
(2015) 09 SC CK 0148

In the Supreme Court Of India

Case No : I.A. Nos. 7-8 and 9-10 of 2015 in SLP (C) Nos. 23886-23887/2012

The Committee-GFIL

APPELLANT

Vs

Libra Buildtech Private Ltd. and others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Contract Act, 1872 — Section 65
Stamp Act, 1899 — Section 49, 50, 50(3)

Citation : (2016) 1 ABR 164 : (2015) 11 AD (SC) 221 : (2016) 1 AKR 63 :
(2016) 1 ALD 106 : (2015) 113 ALR 739 : (2016) 1 RCR(Civil) 424 : (2016)
130 RD 465 : (2015) 10 SCALE 316 : (2016) 133 SCL 181

Hon'ble Judges : Jasti Chelameswar and Abhay Manohar Sapre, JJ.

Bench : Division Bench

Final Decision : Allowed

Judgement

Abhay Manohar Sapre, J—In the light of the order dated 22.01.2015 already passed by this Court in I.A. Nos. 7-8 as mentioned in the Office Report dated 11.02.2015, no further order on these IAs. is required.

2. I.A. Nos. 9 and 10—these two applications are filed by the applicants/ Respondent Nos. 1-4.—Libra Buildtech Private Ltd. and Ors. (hereinafter referred to as "the applicants") for direction by this Court to State of Punjab and S.D.M. Dera Bassi to refund the full amount of stamp duty to the applicants.

3. In order to appreciate the nature of controversy involved and the direction sought for refund of the amount paid by the applicants for purchase of stamp duty for execution of sale deeds in relation to properties in question, it is necessary to set out the undisputed factual background of the case infra.

4. Golden Forest India Limited (GFIL), (hereinafter referred to as "the company") was a company incorporated under the Companies Act on 23.02.1987. On 06.03.1987, it was granted certificate of commencement of business. This company went into liquidation. The creditors of the company, therefore, filed

various claim petitions against the company in various courts across the country. This Court therefore, on an application filed, transferred all the cases pending in various courts in the country to this Court.

5. This Court thereafter constituted a Committee, namely, GFIL Committee (Petitioner in S.L.P.(C) Nos. 23886-87 of 2012) to take over the assets of the company and dispose of the same for paying the debts of various investors/creditors.

6. By order dated 05.09.2006 in I.A. Nos. 28, 36 etc. in T.C.(C) No. 2 of 2004 etc. this Court directed the GFIL Committee to sell the properties of the company. In compliance of the above said order, the GFIL Committee published an advertisement for the auction of certain properties of the company. The applicants herein participated in the auction and submitted their bid to purchase the properties advertised for sale. After auction, the applicants herein were declared as successful bidders in respect of five properties namely-

(a) Property No. 1 (Central Office Building Village Jharmari, Tehsil Dera Bassi, bid by Libra Buildtech Pvt. Ltd.) for Rs. 34 crores,

(b) Property No. 2 (Hotel behind Central office at village Jharmari, bid by Saffron Town Planners Pvt. Ltd.) for Rs. 16.25 crores.

(c) Property No. 3 (Farm lands & Buildings behind semi-constructed Hotel at village Jharmari, bid by Swans Town Planners Pvt. Ltd.) for Rs. 15.25 crores.

(d) Property No. 7 (10 Residential and 2 Office buildings at village Jarout by Aries Buildwell Pvt. Ltd.) for Rs. 9.05 crores.

(e) Property No. 9 (Farm Lands at village Kurali, bid by Flamingo Propbuild Pvt. Ltd.) for Rs. 27.25 crores.

As per auction conditions, the applicants immediately deposited 25% of the bid amount, i.e., Rs. 25.45 crores with the GFIL Committee on 06.12.2006.

7. By order dated 14.05.2007, this Court directed the GFIL Committee to invest the bid amount received by them in FDRs till the sale in favour of the applicants was confirmed.

8. On 29.07.2009, this Court confirmed the sale of the properties in favour of the then Director of the applicant-Companies and granted them six months" time to pay the balance amount of 75% towards the sale price. However, the said time to pay the balance amount was further extended by 14 days vide order dated 29.01.2010. This Court also directed that on deposit of the full amount, the GFIL Committee would ensure that the properties in question are put in possession of the purchasers (applicants).

9. As per the direction of this Court, the applicant-Companies accordingly deposited the balance 75% of the bid amount on 10.02.2010 with the GFIL Committee, i.e. (Rs. 101.80 crores).

10. Thereafter, this Court transferred the pending cases to the Delhi High Court for further action.

11. In pursuance thereof, the Division Bench of the High Court of Delhi by order dated 03.08.2011 in W.P.(C) No. 1399 of 2010 directed the successful bidders/applicants herein to deposit the stamp papers within two weeks and further directed the GFIL Committee to execute the sale deed within a period of four weeks thereafter.

12. In terms of the directions issued by the High Court, on 02.09.2011, the applicants purchased the stamp papers for a sum of Rs. 6.22 crores and gave the same to the GFIL Committee to execute the sale deeds and handover the possession of the properties to them.

13. On 23.12.2011, sale deeds were accordingly executed in favour of the applicants and even registration was effected in respect of two of the applicants.

14. Despite payment and execution of sale deeds, the GFIL Committee did not handover the possession of the properties to the applicants and hence this led to filing of applications by the applicants being CMP No. 8029 of 2012 in W.P. No. 1399 of 2010.

15. By order dated 09.07.2012, the High Court directed the GFIL Committee to refund the amount deposited by the bidders within one week till they are in a position to handover the possession of the properties.

16. Against this order, the GFIL Committee filed a review petition being R.P. No. 423 of 2012 in C.M. No. 8029 of 2012 in W.P.(C) No. 1399 of 2010. By order dated 30.07.2012, the High Court dismissed the same.

17. Instead of refunding the amount, the GFIL Committee challenged both the orders dated 09.07.2012 and 30.07.2012 by way of abovementioned special leave petitions i.e. SLP (C) Nos. 23886-23887 of 2012 before this Court.

18. This Court, by order dated 26.09.2012, disposed of these Special Leave Petitions with a direction to the GFIL Committee to refund the entire amount deposited by the applicants by way of sale consideration with interest and also recorded that as far as payment of stamp duty amount is concerned, the applicants would take up the matter with the State Government for refund of the said amount.

19. In pursuance of the aforesaid order of this Court, the GFIL Committee on 06.10.2012 refunded the entire sale consideration with interest to the applicants. However, while refunding it, the GFIL deducted the TDS on the interest accrued on the amount deposited by the applicants despite the fact that the bank had already deducted the same.

20. Aggrieved by the TDS deducted by the GFIL Committee, the applicants filed I.A. Nos. 3-4 of 2013 before this Court for seeking refund of the said amount.

21. By order dated 23.02.2015, this Court directed the GFIL Committee as well as the Union of India to refund a sum of Rs. 3.4 crores because it was noticed that TDS was already deducted twice over.

22. Out of five applicants, four of them, namely, Libra Build Tech Pvt. Ltd., Saffron Town Planners Pvt. Ltd., Aries Buildwell Pvt. Ltd. and Flamingo Propbuild Pvt. Ltd. applied on 22.10.2012 to the Government of Punjab through S.D.M. Dera Bassi for refund of stamp duty amount. One applicant, namely, Swans Town Planners Pvt. Ltd. applied to the Government of Punjab through S.D.M., Dera Bassi for refund of stamp duty amount on 02.11.2012.

23. The S.D.M., Dera Bassi, filed his reply stating therein that vide letter dated 18.07.2013, he has already rejected the claims of the applicants for refund of stamp duty amount on the ground that the applications made by the applicants to claim refund of stamp duty amount were time barred and hence the claims for refund have already been consigned to the records as not maintainable.

24. It is with this background, as mentioned above, I.A. No. 9 and 10 are filed by the applicants praying for a direction to the State of Punjab and S.D.M. Dera Bassi to refund the entire amount of stamp duty (Rs. 6.22 crores) to the applicants. Notice on IAs. was given to all the concerned parties including State of Punjab and S.D.M. Dera Bassi who were impleaded as party Respondent by IA Nos. 7 and 8. They are served and duly represented.

25. Learned senior Counsel Shri Shaym Divan appearing for the applicants has urged three points in support of the prayer made in the applications. In the first place, he contended that when admittedly the purpose for which the applicants had deposited the money-sale consideration with the GFIL Committee as per court's directions has failed namely-"purchase of the properties in questions by the applicants" and when the Court as a consequence thereof directed refunding of the entire sale consideration money with interest to the applicants by order dt. 26.09.2012, a fortiori, the applicants are also entitled to claim refund of the entire amount of stamp duty from the State exchequer. In other words, the submission of the learned Counsel is that when the original purpose intended between the parties, namely "sale of the properties to the applicants by the GFIL Committee" failed or had become impossible to perform due to reasons beyond the control of the vendors (GFIL Committee), the applicants are entitled to claim the refund of the entire stamp duty amount from the State exchequer, because in such circumstances, the State has no right to retain the stamp duty money consequent upon failure of performance of contract in relation to sale of properties by the parties.

26. In the second place, learned Counsel contended that direction to refund the amount of stamp duty could always be issued against the State Government by taking recourse to powers contained in Sections 49 and 50 of the Indian Stamp Act, 1899 (for short called "the Act") read with Section 65 of the Indian Contract Act, 1872. Learned Counsel also placed strong reliance upon the principle of law

contained in the maxim *actus curiae neminem gravabit* - (Act of the court shall prejudice no man) and contended that admittedly, there was no fault on the part of the applicants in execution of the entire transaction for which they could have been penalised for not getting their money back and hence keeping in view the principle contained in this maxim, the applicants are entitled to claim the return of amount of stamp duty.

27. In the third place, learned Counsel contended that the SDM was not right in rejecting the applicants' claim of refund on the ground of it being barred by limitation because according to learned Counsel, the right to claim refund of stamp duty amount arose for the first time in applicants' favour on 26.09.2012 when this Court by order dated 26.09.2012 directed the GFIL Committee to refund the entire sale consideration to the applicants due to failure on the part of the GFIL Committee to handover the possession of the properties in question to the applicants and in the same order granted liberty to the applicants to approach the State Government to claim refund of stamp duty amount. Learned Counsel pointed out that the applicants, in compliance to liberty granted, applied to the State Government on 22.10.2012/02.11.2012 which was within the time prescribed in Section 50 of the Act. It was, therefore, his submission that the State Government (SDM, Dera Bassi) should have entertained the applicants' application treating the same to have been filed within time and accordingly should have granted refund of entire stamp duty amount to the applicants, as was claimed by them in their applications.

28. In reply, learned Counsel for the Respondents supported the impugned order of rejection passed by the SDM and contended that the applicants' claim was rightly rejected on the ground of limitation.

29. Having heard the learned Counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by the learned Counsel for the applicants.

30. The question which arises for consideration in this case is whether the applicants are entitled to claim refund of stamp duty amount of Rs. 6.22 crores.

31. From the facts set out supra which are part of judicial record of the cases decided by this Court and the Delhi High Court, it is clear that despite applicants depositing the entire sale consideration (Rs. 101.80 crores) and Rs. (6.22 crores) for stamp duty to purchase the properties in question, and having performed their part of contract, in letter and spirit, the GFIL Committee i.e. seller failed to place the applicants in possession of the properties. This event resulted in frustrating the purpose as was originally intended between the parties.

32. As mentioned supra, this Court, therefore, passed an order on 26.09.2012 and cancelled the transaction in question and directed the GFIL Committee to refund the entire sale consideration with interest to the applicants. So far as the refund of stamp duty amount was concerned, this Court on a statement made by counsel for the applicants permitted the applicants to approach the State

Government to claim refund from the State Government.

33. The order dated 26.9.2012 reads as under:

Whatever be the reason, it has been submitted by Mr. Vivek Tankha, learned senior Counsel appearing for the Respondents, that they are willing to have the sale deeds cancelled and to receive the entire amounts, which they had paid along with the interest accrued thereon. As far as payment of stamp duty is concerned, it is submitted that the Respondents would take up the matter with the Government for refund.

Having heard Mr. V.G. Jhanji, learned senior Counsel appearing for the Committee-GFIL and Mr. Vivek Tankha, learned senior Counsel for the Respondents, and in view of the offer, which has been accepted by the Respondents, we dispose of the special leave petitions, with a direction to the Committee to refund to the five concerned Respondents the amounts deposited by them by way of sale consideration, together with the interest accrued thereon till date, expeditiously, but if possible, within a week from date. Upon refund of the entire amount, the sale deeds shall stand cancelled and the Committee will not be bound by the same.

34. In compliance to the aforesaid order, the committee accordingly refunded the entire sale consideration to the applicants on 06.10.2012. So far as claim for refund of the stamp duty amount was concerned, the applicants filed an application to the State Government (S.D.M., Dera Bassi) on 22.10.2012/02.11.2012.

35. In our considered opinion, keeping in view the undisputed facts mentioned above, the applicants are also entitled to claim the refund of entire stamp duty amount of Rs. 6.22 crores from the State Exchequer, which they spent for execution of sale deeds in their favour in relation to the properties in question. This we say for the following reasons.

36. In the first place, admittedly the transaction originally intended between the parties, i.e., sale of properties in question by GFIL-Committee to the applicants was not accomplished and failed due to reasons beyond the control of the parties. Secondly, this Court after taking into consideration all facts and circumstances also came to the conclusion that it was not possible for the parties to conclude the transactions originally intended and while cancelling the same directed the seller (GFIL-Committee) to refund the entire sale consideration to the applicants and simultaneously permitted the applicants to claim refund of stamp duty amount from the State Government by order dated 26.09.2012. Thirdly, as a result of the order of this Court, a right to claim refund of amount paid towards the stamp duty accrued to the applicants. Fourthly, this being a court monitored transaction, no party was in a position to take any steps in the matter without the permission of the Court. Fifthly, the applicants throughout performed their part of the contract and ensured that transaction in question is accomplished as was originally intended but for the reasons to which they were

not responsible, the transaction could not be accomplished. Lastly, the applicants in law were entitled to claim restoration of all such benefits/advantages from the State once the transaction was cancelled by this Court on 26.09.2012 in the light of the principle contained in Section 65 of the Contract Act which enable the party to a contract to seek restoration of all such advantage from other party which they took from such contract when the contract is discovered to be void or becomes void. This was a case where contract in question became void as a result of its cancellation by order of this Court dated 26.09.2012 which entitled the applicants to seek restitution of the money paid to the State for purchase of stamp duty.

37. In our considered opinion, while deciding a case of this nature, we have to also bear in mind one maxim of equity, which is well settled namely " *actus curiae neminem gravabit*" meaning - An Act of the Court shall prejudice no man. In Broom's Legal Maxims 10th edition, 1939 at page 73 this maxim is explained saying that it is founded upon justice and good sense and afforded a safe and certain guide for the administration of law. This maxim is also explained in the same words in [(Jenk. Cent. 118)]. This principle is fundamental to any system of justice and applies to our jurisprudence. (See: *Busching Schmitz Private Limited Vs. P.T. Menghani and Another*, and *Raj Kumar Dey and Others Vs. Tarapada Dey and Others*,)

38. It is thus a settled principle of law based on principle of equity that a person cannot be penalized for no fault of his and the act of the court would cause no prejudice to any of his right.

39. In our considered opinion, the aforesaid maxim would apply with full vigour in the facts of this case and if that is the position then applicants, in our opinion, are entitled to claim the refund of entire amount of stamp duty from the State Government which they spent in purchasing the stamp duty for execution of sale deed in relation to the properties in question. Indeed in the light of six reasons set out supra which, in our considered opinion, in clear terms attracts the principle contained in the aforesaid maxim, the State has no right to defend the order of SDM for retaining the amount of stamp duty paid by the applicants with them. The applicants' bona fide genuine claim of refund cannot be denied on such technical grounds.

40. This case reminds us of the observations made by the Chief Justice M.C. Chagla in a case reported in *Firm Kaluram Sitaram Vs. The Dominion of India*, .

41. The learned Chief Justice in his distinctive style of writing observed as under in para 19:

...we have often had occasion to say that when the State deals with a citizen it should not ordinarily reply on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.

42. We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.

43. Even apart from what we have held above, when we examine the case of the applicants in the light of Sections 49 and 50 of the Act, we find that the case of the applicants can be brought Under Section 49 (d)(2) read with Section 50(3) of the Act to enable the State to entertain the application made by the applicants seeking refund of stamp duty amount. The interpretation, which advance the cause of justice and is based on the principle of equity, should be preferred. We hereby do so.

44. As mentioned above, it is not in dispute that this Court on 26.09.2012 cancelled the transaction in question, and hence by reason of the orders of this Court, the stamps used for an instrument executed by the applicants were found unfit thereby defeating the purpose originally intended. This occurred either due to some error or mistake therein. Since the execution of sale deeds and its implementation was subject to the orders of the court, the parties were required to apply the court for appropriate orders for every step. It is due to this reason, the right to claim the refund of the amount of stamp duty arose for the first time in applicants" favour on 26.09.2012. The applicants had accordingly filed their applications within 6 months from the date of this order, as provided in Section 50. In the light of these facts, the applications should have been entertained treating the same to have been filed Under Section 49 (d)(2) read with Section 50 of the Act for grant of refund of stamp duty amount claimed therein by the applicants.

45. In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed Under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the State in the light of the grounds mentioned above.

46. In view of the foregoing discussion, I.A. Nos. 9 and 10 filed by the applicants deserve to be allowed and are accordingly allowed. The State of Punjab through the SDM, Dera Bassi is directed to refund the entire stamp duty amounting to Rs. 6.22 crores spent by the applicants for purchasing of stamps papers for execution of sale deeds in relation to purchase of the properties in question. Let the refund of money as directed above be paid to the applicants within four weeks from the date of this order.