

(21) Now, the question arises as to how much compensation, the workmen are entitled to in each case.

(22) In some of the cases, re-instatement of the workmen has been ordered with some back wages and in view of the discussion made above, their order of re-instatement and back wages stands set aside and the workmen are held entitled to compensation. So far compensation is concerned, keeping in view whole of the facts, circumstances and case law, we are of the considered view that Rs. 20,000 (Rs. Twenty thousands) shall be the just compensation for each completed year of service by the workmen and we order accordingly.

(23) All the Civil Writ Petitions stand disposed of in the above terms.

R.N.R.

Before M. M. Kumar and Sabina, JJ

M/S ROYAL OVERSEAS KHOSA PANDO,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 15358 of 2007

5th April, 2008

Constitution of India, 1950—Art. 226—Indian Stamp Act, 1899—S. 9(1)(a)—Transfer of Property Act,—S.58(f)—Notification, dated 7th November, 1979 issued by Revenue Department—Petitioner depositing original title deed without surrendering possession with bank for securing loan—Section 58(f) of TP Act provides that in case where a person delivers to a creditor or his agent document of title in respect of his immovable property with an intention to create security thereon the transaction is called transaction by deposit of mortgage title deed—Authorities directing petitioner to pay deficiency of stamp duty as pointed by Audit party—Neither any notice issued to petitioners nor they were allowed

to file objections against audit report—Agreement containing no such clause which might be construed to mean that it is integral part of transaction—Petition allowed.

Held, that the respondent has not recorded any finding as to whether the agreement, dated 14th November, 2003 was intended by the parties to reduce their bargain regarding deposit of the title deeds to the form of a document. It appears to us that the agreement contains no such clause which might be construed to mean that it is integral part of the transaction. Be that as it may, in the absence of any finding by the respondents to that effect the impugned order cannot be sustained and is thus liable to be set aside. We are also impressed with the other argument raised by the petitioner that the report of Sub-Registrar, Moga based on the Audit report for the year 2005 had recorded a foregone conclusion and the authorities have proceeded to accept the report. At the time of preparation of report by the Sub-Registrar neither any notice was issued to the petitioners nor they were allowed to file objections against the report. It has also caused prejudice to the interest of the petitioners.

(Para 9)

Mukul Aggarwal, Advocate, *for the petitioner.*

Charu Tuli, Senior Deputy Advocate General, Punjab.

M. M. KUMAR, J

(1) This petition filed under Article 226 of the Constitution prays for quashing order, dated 29th April, 2005 (Annexure P-2) passed by the Additional Deputy Commissioner-cum-Collector, Moga in pursuance to the proceedings initiated under Section 3 of the Indian Stamp Act, 1899 (for brevity 'the Act'). The Collector has held that on the basis of instructions dated 11th September, 1979 (R-1), any mortgage without delivery of possession and deposit of title deed to secure loan is assessable under Section 9(1)(a) of the Act. Accordingly, a deficiency of Rs. 1,39,800 has been determined and direction for recovery of the same from the petitioner has ordered.

(2) Brief facts of the case are that the petitioner is a firm which has dealing with the Oriental Bank of Commerce Branch, Dhalle Ke

Tehsil & District, Moga (for brevity 'the bank'). The firm entered into an agreement for availing the facility of loan to the extent of Rs. 80 lacs (30 lacs as cash credit + Rs. 50 lacs as term loan) subject to the condition that it was to return loan amount along with interest and other expenses and it was also to deposit title deeds of properties collateral security for the longwith the bank. The details of the title deed has been given in the agreement title dated 27th December, 2000 registered,—vide Wasika No. 5394 by the office of the Sub-Registrar, Moga in favour of the petitioner firm for a total consideration of Rs. 2,25,000. Likewise, title deed, dated 27th December, 2000 registered,—vide Wasika No. 4924 by the office of Sub-Registrar, Moga against a consideration of Rs. 1,55,000. There were other properties mentioned in the Schedule (Annexure P-1) as well. It is well known that an equitable mortgage is created by surrendering the title deeds for securing the bank loan. The aforementioned document was got registered in favour of the bank on 18th November, 2003. The audit raised an objection,—vide their audit note pointing out deficiency of stamp duty to the tune of Rs. 1,39,800. Accordingly, Sub-Registrar, Moga-Respondent No. 2 sent his report to the Additional Deputy Commissioner-cum-Collector, Moga-respondent No. 4, who upheld the demand. It has been pointed out in his order dated 29th April, 2005 (Annexure P-2) that the petitioner had affixed stamp duty valuing Rs. 20,200 at the time of getting the document attested. He referred to notification, dated 7th November, 1979 issued by the Revenue Department to support the view that any mortgage without possession by deposit of title deed or any loan secured by a mortgage without possession was assessable to stamp duty as per the provisions of Section 9(1)(a) of the Act. Therefore, he upheld the demand of Rs. 1,39,800 and ordered recovery of aforementioned amount from the petitioner. The order of the Collector was challenged in an appeal and the Commissioner, Ferozepur Division, Ferozepur upheld the view taken by the Collector. Para 5 of the order passed by the Commissioner reads as under :—

“I have considered the arguments advanced by the learned counsel for the appellants as well as the State Representatives. A perusal of the report of the Sub- Registrar, Moga, shows that the Stamp Auditor of the office of Financial

Commissioner (Revenue) Punjab, Chandigarh in the Audit Note for the year 2005 had found deficiency of Stamp duty amounting to Rs. 1,39,800 in respect of demulcent No. 5431, dated 18th November, 2003 shows that the appellant has secured loan of Rs. 8,000,00 from Oriental Bank of Commerce, Dhalle Ke, District Moga. The Collector in his impugned order has mentioned that as per Punjab Government notification No. CA. 11/99-S9/79/14885A, dated 7th November, 1979 the stamp duty is to be charged @ 2% and registration fee @ 1% on mortgage deed without possession, deposit of title deed, or mortgage without possession to secure loan or to secure loan from any commercial bank. The Collector, therefore,—*vide* his order, dated 29th April, 2005, rightly directed the appellant to pay Rs. 1,39,800 as deficiency of stamp duty as pointed by the Audit Party. I, therefore, see no force in this appeal and dismiss the same.”

(3) The petitioner has attacked the orders passed by the Collector as well as by the Commissioner by asserting that there is no notification dated 7th November, 1979 in existence which has been made the basis of the impugned order apart from the report of the audit. It has been pleaded that there is no legal provision for imposition of stamp duty on the petitioner who has merely deposited the original title deed without surrendering possession with the bank for securing loan nor any such provision has been relied upon in the impugned orders. Learned counsel has also submitted that once audit objection has been raised by pointing out deficiency of stamp duty amounting to Rs. 1,39,800, then the conclusion was foregone and the principles of natural justice have also been violated. A reference has been made to various inter locutory orders to substantiate the aforementioned contention. Learned counsel for the petitioner has referred to circular dated 11th September, 1979 (R-1) by claiming that the circular in fact support the petitioner inasmuch as it remit the stamp duty chargeable under the Act on any deed of mortgage without possession by deposit of title deeds or on any agreement deed for securing loan from an commercial or banking institution.

(4) Mrs. Charu Tuli, learned State counsel has however, pointed out that notification dated 11th September, 1979 is in operation and reference to notification dated 7th November, 1979 has erroneously been made. According to the learned State counsel, once a document is offered for registration, then under the Registration Act, 1908, the stamp duty and registration fee is charged as per the provisions of the Act. She has banked upon Section (1) of the Act to submit that stamp duty and registration fee is normally leviable. According to the learned State counsel, the view taken by the Collector as well as by the Commissioner, Ferozepur Division, Ferozepur, deserves to be upheld and the petition is liable to be dismissed. She has emphasised that circular dated 11th September, 1979 (R-1) is confined only to purchase of inputs like crop loan on fertilizers, insecticides, pesticides, weedicides and seeds.

(5) In order to determine the controversy raised in the instant petition it would be necessary to make a reference to the provisions of Section 58(f) of the TP Act because it deals with the mortgage by deposit of title-deeds and the same reads thus :

58(f) Mortgage by deposit of title-deeds : Where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay and in any other town which the State Government concerned may, by notification in the official gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds”

(6) It is pertinent to mention that the provisions of Section 58(f) of the TP Act has been extended to all the district headquarters of Punjab,—*vide* notification No. GSR 88/CA.4/1882/S.58/75, dated 28th August, 1975 and all block headquarters,—*vide* notification No. SO 31/CA.4/1882/S.58/79, dated 23rd June, 1979. Accordingly, it must be held that Moga where the document is executed and registered is covered by the notifications issued by the respondent-State. A perusal of Section 58 (f) of the TP Act shows that in a case where a person delivers to a creditor or his agent document of title in respect of his

immovable property with an intention to create security thereon the transaction is called transaction by deposit of mortgage title deed. As early as 1950, the provisions came up for consideration before Hon'ble the Supreme Court in the case of **Rachpal Maharaj versus Bhagwandas Daruka and others (1)**. Their Lordships considered the question as to whether the memorandum signed and delivered by a borrower and relied upon by the lender evidencing the creation of a mortgage was compulsorily registrable under Section 17 of the Registration Act, 1908. A large sum was found due to the lender and the borrower has raised the demand for its repayment. The borrower handed over to the lender certain title deeds relating to immovable property which belonged to his family for the purposes of being held as security for the amounts then due. A draft memorandum was prepared which the lender took with him duly signed and delivered. It is in these circumstances that the question of creating mortgage by deposit of title deed under Section 58(f) and the question of compulsorily registration under section 59 of the TP Act had arisen before the Supreme Court. The answer was recorded by their Lordships in para 4 of the judgment which reads as under :—

“A mortgage by deposit of title deeds is a form of mortgage recognised by S. 58 (f), T.P. Act, which provides that it may be effected in certain towns (including Calcutta) by a person “delivering to his creditor or his agent documents of title to immovable property with intent to create a security thereon.” That is to say, when the debtor deposits with the creditor the title deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required under S. 59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. As the deposite alone is not intended to create the charge

(1) AIR 1950 S.C. 272

and the document, which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration under S. 17, Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive. The document may be handed over to the creditor along with the title deeds and yet may not be registrable, as in **Obla Sundarachariar versus Narayan Ayyar**, 58 I.A. 68 : (A.I.R. (18) 1931 P.C. 36) Or, it may be delivered at a later date and nevertheless be registrable as in **Hari Sankar Paul versus Kedar Nath Saha**, 66 I.A. 184 : (A.I.R. (26) 1939 P.c. 167. The crucial question is : Did the parties intend to reduce their bargain regarding the deposit of the title deeds to the form of a document ? If so, the document requires registration. If, on the other hand, its proper construction and the surrounding circumstances lead to the conclusion that the parties did not intend to do so, then, there being no express bargain, the contract to create the mortgage arises by implication of the law from the deposit itself with the requisite intention, and the document, being merely evidential does not require restoration.” (emphasis added)

(7) Another opportunity to consider the same proposition based on Section 58(f) of the TP Act arose before a Constitution Bench of the Supreme Court in the case of **United Bank of India versus Lakh Ram and Co. (2)**. The Constitution Bench approved the view taken by the Supreme Court in the case of **Rachpal Maharaj** (supra) and proceeded to consider its application to the letters which were written by the title holder intimating the United Bank of India that the title deed has been handed over to another family member who is to deposit the same for security purposes. It was found by the Supreme Court that since the afore-mentioned letter described as Ex. 7(a) was not to be an integral part of the transaction it was not to operate to create an interest in the immovable property and the same do not require registration. The

view of the Constitution Bench is discernible from the reading of para 8 which reads thus :

“Applying the principle to the present case, we consider that the letter at Ex. 7(a) was not meant to be an integral part of the transaction between the parties. The letter does not mention what was the principal amount borrowed or to be borrowed. Neither does it refer to rate of interest for the loan. It is important to notice that the letter does not mention details of title deeds which are to be deposited with the plaintiff-bank. We are, therefore, of the opinion that the view of the High Court with regard to the construction of Ex. 7(a) is erroneous and the document was not intended to be an integral part of the transaction and did not by itself, operate to create an interest in the immovable property. It follows, therefore, that the document Ex. 7(a) did not require registration under Section 17 of the Indian Registration Act.”

(8) the afore-mentioned judgments along with others have been followed and applied by a Division Bench of Karnataka High Court in the case of **State Bank of Mysore versus S. M. Essence Distilleries Pvt. Ltd.** (3) and a Division Bench of this Court in the case of **Narvir Singh and another versus State of Haryana and others** (CWP No. 3533 of 2007 decided on 30th August, 2007.

(9) When the facts of the present case are examined in the light of the principles laid down by Hon'ble the Supreme Court in the cases of **Rachpal Maharaj** (supra) and **United Bank of India** (supra) it becomes evident that the respondent has not recorded any finding as to whether the agreement dated 14th November, 2003 was intended by the parties to reduce their bargain regarding deposit of the title deeds to the form of a document. It appears to us that the agreement contains no such clause which might be construed to mean that it is integral part of the transaction. Be that as it may, in the absence of any finding by the respondents to that effect the impugned order cannot be sustained and is thus liable to be set aside. We are also impressed with the other argument raised by the counsel for the petitioner that the report of Sub

Registrar, Moga based on the Audit report for the year 2005 had recorded a foregone conclusion and the authorities have proceeded to accept the report. At the time of preparation of report by the Sub Registrar neither any notice was issued to the petitioners nor they were allowed to file objections against the report. It has also caused prejudice to the interest of the petitioners.

(10) For the reasons, aforementioned this petition succeeds and the impugned orders dated 29th April, 2005 (Annexure P-2) passed by the Additional Deputy Commissioner-cum-Collector, Moga and 30th January, 2007 (Annexure P-4) passed by the Commissioner, Ferozeour Division, Ferozepur, are hereby set aside.

R.N.R.

Before M. M. Kumar and Sabina, JJ.

RANINDER SINGH AND ANOTHER,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 10119 of 2007

28th May, 2008

Constitution of India, 1950—Art. 21 & 226—Code of Criminal Procedure, 1973—S. 438—Grant of anticipatory bail—Registration of cases against petitioners—Allegations of political rivalry against respondent No. 4—Whether petitioners could be granted extra ordinary relief of issuing them a notice of a specified period so as to enable them to avail appropriate legal remedy—Held, yes.

Held, that it cannot be disputed that there is political rivalry between the family of the petitioners and respondent No. 4. The aforementioned conclusion has further been supported from the fact that in the instant petition a number of allegations of political vendetta have been levelled against respondent No. 4 and despite service no affidavit has been filed rebutting those allegations. It is needless to observe that