* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 20th May, 2026***
Judgment pronounced on: 28th July, 2026

\+ W.P.(C) 839/2008 & CM APPL. 854/2025

VINITA BHARGAVA .....Petitioner

Through: Mr. S. N. Bhargava, PoA of the petitioner, in-person.

versus

M.C.D .....Respondent

Through: Mr. Gaganmeet Singh Sachdeva, Mr. Harshpreet Singh Chadha and Mr. Amaan Khan, Advocates for MCD.
Mr. Jai Sahai Endlaw, Advocate (*Amicus Curiae* appointed by the Court).

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present petition has been filed seeking quashing of the letter dated 3rd January, 2008 issued by respondent/MCD, whereby, MCD raised a demand of 3% of the sale consideration towards transfer duty in respect of petitioner's property bearing no.301, Fancy Cooperative Group Housing Society Ltd., Vasundhra Enclave, Delhi-96 ('subject property').

FACTUAL BACKGROUND

2. Brief facts relevant for adjudication of the present matter are set out below.

3. The subject property was originally owned by Smt. Brinder Chaudhary, who transferred her rights therein to Smt. Latha Nair under an ATS dated 7th January, 1996. Thereafter, Smt. Latha Nair executed an ATS dated 29th August, 2000 in favour of the petitioner for a total sale consideration of Rs. 15,00,000/-. The petitioner has remained in continuous possession of the subject property since then and has been regularly paying the property tax, electricity charges and other charges. Smt. Latha Nair also executed a General Power of Attorney ('GPA') in favour of the petitioner in respect of the subject property.

4. On 14th August, 2007, a conveyance deed was executed by DDA in favour of the petitioner on payment of Rs.29,000/-, converting the subject property from leasehold to freehold. The conveyance deed was registered with the sub-registrar on 14th August, 2007 upon payment of stamp duty of Rs. 870/- and transfer duty of Rs.870/- totalling Rs.1740/-.

5. On 13th December, 2007, the petitioner applied for mutation of the subject property with MCD.

6. On 3rd January, 2008, MCD sent the impugned letter demanding payment of transfer duty at 3% of the sale consideration for mutation of the subject property.

7. Aggrieved by the same, the present petition has been filed by the petitioner challenging the said impugned letter.

PROCEEDINGS BEFORE THIS COURT

8. On 7th March, 2008, this Court passed an interim order staying the operation of the impugned letter. *Vide* order dated 17th February, 2009, the aforesaid interim order was made absolute till the disposal of the present petition.

9. This Court *vide* order dated 12th August, 2025 appointed Mr. Jai Sahai Endlaw, Advocate, as an *Amicus Curiae* to assist the Court.

SUBMISSIONS ON BEHALF OF THE PARTIES

Submissions made by Mr. S.N. Bhargava, the Power of Attorney of the petitioner

10. The case of the petitioner is squarely covered by the judgment of this Court in ***Raghu Nayyar* v. *MCD*[1]**. In ***Raghu Nayyar*** (supra) it was held that clauses (i) to (v) of sub section (b) of Section 147 of DMC Act would not apply to an ATS. The Court held that clause (vi) of sub section (b) of Section 147 of DMC Act would not apply as the documents were executed prior to the date of amendment in the Delhi Municipal Corporation Act, 1957 ('DMC Act'), *i.e.* 1st August, 2003.

Submissions made on behalf of Mr. Jai Sahai Endlaw, Advocate, the amicus curiae

11. The levy of transfer duty under Section 147 of the DMC Act is in the nature of a surcharge on the duty imposed under the Indian Stamp Act, 1899 ('Stamp Act') and is attracted only in respect of the instruments contemplated under Section 147 of the DMC Act. The power to levy transfer duty is not an independent taxing power but is incidental to the levy of

[1] 2007 SCC OnLine Del 938.

stamp duty and, therefore, cannot be imposed in the absence of a corresponding liability to pay stamp duty.

12. In the present case, the MCD seeks to levy transfer duty on the basis of an ATS dated 29th August, 2000 by treating the said document as a "*contract for transfer of immovable property*" falling within Section 147(2)(b)(vi) of the DMC Act. Such a course is legally impermissible in as much as clause (vi) of Section 147(2)(b), which brought "*contracts for transfer*" within the ambit of transfer duty, came into force only with effect from 1st August, 2003. The subsequent amendment cannot be retrospectively applied to transactions concluded prior to 1st August, 2003.

13. On the date of execution of the ATS, such an agreement was neither compulsorily registrable nor amenable to stamp duty in the manner subsequently contemplated under the amended statutory regime. Since Section 147 envisages transfer duty as a surcharge upon stamp duty, it is contended that where the ATS itself did not attract stamp duty at the time of its execution, the question of levying transfer duty thereon could not arise. Consequently, the MCD could not insist upon payment of transfer duty on the ATS as a condition precedent for effecting mutation in its records.

14. Reliance is also placed upon the decision of the Supreme Court in ***Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana***[2], wherein it was held that an ATS does not, by itself, convey title nor can it be treated as a conveyance or sale deed. Therefore, an ATS cannot be equated with a conveyance so as to attract transfer duty under Section 147 of the DMC Act.

15. The relevant document for determining the liability towards stamp duty and the consequential transfer duty is the registered conveyance deed.

Transfer duty has already been recovered on the said conveyance deed. Therefore, no further transfer duty can be demanded with reference to the earlier ATS.

16. Reliance is placed on the judgment of the Division Bench of this court in ***Collector of Stamps v. Dr. Hem Lata***[3], to contend that stamp duty is chargeable on the conveyance deed and not on any antecedent document which does not itself operate as a conveyance. Since transfer duty under Section 147 is merely a surcharge upon stamp duty, the same principle would equally govern the levy of transfer duty.

17. Reliance is also placed upon the judgment of this Court in ***Raghu Nayyar*** (supra), wherein it was held that an ATS executed prior to 1st August, 2003 would not attract transfer duty under Section 147 of the DMC Act and that payment of such transfer duty could not be insisted upon as a pre-condition for sanctioning mutation.

Submissions made by the Mr. Gaganmeet Singh Sachdeva, Advocate, on behalf of the MCD

18. Section 147 of the DMC Act enables the MCD to levy duty in the form of surcharge on transfers of immovable property situated within the territory of Delhi at a rate not exceeding 5%. In terms of the notification dated 6th July, 2023 issued under Section 147(2)(b) of the DMC Act, rate of transfer duty has been increased from 2% to 3% in the case of females. This enhancement is applicable for registration of instruments having amount of more than Rs.25,00,000/-.

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[2] (2012) 1 SCC 656.
[3] 1996 SCC OnLine Del 604.

19. Under Section 128(5) of the DMC Act, there is an obligation on the competent authority to satisfy that all duties required to be paid under Section 147 have been paid after recording any transfer of the property.

20. A departmental notification dated 28th January, 2002 has been issued by MCD directing all assessing officers to ensure proper transfer duty stands paid before processing mutation of any property on the basis of a registered document.

21. On 23rd December, 2011, MCD has issued a circular which states that transfer duty is assessed independently of the stamp duty and is chargeable under Section 147 of the DMC Act. Even though it is recoverable as surcharge on the duty imposed under the Stamp Act, it does not form part of the stamp duty itself as it is levied over and above the same under the provisions of DMC Act. The transfer duty is to be collected by Registrar/Sub-Registrar Stamps, Government of NCT of Delhi ('GNCTD') and the same is calculated as per the applicable rates and the circle rates notified by the GNCTD or on the value of consideration for transfer as set out in the contract/deed/instrument, whichever is higher on the date of filing application under Section 128 of the DMC Act.

22. The amount charged by DDA at the time of execution of conveyance deed was only for the purpose of converting the land beneath the land in question from leasehold to freehold. This amount does not take into account the cost of the subject property itself or the amount mentioned in the agreement to sell, which forms the actual basis of transfer of property in favour of the petitioner by the original allottee.

23. At the time of execution of conveyance deed and conversion of land from leasehold to freehold, the petitioner did not pay the full transfer duty

payable under Section 147 of the DMC Act. The transfer duty was payable at the rate prescribed on 90% of the consideration mentioned in the ATS.

24. In the present case, the petitioner purchased the property on the basis of an ATS and a GPA, which were not registered documents. Therefore, the mutation can be permitted only upon the petitioner paying the consideration in terms of the ATS.

ANALYSIS AND FINDINGS

25. Section 147 of the DMC Act vests the power with the MCD to levy transfer duty on immovable properties located within Delhi. In terms of Section 147(2) of the DMC Act, transfer duty is levied in the form of surcharge on the stamp duty imposed under the Stamp Act. For ease of reference, Section 147 is set out below:-

> "*147.* ***Duty on transfer of property and method of assessment thereto.*** *– (1) Save as otherwise provided in this Act****, the Corporation shall levy a duty on transfers of immovable property situated within the limits of Del****hi in accordance with the provisions hereafter in this section contained.*
>
> *(2) The said duty shall be levied –*
>
> *(a)* ***in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899 (2 of 1899)*** *as in force for the time being in the Union territory of Delhi, on every instrument of the description specified below, and*
>
> *(b)* ***at such rate as may be determined by the Corporation not exceeding five per cent, on the amount specified below against such instruments-***

Description of Instrument	*Amount in which duty should be levied*
(i) Sale of immovable property	*The amount or value of the consideration for the sale, as set forth in the instrument.*

(ii)	*Exchange of immovable property value,*	*The value of the property of the greater as set forth in the instrument.*
(iii)	*Gift of immovable property*	*The value of the property, as set forth in the instrument*
(iv)	*Mortgage with possession of immovable property*	*The amount secured by the mortgage as set forth in the instrument.*
(v)	*Lease in perpetuity of immovable property*	*The amount equal to one-sixth of the whole amount of value of the rent which would be paid or delivered in respect of the first fifty years of the lase as set forth in the instrument.*
(vi)	***Contract for transfer of immovable property***	***Ninety per cent of the value of the consideration for the transfer as set out in the contract."***

[emphasis supplied]

26. "*Contract for transfer of immovable property*", Entry (vi) above, was added to Section 147(2)(b) *vide* amendment carried out on 1st August, 2003.

27. From the statutory scheme under the DMC Act, it is manifest that transfer duty is an independent levy under Section 147 of the DMC Act. Even though transfer duty is recoverable as a surcharge on stamp duty payable under the Stamp Act, it does not form a part of the stamp duty. Merely because stamp duty has not been levied on the actual value, it would

not debar the MCD from levying transfer duty in terms of Section 147 of the DMC Act. Transfer duty is collected by the Registrar/Sub Registrar/Collector of Stamps at the time of registration of document of transfer relating to the property. However, it is collected on behalf of the MCD and is remitted to MCD.

28. At this juncture, it may be relevant to refer to sub section (5) of Section 128 of the DMC Act, which is set out below:-

> "***128. Notice of transfers.***
> *... (5) the Commissioner shall record every transfer or devolution of title notified to him under this section in his books and in the Municipal Assessment Book**;***
>
> ***Provided that before recording such transfer or devolution of title, the Commissioner shall satisfy himself that any duty on transfer of property leviable under section 147 has been paid.***"
>
> [emphasis supplied]

29. Section 128 of the Stamp Act casts a statutory obligation upon the MCD to verify that the transfer duty payable under Section 147 of the DMC Act has been duly paid prior to effecting mutation. The MCD has the right to examine the documents purportedly evidencing the transfer to ensure that the payment of statutory dues is complete.

30. In terms of the circular issued by MCD on 23rd December, 2011 (Annexure A-2 filed along with written submissions on behalf of MCD), the assessing officers have been directed to collect transfer duty on instruments of transfer of immovable property on which the transfer duty has not been paid at the time of registration of the document with the registering authorities. The circular further provides the transfer duty will be based on circle rates as notified by GNCTD or on the value of consideration for transfer as set out in the instrument, whichever is higher on the date of filing

of the application under Section 128 of the DMC Act. The relevant extracts from the said circular are set out below:-

> *"It has been noticed that while registering instruments purporting to be transfer of immovable properties, in some of the cases, the registering authorities of the GNCTD have not been collecting duty on transfer which is MCD's share u/s 147 of the DMC Act in stamp duty applicable to such instruments. This is more so in the case of "contract of transfer of immovable properties" introduced w.e.f. 01.08.2003 in Section 147 whereby duty on transfer is to be levied on 90% of the value of the consideration for the transfer as set out in such contract. Such instruments are other than (i) to (v) specified u/s 147(2)(b) of the Act.*
>
> *All the Assessing Officers are hereby directed that Transfer Duty on the instruments purporting to be transfer or contracts for transfer of immovable on which the registering authority of GNCTD has not collected surcharge on stamp duty (which is MCD's share) be collected forthwith.* ***This Transfer Duty will be at the present rates applicable for Transfer Duty and till be based upon the circle rates as notified by GNCTD (Revenue Department) vide notification No.FJ(281)/Regn/Br/HQ/Div.Com/09 dated 4.2.2011 (came into force w.e.f. February 08, 2011) or on the value of consideration for transfer as set out in the said contract deed/instrument, whichever is higher, on the day of filing application u/s 128 of the DMC Act. On collection of such Transfer Duty, mutation u/s 128 of DMC Act will be carried out.***"
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> [emphasis supplied]

31. Another circular was issued by MCD on 16th July, 2012 (Annexure A-3 filed along with written submissions on behalf of MCD), wherein it was provided that in case the transfer duty on the total consideration amount has not been charged by GNCTD, MCD could collect the differential transfer duty at the time of mutation under Section 128 of the DMC Act. Relevant extract from the aforesaid circular is set out below:

> *"Section 128 (5) of the DMC Act states that before recording such transfer or devolution of title (i.e. mutation), the Commissioner shall satisfy himself that any duty on transfer of property leviable under section 147 of*

the Act has been paid. Thus, the Commissioner is statutorily obliged to ensure the transfer duties payable under section 147 are duly paid before carrying out any mutation under Section 128 of DMC Act.

Therefore, in terms of the provisions of DMC Act, the continuation to existing circulars and instructions already issued dealing with mutation cases, ***the last executed Conveyance Deed should be the material for mutation and in case the transfer duty on the total consideration amount (as reflected in the Instrument of Transfer of an immovable property) has not been charged by the SRO, GNCTD, the Municipal Corporation may collect the difference of transfer duty at rates of the relevant period of charging transfer duty on the amount which has escaped stamp duty and proceed with the mutation under Section 128 of the DMC Act.***"

[emphasis supplied]

32. In the present case, the petitioner has purchased the subject property on the basis of an agreement to sell and the GPA executed in her favour on 29th August, 2000. It is an admitted position that the petitioner has been in possession of the subject property on the basis of the said ATS and GPA and has been regularly paying the property tax, electricity charges and other charges. Subsequently, a conveyance deed was executed by the Delhi Development Authority ('DDA') in favour of the petitioner on 14th August, 2007, which was a registered document.

33. At the time the petitioner applied for mutation with the MCD, *i.e.* on 13th December, 2007, Section 147(2)(b) of the DMC Act had been amended so as to include an ATS in the list of documents (Entry no. (vi), "*contract for transfer of immovable property*"), on which transfer duty was payable. The amendment provided that the transfer duty would be leviable on 90% of the sale consideration mentioned in the document, *i.e.* agreement to sell, at the prescribed rate. In terms of the MCD resolution no. 193 dated 21st September, 2007 released *vide* notification dated 19th November, 2007 with effect from 20th November, 2007, the prescribed rate was 2% in case of

females. The said rate of 2% was increased to 3% *vide* circular dated 16th July 2023, in respect of properties valued at Rs.25,00,000/- or more.

34. Once the amendment had been carried out in the DMC Act, there was no impediment for MCD to demand transfer duty on the differential amount, taking into account the transfer duty paid at the time of registration of the conveyance deed. The amount mentioned in the ATS was the actual amount of consideration paid by the petitioner towards purchase of the subject property and therefore, would be the relevant consideration for the purposes of determining transfer duty under Section 147(2)(b) of the DMC Act.

35. The relevant date for the purposes of levying transfer duty would be the date when the petitioner approached the MCD for carrying out mutation and not the date on which the ATS was executed. Therefore, I do not find any merit in the contention of the petitioner and the *amicus curiae* that the MCD is trying to apply the amendment in a retrospective manner.

36. It is contended on behalf of the petitioner that at the time of execution of the conveyance deed, appropriate amount of stamp duty as well as transfer duty has been paid by the petitioner and therefore, there is no requirement to pay any further transfer duty.

37. A perusal of the conveyance deed shows that through the conveyance deed, "*reversionary interest in the land underneath the said property*" has been transferred in favour of the petitioner. Therefore, the amount of stamp duty and transfer duty charged upon the petitioner was only in respect of the underlying land and not in respect of the flat constructed over the said land. Therefore, this Court cannot accept the contention of the petitioner that the entire transfer duty stood paid by the petitioner at the time of execution and registration of the conveyance deed.

38. The petitioner has placed reliance on the judgment of the coordinate bench of this Court in ***Raghu Nayyar*** (supra) in support of her contention that transfer duty cannot be charged on an ATS. To be noted, the aforesaid judgment was carried in appeal both by the petitioners therein as well as MCD and the appeals were dismissed by the Division Bench of this Court.

39. In ***Raghu Nayyar*** (supra)**,** the ATS was entered in 1997 and the petitioner therein applied for conversion from leasehold to freehold with DDA on 15th January, 2000. The conveyance deed was registered on 25th June, 2001 after the Collector of Stamps adjudicated the stamp duty and transfer duty on the value of Rs.10,000/-. From paragraph 10 of the judgment in ***Raghu Nayyar*** (supra), it appears that on 23rd June, 2003 MCD had proposed recovery of transfer duty @ 3% of the value in the agreement to sell. Pertinently, the aforesaid date of 23rd June 2003 was before the date of the amendment carried out in Section 147(2)(b) of the DMC Act, i.e. 1st August 2003, so as to include an ATS as an instrument on which transfer duty could be charged.

40. The writ petition in ***Raghu Nayyar*** (supra) was allowed by the Single Bench noting that prior to 1st August, 2003, no transfer duty was payable on an ATS. Therefore, the value mentioned in the conveyance deed was taken as relevant value for purposes of payment of transfer duty and not the value indicated in the agreement to sell. Paragraphs 27, 28 and 31 of the said judgment are set out below:-

> "*27. Once the transfer duty was tightly as adjudicated upon and collected by the Collector of Stamps, there was no question of the MCD again demanding transfer duty in terms of the unamended Section 147 of the DMC Act, 1957 as it stood at that point in time. It requires to be noticed that under that provision the transfer duty is levied in the form of a surcharge on the stamp duty under Indian Stamp Act, 1899 and "other*

instruments of the description specified below at such rate as may be determined by the Corporation not exceeding 5% on the amount specified below against such instrument." The above provision therefore envisages –

- *(i) that the transfer duty is a surcharge on the stamp duty;*
- *(ii) that the transfer duty is leviable only on those instruments which answer the description set out in the table in s. 147;*
- *(iii) the transfer duty would be leviable at a rate not exceeding 5% on the amounts specified in Section 147 against such instruments.*

28. Prior to 1.8.2003, the date from which the said Section 147 was amended by Section 23 of the DMC Amendment Act 6 of 2003, there was no provision under which "a contract for transfer of immovable property" would attract transfer duty. In other words prior to 1.8.2003 if the document in question did not answer the description of a sale deed and it was merely an agreement to sell, it would not be amenable to levy a transfer duty…

*** *** ***

31. Secondly, the judgment does not at all refer to the parallel developments that had been taking place by way of Amendment to the Registration Act, 1908. The SOR of the Amendment Bill which have been extracted hereinabove clearly shows that the Legislature perceived that difficulty in construing the agreement to sell, which till then was not compulsorily registrable, as a sale deed merely on the basis of what was stated in the recitals of such a document. Further, the Legislature was also clear that prior to 24.9.2001 such documents were not to be treated as compulsorily registrable. The intention of the Legislature has been made specific by the subsequent amendment to Section 147 of the DMC Act, 1957 which was only given prospective effect from 1.8.2003."

41. In ***Raghu Nayyar*** (supra), transfer duty was sought to be levied before the amendment of Section 147 of the DMC Act, hence, the Court held that in terms Section 147 as it stood before the amendment, MCD could not levy transfer duty on an ATS as a pre-condition for grant of mutation. In the present case, the petitioner applied for mutation with MCD on 13th December, 2007, when the provisions of Section 147(2)(b) of the DMC Act

had already been amended and ATS was included as an instrument, on which transfer duty could be levied. Therefore, the judgment in ***Raghu Nayyar*** (supra) does not advance the case of the petitioner.

42. The petitioner has also placed reliance on the judgment of the Division Bench in ***Collector of Stamps v. Dr. Hem Lata*** (supra) to contend that the stamp duty and transfer duty should be levied on the value of consideration mentioned in the conveyance deed. However, the said judgment dealt exclusively with the levy of stamp duty under the Stamp Act. The issue of transfer duty under the DMC Act did not arise for consideration in the said case.

43. In fact, if the interpretation of the petitioner were to be accepted then the very purpose of making an ATS compulsorily registerable and the consequent amendment under section 147 of the DMC Act would be defeated. Therefore, MCD was well within its right to demand transfer duty based on the consideration mentioned in the ATS, which was in accordance with the amendment of Section 147 of the DMC Act carried out on 1st August, 2003. The petitioner's application for mutation was admittedly after the date of the amendment.

CONCLUSION

44. In view of the discussion above, this Court is of the view that the petitioner shall be liable to pay the balance transfer duty to the MCD at the rate of 2%, i.e. the rate prevailing as on 13th December, 2007 when petitioner applied for mutation. The transfer duty shall be payable on 90% of the sale consideration mentioned in the ATS dated 29th August, 2000.

45. Accordingly, the present petition is disposed of in the aforesaid terms.

46. The pending application also stands disposed of.

AMIT BANSAL
(JUDGE)

JULY 28, 2026
Vivek/-