

Neutral Citation No. - 2025:AHC:75707

Reserved on 5.5.2025

Delivered on 09.5.2025

Court No. - 10

Case :- WRIT - C No. - 13451 of 2025

Petitioner :- M/S Dlf Home Developers Pvt Ltd

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Mr. Pinaki Mishra, Sr. Adv. Mr. Shashi Nandan, Sr. Adv. Mr. Naveen Sinha, Sr. Adv. & Mr. Rohan Gupta

Counsel for Respondent :- C.S.C., Mr. Manish Goel, AAG, Mr. Jagat Bhushan, Sr. Adv. Mr. Anurag Khanna, Sr. Adv.

Hon'ble Piyush Agrawal, J.

1. Heard Mr. Pinaki Mishra, learned Senior Advocate, Mr. Shashi Nandan, learned Senior Advocate and Mr. Naveen Sinha, learned Senior Advocate assisted by Mr. Amit Agarwal, Mr. Rohan Gupta, Mr. Devashish Chauhan, Mr. Varad Nath, Mr. Anjani Kumar, Mr. Prakhar Gupta and Mr. Pranay Kumar, for the petitioner and Mr. Manish Goel, learned Additional Advocate General along with Mr. A.K. Goyal, learned ACSC for State – respondent nos. 1 to 3 and Mr. Jagat Bhushan, learned Senior Advocate and Mr. Anurag Khanna, learned Senior Advocate assisted by Mr. Amartya Bhushan, Mr. Jatin Sehgal, Mr. Shivashish Dwivedi, Mr. Devna Soni, Ms. Yasvi Bajpai and Mr. T. Islam for respondent no. 4.

2. By means of present petition, the petitioner is praying for the following reliefs:

a. Issue a writ in the nature of mandamus directing the respondent nos. 1, 2 and 3 to sine-die adjourn the stamp recovery proceedings bearing Stamp Case No. D202211270001599 pending before the Court of Collector / District Magistrate, Gautam Budh Nagar to await the judgement of the Hon'ble High Court of Delhi in OMP (Comm.) 450 / 2023 and Arb A (Comm) 45/2023 and the final arbitral award by the Arbitral Tribunal, who are already seized of the very same issue being considered by the Id. Collector; or

b. Issue a writ in the nature of certiorari and quash the impugned stamp recovery proceedings bearing Stamp Case No. D202211270001599 pending before the Court of Collector / District Magistrate, Gautam Buddha Nagar;

c. Pass any other order / orders or direction / directions as this Hon'ble Court may deem fit in the facts and circumstances of the case.

3. Mr. Manish Goel, learned Additional Advocate General appearing on behalf of State-respondent nos. 1 to 3 raises a preliminary objection regarding maintainability of the present writ petition and submits that the prayer made in the writ petition cannot be granted at this stage. He further submits that a mandamus is sought directing respondent nos. 1 and 2 appears to be misconceived on the pleading made in paragraph no. 6 of the writ petition as neither any copy of the representation has been annexed along with the writ petition nor any pleading has been made for representing the respondents for which the mandamus is sought. He further submits that respondent nos. 1 and 2 are Principal Secretary, Department of Revenue, Government of UP and Chief Secretary, Department of Revenue, Government of UP, respectively. He

further submits that stamp cases are not govern by the revenue department, therefore, no such order can be passed as prayed in prayer no. a. He further submits that prayer no. b is also misconceived as from the pleadings itself shows that the petitioner is aggrieved by the notices but same are not under challeng; when the notices, itself are not under challenged, relief no. b cannot be accorded to the petitioner. He further submits that it is simple show cause notices to which the petitioner has already submitted detailed reply, copies of which have been annexed along with the writ petition. He further submits that if any order is passed against the petitioner, the petitioner has efficacious alternative remedy to challenge the same under the Stamp Act but as on today, the writ petition is premature and is liable to be dismissed on this ground alone.

4. Mr. Jagat Bhushan, learned Senior Counsel appearing on behalf of respondent no. 4 also raises a preliminary objection with regard to maintainability of the present petition and submits that the petitioner has himself submitted reply in pursuance of the notices, therefore, the present writ petition is not maintainable. He further submits that there is laches in approaching this Court as the notices have been issued on 1.2.2023 and 22.5.2023 but the petitioner has approached this Court so late, therefore, the present writ petition is not maintainable on the ground of laches. He further submitted that relief sought in writ petition could not be granted at this stage.

5. Rebutting to the aforesaid submissions, Mr. Pinaki Mishra, learned Senior counsel appearing on behalf of the petitioner submits that the notices are without jurisdiction as the stamp authorities have no jurisdiction to adjudicate the issue at this stage when the parties have consented to appear before the Arbitrator, who can take the evidences. In support of his submission, Mr. Mishra has relied upon the seven judges Bench judgement of the Apex Court in the case of **Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 (2024) 6 SCC 1**. (relevant paras: 66, 73-74, 76, 81, 94, 100, 120, 131, 136-138, 143, 176-177, 183-185, 190, 194-196, 199, 205-206 & 235.4).

6. He further relied upon the judgement of this Court in the case of **Arezzo Developers (P.) Ltd. and others Vs. State of UP and others, MANU/UP/1896/2009** (relevant paras: 1-5 & 12-13) as well as in the case of **Final Step Developers Pvt. Ltd and another Vs. State of UP and others (Writ C No. 24782 of 2023)** decided on 27.7.2023 (relevant paras: 5, 8) and submits that writ petition can be entertained against a show cause notice.

7. He further relied upon the judgement of Apex Court in the case of **Oryx Fisheries Pvt. Ltd. Vs. Union of India and others (2010) 13 SCC 427** (relevant paras: 24-28, 31-33).

8. He submits that while considering the proceedings pending

before the Arbitrator, the question arises about the sufficiency of stamp duty, where the agreement can be looked into as held by the seven judges bench of the Apex Court in the case of **Interplay (supra)**. He further submits that the Apex Court has specifically held that stamp authorities should keep their hand away and the Arbitrator is competent enough to decide the issue about the sufficiency of stamp and if the same is found insufficient, he can impound the documents and refer the matter to the concerned authority. He further submits that at this stage, the proceeding for deficiency of stamp will prejudice the right of the petitioner as the Arbitration is going on.

9. In reply to the aforesaid submission, Mr. Manish Goel, learned AAG submits that the arbitration proceeding has been stayed by the orders of Delhi High Court and copy of the said orders are annexed as Annexure No. 16 and 17 of the present writ petition. He further submits that once the proceeding has been stayed, no arbitration proceeding can be undertaken before the Arbitrator. He further refers written submission filed by the petitioner before the stamp authority (Annexure no. 18 of this writ petition) wherein para 3, has reproduced clause 11.5 (i) of the agreement which specifically stated that all incidental charges of this agreement shall be borne by the seller and in clause 11.5(ii) it was specifically stated that stamp duty and registration charges shall be borne and paid by the seller. He further submits that once

the agreement contemplates such provisions holding liability of stamp duty and registration upon the seller, the petitioner cannot be aggrieved by the present proceedings.

10. He further submits that the judgement relied upon by the learned Senior Counsel for the petitioner in the case of **Interplay (supra)** is of no aid to the petitioner as the said judgement has been passed in different context. He prays for dismissal of the present writ petition.

11. Mr. Bhushan, learned Senior counsel appearing for respondent no. 4 further submits that the judgement of the Apex Court heavily relied upon by the petitioner in the case of **Interplay (supra)** is not applicable in the facts of the present case. He refers paragraph nos. 1, 5, 46, 65, 66, 136 to 138, 176, 177, 190 and 235 of the said judgement and tried to emphasis that in order to determine the deficit of stamp duty, only the Stamp Authority is the competent authority. He further submits that the Apex Court has not prohibited for initiating the stamp proceeding, if deficit of stamp duty is noticed, therefore, the submission made by learned Senior counsel for the petitioner, is misconceived.

12. In reply to the aforesaid submission, Mr. Mishra, learned Senior Counsel for the petitioner has relied upon the judgement of **Interplay (supra)** and submits that before the Arbitrator until and unless the nature of the agreement is determined, the levy of stamp

duty cannot be made out at this stage. He further submits that the issue is *sub judice* before the Arbitrator in order to determine, whether the agreement is sale agreement deed, lease agreement or assignment. He submits that until and unless the agreement in question is not determined about its nature, the present proceeding ought not to have been initiated.

13. Mr. Mishra, learned Senior Counsel for the petitioner further submits that notices have been issued by the authorities, who have already made up its mind to pass the order against the petitioner, therefore, the entire exercise, which is proposed to be undertaken in furtherance of the notice would be empty formality and futile exercise. He further submits that notices though stated to be for the purposes of giving the petitioners a show cause, is infact in the nature of an order which has been issued with premeditation with malice writ large in issuing the said notices.

14. After hearing learned counsels for the parties, the Court has perused the records. Rival contentions raised across the bar would require appreciation of the parameters under which a show cause notice in reference to a proposed order of deficiency of stamp duty may be passed and the circumstances under which the validity of a show cause notice may be assailed in writ jurisdiction on the ground of without jurisdiction empty formality or futile exercise with predetermined mind.

15. The maintainability of a writ petition against a show cause notice was subject matter of consideration in the case of **Siemens Ltd Vs. State of Maharastra and others, (2006) 12 SCC 33**, wherein it was held that ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless it is without jurisdiction; however, when a notice is issued with premeditation, writ petition would be maintainable. Referring to the earlier decisions in **State of U.P. vs. Brahm Datt Sharma (1987) 2 SCC 179**, **Special Director vs. Mohd. Ghulam Ghouse (2004) 3 SCC 440**, **Union of India vs. Kunisetty Satyanarayana (2006) 12 SCC 28**, **K.I. Shephard vs. Union of India (1987) 4 SCC 431** and **V.C., Banaras Hindu University vs. Shrikant (2006) 11 SCC 42**, it was observed as follows:-

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm Datt Sharma, Special Director v. Mohd. Ghulam Ghouse and Union of India v. Kunisetty Satyanarayana, but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India.) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.

10. The said principle has been followed by this Court in V.C., Banaras Hindu University v. Shrikant, stating: (SCC p. 60, paras 48-49)

"48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.

49. In K.I. Shephard v. Union of India this Court held: (SCC p. 449, para 16)

"It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.' "

(See also Shekhar Ghosh v. Union of India and Rajesh Kumar v. D.C.I.T.10)

11. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable."

16. Learned counsel for the parties have heavily relied upon the Apex court judgement in the case of **Interplay (supra)**. Perusal of the said judgement indicates that the Apex Court had an occasion to consider the situation where agreement consist clause of arbitration but said agreement was not duly stamped. The matter was pending for appointment of Arbitrator before the court concerned. Either of the parties were raising objections that the said agreement cannot be looked into as the same is not properly stamped or registered. On this background, the order has been passed by the Apex Court holding that the proceedings of arbitration cannot be stopped due to insufficient stamp duty on the instrument. Further, it has been held that the

proceedings cannot be stopped at the stage of appointment of Arbitrator due to unstamped or insufficient stamp duty. Further, the Arbitrator is competent to take evidence and in the event, it is found insufficiently stamped, the same can be impounded and matter can be referred to the competent authority.

17. Mr. Mishra, learned Senior Counsel for the petitioner emphasized that in the case of **Interplay (supra)** since there is embargo on the stamp authorities to proceed for determination of deficit stamp duty, where the arbitration proceedings are pending before the Arbitrator, therefore, the notices are without jurisdiction.

18. Mr. Bhushan, learned Senior Counsel for the respondents has rightly opposed the said submission of the learned senior counsel for the petitioner stating that there is no such embargo or observation in any of the part of the judgement as suggested by Mr. Mishra, learned Senior counsel for the petitioner.

19. This Court also could not find any observation or direction of the Apex Court restraining the stamp authorities to initiate the proceedings, if the agreement found to be deficit of stamp duty. It is not in dispute between the parties that the Arbitrator has been appointed and matter is pending before the Arbitrator and it is not the stage of appointment of an Arbitrator. Once the said fact is not disputed, the judgement relied upon by the learned Senior counsel for the petitioner in the case of **Inteplay (supra)** is of no aid to him.

20. Therefore, it cannot be said that the proceedings initiated by the stamp authority against the petitioner is without jurisdiction.

21. Further reliance has been placed by the learned Senior Counsel for the petitioner in the case of **Arezzo Developers (supra)** in which this Court while entertaining the writ at the stage of notice has held that the authorities have issued notice without jurisdiction, therefore, the writ petition was entertained. Against the said decision, the State has preferred an appeal before the Apex Court, which was dismissed by order dated 7.1.2026. However in the present case, the Court is of the opinion that initiation of the proceeding is not without jurisdiction in view of the afore-stated facts.

22. The question as to what would be the proper contents of a notice to show cause, so as to be in consonance with the principles of natural justice was considered in the case of **Oryx Fisheries (supra)** and it was observed that the notice directing show cause must state the charges only and not definite conclusions of alleged guilt otherwise the entire proceeding would stand vitiated by unfairness and bias. It was stated thus:-

"24. ... It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

25. Expressions like "a reasonable opportunity of making objections" or "a reasonable opportunity of defence" have

come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in *Khem Chand v. Union of India*¹¹, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. *S.R. Das, C.J. speaking for the unanimous Constitution Bench in Khem Chand held that the concept of "reasonable opportunity" includes various safeguards and one of them, in the words of the learned Chief Justice, is : (AIR p. 307, para 19)*

"(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;"

27. *It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.*

28. *Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.*

29. ...

30. ...

31. *It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory*

regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."

23. The scope of judicial review in matters relating to challenge to show-cause notice was subject matter of consideration in **Union of India and another Vs. Vicco Laboratories, (2007) 12 SCC 270**, and while holding that non-interference at the stage of issuance of show-cause notice is the normal rule, it was stated that where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The observations made in the judgment in this regard are as follows:-

"31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ

petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."

24. The principle that a writ petition should normally not be entertained against mere issuance of show-cause notice was reiterated in **Commissioner of Central Excise, Haldia Vs. M/S. Krishna Wax (P) Ltd. (2020) 12 SCC 572** and it was held that the concerned person must first raise all the objections before the authority which had issued a show-cause notice and the redressal in terms of the existing provisions of law could be taken resort to if an adverse order was passed against such person.

25. A similar view had been taken in a decision in **Malladi Drugs and Pharma Ltd. Vs. Union of India (2020) 12 SCC 808**, and the judgment of the High Court dismissing the writ petition against a show-cause notice was upheld.

26. Again in **Union of India and others Vs. Coastal Container Transporters Association and others (2019) 20 SCC 446**, while examining the scope of powers under Article 226 with regard to quashment of a show-cause notice, it was held that the same would not be permissible unless there is lack of jurisdiction or violation of principles of natural justice.

27. The case in hand, the respondent authority issued notice to the petitioner requiring him to show cause as to why an order of

deficiency of stamp duty be not passed, is not in dispute. It is rather sought to be argued that since the show cause notice specifies the imputations, the same is indicative of the fact that the respondent authority has already made its mind to pass an order of deficit of stamp duty against the petitioner and that the notices are, therefore premeditated and the entire exercise proposed to be undertaken in furtherance thereof would be an empty formality.

28. The form and content of a show cause notice that is required to be served before deciding as to whether the notice is to be imposed deficiency of stamp duty or not. A show cause notice to mention that action of imposing deficiency of stamp duty is proposed so as to provide adequate and meaningful opportunity to show cause against the same. Accordingly, it would require the statement of imputations detailing out the alleged breaches and defaults so that the noticee gets an opportunity to rebut the same.

29. It is essential for the notice to specify the particular grounds on which an action is proposed to be taken so as to enable the noticee to answer the case against him and in the absence of the same a person cannot be said to be granted a reasonable opportunity of being heard.

30. A fair hearing to the party before imposition of stamp duty thus becomes an essential pre-condition for a proper exercise of the power and a valid order be made pursuant thereto. The applicability

of the principle of *audi alteram partem* and the necessity of issuance of show cause notice also becomes imperative before passing of any such order of imposition of stamp duty.

31. In order to comply with the principles of natural justice, a show cause notice must clearly specify as to what would be the consequences that may ensue if noticee does not satisfactorily respond to the grounds on which the proposed action is based. The notice must not only be adequate in content but must also explicitly and unambiguously set out the reason necessitating such proposed action. Particularly in the matters involving the proposed demand for deficiency of stamp duty, the show cause notice is required to strictly adhere to the principles of natural justice and to fulfil the same, it must meet the twin requirement of stating in unambiguous terms and grounds. The grounds according to which, stamp authorities necessitate the action and particular action, which is proposed to be taken, in case, noticee is unable to furnish an adequate response to the grounds stated in the notice.

32. Procedural fairness necessitate that persons liable to be adversely affected by a contemplated administrative decision must be given adequate notice of the proposed action so that they are not taken unfairly by surprise and also they are in a position to make submissions or representations against the proposed action, to appear at the hearing and to effectively answer the charges, which

they have to meet. A proper hearing must always include an opportunity to be informed of the case against them.

33. The right to know and to effectively respond to the charges has been recognized as a fundamental feature of any administrative adjudicatory process. It is a fundamental principle of fairness that a party should have prior notice of the case against him and an opportunity to properly respond to the same. The charges are to be made known specifically and with particularity so as to ensure that the party liable to be affected is not taken by surprise, and has an effective opportunity of putting forward its defence.

34. The contention raised on behalf of the petitioner that the issuance of the show cause notice is an empty formality for the reason that imputations have been stated in the notice which are indicative that the authority concerned has already made up its mind, cannot be accepted for the reason that the grounds/imputations specified in the notice are with a view to elicit the response of the petitioners in respect of the grounds on which the action is proposed. It is open to the petitioner to rebut the allegations specified in the notice by submitting their reply and it would be incumbent upon the respondent authority to accord consideration to the same and thereafter, pass an order affording reasonable opportunity to the petitioner.

35. It is legally well settled that mere issuance of show cause

notice does not amount to an adverse order, which may be held to affect the rights of the parties. The necessity for issuing a show cause notice and the requirement of specifying the grounds on which the action is proposed is in fact a necessary prerequisite, so as to ensure that the noticee is aware of the grounds on which action is proposed and has an adequate opportunity to rebut the same. If the show cause notice does not specifically state the grounds on which it is being issued and the proposed action, the noticee would be taken by surprise and would not have adequate opportunity to rebut the allegations during the course of proceedings, which is to follow.

36. Having regard to the aforestated facts and circumstances, the Court is of the view that the challenge raised to the show cause notices, at this stage, are not without jurisdiction and is premature.

37. Accordingly, this Court is not inclined to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to interfere in the matter.

38. Accordingly, the writ petition is dismissed at this stage.

(Piyush Agrawal, J.)

Order Date :- 09.05.2025
Rahul Dwivedi/-