

M/S. MSD REAL ESTATE LLP

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v.

THE COLLECTOR OF STAMPS & ANR.

(Civil Appeal No. 3194 of 2020)

SEPTEMBER 17, 2020

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**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M. R. SHAH, JJ.]**

Stamp Duty:

Deficit stamp duty – Demand for – Penalty imposed ten times the deficit duty – In litigation Supreme Court modified the penalty amount reducing the same to half – Stamp duty was paid – Thereafter the property in question was sold – Permission for construction on the property was sought by the subsequent purchaser – Property was mutated in the name of the purchaser – The purchaser submitted post-dated cheques towards the penalty amount – Notice was issued by competent authority demanding outstanding amount towards penalty – Permission for construction was denied – High Court upheld the demand of penalty and holding that payment of penalty by post-dated cheques cannot be approved – As regards notice by Municipal Corporation, High Court observed that the purchaser could apply afresh for permission for construction after paying the penalty amount in toto – Appeal to Supreme Court – During pendency of the appeal orders issued by Municipal Corporation to handover the land in question to the Corporation – Challenged in interlocutory application – Held: High Court rightly did not interfere with the demand of penalty – As regards the notice by Municipal Corporation, the observation of the High Court amply protects the right of the purchaser – The orders of Municipal Corporation passed during pendency of the appeal being subsequent actions cannot be entertained in the present appeal.

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Disposing of the appeal, the Court

HELD: 1.1 In pursuance of the order of the Collector dated 22.09.2008, the Trustees were liable to deposit stamp duty as well as penalty. Although deficiency of stamp duty was deposited through the Treasury Challan dated 01.11.2019 but the penalty

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A was not deposited and only post-dated cheques were submitted. The High Court has rightly observed that facility to deposit the penalty by post-dated cheques cannot be approved and the appellant being subsequent purchaser was liable to deposit the amount of penalty which was outstanding against the property and which was subject matter of the gift deed dated 21.04.2005.

B The High Court has rightly not interfered with the order dated 04.06.2020 issued by the Addl. Tehsildar(Recovery) demanding an amount of Rs.8,80,97,025/- which was outstanding on the above date. [Para 16][1034-C-E]

C 1.2 The order of Collector dated 22.09.2008 was modified by Supreme Court and the amount of penalty was reduced to the extent of half of the ten times penalty. Therefore, the respondents are to take steps in compliance to the said order. The issue of penalty as imposed by the order of the Collector of Stamps dated 22.09.2008 having already been decided, all the parties are to act in accordance with the said judgment. [Para 18][1034-G-H; 1035-A]

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2. As regards order dated 4.6.2020 issued by the Building Officer of Municipal Corporation, the direction of the High Court that after the deposit of the stamp duty and the penalty, the Municipal authorities to reconsider the application for building permission, amply protects the rights of the appellant. In view of the deposit made by the appellant towards the penalty, the appellant is free to apply for building permission which is to be considered by the Municipal Corporation as observed by the High Court. [Paras 19 and 20][1035-C-E]

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F 3. The orders and notices issued by the Municipal Corporation and other State Authorities which have been brought on record by the IA No. 72517/2020 are all subsequent actions which were not subject matter of the writ petition before the High Court and cannot be taken into consideration in the present appeal. The said issues cannot be entertained. Liberty is given to the parties to seek such remedy with regard to subsequent actions and orders as permissible in law. [Paras 21-22][1035-F-G]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3194 of 2020. A

From the Judgment and Order dated 10.06.2020 of the High Court of Madhya Pradesh, Bench at Indore in W.P. No. 8145 of 2020.

Puneet Jain, Ms. Christi Jain, Arjun Garg, Aakash Nandolia and Mishra Saurabh, Advs. for the appearing parties. B

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. Leave granted.

2. This appeal has been filed against the judgment of the High Court of Madhya Pradesh at Indore dated 10.06.2020 by which the writ petition filed by the appellant challenging the notice dated 04.06.2020 issued by Additional Tehsildar (Recovery), District Indore as well as notice dated 04.06.2020 issued by Building Officer, Zone No.09, Municipal Corporation Indore has been dismissed. C D

3. Brief facts giving rise to this appeal are:

The property in question in this appeal is Lantern Hotel having Municipal No.28, Yeshwant Niwas Road, Indore with regard to which a Deed of Assent was executed on 21.04.2005 by the Trustees of Private Trust, namely, H.C. Dhanda Trust. H.C. Dhanda executed Will dated 26.10.2002. The Collector of Stamps issued notice stating that there is deficiency in the stamp duty on deed dated 21.04.2005 and passed an order dated 22.09.2008 holding the deed to be a Gift Deed and determined a deficiency of stamp duty to the extent of Rs.1,28,09,700/- and imposed penalty of ten times to the tune of Rs.12,80,97,000/-. H.C. Dhanda Trust filed writ petition in the High Court challenging order dated 22.09.2008 which was dismissed on 30.03.2017. An SLP(C) Diary No.30539 of 2017 was filed by the Trustees of H.C. Dhanda Trust against the judgment of the Madhya Pradesh High Court dated 30.03.2017 in which this Court passed following interim order dated 10.11.2017: E F

“Issue notice, returnable in six weeks, limited to the quantum of penalty that has been imposed by the Collector (Stamps). G

Subject to the condition that stamp duty is paid within a period of one month, there shall be stay of the order qua the penalty.” H

A 4. The Trustees of H.C. Dhanda Trust could not deposit the stamp
duty, this Court made it clear by order dated 22.04.2019 in SLP(C) Diary
No.30539 of 2017 that no interim order is operating as on date. An
amount of Rs.1,28,09,700/- was deposited through a Treasury Challan
dated 07.11.2019 which was the amount of stamp duty on behalf of
B Jogesh Dhanda son of late Shri H.C. Dhanda.

 5. The appellant, M/s. MSD Real Estate LLP by a Registered
Sale Deed dated 27.11.2019, purchased the property in question, Lantern
Hotel from the Trustees of the Trust of Jogesh Dhanda and Ishan Dhanda.
The appellant applied for development permission and vide letter dated
C 18.11.2019 the appellant was granted permission for construction.
Application for mutation was filed by the appellant in the Municipal
Corporation. The appellant also deposited Rs.2,92,20,794/- property tax
under protest, mutation in the name of the appellant was also made
against the property in question.

D 6. On 20.11.2019 the appellant along with Jogesh Dhanda submitted
an application to Collector of Stamps regarding stamp duty and penalty
imposed upon Lantern Hotel, Indore situate at Municipal No.28,
Yeshwant Niwas Road, Indore. Along with letter the appellant submitted
six post dated cheques totaling Rs.12,80,97,025/-. A notice dated
04.06.2020 was issued by Addl. Tehsildar (Recovery) for depositing an
E amount of Rs.8,80,97,095/-, outstanding amount towards the penalty.
On 04.06.2020 itself another letter was issued by the Office of Municipal
Corporation, Indore regarding application received from the appellant
for permission of building construction. The application for building
permission was rejected by notice dated 04.06.2020. Aggrieved by the
F aforesaid two notices dated 04.06.2020 Writ Petition No.8145 of 2020
was filed by the appellant. In the writ petition the appellant has challenged
notice dated 04.06.2020 issued by the Addl. Tehsildar(Recovery) as well
as order dated 04.06.2020 of the Office of Municipal Corporation, Indore.
The appellant also prayed for direction to restraint the respondents from
G giving effect to their impugned orders and from taking any coercive/
penal action against the appellant.

 7. Learned Single Judge by its order dated 10.06.2020 dismissed
the writ petition. Learned Single Judge held that the appellant being
subsequent purchaser is liable to pay the penalty amount. Learned Single
Judge noticed that there being no interim order in SLP(C) Diary No.
H 30539 of 2017 pending in this Court he was liable to pay the penalty

amount. The High Court also took the view that payment of penalty by post dated cheques cannot be approved by the High Court. Insofar as notice dated 04.06.2020 issued by the Municipal Corporation, the High Court took the view that at that time no interference was called for and after payment of penalty amount in toto, the appellant would be free to apply afresh for building permission again whereafter the Municipal authorities are directed to reconsider the application for building permission. With the above discussion, the writ petition was dismissed. Aggrieved by the judgment of the High Court, the appellant has filed this appeal.

8. This appeal arising out of SLP(C)No.7990 of 2020 was filed on 24.06.2020.

9. During the pendency of this appeal order dated 26.07.2020 has been issued by the Municipal Corporation, Indore as well as order dated 25.07.2020 and 28.07.2020 has been issued by the Municipal Corporation, Indore. The Municipal Corporation also issued letter dated 27.07.2020 to the Sub-Divisional Officer, Revenue, Indore requesting him to remove all encroachment on Municipal property and to handover possession of the land in question to the Municipal Corporation. The appellant by means of I.A.No.72517 of 2020 has prayed for stay the aforesaid orders and notices and has prayed for other reliefs consequent to the notices and orders issued as referred to in aforesaid IA. Counter-affidavit has also been filed by the Municipal Corporation, Indore to which Rejoinder-affidavit has also been filed. On 07.07.2020 while issuing notice this Court passed the following order:

“Issue notice.

List along with Diary No.30539/2017.

Learned counsel for the petitioner submits that towards the penalty amount Rs.6.8 crores have already been encashed/paid and for rest of the penalty amount post-dated cheques have already been given. The petitioner undertakes to ensure that all post-dated cheques are cleared so that entire amount of penalty is paid which I shall, however, be subject to the order of this Court in the pending petition i.e. Diary No.30539/2017.

In the meantime, impugned orders including the auction proceeding shall remain stayed.”

A 10. We have heard Shri Kapil Sibal, learned senior counsel appearing for the appellant. Shri Tushar Mehta, learned Solicitor General has appeared on behalf of the State. Shri Purushaindra Kaurav, learned Advocate General, has appeared for Municipal Corporation, Indore.

B 11. Shri Kapil Sibal submits that the action of the Addl. Tehsildar (Recovery) asking for recovery of amount of Rs.8,80,9725/- was unjustified. It is submitted that the appellant after purchasing of the property has deposited the amount of deficit stamp duty as well as post dated cheques covering the entire amount of penalty of Rs.12,80,97,025/- by letter dated 20.11.2019 which was accepted by the Collector Stamps and letter dated 23.11.2019 was issued by the Collector of Stamps that
C cheques of total amount has been received and no stamp duty is outstanding. It is submitted that by 04.06.2020 on which date notice was issued by Addl. Tehsildar (Recovery) out of the abovesaid cheques, two
D cheques of Rs.2 crores each have already been encashed by the State Government. Shri Sibal submits that subsequently he has also deposited further amount and he has undertaken before this Court to ensure that all cheques given by him towards penalty amount shall be cleared.

E 12. Shri Sibal further submits that building permission was granted to the appellant after being satisfied with all necessary requirements which could not have been cancelled by order dated 04.06.2020 by the Municipal Corporation, Indore. He submits that the appellant was committed to pay the entire amount of the penalty which commitment was accepted by the Collector of Stamps by letter dated 23.11.2019 and the action taken for cancelling the building permission was unjustified. Shri Sibal further submitted that in spite of the interim order passed by this Court on 07.07.2020 by which this Court has stayed the impugned
F orders and auction proceedings by the Municipal Corporation, the Municipal Corporation has issued several orders which are malafide and illegal. The order dated 25.07.2020 passed by the Municipal Corporation of Indore cancelling the mutation of the appellant on the ground that proceeding is pending in this Court and by the Collector
G regarding title of the property was wholly unauthorized and illegal. The appellant having purchased the property by registered sale deed, got mutation of title in his name. He further submitted that no proceeding is pending regarding title of property as mentioned in the letter dated 25.07.2020. He further submits that another order issued on 28.07.2020 by the Office-Commissioner Municipal Corporation which mentions that
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Indore Municipal Corporation has already sent letter to Sub-Divisional Officer Revenue for putting up the application before the competent officer for taking action under Section 4/5 of Madhya Pradesh Public Premises Eviction Act, 1974 for eviction is wholly illegal and unauthorised. He submits that the house property No.28, Yashwant Niwas Road, Indore was in the ownership of late Shri H.C. Dhanda which was gifted by his Highness Maharaja by order dated 22.04.1948 as free gift to late Shri H.C. Dhanda being Minister in the Cabinet of his Highness and right from 1948 late Shri H.C. Dhanda was the owner in possession with regard to which subsequently he created a Trust by his Will. He submitted that property had been purchased by the appellant by registered sale deed dated 23.11.2019 and there is no question of Corporation or anyone else claiming any title in the property, no determination of title is pending in any Court of law and the observation made by the Corporation in its letter that determination of title is pending with the office of District Collector is wholly malafide and unjustified. He submits that subsequent letters and action taken by the Corporation as well as by the State authorities are only with the intent to harass the appellant and all are actions are beyond their jurisdiction and deserve to be set aside by accepting the IAs filed by the appellant.

13. Shri Tushar Mehta, learned Solicitor General appearing on behalf of the State submits that no error was committed by the Addl. Tehsildar (Recovery) in issuing recovery notice dated 04.06.2020 since the interim order being not operating in SLP(C) Diary No.30539 of 2017 the amount of penalty was outstanding. He submits that there is no procedure or provision for accepting the amount of penalty by post dated cheques as it claimed by the appellant. Shri Mehta further submits that amount of penalty being outstanding against the property, mutation in the name of the appellant against the property as well as building permission has rightly been rejected. Shri Mehta further submits that subsequent actions including the notices and orders brought by the appellant by IA No.72517 of 2020 are all actions which are subsequent actions and has no relation to issues which have been raised in this appeal. He submits that neither subsequent actions, letters were part of the writ petition nor they can be considered in this appeal. He submits if so advised it is always open to take appropriate proceeding if he is aggrieved by any action subsequently taken after the decision of the writ petition.

14. Shri Purushaindra Kaurav, learned Advocate General appearing for the Corporation fairly submitted that it is the appellant who are in

A possession of the property in question. He submitted that notices and actions taken by the Corporation and other authorities subsequent to the decision of the writ petition cannot be made subject matter of challenge in this appeal, remedy of the appellant if any is elsewhere. He supports the order of the Municipal Corporation by which building permission earlier granted has been cancelled.

B 15. We have considered the submission of the parties and perused the record.

C 16. In pursuance of the order of the Collector dated 22.09.2008, Trustees of H.C. Dhanda Trust were liable to deposit stamp duty as well as penalty. In SLP(C) Diary No.30539 of 2017 the interim order granted by this Court on 10.11.2017 having not been complied with there was no interim order operating and the Trustees of H.C. Dhanda Trust were liable to deposit the stamp duty and penalty. Although deficiency of stamp duty was deposited through the Treasury Challan dated 01.11.2019 but the penalty was not deposited and only post dated cheques between
D dates 25.02.2020 to 25.05.2020 were submitted on behalf of the appellant and Jogesh Dhanda. The High Court has rightly observed that facility to deposit the penalty by post dated cheques cannot be approved and the appellant being subsequent purchaser was liable to deposit the amount of penalty which was outstanding against the property and which was
E subject matter of the gift deed dated 21.04.2005. The High Court has rightly not interfered with the order dated 04.06.2020 issued by the Addl. Tehsildar(Recovery) demanding an amount of Rs.8,80,97,025/- which was outstanding on the above date.

F 17. We by our order of the date passed in C.A.Nos.....of 2020 (arising out of SLP(C)Nos.10972-10973 of 2020) allowing the appeals partly, held:

G “In result the appeals are allowed the order of the Collector of Stamps dated 22.09.2008 is modified to the extent that penalty imposed of ten times of Rs.12,80,97,000/- is modified into five times penalty i.e. Rs.6,40,48,500/-. The appeals are partly allowed to the above extent. “

H 18. The order of Collector dated 22.09.2008 having been modified and the amount of penalty having been reduced to the extent of half of the ten times penalty, respondents are to take steps in compliance to the said order. Shri Sibal has submitted that total deposit as on date by the appellant towards the penalty is about Rs.8.8 crores. The issue of penalty

as imposed by the order of the Collector of Stamps dated 22.09.2008 A
having already been decided by order of even date in
C.A.Nos.....of 2020 (arising out of SLP(C)Nos.10972-
10973 of 2020) all the parties are to act in accordance with the said
judgment.

19. Now, we come to order dated 04.06.2020 which was under B
challenge in the writ petition before the High Court by which the
Municipal Corporation, Indore has cancelled the building permission
granted earlier was rejected. The High Court while considering the
aforesaid by its judgment in paragraph 8 has held:

“8. So far as order dated 4.6.2020 issued by the Building Officer C
of Indore Municipal Corporation is concerned, at this stage, no
interference is called for as the petitioner has failed to deposit the
penalty amount and this fact was suppressed in the application
submitted for building permission. After the deposit of the stamp
duty and the penalty, the Municipal authorities are directed to
reconsider the application for building permission.” D

20. The above observation of the High Court amply protects the
rights of the appellant. In view of the deposit made by the appellant
towards the penalty, the appellant is free to apply for building permission
which is to be considered by the Municipal Corporation as observed by
the High Court in its judgment and order dated 10.06.2020. Nothing E
more is required to be said about the order dated 04.06.2020 issued by
the Office of the Municipal Corporation.

21. Now, we come to the submission of Shri Sibal with regard to
orders and notices issued by the Municipal Corporation and other State
Authorities subsequent to filing of this appeal. The orders and notices F
issued by the Municipal Corporation and other State Authorities which
have been brought on record by the IA No. 72517/2020 are all subsequent
actions which were not subject matter of the writ petition before the
High Court and cannot be taken into consideration in this appeal.

22. With regard to subsequent notices, actions and orders, as noticed G
above, brought on record by IA noted above the said issues cannot be
entertained in this appeal. We give liberty to the parties to seek such
remedy with regard to subsequent actions and orders as permissible in
law. The appeal is disposed of accordingly.