IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2010/2015

Ghansham J. Shewakramani & Ors. … Petitioners

V/s.

State of Maharashtra & Anr. … Defendants

Ms. Srushti Jignesh Thakkar for the Petitioner
Mr. M. A. Sayed, AGP for the Respondent Nos.1 and 2.

CORAM: K.K. TATED, J.
DATED : NOVEMBER 18, 2015

P.C. :

1. Heard the learned counsel for the parties. By consent of the parties, taken up for final hearing at the stage of admission itself.

2. By this petition, under Article 226 of the Constitution of India, the Petitioner challenges the notices/orders dated 11/06/2015 issued by the Collector of Stamps (Enc – II), Mumbai under section 267 of the Maharashtra Land Revenue Code, 1966 for recovery of penalty for non payment of stamp duty within stipulated time. The details of the impugned notices are as under:

DETAILS OF IMPUGNED NOTICES/ORDERS

SR NO.	**REF NO. WITH DATE**	**PENALTY AMOUNT**	**NAME AND PARTICULARS**
1.	Enf-II/AY/5621/08.788/15	Rs. 24,000/-	Ghansham K. Shewakramani

	11/06/2015		Agreement for Sale dt. 30.10.1998 Property Details: Parking No.1 and 2 Lower Basement, Rangoli Complex, Andheri (e), Mumbai
2.	Enf- II/AY/5622/08.791/15 11/06/2015	Rs.1,84,800/-	Ghansham K. Shewakramani Agreement for Sale dt. 01.08.1986 Property Details: Godown No.1, Rangoli Complex, Andheri (e), Mumbai
3.	Enf- II/AY/5624/08.801/15 11/06/2015	Rs.3,58,500/-	Ghansham K. Shewakramani Agreement for Sale dt. 12.10.1998 Property Details: Godown No.10, Lower Basement, Rangoli Complex, Andheri (e), Mumbai
4.	Enf- II/AY/5626/08.802/15 11/06/2015	Rs. 3,11,100/-	Meena G. Shewakramani Agreement for Sale dt. 12.10.1998 Property Details: Godown No.3, Lower Basement, Rangoli Complex, Andheri (e), Mumbai
5.	Enf- II/AY/5627/08.798/15 11/06/2015	Rs. 1,13,400/-	Meena G. Shewakramani Agreement for Sale dt. 20.03.1991 Property Details: Office No. 302, 3rd Floor,

			Rangoli Complex, Andheri (e), Mumbai
6.	Enf- II/AY/5629/08.792/15 11/06/2015	Rs. 24,000/-	Monish G. Shewakramani Agreement for Sale dt. 30.10.1998 Property Details: Parking No. 16 and 17 Rangoli Complex, Andheri (e), Mumbai
7.	Enf- II/AY/5634/08.795/15 11/06/2015	Rs. 24,000/-	Ritika G. Shewakramani Agreement for Sale dt. 30.10.1998 Property Details: Parking No.20 And 21, Lower Basement, Rangoli Complex, Andheri (e), Mumbai
8.	Enf- II/AY/5631/08.800/15 11/06/2015	Rs. 5,59,800/-	Ritika G. Shewakramani Agreement for Sale dt. 12.04.1996 Property Details: Godown No.9, Lower Basement, Rangoli Complex, Andheri (e), Mumbai
9.	Enf- II/AY/5623/08.796/15 11/06/2015	Rs. 4,11,500/-	Chitra G. Shewakramani Agreement for Sale dt. 10.11.1992 Property Details: Shop No.3, Lower Basement, Rangoli Complex, Andheri (e), Mumbai

10.	Enf-II/AY/5632/08.797/15 11/06/2015	Rs. 24,000/-	Chitra G. Shewakramani Agreement for Sale dt. 30.10.1998 Property Details: Parking No. 18 and 19 Lower Basement, Rangoli Complex, Andheri (e), Mumbai
11.	Enf-II/AY/5635/08.799/15 11/06/2015	Rs. 1,77,100/-	Chitra G. Shewakramani Agreement for Sale dt. 01.08.1986 Property Details: Godown No.8, Lower Basement, Rangoli Complex, Andheri (e), Mumbai
12.	Enf-II/AY/5642/08.789/15 11/06/2015	Rs. 4,50,000/-	Sheila V. Shewakramani Agreement for Sale dt. 12.04.1996 Property Details: Godown No.6 Lower Basement, Rangoli Complex, Andheri (e), Mumbai
13.	Enf-II/AY/5643/08.7941/15 11/06/2015	Rs. 24,000/-	Sheila V. Shewakramani Agreement for Sale dt. 30.10.1998 Property Details: Parking No. 14 and 15 Lower Basement, Rangoli Complex, Andheri (e), Mumbai

14.	Enf-II/AY/5636/08.793/15 11/06/2015	Rs. 2,90,100/-	Vijay J. Shewakramani Agreement for Sale dt. 12.10.1998 Property Details: Godown No.301, Rangoli Complex, Andheri (e), Mumbai
15.	Enf-II/AY/5637/08.790/15 11/06/2015	Rs. 1,36,800/-	Vijay J. Shewakramani Agreement for Sale dt. 20.03.1991 Property Details: Office No.301, Rangoli Complex, Andheri (e), Mumbai
16.	Enf-II/AY/5640/08.787/15 11/06/2015	Rs. 2,43,700/-	Rohan Vijay Shewakramani Agreement for Sale dt. 30.10.1998 Property Details: Godown No.5 Lower Basement, Rangoli Complex, Andheri (e), Mumbai

3. It is the case of the Petitioner that the Respondent State of Maharashtra floated a Stamp Duty Amnesty Scheme – 2008 (said Scheme) to regularize the prior documents on which stamp duty or proper stamp duty was not paid. The said scheme was announced to give chance to the persons who failed to pay stamp duty on their instruments/agreements /sale deeds/ conveyance etc. The said scheme was extended from time to time till August 2014. To avail the benefit under the said Scheme, the Petitioner had lodged 16 documents in

respect of their properties which were purchased by them, for payment of stamp duty and and token penalty. As per the said scheme, the Petitioner was supposed to pay stamp duty along with token penalty on or before 31/08/2014. At that time, it remained on the part of the Petitioner to pay the same on or before 31/08/2014, being holiday and hence, they paid the same on next day i.e. 01/09/2014. The learned counsel for the Petitioner submits that 31/08/2014 was Sunday and 29/08/2014 the banks were declared their official holiday owing to Ganeshotsav, 30/08/2014 was also a bank holiday being fourth Saturday. Hence, the Petitioner could not pay the same and token penalty. The Petitioner paid the same immediately on 01/09/2015 and same was accepted by the Respondent.

4. The learned counsel for the Petitioner submits that the Respondent No.2, without considering the fact that the last date of the payment of duty was Sunday and immediately on next date, the Petitioner paid, issued the impugned notices/orders dated 11/06/2015 calling upon the Petitioner to pay the penalty on each and every document. The learned counsel for the Petitioner submits that the Respondent, without giving any hearing, issued the impugned notices/orders. Hence, the same are liable to be set aside. She submits that the Respondent No.2 failed to consider the provisions of section 10 of the General Clauses Act 1987 at the time of calculating the last date. Section 10, reads thus:

> 10. ***Computation of time.-*** *(1) Where, by any (Central Act) or regulation made after the commencement of this Act, any act or proceeding is directed to allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or that day or the last day of*

> *the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.*
>
> ***Provided that*** *nothing in this section shall apply to any act or proceeding to which the (Indian Limitation Act, 1877 (15 of 1877), applies.*
>
> *This section applies also to all (Central Acts) and Regulations made on or after the fourteenth day of January, 1887."*

5. The learned counsel for the Petitioner submits that it is crystal clear from bare reading of the said section that if last date happens to be holiday, then next date to be treated as a last date for complying the procedure. She submits that in the present proceedings, 31/08/2014 Sunday, was last date for payment of stamp duty and same was paid by the Petitioner on 01/09/2014 i.e. on next date. Hence, the Authority should have held that the payment made by the Petitioner on 01/09/2014 was within prescribed period. Hence, the impugned notices/orders passed by Respondent No.2 on 11/06/2014 be set aside holding that the Petitioner paid the stamp duty under the said Scheme, within time.

6. On the other hand, the learned AGP for the State vehemently opposed the petition. He submits that admittedly, the last date for payment of stamp duty was 31/08/2014. On or before that day, the Petitioner failed and neglected to pay stamp duty. He submits that before that also the Authority called upon the Petitioner to make payment from time to time. In spite of that the Petitioner failed and neglected to comply the same within stipulated time. He submits that the Petitioner made payment of stamp duty on 01/09/2014 was

beyond the prescribed time as per the said Scheme. Hence, the notices/ orders dated 11/06/2014 issued by the Respondent No.2 was according to law. Hence, there is no substance in the petition and same be dismissed with costs.

7. Heard both sides at length. The issue involved in the present proceedings is very limited i.e. whether the stamp duty paid by the Petitioner under the said Scheme on 01/09/2014 was within prescribed time or not. It is to be noted that there is no dispute that the Petitioner filed appropriate Application with the Respondent under the said Scheme which was considered and accepted by the Authority. Thereafter the Respondent issued demand notice dated 19/07/2014 calling upon the Petitioner to pay stamp duty with concessional penalty on or before 31/08/2014. Pursuant to the said notice, the Petitioner paid the entire amount on 01/09/2014, as 31/08/2014 was a Sunday.

8. The Apex Court in the matter of ***Harinder Singh Vs. S. Kamail Singh AIR 1957 SC 271*** held the effect of section 10 of the General Clauses Act, 1897 is that the provision merely provides that the act which could not be done on account of a holiday, may be done on the next working without being affected by the period of limitation. The object of the section is, to enable a person to do what he could have done on a holiday, on the next working day. When a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to section 10 of the General Clauses Act, 1897, the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open.

9. This court in the matter of ***Pandhari Shripati Patil Vs. State of Maharashtra & Ors. MANU/MH/1468/2001*** held that if any holiday comes on the last day of the performance, if said performance is done on next date that to be considered within time. Paragraph 18 of the said judgment reads thus:

> *"18. Apparently, therefore, if the day on which the meeting is required to be held happens to be holiday or the office of the Panchayat is required to be kept closed, certainly the proceedings can be taken on the day following such day. In such cases, it cannot be held that the period of seven days would stand expired even if on arithmetical calculation the seventh day falls on the holiday, the period would get extended till the next following working day in order to enable the parties to perform the act required to be performed within seven days. In the case in hand it is an undisputed fact that 26-3-2001 was a holiday on account of "Gudi Padwa" day. It is also an undisputed fact that on account of holiday, the office of the Panchayat was closed on the said day. Being so, no fault can be found with the Tahsildar convening the meeting on 27-3-2001 to consider the no confidence motion and hence the period of seven days required to be complied with under section 35 of the said Act, cannot be said to have been flouted by the Tahsildar by holding the meeting on 27-3-2001. The provisions contained in section 35 of the Bombay Village Panchayats Act are to be read with section 11 of the Bombay General Clauses Act, 1904."*

10. In the present proceedings, there is no dispute that 31/08/2014 was a Sunday and therefore the payment made by the Petitioner on next day i.e. 01/09/2014 treated to be within time as per the demand notice dated 19/07/2014 issued by Respondent. These facts are not considered by the Authority below properly.

11. Hence, I am of the opinion that the Petitioner has made out a case for allowing the Writ Petition. Hence, following order is passed:

a) The Writ Petition is allowed in terms of prayer clause (a) which reads thus:

> (a) That this Hon'ble Court be pleased to issue writ of certiorari or any other writ, order or direction in the nature of certiorari thereby quashing and setting aside the impugned notices and orders (details as set above in para 2) dated 11/06/2015 passed by the Respondent No.2.

b) Writ Petition stands disposed off accordingly.

c) No order as to costs.

(K.K. TATED, J.)