

Writ Petition No.1364 of 2010

TALAT MEHMOOD etc.

VERSUS

DISTRICT REGISTRAR.

**06.04.2011**

Sadaqat Ali Khan Advocate for Petitioner.  
Razzaq A. Mirza, Addl. A.-G

Petitioners Nos.1 to 4 entered into an exchange deed dated 31-10-2009 with petitioner No.5 of two properties mentioned in the deed in question whereby the two properties mentioned therein were exchanged inter se by the parties. As per statement given in the deed in question the property bearing No.RH52-BII measures 4, marlas 7, sirsahi and was valued at Rs.3,00,000/- whereas the other property subject-matter of the exchange deed measures 2 marlas, 6 sirsahi and its value has been shown as Rs.2,00,000/-. This exchange deed was presented for registration before the Sub-Registrar Office, Hazro and has been registered. The Sub Registrar office has refused to deliver back the registered exchange deed to the petitioners on the plea that the stamp duty upon the exchange deed is to be paid in respect of valuation of both the properties. This order dated 31-12-2009 of the said respondent has been assailed by the petitioners through the instant writ petition.

2. Parawise comments were requisitioned which have been submitted.

3. It is contended by the learned counsel for the petitioners that the document of exchange deed of the properties has been specifically dealt with at Serial No.31 in Schedule I of the Stamp Act, 1899. It is an admitted position that the properties subject-matter of the deed are immovable properties and are situated in urban area mentioned in the deed. According to the learned counsel for the petitioners the Punjab Finance Act (No.IX) of 1997 as amended provides the following method of assessment: of the stamp duty to be charged on an exchange deed:

(b) when executed in respect of immovable property in urban area as defined in No.23;	Eight rupees for every one hundred rupees or part thereof of the value of the property of the greatest value.
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The learned counsel for the petitioners has concluded that the legislature was conscious of the fact that the exchange deeds always involve two properties and for the purposes of determination of the, stamp duty the direction was given to charge the stamp duty on the value of the property of the greatest value. The learned counsel for the petitioners contended that the petitioners are bound to make the payment in accordance with Item No.31, clause (b) in respect, of the value of the property carrying greatest value which according to the learned counsel for the petitioners is Rs.3,00,000/- with respect to the property measuring 4 marlas, 7 sirsahi bearing No.RH 52-BII. The learned

counsel has contended that the petitioners have paid the stamp duty to the respondents in accordance with the schedule but the registered exchange deed is not being returned to the petitioners.

4. Conversely, the learned Additional Advocate-General has contended that according to section 29 of the Stamp Act, 1899, the parties to an exchange deed are to be treated in accordance with Item No.62, clause (e) which reads as follows:

"(e) in the case of an instrument of exchange---by the parties in equal shares;"

The learned Additional Advocate-General has contended that for the purposes of paying stamp duty on an exchange deed aggregate valuation of both the properties subject of the exchange is to be taken for determination of the stamp duty.

5. I have considered the arguments of the learned counsel for the parties. The provisions of law creating a financial obligation have to be interpreted strictly and any benefit' arising therefrom interpreting the said provision has to be extended to the citizens if the same is possible. The perusal of Item No.31, clause (b) as reproduced above prescribes that the valuation in respect of an exchange deed is to be made on the basis of one of the properties which carries the greatest value. The legislature was conscious of the fact that two or more properties are involved and by making use

of the term "property" of the greatest value the intention of the legislature appears to be that in the exchange deed one of the properties which carries the greatest value shall be the determining factor for the purpose of assessment of the stamp duty to be charged. The reference of the learned Additional Advocate-General to the provisions of Item No.62, clause (e) only provides that whatever stamp duty is determined in respect of an exchange deed it has to be shared by the parties in equal denominations. The reference to section 29, Item No.62, clause (e) does not in any manner support the contention of the learned Additional Advocate-General that in an exchange deed the valuation of both the properties shall be combined together for the purposes of charging the stamp duty. The Hon'ble Supreme Court of Pakistan in a reported judgment *Qaiser Javed Malik v. Pervaiz Hameed and 2 others* (2009 SCMR 846) has laid down the following law at page 851 in paragraph No.6 about the interpretation of the statutes:---

"It is settled principle of interpretation that the Courts should adopt an interpretation, which may give meanings of each word of an enactment taking into 'consideration the spirit of such legislation. An interpretation whereby any portion of an enactment is rendered ineffective is not to be adopted when clear meanings can be given to various provisions of an enactment in a harmonious manner as held by this Court in the cases of' *Shahid Nabi Malik and another v. Chief Election Commissioner and 7 others* (PLD 1997 SC 32), *M. Aslam Khaki v. Muhammad Hashim* (PLD 2000 SC 225), *Hafiz Abdul Waheed v. Mrs. Asma Jehangir* (PLD 2004 SC 219), *D.G. Cement Company Limited and others v. Federation of Pakistan and others* (2004 SCMR 456) and *Shoukat Baig v. Shahid Jami* (PLD 2005 SC 530)."

6. In view of the above, .1 have no hesitation to hold that

Item No.31, clause (b) of Punjab Finance Act (No.IX) of 1997 as amended provides the determination of the stamp duty value on the basis of the property of the greatest value which in the instant case is Property No.RH 52-BII measuring 4 marlas, 7 sirsihi as its value has been given in the deed to be Rs.3,00,000/- and the petitioners are liable to pay the stamp duty on the basis of the valuation of the said property. The learned counsel for the petitioners has contended that the petitioners have already deposited the stamp duty with the respondents according to the greatest value of the Property No.RH 52-BII. If this is the situation, the respondents do not have any lawful authority either to demand the stamp duty on the basis of aggregate value of the two properties or to refuse to return the exchange deed instrument to the petitioners if they have paid the Stamp duty in accordance with the property carrying the greatest value. The instant writ petition, therefore, is accepted and the act of the respondents of demanding the stamp duty on the exchange deed of the petitioners on the basis of aggregate value of the two properties is declared to be illegal and without lawful authority. If the petitioners have already paid the stamp duty in accordance with the property of the greatest value of Rs.3,00,000/- the instrument of exchange deed shall be released to the petitioner without any further delay time by the respondents°. There is no order as to costs.

**(NASIR SAEED SHEIK)**  
**Judge**

