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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3961 OF 2023**

Kundan Care Products Ltd. ... Petitioner

Vs.

1. State of Maharashtra ... Respondents

2. Joint District Registrar Class-1

And Collector of Stamps, Sangli

3. Chief Controlling Revenue Authority

Mr. Sunny Shah a/w. Ms. Aashka Shell i/b. Mr. Kartik Garg for the
Petitioner.

Mr. P. G. Sawant, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 25th JANUARY 2024

ORAL JUDGMENT

1. By order dated 6th January 2024 this petition was fixed for final hearing at admission stage.

2. Heard learned counsel for the petitioner and the learned AGP for final disposal of the petition.

3. This petition is filed to challenge the order dated 29th September 2022 passed by the respondent no. 3 in Appeal No. 268 of 2018 and order dated 10th August 2018 passed by respondent no.2. Both orders deal with valuation and assessment for payment of stamp duty on the sale certificate and the addendum to the sale certificate with respect to sale of windmills.

4. The petitioner is an auction purchaser of the immovable property consisting of land along with windmills. Under an auction proceeding sale certificate for land as well as windmills was issued in favour of the petitioner for a total sale price of Rs.12,36,00,000/-. Subsequently, two addendums to the original sale certificate were issued; one for the sale of landed property with its description with the sale price of Rs.2,03,26,624/- and another for the sale of the windmills with its description with the sale price of Rs.10,02,73,076/-.

5. Thereafter, the sale deed dated 20th June 2018 was executed based on the addendum for landed property and the petitioner paid stamp duty of Rs.10,16,500/ computed @ 5%, and the sale deed was lodged for registration. At the time of adjudication of the sale deed for landed property, the addendum for windmills was required to be

submitted before the adjudicating authority.

6. By order dated 10th August 2018 adjudication was done by respondent no. 2 regarding the sale deed for landed property and the property was revalued at Rs.3,41,32,000/- and the petitioner was directed to pay additional stamp duty of Rs.6,90,100/- along with a penalty of Rs.55,210/-. The petitioner paid the said additional stamp duty as well as the penalty and the sale deed for the landed property was registered on 18th August 2018.

7. By a separate order dated 10th August 2018 respondent no. 2 assessed the addendum for the windmills and valued the windmills for Rs.10,55,87,000/- and assessment for stamp duty was made @ 5% and the petitioner was directed to stamp duty of Rs.52,79,350/-.

8. Aggrieved by the said order the petitioner filed Appeal No. 286 of 2018 under section 53(1A) of the Maharashtra Stamps Act, 1958 before respondent no. 3. In the said appeal, the petitioner challenged the revaluation of the windmills from the original valuation of Rs. 10,32,73,376/- to Rs.10,55,87,000/- and also challenged the applicability of 5% stamp duty by treating windmills as immovable

property. The contention of the petitioner before the appellate authority was that the windmills cannot be treated as immovable property and that the windmills has to be treated as movable property and the stamp duty was required to be assessed @ 3% and not 5% in view of Article 25(a) of Schedule I of the Maharashtra Stamps Act, 1958. The petitioner had also raised an objection before the appellate authority that since the addendum to the original sale certificate for the windmills was never lodged for registration, respondent no. 2 could not have assessed the same for payment of stamp duty.

9. By order dated 26th September 2022 respondent no. 3 dismissed the appeal preferred by the petitioner and confirmed the valuation. Respondent no. 3 in the impugned order has taken into consideration the valuation of the property as Rs.12,36,00,000/- and assessed the same for payment of stamp duty of Rs.61,80,200/- and directed the petitioner to pay penalty on the said amount.

10. Perusal of the impugned order indicates that respondent no. 3 has taken into consideration the valuation of the property as reflected in the original sale certificate which was the common sale certificate

for the landed property as well as the windmills. Thus, respondent no. 3 decided the appeal preferred by the petitioner by assessing the stamp duty on the original sale certificate for the sale price of landed property and the windmills and directed to pay stamp duty of Rs.61,80,200/- with penalty of Rs.7,41,600/-.

11. Hence, the present petition is filed challenging the order passed by respondent no. 3 as well as the original assessment order passed by respondent no. 2 with reference to the addendum to the sale certificate for windmills.

12. Learned counsel for the petitioner submitted that pursuant to the auction, the sale certificate dated 22nd February 2018 was issued with the sale price of Rs.12,36,00,000/- for the combined valuation of the landed property as well as the windmills as specifically described in the sale certificate. He submitted that two separate addendums to the sale certificate were issued on 21st April 2018. He submitted that the addendum for the landed property specifically described the property with a sale price of Rs.2,03,26,624/-. He submitted that the addendum for the windmills to the original sale certificate specifically described the windmills with a sale price of Rs.10,32,73,376/-.

13. Learned counsel for the petitioner further referred to the sale deed dated 20th June 2018 which was registered on 18th August 2018 on making payment of the original stamp duty of Rs.10,16,500/- and the subsequent payment of the additional stamp duty of Rs.6,90,100/- along with penalty of Rs.55,210/-. He thus submitted that pursuant to the assessment order dated 10th August 2018, the petitioner had already paid stamp duty for the landed property, and the sale deed was registered. He submitted that though the stamp duty for the landed property was paid, respondent no. 3 while deciding the appeal preferred by the petitioner has taken the valuation of the property as per the sale price reflected in the original sale certificate which consisted of the landed property as well as the windmills. He submitted that though the assessment for the landed property as per the addendum was made and the stamp duty was paid, respondent no. 3 had recalculated the stamp duty on the combined sale price without giving benefit to the petitioner for the payment of stamp duty already made for the landed property.

14. Apart from the aforesaid submissions, learned counsel for the petitioner also raised objection with respect to the windmills being

treated as immovable property and assessment being done for payment of stamp duty @ 5% as per Article 25(b) of Schedule I of the Maharashtra Stamps Act, 1958 instead of treating it as moveable property. He submitted that the windmills ought to have been considered moveable property and should have been assessed for payment of stamp duty @ 3% under Article 25(a) of Schedule I of the Maharashtra Stamps Act, 1958.

15. Though the aforesaid submissions are made with respect to the assessment of the windmills by treating the same as moveable property, learned counsel for the petitioner on instructions states that the petitioner is not pressing the aforesaid submissions for treating the windmills as moveable property as the petitioner is desirous of taking benefit of the amnesty scheme pursuant to the order dated 7th December 2023 issued by the Revenue and Forest Department, Maharashtra State.

16. He further on instructions states that the petitioner is agreeable to abide by the order dated 26th September 2022 passed by respondent no. 3, provided the petitioner is given the benefit of payment of stamp duty already paid pursuant to order dated 10th

August 2018 by making payment of stamp duty of Rs.6,90,100/- over and above the original payment of stamp duty of Rs.10,16,500/- (Rs.10,16,500/- + Rs.6,90,100/-). He therefore submits that so far as the order passed by respondent no. 3 by directing the petitioner to pay a stamp duty of Rs.61,80,200/- is incorrect in as much as the petitioner has already paid a stamp duty of Rs.10,16,500/- plus an additional stamp duty of Rs.6,90,100/- towards registration of the sale deed for the landed property based on the addendum for the landed property.

17. Learned counsel for the petitioner thus submits that the petitioner is entitled to get the benefit of the amount of stamp duty already paid and the petitioner cannot be made to pay stamp duty twice by valuing the property which is already assessed and stamp duty is already paid. In support of his submissions, the learned counsel for the petitioner relied upon Section 4 of the Maharashtra Stamps Act, 1958.

18. Learned AGP states that the respondent no. 3 has rightly taken into consideration the valuation as per the original sale certificate as during the auction purchase the sale certificate is issued pursuant to the auction purchase for the entire property by issuing a combined sale certificate for the landed property as well as the windmills. He

therefore submitted that respondent no. 3 has rightly assessed the property as per the original sale certificate as the higher value of the principal document is required to be assessed for payment of stamp duty.

19. I have considered the submissions made by both the parties. Perused the papers. A perusal of the sale certificate indicates that the valuation of the landed property as well as the windmills was described in the original sale certificate, however, subsequently two separate addendums are issued; one addendum to the original sale certificate for the landed property by showing the sale price/valuation only for the land and a separate addendum is issued for windmills showing separate valuation/sale price for the windmills.

20. It is not disputed that the petitioner has already paid stamp duty of Rs.10,16,500/- for the sale deed based on the addendum for the landed property as well as additional stamp duty of Rs.6,90,100/- as per the assessment made by the respondent no.2. Thus it is not disputed that the petitioner has paid total stamp duty of (Rs.10,16,500/- + Rs.6,90,100) Rs.17,06,600/- and sale deed dated 20th June 2018 was registered on 18th August 2018. Orders passed by

respondent no. 2 as well as respondent no. 3 indicates that at the time of assessment of the sale deed for landed property, the copy of the addendum for the windmills was also submitted before respondent no. 2. Accordingly, respondent no. 2 assessed the addendum for windmills for payment of stamp duty.

21. So far as the order passed by respondent no. 3 is concerned, respondent no. 3 has modified the order passed on 10th August 2018 by respondent no. 2 and reassessed the property by taking into consideration the valuation/sale price as per the original sale certificate which was combined for the landed property and the windmills. The order of respondent no. 3 in paragraph 5.10 of the impugned order has referred to the valuation of the property as Rs.12,36,00,000/- which is reflected in the original sale certificate consisting of landed property as well as the windmills. Respondent no. 3 has thus made the assessment for payment of stamp duty on the original amount of the sale certificate and directed the petitioner to pay stamp duty of Rs.61,80,200/- and the penalty thereof. Thus, the separate valuation in the two addendums to the sale certificate clearly shows that the valuation/sale price of the landed property as well as the windmills has

been separately indicated. Since the petitioner has already paid stamp duty for the landed property, respondent no. 3 ought to have taken into consideration the assessment for payment of stamp duty by giving the benefit of the amount already paid by the petitioner towards stamp duty on the sale deed based on the addendum for landed property.

22. Respondent no. 3 in paragraph 5.12 has stated that since the amount of stamp duty already paid by the petitioner was for the purpose of registration of the sale deed, the petitioner will not be entitled to claim any benefit for payment towards stamp duty already made by taking benefit of Section 4 of the Maharashtra Stamp Act, 1958. Ultimately the respondent no. 3 has opined that the sale deed which is registered and the two addendums to the sale certificate do not constitute supplementary documents for the purpose of section 4 of the said Act. Hence, according to respondent no. 4 the petitioner is held not entitled to take benefit of the stamp duty already paid towards the addendum to the sale certificate which is registered with the sale deed for the landed property.

23. The learned counsel for the petitioner has relied upon Section 4 of the Maharashtra Stamp Act, 1958 and submitted that several instruments used in a single transaction of sale are to be treated as one transaction and the party is entitled to determine which instrument so employed shall, for the purposes of sub-section(1), be deemed as principal instrument. In the present case, the petitioner by treating the addendum to the sale certificate for the landed property as the principal instrument submitted the sale deed for registration and as per the assessment and paid stamp duty as well as the additional stamp duty for the landed property. Thus, the addendum to the sale certificate for the windmills was never submitted for registration, however, respondent no. 2 had assessed the addendum for windmills for payment of stamp duty and directed the petitioner to pay stamp duty.

24. Perusal of the sale deed, the original sale certificate, and the two addendums indicate that all these instruments are part of one transaction of the auction purchase pursuant to which initial sale certificate was issued to the petitioner for the landed property as well as the windmills. Subsequently, addendums to the sale certificate are

issued separately for the landed property and the windmills. Thus, it cannot be said that the two separate addendums are separate transactions and that the petitioner would not be entitled to claim the benefit of the payment of stamp duty for the registration of the sale deed based on the addendum of the landed property. In view of section 4 of the Stamp Act and the aforesaid assessments done for two separate addendums to the Sale Certificate for the landed property along with the windmills, I do not find that the reasons given by respondent no. 3 by considering the addendum to the sale certificate as a separate transaction, are acceptable.

25. In view of the aforesaid, the addendum to the windmills is part of the original transaction i.e. the auction sale for the landed property along with the windmills, however only the addendum to the landed property and the sale deed is already registered by payment of stamp duty. Hence, for the assessment of stamp duty on the addendum for the windmills, the petitioner will be entitled to claim the benefit of the stamp duty already paid pursuant to the assessment dated 10th August 2018 and the payment of stamp duty originally paid on the assessment

of the sale deed based on the addendum for the landed property which was lodged for registration. The petitioner cannot be asked to make payment of the stamp duty twice on the landed property. Hence for the reasons stated above the impugned order dated 26th September 2022 needs modification to the extent of the petitioner's entitlement to get the benefit of the stamp duty already paid, for the landed property.

26. Hence the petition is partly allowed by passing the following order :

(i) Order dated 26th September 2022 passed by respondent no 3 in Appeal No. 268 of 2018 is modified only to the extent for permitting the petitioner to claim the benefit of the amount of Rs. Rs.17,06,600/- (Rs.10,16,500/- + Rs.6,90,100) already paid by the petitioner towards stamp duty at the time of registration of the sale deed dated 20th June 2018 registered on 18th August 2018, for the landed property.

(ii) Needless to state that the concerned authorities shall consider the amount of Rs.17,06,600/- (Rs.10,16,500/- + Rs.6,90,100) already paid by the petitioner towards the landed

property, for providing the benefit of the amnesty scheme to the petitioner for payment of stamp duty on the addendum for windmills.

(iii) Petition is disposed of in the above terms.

(iv) All concerned to act on an authenticated copy of this order.

[GAURI GODSE, J.]