

A M/S TIRUPATI DEVELOPERS  
v.  
STATE OF UTTARAKHAND & ORS.  
(Civil Appeal No. 6619 of 2013)

B AUGUST 08, 2013

**[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]**

*Indian Stamp Act, 1899 - s.28 r/w Art.5 (b-1) of Schedule 1B [as applicable to the State of Uttarakhand] and ss.33, 38 and 47A - Deficit stamp duty - Agreements for sale executed in favour of appellant - Presented before the Deputy Registrar for registration - Matter referred by him to Assistant Commissioner (Stamp and Registration) who held that the stamp duty paid on the documents was deficient and directed the appellant to make up for the deficit stamp duty alongwith penalty imposed as well as interest - Writ Petitions in High Court - Partial relief given to appellant modifying the orders of Deputy Registrar, inasmuch as deficient stamp duty was worked out at a lesser amount and on this reduced penalty of 15% was imposed - Held: The subject matter of the documents fell u/s.33 - Subsequent conduct of the parties in cancelling the agreements cannot be a reason for not taking action u/s.33/38 - Main argument of the appellant before the High Court was that at the relevant time stamp duty was payable @ Rs. 80/- per thousand whereas the Assistant Commissioner (Stamps) had calculated the same @ Rs. 125/- per thousand - This argument has already been accepted by the High Court whereby stamp duty payable was reduced and relief to that extent has already been given - Likewise the High Court also set aside the order of the Assistant Commissioner (Stamps) in so far as the interest payment was imposed upon the appellant - In any case, High Court reduced the penalty to 15% of the deficit stamp duty, thereby giving sufficient succour to the appellant - No further relief can be granted to the appellants.*

Eleven Agreements for sale were executed in favour of the appellant/petitioner. In each of these agreements a part of land situated in a village in Uttarakhand was sought to be purchased by the appellant. The Deputy Registrar concerned impounded all these documents as he felt that the documents were not sufficiently stamped. Matter was referred by him to the Assistant Commissioner (Stamp and Registration) who directed the appellant to make up for the deficit stamp duty alongwith penalty imposed as well as interest. Revision Petition before the Additional Commissioner was dismissed. That order was challenged by filing Writ Petitions in the High Court which met the same fate in so far as issue regarding deficient stamp duty is concerned. However, partial relief was given to the appellant modifying the orders of Deputy Registrar, inasmuch as deficient stamp duty was worked out at a lesser amount and on this reduced penalty of 15% was imposed.

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In the instant appeals, the appellant referred to the provisions of Section 2, Section 3 and Section 10 of the Indian Stamp Act, 1899, and on that basis submitted that at the time of agreement to sale, stamp duty is not payable at all.

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The appellant, further argued that in the instant cases, the Assistant Commissioner (Stamps) had adjudicated the matter under Section 33/38 of the Stamp Act which was clearly illegal as these provisions were not applicable and instead, the case should have been dealt with u/s 47 A of the Stamp Act.

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Dismissing the appeals, the Court

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HELD: 1. A conjoint reading of Section 28 of the Indian Stamps Act, 1899 read with Article 5 (b-1) of Schedule 1B, as applicable to the State of Uttarakhand clearly depict that the stamp duty is payable on 50% of

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A the Value of consideration of the sale agreement. As per  
this, in the illustrative case chosen by this Court, where  
the total consideration was Rs. 24,70,000/-, stamp duty  
was to be calculated on Rs. 12,35,000/-. Instead the  
appellant had paid stamp duty of Rs. 10,000/- only. It is  
B manifest, therefore, that the stamp duty paid on the  
document was deficient which was rightly impounded by  
the Deputy Registrar and sent for adjudication. [Paras 11  
and 12] [606-B, F-H]

C 2. As per Section 33 of the Stamps Act, every person  
having, by law or consent of parties authority to receive  
the evidence or every person in-charge of a public office  
is duty bound to impound the instrument when produced  
before him, and he finds that such an instrument is not  
D duly stamped. The agreements in question were  
presented before the Deputy Registrar for registration  
who felt that the stamp duty on these documents was  
deficient. Therefore, it is rightly held by the Courts below  
that the subject matter of the documents fell under  
E Section 33 of the Act and not under Section 47 A of the  
Act. [Para 14] [607-E-F]

F 3. The main argument of the petitioner before the  
High Court was that at the relevant time the stamp duty  
was payable at the rate of Rs. 80/- per thousand whereas  
the Assistant Commissioner (Stamps) had calculated the  
same at the rate of Rs. 125/- per thousand. This argument  
has already been accepted by the High Court whereby  
stamp duty payable was reduced and relief to that extent  
has already been given. Likewise the High Court had also  
G set aside the order of the Assistant Commissioner  
(Stamps) in so far as the interest payment was imposed  
upon the appellant. Even the penalty was reduced to 15  
percent only. [Para 16] [607-H; 608-A-B]

H 4. In regard to the contention that no adjudication  
was permissible at all because of the reason that these

agreements for sale were subsequently cancelled, that too within two months of the execution thereof, this Court is of the opinion that the subsequent conduct of the parties in cancelling the agreements cannot be a reason for not taking action under Section 33/38 of the Act. That action was necessitated when the documents were produced before the Dy. Registrar and he found the same to be deficient. The subsequent cancellation would be of no avail. In any case, keeping in view this aspect the High Court reduced the penalty to 15 percent of the deficit stamp duty, thereby giving sufficient succour to the appellant. No further relief can be granted to the appellants. [Paras 17, 18] [608-C-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6619 of 2013.

From the Judgment and Order dated 29.09.2011 of the High Court of Uttarakhand at Nainital in Writ Petition (M/S) No. 2068 of 2011.

WITH

C.A. Nos. 6620, 6621, 6622, 6623, 6624, 6627, 6628, 6629, 6630 & 6631 of 2013.

Vibha Datta Makhija, Ashok Kumar Sharma for the Appellant.

Rachana Srivastava, Prateek Dwivedi (for Anuvrat Sharma) for the Respondents.

The Judgment of the Court was delivered by

**A.K. SIKRI, J. 1.** Leave granted.

2. Eleven Agreements for sale were executed in favour of the petitioner herein. In each of these agreements a part of land comprising area 0.385 Hectare, falling in Khasra No. 25

A situated in village Mahua Kheda, Tehsil Kashipur, Udham Singh  
Nagar, Uttarakhand was sought to be purchased by the  
petitioner. The petitioner had also paid earnest money of  
varying amounts against the total consideration which are  
agreed to in each of the agreements. For example, in one  
B agreement dated 4.12.2007, total consideration mentioned  
was Rs. 24,70,000/- and at the time of signing the agreement  
for sale, an advance amount of Rs. 6,15,000/- was paid. A sum  
of Rs. 10,000/- was paid as stamp duty on this deed of  
Agreement of Sale. In a similar manner, other 10 agreements  
C were also presented for registration, paying a sum of Rs.  
10,000/- as stamp duty on each of them.

3. The Deputy Registrar concerned impounded all these  
documents as he felt that the documents were not sufficiently  
D stamped. Matter was referred by him to the Assistant  
Commissioner (Stamp and Registration) for adjudication of  
proper stamp duty and to recover deficit stamp duty from the  
petitioner. Notices were issued to the petitioner by the Assistant  
Commissioner (Stamp and Registration) and an enquiry was  
E conducted. After receiving his objections, the Assistant  
Commissioner (Stamp and Registration) passed the orders  
holding that the stamp duty paid on these documents was  
deficient. In each of the cases, he directed the petitioner to  
make up for the deficit stamp duty alongwith penalty imposed  
as well as interest. For example, in respect of, document,  
F illustrated above, the petitioner was called upon to pay Rs.  
1,44,375/- as deficient stamp duty and Rs. 70,000/- as penalty  
with interest. Similar orders were passed in other ten cases.

4. Challenging these orders, the petitioner preferred  
G Revision Petition before the Additional Commissioner, Kumaon  
Mandal, Nainital which was, however, dismissed by an order  
dated 10.3.2011. That order was challenged by filing Writ  
Petitions in the High Court of Uttarakhand, Nainital which have  
met the same fate in so far as an issue regarding deficient  
H stamp duty is concerned. However, partial relief is given to the

petitioner modifying the orders of Deputy Registrar, in as much as deficient stamp duty is worked out at Rs. 88,800/- and not Rs. 1,44,375/-. On this amount reduced penalty of 15% is imposed i.e. Rs. 13,320/-.

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5. Similar corrections are made in other Writ Petitions in so far as exact quantum of deficit stamp duty is concerned and the Writ Petitions are allowed partly to this extent.

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6. Undeterred and unsatisfied with the aforesaid outcome, present Special Leave Petitions are filed invoking extraordinary jurisdiction under Article 136 of the Constitution of India, impugning the aforesaid verdict dated 29th September, 2011 of the High Court of Uttarakhand, Nainital.

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7. Operative portion of the impugned order reads as under:

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"Considering the peculiar facts and circumstances of the case that the agreement for sale had been cancelled within a period of two months from the date of execution of agreement for sale coupled with the fact that no opportunity of hearing was afforded to the petitioner on the point of imposition of penalty, this Court is of the opinion that to meet the ends of justice, penalty be imposed at the rate of 15 percent of the deficit stamp duty. This order shall not be treated as a precedent for other cases".

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8. Ms. Vibha Datta Makhija, learned Counsel who appeared on behalf of the petitioner in all these cases, referred to the provisions of Section 2, Section 3 and Section 10 of the Indian Stamp Act, 1899 (hereinafter to be referred as the Stamp Act), on the basis of which her submission was that at the time of agreement to sale, stamp duty is not payable at all. She, further argued that in the instant cases, the Assistant Commissioner (Stamps) had adjudicated the matter under Section 33/38 of the Act which was clearly illegal as these provisions were not applicable and instead, the case should

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A have been dealt with u/s 47 A of the Stamp Act.

9. In so far as first argument of the petitioner's Counsel is concerned, on the reading of the aforesaid provisions of the Indian Stamp Act to which our attention was brought, one would get an impression that there is some merit in the said submission. However, this argument ignores that there is a State amendment thereto and applicability of this provision demolishes the aforesaid plea comprehensively.

10. Section 28 of the Stamp Act reads as under:

**"28. Direction as to duty in case of certain conveyances.**

(1) When any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with ad valorem duty in respect to such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with ad valorem duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained

a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with ad valorem duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser. A  
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- (4) Where a person having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with ad valorem duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with ad valorem duty in respect only of the excess of the original consideration over the aggregate of the consideration paid by the sub-purchaser. C  
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Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee. F

- (5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with ad valorem duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration H

A obtained by such original seller or, where such duty  
would exceed five rupees, with duty of five persons."

11. The aforesaid provision has to be read with Article 5  
(b-1) of Schedule 1B of the Indian Stamps Act, as applicable  
B to the State of Uttarakhand, which is as under:

Description of Instrument	Proper Stamp Duty
<p>(b) If relating to the sale C of an immovable property where possession is not admitted to have been delivered nor is agreed to D be delivered nor is agreed to be delivered without executing the conveyance.</p> <p>Provided that when E conveyance in pursuance of such agreement is executed, the duty paid under this clause in excess F of the duty payable under Cl.(c) shall be adjusted towards the duty payable on the conveyance."</p>	<p>The same duty as on conveyance [No. 23 Cl. (a) on one half of the amount of consideration as set forth in the agreement.</p>

12. The conjoint reading of the aforesaid provisions would  
clearly depict that the stamp duty is payable on 50% of the  
Value of consideration of the sale agreement. As per this, in  
the illustrative case chosen by us, where the total consideration  
G was Rs. 24,70,000/-, stamp duty was to be calculated on Rs.  
12,35,000/-. Instead the appellant had paid stamp duty of Rs.  
10,000/- only. It is manifest, therefore, that the stamp duty paid  
on the document was deficient which was rightly impounded by  
the Deputy Registrar and sent for adjudication. In fact, this legal  
H position was even conceded to by the appellant before the High

Court which has been recorded in the impugned judgment as follows: A

"It is admitted to both the parties that the petitioner is liable to pay the stamp duty, which is payable on 50 percent of the valuation of the sale consideration on the date of execution of the agreement for sale". B

13. In so far as second argument predicated on, Section 47 A of the Stamp Act is concerned, we find no substance therein. Section 33 of the Act, which was invoked in the present case reads as under: C

"Every person having by law or consent of parties authority to receive evidence and every person in-charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion with duty is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same". D

14. As per the aforesaid provisions, every person having, by law or consent of parties authority to receive the evidence or every person in-charge of a public office is duty bound to impound the instrument when produced before him, and he finds that such an instrument is not duly stamped. The agreements in question were presented before the Deputy Registrar for registration who felt that the stamp duty on these documents was deficient. Therefore, it is rightly held by the Courts below that the subject matter of the documents fell under Section 33 of the Act and not under Section 47 A of the Act. E F

15. Presumably, knowing this legal position, this argument was, though, taken before the Assistant Commissioner (Stamps) and was not, thereafter, pressed before the High Court. G

16. The main argument of the petitioner before the High Court was that at the relevant time the stamp duty was payable H

A at the rate of Rs. 80/- per thousand whereas the Assistant Commissioner (Stamps) had calculated the same at the rate of Rs. 125/- per thousand. As mentioned above, this argument has already been accepted by the High Court whereby stamp duty payable is reduced and relief to that extent has already been given. Likewise the High Court has also set aside the order of the Assistant Commissioner (Stamps) in so far as the interest payment was imposed upon the appellant. Even the penalty is reduced to 15 percent only.

C 17. Last attempt of Ms. Makhija was that no adjudication was permissible at all because of the reason that these agreements for sale were subsequently cancelled, that too within two months of the execution thereof. We are of the opinion that the subsequent conduct of the parties in cancelling the agreements cannot be a reason for not taking action under D Section 33/38 of the Act. That action was necessitated when the documents were produced before the Dy. Registrar and he found the same to be deficient. The subsequent cancellation would be of no avail. In any case, keeping in view this aspect the High Court reduced the penalty to 15 percent of the deficit E stamp duty, thereby giving sufficient succour to the appellant.

18. We are of the opinion that no further relief can be granted to the appellants. Thus, these appeals are dismissed as devoid of any merits.

F 19. No costs.

B.B.B.

Appeals dismissed.