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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.8548 OF 2013

M/s.Ruby Ailcare Services
Pvt. Ltd. ...Petitioner
vs.
State of Maharashtra & Ors. ...Respondents

Mr.Sandeep Paigude for the Petitioner
Ms M.S.Bane, AGP `B' Panel for the respondent Nos.1,2 and 4.

CORAM : A.S.OKA, J.
DATE : JUNE 12, 2015

P.C.:

1 Heard the learned counsel for the petitioner and the learned AGP for the State. Considering the narrow controversy involved in this petition, forthwith taken up for final disposal.

2 Rule. Learned AGP waives service for the respondent Nos.1,2 and 4. Considering the nature of controversy involved, the service of notice to the respondent No.3 is dispensed with. The issue concerns Lease Deed dated 21st January 2009 executed by and between the petitioner and the respondent No.3-Pimpri Chinchwad Municipal Corporation. Final order was made by the Joint District Registrar Class-I and the District Collector of Stamps, Pune city, holding that the document of Lease was covered by the Articles 36 (iii), 25(a), and 25(b) of the Bombay Stamp Act,1958 (for short "the said Act of 1958") and, therefore, by upholding the objections raised by the Accountant General, a

direction was issued to pay deficit stamp duty of Rs.34,24,620/- along with penalty in accordance with law. An appeal was preferred by the petitioners against the said order by invoking section 53 (1) (A) of the said Act of 1958. By the impugned order dated 1st April 2013, the said appeal has been disposed by the Chief Controlling Revenue Authority Maharashtra State, Pune. Though the impugned order was set aside, the Appellate Authority proceeded to hold that the deficit stamp duty payable was Rs.55,33,797/- and in addition, the petitioner was liable to pay penalty of Rs.51,94,389/-.

3 Apart from the submissions on merits, the learned counsel for the petitioner pointed out that at highest the Appellate Authority could have confirmed the order of the Joint District Registrar holding that the petitioner was liable to pay deficit stamp duty of Rs.34,24,620/-. However, while deciding the appeal, the Appellate Authority has modified the order of the First Authority which has caused further prejudice to the petitioner and in fact the amount of deficit stamp duty made payable by the petitioner has been substantially enhanced. Correspondingly, enhanced penalty amount has been ordered to be paid. He submitted that the petitioner was never issued a notice informing him that it was proposed to enhance the deficit stamp duty. He submitted that the Appellate Authority was powerless to do so. No notice was issued to the petitioner informing the petitioner that it is proposed to enhance the deficit stamp duty. The

learned AGP appearing for the respondent Nos.1,2 and 4 by relying upon the affidavit of Smt.Neelima Dhaigude, the Joint District Registrar and the Collector of Stamps, Pune has supported the impugned orders including the order of the Appellate Authority.

4 I have carefully considered the submissions. Perusal of the Judgment of the Appellate Authority does not disclose that the petitioner was put to notice or was served with a show cause notice that the amount of deficit stamp duty payable by the petitioner and consequently the penalty amount was proposed to be enhanced. Therefore, the petitioner was prevented from making submissions on this aspect.

5 Assuming that the Appellate Authority was satisfied that the amount of stamp duty fixed by the Joint District Registrar was on the lower side, by setting aside the impugned order, the Appellate Authority could have directed re-determination of the amount by the First Authority after notice to the petitioner.

6 Therefore, due the impugned order, prejudice has been caused to the petitioner. Thus, the Appellate Authority has committed a gross illegality. The Appellate Authority could not have enhanced the amount of stamp duty by adopting such a course.

7 Therefore, the impugned order of the Appellate Authority deserves to be quashed and set aside. Accordingly, I pass the following order:

(I) The impugned order dated 1st April 2013 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune is quashed and set aside and the Appeal No.8 of 2012 preferred by the petitioner is restored to the file of the Appellate Authority;

(II) A representative or the Advocate for the petitioner shall appear before the Appellate Court on 6th July 2015 at 11.00 a.m for fixing the schedule of hearing;

(III) The appeal shall be heard and decided afresh as expeditiously as possible and preferably within a period of four months from 6th July 2015;

(IV) The appeal shall decided afresh in the light of observations made by this Court in this Judgment and order;

(V) If any coercive action of freezing the bank account of the petitioner has been taken on the basis of the impugned order of the Appellate Authority, necessary corrective steps shall be taken by the Appellate Authority within a period of one week from the date of production of an authenticated copy of this order by the petitioner;

(VI) If the petitioner has deposited any amount on the basis of the order of the Appellate

Authority, the petitioner will not be entitled to seek refund thereof till the disposal of the appeal;

(VII) Rule is partly made absolute on above terms

(VIII) All concerned to act upon an authenticated copy of this Judgment and order.

(A.S.OKA,J.)