

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Omar Sial

Civil Reference No.02 of 2018
(Under Section 57 of Stamps Act, 1899)

In the matter of Chief Revenue Authority/Member (RS&EP)
Board of Revenue Sindh, Karachi

Date of hearing: 18.10.2021 and 01.11.2021

Mr. Jawwad Dero, Additional Advocate General.

Mr. Abdul Wajid Wyne along with Mr. Bilal Wajid Wyne for complainant.

Mr. Muhammad Aqil along with Mr. Arif Dawood for purchaser/
vendee Farhana Zakai.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Instant Civil Reference under section 57 of Stamps Act, 1899 has been presented before us seeking an opinion in respect of queries raised therein.

2. The relevant facts for the purpose of deciding instant Reference are that a conveyance deed in respect of an open plot bearing No.D-1, Block-5, measuring 959.72 sq. yards of F.B. Area, KDA Scheme No.16, Karachi, was presented for registration. The deed was executed between one Muhammad Sharif Raza Molani and eight others through their attorney Masood Ahmed Zakai son of Muhammad Din Zakai and Mrs. Farhana Zakai wife of Masood Ahmed Zakai. The deed was presented before the Collector/Chief Inspector of Stamps for treatment under section 17 of Stamps Act, 1899 on 26.06.2014 for adjudication. The record shows that the deed was examined along with all its enclosures attached there with including relinquishment deed. In the subject

instrument sought to be registered, the subject property was declared/disclosed to be an open plot.

3. The enclosures of the deed also includes a demolition permission of an authorized officer of Sindh Building Control Authority of Gulberg Town dated 11.06.2014. For the purposes of the aforesaid adjudication the site inspection was also conducted which confirmed the status of the property as being an open plot which was assessed in terms of valuation table applicable on 26.06.2014 issued under section 27-A of the Stamps Act, 1899. In terms of the valuation table the plot was assessed to Rs.52,80,000/- on which the stamp duty was calculated which came to Rs.1,05,600/-.

4. It is at this stage of completion of the adjudication when one stranger Muhammad Aslam Memon wrote/sent a complaint on 01.07.2014 which was allegedly transformed as a Reference under section 56 of Stamps Act, 1899. On such complaint the notices were issued to all concerned and the respective counsels were heard which culminated as the instant reference under section 57 of Stamps Act, 1899 for opinion whether:

a) The Adjudication made by Collector/Chief Inspector of Stamps, Board of Revenue Sindh under section 32 is final ?

OR

b) Stamp Duty in present instrument of conveyance deed may be calculated as per value declared in previous transaction done through deed of relinquishment ?

5. We have heard the learned Additional Advocate General as well as learned counsel Mr. Abdul Wajid Wyne appearing for complainant Muhammad Aslam and Mr. Muhammad Aqil, learned counsel for purchaser/vendee Farhana Zakai and perused material available on record.

6. The objections in the said complaint/Reference were to the extent that the adjudication conducted by the Collector/ Chief Inspector of Stamps, Board of Revenue Sindh, was not correct as the property that was involved in a bidding process initiated in Suit No.1150 of 2006 is different from the one disclosed in the conveyance deed sought to be registered which ended up in miscalculation of stamp duty. He (the complainant Muhammad Aslam Memon) disclosed his eligibility to lodge complaint, as being an unsuccessful bidder in the said process. His offer though was matched by the legal heirs/co-owners who (perhaps some of the legal heirs) exercised their first right of refusal under order XXI rule 88 CPC and the share of other/remaining legal heirs was deposited in the sum of Rs.1,69,28,600/- for a built up bungalow i.e. ground plus one storey constructed on the said plot against which relinquishment deed was executed and registered.

7. For maintaining a Reference the requirement of Section 56 of Stamps Act, 1899 is such that if the Collector acting under section 31 or 40/41 of the ibid Act visualized a doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case and refer it with its own opinion thereon for the decision of the Chief Revenue Authority. On receipt of such statement the authority shall then consider the case and send copy of its decision back to the Collector who shall proceed to assess and charge the duty in conformity with such decision of the Chief Revenue Authority. Record shows that nowhere such situation was reached and/or demonstrated by the Chief Revenue Authority in the instant Reference. What transpired from the record is that an stranger moved an application/complaint who has no locus standi when he lost the bidding process.

8. The Chief Revenue Authority himself has opined that the order of the Collector/Chief Inspector of Stamps, Board of Revenue is not

challengeable before Chief Revenue Authority to initiate reference under section 56 of the ibid Act. It further shows that he (Chief Revenue Authority) himself has not taken any notice of any evasion of duty, as required under section 57 of Stamps Act, 1899 since the reasoning is provided in the Reference. Question could only arise for the purposes of a Reference if a Collector acting under section 31 or 40/41 of Stamps Act, 1899 had any doubt as to the amount of duties with which any instrument is chargeable and in consequence whereof he would draw up statement of the case and refer it with his own opinion for an onward decision by the Chief Revenue Authority or in the alternate Chief Revenue Authority himself had taken a notice. Inference was however drawn that since an application in the shape of objections has been preferred as to the amount of duties payable, the document was impounded under section 33 of Stamps Act, 1899 for re-examination by the Assistant Chief Inspector of Stamps, Stamps Wing, Board of Revenue. In fact, it could not have been impounded in terms of section 33 ibid, as after completion of all codal formalities, the Collector / Chief Inspector of Stamps had already passed an order under section 32, certifying the same and making an endorsement as well. A complaint by a private person cannot be made basis for impounding an instrument when a certificate to the effect that proper stamp duty has been paid has already been issued by the competent authority.

9. The property which was involved in the bidding process in the aforesaid suit had a different status as being built up property on the plot of land having structure of ground plus first floor which transfer of share attained finality by virtue of a registered relinquishment deed, whereas the documents which came for registration in the instant proceedings is only an open plot. The Chief Revenue Authority in response to such complaint reached to the conclusion that the

objections raised by stranger is a futile attempt for impounding the documents and his insistence for payment of additional stamp duty on the instrument had also attenuate in the light of status of the property as being open plot. Status of a built up property was changed to an open plot with permission of the department and transfer of share of some of the legal heirs is also on the basis of a registered relinquishment deed.

10. It is a matter of record as enclosures attached with the conveyance deed disclosed that the construction on the plot was demolished through a permission obtained by the Sindh Building Control Authority, therefore, value of the property in terms of the bid matched or share relinquished cannot be taken into consideration and is rightly adjudged by the Chief Revenue Authority.

11. However, despite such conclusion drawn in this regard the instant Reference is presented for seeking an opinion of this Bench under section 57 of Stamps Act, 1899. We are afraid that the necessities to carve out a Reference never existed and the Chief Revenue Authority despite reaching a lawful conclusion has sent the purported Reference for the adjudication by a three member Bench of this Court for which consideration valuable time was/is consumed as we have already observed necessities to make a Reference in terms of Section 56(2) and 57 of Stamps Act, 1899 which were never materialized and hence could not have been followed.

12. During course of the arguments, Mr. Muhammad Aqil has cited a judgment of Division Bench of this Court reported as ***Mrs. Nighat Saimi v Province of Sindh (PLD 2017 Sindh 596)*** and reliance was placed on paragraph 13 of the said judgment which is reproduced as under:-

“In the instant mater, the worth of property is mentioned by the concerned family judge for a particular purpose and of course such valuation is not binding on anybody else as it is not a decree of court. We are of the view that even if a property is sold out on the basis of a decree, the sale

consideration mentioned in the instrument will be the basis for calculation of stamp duty without having any influence of sale price received in pursuance of decree. The Sub-Registrar and Inspector of Stamp has no authority to question the valuation of property if it is in accordance to notified 'Valuation Table'.”

13. The fact of the aforesaid case never warranted such an observation as in that case no issue of any decree by a Court of competent jurisdiction was involved. The Court had itself observed that the valuation done by the family Court was for a particular purpose and since it was not a decree of a Court the valuation so carried out was not binding. And then the Court went on to observe that even if there is a decree of the Court, the stamp duty would be payable as per Valuation Table. Though on facts the said judgment is not relevant; nonetheless, since it has been cited before this Full Bench, therefore, we are compelled to hold that we do not approve such observations made by the Division Bench in the aforesaid paragraph. Had it been in performance of decree, an instrument is being registered, it ought to be on the basis of value determined in the decree and/or agreement entered into for which performance is to be made in terms of Court decree. In such situation there was no occasion for altering/undervaluing the property to avoid stamp duty as the value is already determined by Court of law or decree. It is only in case when the property has changed its status lawfully i.e. from a built-up property to an open plot or from a semi-constructed property to a fully constructed property, the value of the property may be altered in instrument sought to be registered. Thus, when the property sold out on the basis of a decree, which decree has valued the property in question, then the right of valuing the property does not rest with the vendor and vendee and/or the concerned authority. Hence, to the extent of the observation made in paragraph 13 above we observe that it does not hold good law.

14. The impounded documents thus be released to the executant beneficiary as the adjudication made by the Collector/Chief Inspector of Stamps of the Board of Revenue in terms of Section 32 is required to be done only in terms of Valuation Table under section 27A of Stamps Act, 1899 with reference to nature of the property disclosed in the instrument and the status of which property was taken into account in terms of ascertaining its character as required under the law.

15. Upshot of the above discussion is that the question No.(b) is answered in negative whereas the question No.(a) is answered accordingly in terms of the above discussion. The impounded documents thus be released to the executants/beneficiary as the adjudication done by the Collector/Chief Inspector of Stamps of the Board of Revenue in terms of Valuation Table under section 27A of the Stamps Act, 1899, keeping in mind the nature of property disclosed in the instrument which is different than the one involved in the suit when the parties entered into bidding process to ascertain the value of the property for distribution of the respective shares to the legal heirs.

Dated:

Judge

Judge

Judge