IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6604 OF 2014

Opal Builders Private Limited, a	]
Company incorporated under the	]
provisions of Companies Act, 1956	]
and having its registered office at	]
101, Lovely House, S.V. Road,	]
Vaishali Nagar, Jogeshwari (West)	]
Mumbai 400 102	]..... **Petitioner.**

Versus

1]	**The State of Maharashtra through**	]
	the office of the Government	]
	Pleader, High Court, Mumbai.	]
		]
2]	**The District Registrar, Thane City**	]
	through the office of the Government	]
	Pleader, High Court, Mumbai.	]
		]
3]	**The Sub-Registrar of Assurances,**	]
	Thane, Thane No. 7 through the	]
	office of the Government Pleader,	]
	High Court, Mumbai.	]..... **Respondents.**

WITH
WRIT PETITION NO.6607 OF 2014

Kasam Aliji, Indian Inhabitant of	]
Mumbai, Adult residing at	]
B/704, Aliyabad Co-operative	]
Housing Society ltd. Behram	]
Baug, Jogeshwari (West)	]
Mumbai 400 102	]

Versus

1]	**The State of Maharashtra through the office of the Government Pleader, High Court, Mumbai.**	**]**
2]	**The District Registrar, Thane City through the office of the Government Pleader, High Court, Mumbai.**	**]**
3]	**The Sub-Registrar of Assurances, Thane, Thane No. 7 through the office of the Government Pleader, High Court, Mumbai.**	**]..... Respondents.**

Ms. Sharmila U Deshmukh for the Petitioner in WP No.6604/2014.
Ms. P S Cardozo, AGP, for the Respondent Nos.1 to 3 in both the Petitions.

CORAM : R. M. SAVANT, J.
DATE : 09th July 2015

ORAL JUDGMENT :

1 Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the orders both dated 27/5/2014 passed by the Respondent No.2 herein by which orders the Appeals filed by the Petitioners in the above Petitions against the refusal of the Sub-Registrar, Thane to register the documents in question which are 7 in number comprised in both the Petitions came to be dismissed.

3 The Petitioners above-named submitted the documents in question for registration to the office of the Sub-Registrar, Thane. The below mentioned

chart would indicate that the Date of Execution of Document, Date on which the documents were submitted in the Sub-Registrar's Office, Case No., Date of the adjudication by the office of the Sub-Registrar and the Notice issued pursuant thereto, Date of payment of Stamp Duty, and Date of return of original Document with endorsement.

CHART IN WRIT PETITION NO.6604 OF 2014

Date of Execution of Document	Date on which the documents were submitted in the Sub-Registrar's Office	Case No.	Date of the adjudication by the office of the Sub-Registrar and the Notice issued pursuant thereto	Date of payment of Stamp Duty	Date of return of original document with endorsement
20/09/10	27/12/10	2561/10	5/2/13 and 18/2/13	18/02/13	27/02/13
28/12/10	31/12/10	2586/10	5/2/13 and 18/2/13	18/02/13	27/02/13
28/12/10	15/01/11	175/11	5/2/13 and 18/2/13	18/02/13	27/02/13
28/12/10	15/01/11	176/11	5/2/13 and 18/2/13	18/02/13	27/02/13
31/12/10	06/04/11	706/11	5/2/13 and 18/2/13	18/02/13	27/02/13
31/12/10	30/03/11	675/11	5/2/13 and 18/2/13	18/02/13	27/02/13

CHART IN WRIT PETITION NO.6607 OF 2014

Date of Execution of Document	Date on which the documents were submitted in the Sub-Registrar's Office	Case No.	Date of the adjudication by the office of the Sub-Registrar and the Notice issued pursuant thereto	Date of payment of Stamp Duty	Date of return of original document with endorsement
23/01/13	24/01/13	65/2013	07/08/13	06/09/13	17/09/13

The above mentioned charts therefore indicate that the documents were presented in the office of the Sub-Registrar Thane within four months of their execution. The chart further discloses that the office of the Sub-Registrar, Thane took time to adjudicate the stamp duty and in so far as the 6 documents in Writ Petition No.6604 of 2014 are concerned, the adjudication was completed on 5/2/2013 i.e. after a period of 2 ½ years pursuant to which a demand notice came to be issued to the Petitioners in the first Writ Petition. In so far as the second Writ Petition being No.6607 of 2014 is concerned, the said Petition only involves one document which was executed on 23/1/2013 and presented in the office of the Sub-Registrar on 24/1/2013. After the adjudication, the date of communication of the same is 6/9/2013. In so far as the registration of the documents are concerned, the same is covered by Section 23 of the Registration Act, 1908, which for the sake of ready reference is reproduced herein under :-

> ***"23. Time for presenting documents*** :-
>
> Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :
>
> PROVIDED that a copy of a decree or order may be presented within four months from the date on which the decree or order was made or, where it is appealable within four months from the day on which it becomes final."

The said Section 23 therefore provides that no document shall be accepted for registration unless it is presented for that purpose to the proper officer within four months. The question therefore which arises for consideration is whether the time spent by the authorities in adjudicating the stamp duty should be held to the detriment of the party who seeks registration of the documents.

4 The learned counsel appearing on behalf of the Petitioners sought to place reliance on the judgment of this court in ***Writ Petition No.2662 of 2012*** in the matter of ***Kirti Jagdish Mulani v/s. The State of Maharashtra and ors.***. The said judgment is dated 17/01/2013 and in an identical fact situation where the authorities had taken time to adjudicate which was beyond the four months prescribed by Section 23, this Court had held that the said over run of time cannot be held to the detriment of the Petitioner therein in so far as the registration of the document is concerned. It is therefore the submission of the Petitioners herein that relying upon the said judgment that in

view of the fact that the documents in fact were presented within four months, and since the authorities took their own time to adjudicate the stamp duty, the same fact cannot be come in the way of the Petitioners, in so far as the registration of the documents in question are concerned.

5 Per contra, the learned AGP appearing for the Respondent Nos,.1 to 3 Ms. Cardozo was at pains to make distinction between the facts involved in ***Kirti Mulani's*** case (supra) and the facts involved in the present Petitions. The learned AGP would contend that the facts in ***Kirti Mulani's*** (supra) case disclose that the documents were lodged within four months period whereas in the instant case the documents have been lodged long after even the extended period which is available was over. The learned AGP also by relying upon Section 23 sought to make a distinction between the registration of a document and the adjudication of the stamp duty. It was the contention of the learned AGP that in the instant case what was done was the presentation of the documents for adjudication rather than registration and therefore since the registration was not sought within the time stipulated in Section 23, the said judgment in ***Kirti Mulani's*** case (supra) is of no avail to the Petitioners.

6 In my view, it is not possible to accept the contention urged on behalf of the State by the learned AGP As indicated above, the documents were presented in the office of the Sub-Registrar obviously with an intent to

have them registered, that the documents were taken for adjudication and the adjudication has resulted in over run of time in so far as Section 23 is concerned cannot be held to the detriment of the Petitioners in the above Petitions. It is required of the authorities that having regard to the time frame mentioned in Section 23 that they carry out the exercise of adjudicating the stamp duty expeditiously. However, though the documents were presented for registration within the time mentioned in Section 23, the authorities seem to have taken their own time to adjudicate the stamp duty. In my view, the fine distinction which is sought to be made by the learned AGP cannot be accepted at least in the present case. When a party approaches the registration authority it is obviously with a view to see to it that the document is registered. If the authorities take time to adjudicate the stamp duty, the applicant cannot be made to face the consequences of the same. It is also required to be noted that the document is not registered unless the registration charges are paid, the registration charges are also contingent upon the adjudication of the stamp duty which in turn is based on the valuation of the property. In my view, the facts involved in ***Kirti Mulani's*** case and the facts involved in the present Petitions are identical . In the said case, as indicated above, the adjudication took place after the period mentioned in Section 23 was over. In that view of the matter, the impugned orders both dated 27/05/2014 in both the Petitions passed by the Respondent No.2 herein would have to be quashed and set aside and are accordingly quashed and set aside. The Sub-Registrar, Pune is directed to register the documents in question as the stamp duty and penalty has already been paid by the Petitioners, and if not paid, the Petitioners should be granted reasonable time to pay the same. The Petitions are allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]