

AFR

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 40

Neutral Citation No. - 2025:AHC:35647-DB

WRIT - C NO. - 39180 OF 2024

SEEMA PADALIA AND ANOTHER

V.

STATE OF U.P. AND 4 OTHERS

For the Petitioners Rahul Sahai, Saumitra Anand

For the Respondents C.S.C., Kaushalendra Nath Singh

HON'BLE SHEKHAR B. SARAf, J.

HON'BLE VIPIN CHANDRA DIXIT, J.

1. Heard learned counsel for the parties and perused the record.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioners with the following reliefs :-

"i. Issue a writ, order or direction in the nature of certiorari for quashing the impugned order dated 16.05.2024 passed by respondent no. 3 vide patrank No. 314/Sa.Ma. Ni.-Pratham/2024 whereby the petitioners' application for refund of stamp has been rejected. (Annexure-1 to the writ petition).

ii. Issue a suitable order or direction for declaration of the Rule 218 as substituted/amended by U.P. Stamp 5th amendment Rules 2021 as ultra vires the Indian Stamp Act, 1899.

iii. Issue a suitable writ, order or direction in the nature of mandamus directing the respondent no. 2 to 4 to refund the stamp duty in accordance with law by allowing the application dated 27.04.2024."

3. The factual matrix of the case is that the petitioners sought to enter into a tripartite agreement of sale-deed and sublease deed with respect to super structure of residential unit and land, respectively, with the New Okhla Industrial Development Authority (lessor) and one M/s AGC Realty Private Ltd. (lessee) for dwelling unit No. W-1101 on 11th Floor, Tower W in complex known as "Homes 121" constructed over Plot No. GH - Sector 121 Noida, Gautambudh Nagar. In this behalf the total sale consideration was to be of Rs. 87,37,470/- and the stamp duty was assessed at Rs. 4,37,000/-. The petitioners being desirous of entering into the said agreement purchased the requisite stamp as per the following breakup on 22.09.2015 :

25,000 x 17

10,000 x 1

1,000 x 2

4. Thereafter, an agreement was drawn upon the aforesaid stamps, however, the same was not presented for registration and accordingly remained unused and unutilized. There was a restriction imposed on transfer and sale of flats by NOIDA in the project "Home 121" of which the property in question was a part. Consequently, the agreement did not fructify as the New Okhla Industrial Development Authority did not assent/join in the said transaction. The petitioners were not aware as to the restriction on sale and transfer of flats in project "Home 121" till the time Noida Authority backed out from the agreement. The petitioners were under a bonafide belief that the agreement would be executed soon and kept awaiting its execution and registration.

5. When it became clear that the sale/sublease agreement would not be processed, the petitioners surrendered their allotment of the flat in November, 2023 as the builder expressed its inability

to execute the agreement without the consent of NOIDA. Thereafter, by means of application dated 27.04.2024, the petitioners approached the respondent nos. 2 and 4 seeking refund of stamps worth Rs. 4,37,000/-.

6. The matter was placed before the respondent no. 3 who proceeded to pass the impugned order dated 16.05.2024 on the pretext that an amendment has been introduced being U.P. Stamp (5th Amendment) Rules, 2021, whereby the Rule 2018 has been substituted and a condition had been imposed which contemplates that stamp would not be renewed or returned after 8 years from its purchase and therefore, the claim of the petitioners was time barred.

7. Counsel on behalf of petitioners submits that the amended provision that took place in the year 2021 would not apply to the present case as the stamps were purchased in the year 2015 before the amendment. Learned counsel for the petitioners has placed reliance on a judgment of Supreme Court in ***Harshit Harish Jain & Anr. vs. State of Maharashtra & Ors.*** reported in ***2025 Law Suit (SC) 105***, wherein, a three Judges Bench had dealt with a similar issue with regard to the Bombay Stamp Act, 1958. The issue before the Supreme Court has been delineated in paragraph no. 5 and thereafter, the Supreme Court has relied upon ***M.P. Steel Corporation vs. Commissioner of Central Excise, 2015 7 SCC 58*** to examine the applicability of amending the limitation period on an accrued cause of action. The Supreme Court has, however, gone on to hold in paragraph nos. 10 and 11 that a legitimate refund should not be denied on technical grounds of limitation and has held that equitable balance is required to be kept in mind in fiscal or quasi judicial orders. Relevant paragraph nos. 5,9,10 and 11 are reproduced herein below :-

"5. Having heard the learned counsel for the Appellants and the Respondents, the primary issue for consideration before us is whether the amended six-month limitation, introduced by the 24.04.2015 amendment to Section 48(1) of the Act governs the Appellants' claim for stamp duty refund, particularly when the Cancellation Deed was executed prior to the amendment but registered thereafter.

9. Moreover, in M.P. Steel Corporation v. Commissioner of Central Excise, 2015 7 SCC 58, this Court has held that amendment to provision as to limitation is inapplicable to accrued cause of action where the amendment has reduced the period earlier provided. The relevant paras of this judgement have been extracted hereunder:

"53. Shri A.K. Sanghi, learned Senior Counsel appearing on behalf of the Revenue, has strongly contended before us that the present appeal must attract the limitation period as on the date of its filing. That being so, it is clear that the present appeal having been filed before Cestat only on 23-5-2003, it is Section 128 post amendment that would apply and therefore the maximum period available to the (2015)7 SCC 58 appellant would be 60 plus 30 days. Even if time taken in the abortive proceedings is to be excluded, the appeal filed will be out of time being beyond the aforesaid period.

54. It is settled law that periods of limitation are procedural in nature and would ordinarily be applied retrospectively. This, however, is subject to a rider. In New India Insurance Co. Ltd. v. Shanti Misra, [(1975) 2 SCC 840 : (1976) 2 SCR 266] , this Court held : (SCC p. 844, para 5)

5. "On the plain language of Sections 110-A and 110-F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away.

Otherwise, the general rule is to make it retrospective.”

55. In answering a question which arose under Section 110-A of the Motor Vehicles Act, this Court held : (Shanti Misra case [(1975) 2 SCC 840 : (1976) 2 SCR 266] , SCC p. 846, para 7)

7. “... ‘(1) Time for the purpose of filing the application under Section 110-A did not start running before the constitution of the tribunal. Time had started running for the filing of the suit but before it had expired the forum was changed. And for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum is made available.

(2) Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle. Generally the law of limitation which is in vogue on the date of the commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish a vested right of action by providing for a shorter period of limitation.’”

56. This statement of the law was referred to with approval in Vinod Gurudas Rajak v. National Insurance Co. Ltd., [(1991) 4 SCC 333] as follows : (SCC p. 337, para 7).

7. “It is true that the appellant earlier could file an application even more than six months after the expiry of the period of limitation, but can this be treated to be a right which the appellant had acquired. The answer is in the negative. The claim to compensation which the appellant was entitled to, by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act—subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it impractical for him

to avail of the remedy. This principle has been followed by this Court in many cases and by way of illustration we would like to mention *New India Insurance Co. Ltd. v. Shanti Misra*, [(1975) 2 SCC 840 : (1976) 2 SCR 266] . The husband of the respondent in that case died in an accident in 1966. A period of two years was available to the respondent for instituting a suit for recovery of damages. In March 1967 the Claims Tribunal under Section 110 of the Motor Vehicles Act, 1939 was constituted, barring the jurisdiction of the civil court and prescribed 60 days as the period of limitation. The respondent filed the application in July 1967. It was held that not having filed a suit before March 1967 the only remedy of the respondent was by way of an application before the Tribunal. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action. In view of the change of the law it was held that the application could be filed within a reasonable time after the constitution of the Tribunal; and, that the time of about four months taken by the respondent in approaching the Tribunal after its constitution, could be held to be either reasonable time or the delay of about two months could be condoned under the proviso to Section 110-A(3).” Both these judgments were referred to and followed in *Union of India v. Harnam Singh*, [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92] , see para 12.

57. The aforesaid principle is also contained in Section 30(a) of the Limitation Act, 1963:

30. “Provision for suits, etc., for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908.—Notwithstanding anything contained in this Act—

(a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier:”

58. The reason for the said principle is not far to seek. Though periods of limitation, being procedural law, are to be applied retrospectively, yet if a shorter

period of limitation is provided by a later amendment to a statute, such period would render the vested right of action contained in the statute nugatory as such right of action would now become time- barred under the amended provision.”

10. Even if one were to hold that the Appellants’ claim is examined under the amended six-month period, we are of the considered opinion that a mere technical delay should not, by itself, extinguish an otherwise valid claim. The scheme of stamp duty refund provisions is designed to ensure fairness when the underlying transaction is rescinded for bona fide reasons. The Appellants were compelled to cancel the purchase due to the developer’s inability to deliver timely possession, and were in no way remiss or at fault.

*11. Denying a legitimate refund solely on technical grounds of limitation, especially when the timing of registration fell close to the legislative amendment, fails to strike the equitable balance ordinarily expected in fiscal or quasi-judicial determinations. A measure of discretion or consideration for good faith conduct is not alien to statutory processes that safeguard citizens from unjust enrichment by the State. It has been laid down by this Court in *Bano Saiyed Parwaz v. Chief Controlling Revenue Authority & Inspector General of Registration & Controller of Stamps*, 2024 SCC Online SC 979 that the limitation provision in stamp law (to seek refund of stamp duty) should not be enforced so as to oust the remedy when the applicant is otherwise not blameworthy. The relevant paras of the same have been reproduced hereunder:*

*“14. In *Committee-GFIL v. Libra Buildtech Private Limited*, wherein the issue of refund of stamp duty under the same Act was in question, this Court has observed and held inter alia as under:*

*“29. This case reminds us of the observations made by M.C. Chagla, C.J. in *Firm Kaluram Sitaram v. Dominion of India*, [1953 SCC OnLine Bom 39: AIR 1954 Bom 50]. The learned Chief Justice in his distinctive style of writing observed as under in para 19: (*Firm Kaluram case*, SCC OnLine Bom) 2024 SCC OnLine SC 979*

“19. ... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely 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.”

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.

32. 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.”

15. The legal position is thus settled in Libra Buildtech (supra) that when the State deals with a citizen it should not ordinarily rely on technicalities, even though such defences may be open to it.

16. We draw weight from the aforesaid judgment and are of the opinion that the case of the appellant is fit for refund of stamp duty in so far as it is settled law that the period of expiry of limitation prescribed under any law may bar the remedy but not the right and the appellant is held entitled to claim the refund of stamp duty amount on the basis of the fact that the appellant has been pursuing her case as per remedies available to her in law and she should not be denied the said refund merely on technicalities as the case of the appellant is a just one wherein she had in bonafide paid the stamp duty for registration but

fraud was played on her by the Vendor which led to the cancellation of the conveyance deed.”

8. Counsel on behalf of respondents submits that the amended U.P. Stamp Act would apply in the present case as the petitioners' application for refund was made subsequent to the said amendment.

9. Upon perusal of the averments made, the documents annexed and after going through the ratio of Supreme Court in ***Harshit Harish Jain & Anr (supra)***, we are of the view that in the present case the impugned order rejecting the refund of the petitioners is passed on technical reasons only. From the facts, it is clear that the agreement between the parties has taken place prior to the amendment that has been carried in the stamp papers, and accordingly, following the ratio of the Supreme Court Judgment, it is crystal clear that the benefit of refund of the stamp duty would be applicable in the present case.

10. The impugned order does not take into consideration the ratio of the Supreme Court judgement. Accordingly, the said order is quashed and set aside with the direction upon the authority concerned to once again examine the refund application of the petitioners keeping in view the judgment of the Supreme Court cited above within a period of three months from date.

11. With the above observation, the writ petition is disposed of.

Order Date :- 6.3.2025
sailsh

(Vipin Chandra Dixit, J.)

(Shekhar B. Saraf, J.)