

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

WRIT PETITION NO. 389 OF 2016

Accord Nidhi Developers and Anr.	} }	Petitioners
versus		
The State of Maharashtra and Ors.	} }	Respondents

Mr. Rajiv Narula i/b. M/s. Jhangiani
Narula and Associates for the Petitioners.

Ms. P. H. Kantharia – Government Pleader
for the Respondents.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

DATED :- FEBRUARY 18, 2016

P.C. :-

1) Rule. Respondents waive service. By consent, Rule made returnable forthwith.

2) By this Petition under Article 226 of the Constitution of India, the Petitioners are seeking a Writ of Mandamus or any other appropriate Writ, order or direction in the nature of mandamus, directing the Respondents to accept and register the deed of confirmation.

3) The Petitioners claim that they are partnership firm and carrying on business within the territorial limits of this

Court. The 1st, 2nd, 3rd and 4th Respondents are all officers exercising powers under the Registration Act, 1908.

4) A sale deed and which requires registration, undisputedly having not been registered for, its presentation is beyond time stipulated by section 23 of the Registration Act, 1908, that this Petition.

5) From the narration of facts in the Petition, it is evident that a sale deed was executed and on which the stamp duty was paid to the extent of Rs.2,66,05,000/-. Then, the sale deed was presented for registration. That was refused to be accepted for, there was absence of adjudication. Hence, the Petitioners approached the authorities under the Maharashtra Stamp Act, 1958 and requested that proper stamp duty be determined. The receipt to that effect was also executed. That is how Respondent No. 2 received the instrument for adjudication and proceeded to firstly make an interim order on 8th June, 2015. That itself was made good four months after the receipt of the instrument for adjudication, namely, 4th February, 2015. That interim order dated 8th June, 2015 determined the deficit stamp duty in the sum of Rs.53,45,675/-. Then, the second Respondent passed a final order on 4th July, 2015, which the Petitioners received on 7th July, 2015. It is in these circumstances that the

document/instrument was presented for registration on 4th November, 2015. The authority/officer refused to register the same raising the ground of delay. Then, the Petitioner, in order to get over this, prepared a deed of confirmation and with the opposite party M/s. Rushi Construction Company. That confirmation deed was sent for adjudication and an adjudication order has been made in the sum of Rs.1,15,86,200/-. That is to have registration of the confirmation deed dated 4th November, 2015. We are not concerned with this later adjudication order of 30th December, 2015 or its validity and legality. The Petitioners concede that they would have to adopt appropriate proceedings in order to challenge the order passed on 30th December, 2015. We are concerned in this Petition with the registration of the sale deed dated 23rd December, 2014 and with the refusal of the authority to do so on the ground of delay.

6) We have found from the rival contentions that the point is admittedly covered in favour of the Petitioners and against the Respondents by a Division Bench Judgment of this Court delivered on 24th June, 2015 in the case of *Nestor Builders and Developers Pvt. Ltd. and Anr. vs. State of Maharashtra and Ors.* in **Writ Petition No. 1480 of 2013**, to which, one of us (S.C.Dharmadhikari, J.) was a party.

7) Ms. Kantharia, learned Government Pleader tried to persuade us that this was not a point covered by this judgment. She would urge that the four month's period has been exceeded admittedly. She would point out, from the averments in the Petition, as to how this exceeded.

8) We are of the view that no hairsplitting or distinction of the principle laid down by this reported judgment is now permissible. For, this Court has elaborately discussed the rival contentions, the ambit and scope of the legal provisions and held that if the delay was purely attributable to a distinct authority, namely, the Collector of stamps under the Maharashtra Stamps Act, 1958 and who took time to adjudicate the stamp duty and pass an order, then, that period ought to be excluded and the benefit thereof should be extended to parties like the Petitioners.

9) We are, therefore, in complete agreement with the principle and that must be applied to all such cases. Here as well, we find that the document was presented for registration. However, the refusal was on the ground that proper stamp duty must be adjudicated before it is lodged for registration. That is how the authority under the Stamp Act was approached and it made the adjudication order only on 4th July, 2015. Hence, the time spent from the date of presentation before the registration

authority and the date of receipt of the adjudication order was liable to be excluded. Even on 4th November, 2015 the authority was approached. It may be that if one goes by mathematical calculation that there was a marginal delay, however, that was capable of being condoned and relying on the principle. Eventually these are acts of public bodies and public officials. Parties like the Petitioners cannot be expected to control them. If they take their time in adjudicating matters and passing an order and thereafter communicating the same to the parties like the Petitioners, then, such instance and a rigid one would be fatal and the interest of parties would be adversely affected in the absence of registration. For all these reasons, we are not in agreement with Ms. Kantharia that the point is not covered by this Court's judgment referred above.

10) Hence, the Writ Petition succeeds. Rule is made absolute in terms of prayer clause (b). The officer shall now issue the necessary endorsement of registration of the document within two weeks from today.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)