where, taking the Act as a whole, and viewing it in connection with the existing state of the law at the time of the passing of the Act, we can satisfy ourselves that the words can have been used in the sense to which the argument points.'

(Vacher & Sons Ltd. v. London Society of Compositors.) According to Brett, L.J., the inconvenience necessitating a departure from the ordinary sense of the words should not only be great but should also be what he calls an 'absurd inconvenience'. Moreover, individual cases of hardship or injustice have no bearing for rejecting the natural construction (Young & Co. v. Royal Leamington Spa Corpn.), and it is only when the natural construction leads to some general hardship or injustice and some other construction is reasonably open that the natural construction may be departed from. It is often found that laws enacted for the general advantage do result in individual hardship; for example laws of Limitation, Registration, Attestation although enacted for the public benefit, may work injustice in particular cases but that is hardly any reason to depart from the normal rule to relieve the supposed hardship or injustice in such cases. (Lucy v. W.T. Henleys Telegraph Works Co. Ltd.) 'It is the duty of all courts of justice', said Lord Campbell, 'to take care for the general good of the community, that hard cases do not make bad law'. (East India Co. v. Oditchurn Paul.) 'Absurdity' according to Willes, J., should be understood 'in the same sense as repugnance that is to say something which would be so absurd with reference to the other words of the statute as to amount to a repugnance'. (Christophersen v. Lotingae .) 'Absurdity', said Lord Greene, M.R., 'like public policy, is a very unruly horse'. (Grundt v. Great Boulder Proprietary Mines Ltd.) He proceeded to add:

'There is one rule, I think which is clear ... that, although the absurdity or the non- absurdity of one conclusion as compared with another may be, and very often is, of assistance to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with great care, remembering that Judges may be fallible in this question of an absurdity and in any event it must not be applied so as to result in twisting language into a meaning which it cannot bear. It is a doctrine which must not be used to rewrite the language in a way different from that in which it was originally framed.'

(Grundt v. Great Boulder Proprietary Mines Ltd., Ch pp. 159-60.) The alternative

construction contended for must be such which does not put an undue strain on the words used; (Kanailal Sur v. Paramnidhi Sadhukhan) and does not require recasting of the Act or any part of it. It must be possible to spell the meaning contended for out of the words actually used. (Shamrao V. Parulekar v. District Magistrate, Thana.)

No doubt in cases of ambiguity that construction which better serves the ends of fairness and justice will be accepted, but otherwise it is for the legislature in forming its policy to consider these elements. (IRC v. Mutual Investment Co. Ltd.) If no alternative construction is open, the court cannot ignore a statutory provision 'to relieve what it considers a distress resulting from its operation; a statute has to be given effect to whether the court likes it or not'. (Martin Burn Ltd. v. Corpn. of Calcutta.) The function of the court is to find out what is legal and not what is right. (Chandavarkar Sita Ratna Rao v. Ashalata S. Guram.) It is presumed that a legislative body intends which is the necessary effect of its enactments; the object, the purpose and the intention of the enactment is the same; it need not be expressed in any recital or Preamble; and it is not competent for any court judicially to ascribe any part of the legal operation of the statute to inadvertence. (Kariapper v. Wijesinha.)

The courts should as far as possible avoid a construction which results in anomalies. (N.T. Veluswami Thevar v. G. Raja Nainar.)"

The Supreme Court in the case of ESI Corpn. v. A.K. Abdul Samad, reported in (2016) 4 SCC 785 has held as under:-

"9. In our considered view, the clause "shall also be liable to fine", in the context of the Penal Code may be capable of being treated as directory and thus, conferring on the court, a discretion to impose sentence of fine also in addition to imprisonment although such discretion stands somewhat impaired as per the view taken by this Court in Zunjarrao Bhikaji Nagarka. But clearly no minimum fine is prescribed for the offences under IPC nor that the Act was enacted with the special purpose of preventing economic offences as was the case in Chern Taong Shan. The object of creating offence and penalty under the Employees' State Insurance Act, 1948 is clearly to create deterrence against violation of provisions of the Act which are beneficial for the employees. Non-payment of contributions is an economic offence and therefore the legislature has not only fixed a minimum term of imprisonment but also a fixed amount of fine of five thousand rupees under Section 85(a)(i)(b) of the Act. There is no discretion of awarding less than the specified fee, under the main provision. It is only the proviso which is in the nature of an exception whereunder the court is vested with discretion limited to imposition of imprisonment for a lesser term. Conspicuously, no words are found in the proviso for imposing a lesser fine than that of five thousand rupees. In such a situation the intention of the legislature is clear and brooks no interpretation. The law is well settled that when the wordings of the statute are clear, no interpretation is required unless there is a requirement of saving the provisions from vice of unconstitutionality or absurdity.

Neither of the twin situations is attracted herein."

The Supreme Court in the case of *Southern Motors v. State of Karnataka*, reported in (2017) 3 SCC 467 has held as under:-

"36. As would be overwhelmingly pellucid from hereinabove, though words in a statute must, to start with, be extended their ordinary meanings, but if the literal construction thereof results in anomaly or absurdity, the courts must seek to find out the underlying intention of the legislature and in the said pursuit, can within permissible limits strain the language so as to avoid such unintended mischief."

The Supreme Court in the case of *State of Jharkhand v. Tata Steel Ltd.* reported in (2016) 11 SCC 147 has held as under:-

"25. In this regard, reference to *Mahadeo Prasad Bais v. ITO* would be absolutely seemly. In the said case, it has been held that an interpretation which will result in an anomaly or absurdity should be avoided and where literal construction creates an anomaly, absurdity and discrimination, statute should be liberally construed even slightly straining the language so as to avoid the meaningless anomaly. Emphasis has been laid on the principle that if an interpretation leads to absurdity, it is the duty of the court to avoid the same.

26. In *Oxford University Press v. CIT Mohapatra*, J. has opined that interpretation should serve the intent and purpose of the statutory provision. In that context, the learned Judge has referred to the authority in *State of T.N. v. Kodaikanal Motor Union (P) Ltd.* wherein this Court after referring to *K.P. Varghese v. ITO* and *Luke v. IRC* has observed: (*Oxford University Press case*, SCC p. 376, para 33)

"33. ... '17. The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye 'some' violence to language is permissible.' (*Kodaikanal Motor Union case*, SCC p. 100, para 17)"

27. *Sabharwal, J.* (as His Lordship then was) has observed thus: (*Oxford University Press case*, SCC p. 384, para 58)

"58. ... It is well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. It was held that construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. It

was said that the literalness in the interpretation of Section 52(2) must be eschewed and the court should try to arrive at an interpretation which avoids the absurdity and the mischief and makes the provision rational, sensible, unless of course, the hands of the court are tied and it cannot find any escape from the tyranny of literal interpretation. It is said that it is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case the court may read into the statutory provision a condition which, though not expressed, is implicit in construing the basic assumption underlying the statutory provision."

The Supreme Court in the case of H.S. Vankani v. State of Gujarat, reported in (2010) 4 SCC 301 has held as under:-

"43. It is a well-known rule of construction that the provisions of a statute must be construed so as to give them a sensible meaning. The legislature expects the court to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). The principle also means that if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. It is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly.

44. In this connection reference may be made to the judgment in R (Edison First Power Ltd.) v. Central Valuation Officer wherein Lord Millet said: (All ER pp. 116-17)

"116. ... The courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless.

117 . But the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it...."

45. Reference may also be made to the judgment in Andhra Bank v. B. Satyanarayana wherein this Court has held: (SCC p. 662, para 14)

"14. A machinery provision, it is trite, must be construed in such a manner so as to make it workable having regard to the doctrine '*ut res magis valeat quam pereat*'."

46. In Tinsukhia Electric Supply Co. Ltd. v. State of Assam this Court held as follows: (SCC p. 754, para 118)

"118. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle 'ut res magis valeat quam pereat'. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it."

47. Reference may also be made to the decisions in *Madhav Rao Jivaji Rao Scindia v. Union of India*, *Union of India v. B.S. Agarwal* and *Paradise Printers v. UT of Chandigarh*.

48. The above legal principles clearly indicate that the courts have to avoid a construction of an enactment that leads to an unworkable, inconsistent or impracticable results, since such a situation is unlikely to have been envisaged by the rule-making authority. The rule-making authority also expects rule framed by it to be made workable and never visualises absurd results."

The Supreme Court in the case of *Star Industries v. Commr. of Customs (Imports)*, reported in (2016) 2 SCC 362 has held as under:

"32.It is rightly argued by the learned Senior Counsel for the Revenue that exemption notifications are to be construed strictly and even if there is some doubt, benefit thereof shall not enure to the assessee but would be given to the Revenue. This principle of strict construction of exemption notification is now deeply ingrained in various judgments of this Court taking this view consistently."

The Supreme Court in the case of *Liberty Oil Mills (P) Ltd. v. CCE*, reported in (1995) 1 SCC 451 has held as under:-

"Even assuming that it is so, in the case of an ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the Revenue and not in favour of the assessee. The matter is concluded by a recent decision of a three-member Bench of this Court in *Novopan India Ltd. v. Collector of Central Excise and Customs*."

It is the submission of the Counsel for the petitioners, that in Article 5(e)

(i), the legislature has deliberately omitted the words "Possession of any immovable property is transferred to the purchaser before execution", therefore, it should mean that the intention of the Legislature was not to include the prior delivery of possession in Article 5(e)(i) and therefore, it has to be presumed that the Legislature has included such agreement to sell in Article 5(e)(ii), by impliedly taking out of Article 5(e)(i).

Thus, if the provisions of Article 5(e)(i) and (ii) are considered, the only distinction between both the provisions is the delivery of possession. Where the

possession has been delivered or where is agreed to be delivered without executing the conveyance, then the same duty as a conveyance (No.200) shall be payable and where the possession of the property is not given, then one percent of the total consideration of the property set forth in the agreement or memorandum of agreement shall be payable. It is submitted by the Counsel for the Petitioners, that 5(e)(i) does not include a situation, where the possession has already been delivered prior to execution of agreement to sell, and therefore, the said agreement to sell cannot be treated as a conveyance and it would fall in 5(e) (ii) and then one percent of the total consideration of the property set forth in the agreement or memorandum of agreement shall be payable .

The submission made by the Counsel for the petitioners cannot be accepted.

Article 5(e)(i) of Schedule 1-A of Stamp Act deals with a situation where the possession has been delivered and Article 5(e)(ii) deals with a situation where the possession has not been delivered to the intending purchaser.

Therefore, "the possession of the property which is subject matter of agreement" is the only distinction between 5(e)(i) and 5(e)(ii). The date on which the possession was given is not important. It is submitted by the Counsel for the petitioners that the use of word "when possession of the property is delivered" in Article 5(e)(i) would mean that the date of delivery of possession is important and if the possession was already delivered prior to execution of agreement to sell, then it would not be a conveyance and would not be covered by Article 5(e) (i). The submission made by the Counsel for the petitioners cannot be accepted.

As already held that Article 5(e)(ii) deals with a situation where the possession has not been delivered to the intending purchaser at all. If Article 5(e)(i) is interpreted as per the submission made by the Counsel for the Petitioners, then an additional category of agreement to sell would come into existence i.e., where the possession was already given to the intending purchaser even prior to the execution of agreement to sell.

The taxing statutes should be interpreted strictly and, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute and if two views are possible then the view which favors the assessee/subject should be taken. However, the exemption notifications are to be construed strictly and even if there is some doubt, benefit thereof shall not ensure to the assessee but would be given to the Revenue.

If Article 5(e)(i) and (ii) are compared, then the only distinction is the "possession". Where the possession has not been delivered to the intending purchaser, then the said agreement to sell cannot be treated as a conveyance and would be covered under Article 5(e)(ii). However, where the possession has been delivered or is agreed to be delivered without executing the conveyance, then it would fall in Article 5(e)(i). The only question for determination is that whether the words "when possession of the property is delivered" would include all eventualities of delivery of possession or would only include when the

possession is delivered by virtue of agreement to sell . As already held that while interpreting taxing statute, nothing has to be read into nor should anything be implied other than essential inferences. Thus, it cannot be held that where the possession was already given to the intending purchaser prior to execution of agreement to sell, then it would fall in Article 5(e)(ii) because, Article 5(e)(ii) only deals with a situation, where the possession has not been delivered.

Thus, if the contention of the Counsel for the petitioners is accepted that the words "when possession of the property is delivered" should be interpreted that when the possession of the property is delivered by virtue of agreement, then a third category "where possession has already been given prior to execution of agreement to sell" would come into existence, and such an interpretation is not possible. If one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided.

There is another aspect of the matter. If the construction as suggested by the Counsel for the petitioners is accepted, then it would mean, that where the possession is delivered prior to execution of agreement to sell, then such agreement would not be a conveyance, and it would fall in Article 5(e)(ii) and if the possession is delivered by virtue to an agreement to sell, then it would fall in 5(e)(i), then this interpretation of provision would give rise to one mischief.

"A person in order to evade payment of stamp duty as per Article 5(e)(i), would draft an agreement to sell, by mentioning that the possession was already with the intending purchaser".

The Supreme Court in the case of Corporation Bank Vs. Saraswati Abharansala reported in (2009) 1 SCC 540 has held as under :-

"24. The statute furthermore, it is trite, should be read in a manner so as to do justice to the parties. If it is to be held, without there being any statutory provision that those who have deposited the amount in time would be put to a disadvantageous position and those who were defaulters would be better placed, the same would give rise to an absurdity. Construction of the statute which leads to confusion must be avoided."

Therefore, if it is held that if the possession was already delivered prior to execution of agreement to sell, then such an agreement would fall under Article 5(e)(ii), then it would lead to an absurdity and would give a tool in the hands of unscrupulous persons to evade Tax/Stamp Duty. Such a construction of a taxing provision is not permissible. Therefore, this Court is of the considered opinion that the date of delivery of possession is not material, but whether the possession is with the intending purchaser or is still with the seller/owner would

be the decisive factor.

It is further submitted by the Counsel for the Petitioners, that a co-ordinate Bench of this Court in the case of Mahendra Kumar Vs. Smt. Meera Bhargava, reported in 2015(3) MPWN 38 has held that such an agreement of sale would be covered by Article 5(e)(ii) of Schedule 1-A of Stamp Act, whereas the Counsel for the State has relied upon a judgment passed by a co-ordinate Bench of this Court, passed in the case of Atmaram Vs. Anil Kumar reported in 2011(3) MPLJ 407.

Considered the submissions made by the Counsel for the parties.

"Conveyance" has been defined in Section 2(10) of Indian Stamp Act,

which reads as under :

"(10) Conveyance includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule 1 or by Schedule 1-A, as the case may be."

A Division Bench of this Court in the case of Umesh Vs. Rajaram reported in (2010) 2 MPLJ 104 has held as under :-

"16..... If the agreement is in relation to the property or sale of the same, then ordinarily the stamp duty payable would be Rs. 50/-, but in case, the document contains a recital that the possession of the property has been already been transferred or handed over to the proposed purchaser, without executing a conveyance or it shall be handed over to the purchaser without execution of the conveyance in future, then the document shall come out of the definition of an 'agreement', but would become a 'conveyance', as provided under Article 23 of Schedule 1-A.

(Emphasis supplied)"

Thus, this Court is of the considered opinion, that the Collector Stamps did not commit any mistake in holding that where the agreement to sell contains the recital that the possession of the property is already with the intending purchaser then the document would come out of the definition of agreement and would become a conveyance and hence is chargeable under Article 5(e)(i) of Schedule 1-A of Stamp Act.

It is next contended by the Counsel for the petitioners, that during the pendency of the appeal before the Board of Revenue, the parties have compromised the matter and a compromise decree has been passed, therefore, there is no need for producing the agreement of sale. Ground 6.7 of the writ petition reads as under :

"6.7 That, later on 20-9-2018, there was compromise between parties of suit and suit was disposed off. Then there was no need to produce agreement

Annexure P/3 for evidence, hence, this aspect may kindly be considered by the Hon'ble Court. Copy of order is filed as Annexure P/10."

Considered the submissions made by the Counsel for the petitioners.

Once, the Trial Court had directed for impounding the document, then in the considered opinion of this Court, the Trial Court should not have proceeded further with the Trial, till the document is impounded. The petitioner, has not filed the order of the Trial Court, by which the order of impounding was passed. As the compromise decree is not the subject matter of this Case, therefore, no further observation is required, except by mentioning that the Trial Court should have satisfied itself about the compromise, specifically when the Collector of Stamps had already held that the market value of the property in question is Rs.93,80,000/-. However, as the document was sent for impounding, therefore, the petitioners are under obligation to pay the deficit stamp duty and penalty as directed by Collector Stamps.

It is next contended by the Counsel for the petitioners, that since, the land in dispute is an agricultural land, therefore, the assessment of its market value like a residential land is bad. The Collector in its order dated 27-5-2015 has held that the land in dispute has been included within the limits of Municipal Corporation and is now a residential land and thus, the market value of the land in dispute is Rs.93,80,000/-. This finding given by the Collector, Stamps cannot be said to be erroneous. Mere recital of the document, would not determine the market value of the property, but it is for the Collector Stamps to determine the market value of the property.

No other argument is advanced by the Counsel for the Petitioners.

For the reasons mentioned above, this Court is of the considered opinion, that the petition sans merits and accordingly, the order dated 27-5-2015 passed by Collector of Stamps, Distt. Gwalior in Revenue Case No.15/B-103/2014- 2015/33 and order dated 5-9-2018 passed by Board of Revenue in Revision No. PBR/Revision/Gwalior/Stamp Act/2017/ 3011 are hereby affirmed.

This petition fails and is hereby Dismissed.