

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

ON THE 6th OF DECEMBER, 2023

WRIT PETITION No. 737 of 2021

BETWEEN:-

1. SMT. GEETA KUSHWAH W/O SHRI MUNNALAL KUSHWAH, AGED ABOUT 50 YEARS, NAL WALI GALI LOHIYA BAZAR LASHKAR (MADHYA PRADESH)
2. SMT. BHAGWATI BAI W/O LATE SHRI UTTAM SINGH KUSHWAH, AGED ABOUT 45 YEARS, VILLAGE BILAUA SIDDHPURA TEHSIL DABRA (MADHYA PRADESH)

.....PETITIONERS

(BY MR. YOGESH SINGHAL - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)
2. COLLECTOR OF STAMP COLLECTOR GWALIOR (MADHYA PRADESH)
3. SUB REGISTRAR DISTRICT REGISTRATION OFFICE GWALIOR (MADHYA PRADESH)

.....RESPONDENTS

(BY MS. KALPANA PARMAR - PANEL LAWYER)

.....
This petition coming on for admission this day, the court passed the following:

ORDER

Present petition under Article 226 of the Constitution of India has been directed against the order dated 25.1.2014 whereby the order dated 29.11.2013

for payment of deficit stamp duty to the extent of Rs.1,62,350/- was modified by invoking the provisions under Section 152 of CPC for correcting arithmetical mistake and the petitioner was directed to pay the deficit stamp duty of Rs.15,00,075/- on the sale deed dated 09.7.2012.

Learned counsel for the petitioners at the outset submits that while passing the impugned order dated 25.1.2014 no opportunity of hearing has been granted and stating the mistake committed while passing the initial order dated 29.11.2013 to be a clerical mistake *suo moto* by invoking the provisions under Section 152 of CPC, the order was modified and deficit stamp duty as aforesaid was directed to be paid, which is *per se* illegal. It is further submitted that the impugned order is passed against the settled principle of natural justice as no opportunity admittedly was granted while passing the said order. Thus, it cannot withstand the judicial scrutiny and is required to be set aside.

Per contra, learned counsel for the State submits that from bare perusal of the calculation made by the Collector of Stamps while adjudicating the stamp duty over the sale deed dated 09.7.2012, it could be reflected that due to clerical mistake instead of mentioning the valuation of sale deed at Rs.2,29,90,000/- as the calculation of that was to be calculated at 110% of the area of 2090 square meters multiplied by Rs.10,000/-, rate of the similarly situated lands in the area, since the said land was situated in the residential area of Vinay Nagar and if the amount is calculated accordingly, the amount comes to Rs.2,22,99,000/- and to which the valuation of the trees situated on the land if added, the total amount comes to Rs.2,31,30,000/- (2,29,90,000 + 1,40,000) but instead thereof while calculating the valuation, the amount got mentioned as Rs.24,39,000/- and accordingly, stamp duty was calculated. As and when the said arithmetical anomaly was realised, invoking the provisions under Section 152 of CPC, said

arithmetical mistake was corrected. On the basis of the aforesaid, it is submitted that no illegality has been committed by the respondents in passing the impugned order. Therefore, present petition being devoid of any substance deserves to be dismissed.

Heard learned counsel for the parties and perused the record.

Admittedly, at the time of passing of the impugned order dated 25.1.2014, no opportunity of hearing has been granted to the petitioner. Though at earlier point of time, when the original order dated 29.11.2013 was passed by Collector of Stamps, the petitioner was heard and the valuation as per the calculation sheet of Collector of Stamps was mentioned as 24,39,000/- and accordingly, stamp duty was calculated and petitioner was directed to pay the same and the said amount was paid by the petitioner. Thereafter, as and when the respondents realised that the valuation of the property which has been calculated has wrongly been mentioned as 24,39,000/- while calculating the stamp duty, therefore, less amount got calculated on the valuation wrongly mentioned. This fact though may be correct but the settled principles of natural justice suggests that any party which is going to be affected by any order of any authority is required to be heard. Admittedly, the petitioner which is affected party herein has not been heard and in his absence treating the said amount to be an arithmetical mistake was directed to be corrected by invoking the provisions under Section 152 of the CPC which according to this Court is not sustainable.

Accordingly, the said order dated 25.1.2014 is hereby quashed. The matter is remitted back to the Collector of Stamp for fresh adjudication after giving opportunity of hearing to the petitioner and thereafter, to pass

appropriate orders.

With aforesaid direction, the petition stands disposed of.

(MILIND RAMESH PHADKE)
JUDGE

AKS

