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

WRIT PETITION (L) NO.2691 OF 2014

Kiran Niketan Co-op.Hsg.Soc.Ltd. & Anr. .. Petitioners

V/s

Chief Controlling Revenue
Authority & Inspector General
of Registration, Maharashtra & Anr. .. Respondents

Mr.Sanjay Kadam i/b Kadam & Co. for Petitioners.

Mr.D.A.Nalawade, GP for the Respondents.

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CORAM : A.A. SAYED, J.

DATED : 6 JANUARY 2015

P.C.:

The above Writ Petition filed under Article 226 of the Constitution of India challenges the order dated 6 August 2014 passed by the Chief Controlling Revenue Authority (Respondent No.1) under section 53A of the Maharashtra Stamp Act, 1958. The operative part of the impugned order reads as follows:-

“ORDER

1. Indenture of Mortgage (sic: Conveyance) of Non-Applicant is found deficit in stamp duty of Rs.54,41,825/- (Rs.Fifty Four Lakh Forty One Thousand Eight Hundred Twenty five only) being instrument classificable under Article 6 as per section 5.

2. Non-Applicant to pay Rs.54,41,825/- (Rs.Fifty Four Lakh Forty One Thousand Eight Hundred Twenty five only) within 10 days of rceipt of the order, or otherwise penalty as per Law.

3. Collector of Stamps, Kurla to certify document on the payment as above.

4. Intimate concerned."

2. In para 4.7 of the impugned order, it is stated as follows:

"4.7 Non-Applicant has also failed to demonstrate and prove the various capacities of parties executing instrument under Audit. In this regard, it is seen that everywhere "Ketan Jhaverchand" is mentioned only. Also the case in respect of capacity as "Vendor/Developer" since Non-Applicant failed to prove Vendor the "Trust" became "Developer" who built flats/building, sold Unit to individuals and now finally the Conveyance in favour of Society again having Chairman "Ketan Jhaverchad Shah". Non-Applicant failed to demonstrate on file the accounting method by the Parties Developer, Society and individuals and therefore has failed to substantiate the claim as to "Owner retained property".

Thus the deficit stamp duty is as follows:-

(i)	Market Value	=	Rs.12,94,42,674/-
(ii)	Stamp duty leviable	=	Rs. 64,54,750/-
(iii)	Stamp duty levied	=	Rs. 10,12,925/-
(iv)	Deficit Stamp Duty	=	Rs. 54,41,825/-

The instrument is found deficit in stamp duty of Rs.54,41,825/-.

3. It is not in dispute that if the "owner" of the building had constructed the additional flats on the existing building ("A"-Wing) and retained some of the flats (five) in question, stamp duty would not be payable. The contention on behalf of the Respondents however is that this is not a case of the "owner" of the building retaining the flats in question and that there is a "transfer" of the said flats and now a separate entity is the owner of the said flats. Learned Counsel for the Petitioners, however, disputes this position.

4. In the reply dated 20 December 2013 filed by `Ketan Jhaverchand and ors.', annexed at Exh.I-1 to the Petition (page 72), this aspect has not at all been dealt with. In the circumstances, Respondent No.1/Authority has rightly observed that the Petitioner No.2 has failed to substantiate the claim of `owner retained flats'.

5. Having considered the rival contentions, in my view, it would be in the interest of justice that the Petitioners are granted an opportunity to substantiate that the additional flats in question are "owner retained flats". In the circumstances, in my view, the following order would meet the ends of justice:

(i) The matter is remitted back to Respondent No.1/Authority, who shall pass a fresh order after hearing the Petitioners, within a period of twelve weeks from today;

(ii) The Petitioners shall file, within a period of four weeks from today, a comprehensive reply before the Respondent No.1/Authority, *inter alia*, substantiating their claim that the additional flats in question are "owner retained flats" and belonging to the same entity and there is no "transfer" of the additional flats in question;

(iv) To facilitate a fresh hearing, the impugned order is set aside;

(v) The Petitioners, through their Counsel/Representative, shall appear before the Respondent No.1/Authority on 19 January 2015 at 11 a.m. alongwith a copy of this order, who shall issue appropriate directions for hearing of the matter.

(vi) The Petitioners shall, alongwith their reply, produce before the Respondent No.1/Authority all relevant material including the Will of Vegibai, the three Trust Deeds dated 17 April 1985 as mentioned in the Deed of Conveyance, Electricity Bills, Maintenance Bills and evidence of payments thereof, the Share Certificate, Certified Copies of the proceedings mentioned in the reply dated 20 December 2013, the Resolution of the Management Committee dated 2 July 2011 (referred to at page 57 of the Petition), the IOD/CC/OC, the Income Tax Records and all such material required by Respondent No.1/Authority to decide the issue. The Petitioner No.2 shall ensure that the records in respect of the flats in question are produced before the Respondent No.1-Authority.

6. The Petition is disposed of in the aforesaid terms with no order as to costs. All contentions of the parties are kept open.

(A.A. SAYED, J.)

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