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

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Judgement reserved on: 26.07.2023
Judgement pronounced on : 04.08.2023

+ **W.P.(C) 13840/2021**

MRS. MANSI GARG AND ORS Petitioners

Through: Mr Madhukar Tomar, Advocate.

versus

COMMISSIONER OF INCOME TAX AND ORS Respondents

Through: Mr Shailendera Singh, Sr Standing Counsel
 with Ms Dacchita Shahi and Mr Viplav
 Acharya, Jr Standing Counsels along with
 Mr Akash Saxena, Advocate for revenue.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

GIRISH KATHPALIA, J.:

1. By way of this writ petition under Article 226 of the Constitution of India, the petitioners have sought the following reliefs:

- A. *Issue writ of Mandamus or any other appropriate writ, order or direction of like nature thereof, directing the Respondent No.2 to quash the Impugned Notice dated 15.03.2010 issued by Respondent No.2 to the limited extent of its applicability to the Said Flat owned by the Petitioners No . & 4;*
- B. *Issue writ of Mandamus or any other appropriate writ, order or direction of like nature thereof to quash the Impugned Rejection Order dated 08.07.2021 issued by Respondent No.3;*
- C. *Direct Respondent No.3 to register the Agreement without any further liability in terms of stamp duty, registration fees etc. which have already been paid by or on behalf of the Petitioners; and*
- D. *Any other or further order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice is passed in favour of the Petitioner”.*



Despite repeated opportunities, respondents opted not to file any counter-affidavit in order to resist the writ petition. We heard learned counsel for both sides.

2. Briefly stated, the factual matrix pleaded in the writ petition is as follows. By way of notice dated 15.03.2010 issued by respondent no. 2, addressed to one Mr Romesh Sharma, the flat bearing No. FF-II, First floor, Rear portion of premises bearing No. C-28, Mayfair Garden, New Delhi (hereinafter referred to as “the subject flat”), owned solely by petitioners no. 3 and 4 was attached under mistaken belief that the entire property bearing No. C-28, Mayfair Garden, New Delhi is owned by Mr Romesh Sharma, an alleged tax defaulter. Consequent to the impugned notice dated 15.03.2010, the respondent no. 3 Sub-Registrar sought a clarification from respondent no. 2 as to whether the petitioners’ request for registration of sale deed pertaining to C-28, Mayfair Garden, New Delhi should be kept on hold, despite the fact that Mr Romesh Sharma held interest only in the basement of the said property No. C-28, Mayfair Garden, New Delhi. On getting no response, the respondent no. 3 rejected the petitioners’ application for registration of sale deed by way of impugned rejection order dated 08.07.2021. Petitioners specifically pleaded having never defaulted on their obligations to pay the income tax. Hence, the present writ petition.

3. As mentioned above, the respondents opted not to resist this writ action. Learned counsel for respondents who appeared on 26.07.2023 in this court submitted on the basis of instructions that in the said property No. C-



28, Mayfair Garden, New Delhi, it is only the basement which is owned by Mr Romesh Sharma and that Mr Romesh Sharma has no right, title or interest in rest of the floors of the said property. That being so, the impugned notice dated 15.03.2010 issued by respondent no. 2 cannot survive.

4. However, so far as the rejection order, impugned in the present writ petition is concerned, the petitioners have to initiate fresh steps. For, the impugned rejection order dated 08.07.2021 issued by respondent no. 3 was not premised on the notice dated 01.04.2021 issued by respondent no. 2.

5. In view of above discussion, the writ petition is disposed of, thereby quashing the impugned notice dated 15.03.2010 issued by respondent no. 2.

6. File be consigned to records.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

AUGUST 04, 2023/as