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

WRIT PETITION (L) NO.1021 OF 2016

Kiran Niketan Co-operative Housing
Society Limited And Another ... Petitioners
Versus
Chief Controlling Revenue Authority
& Inspector General of Registration,
Maharashtra State, Pune And Another … Respondents

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Mr. Mayur Khandeparkar a/w Ms Apeksha Sharma i/b Kadam & Co. for the Petitioners.
Mr. Hiten Venegaonkar, A.G.P. for the Respondents.

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CORAM : S.C.GUPTE, J.

DATE : 20 APRIL 2016.

P.C. :

. Heard learned Counsel appearing for the parties. Rule. By consent taken up for hearing forthwith. The subject matter of the present petition is the adjudication order dated 16 February 2016 passed by the Chief Controlling Revenue Authority & Inspector General of Registration, Maharashtra State, Pune in Revision No.93 of 2013 under Section 53A of the Maharashtra Stamp Act, 1958 in respect of stamp duty payable on a conveyance.

2. The gist of the controversy is this : One Jhaverchand Kheraj and 19 others were owners of a large piece of land which is hereinafter referred to as 'larger property'. By a Deed of Partition dated 17 February 1967 executed by Jhaverchand Kheraj and others, the larger property was

divided into three parts. A portion admeasuring 1036 sq. yards together with buildings and structures standing thereon was alloted to Jhaverchand Kheraj and 4 others. These four others included Jhaverchand's mother, wife and two children. Another portion admeasuring 259 sq. yards together with buildings and structures thereon, was allotted to a group of other owners (forming part of 20 owners). This portion of 259 sq. yards was eventually transferred to Jhaverchand Kheraj and others, holders of the portion admeasuring 1036 sq. yards, in or about 1969. Jhaverchand Kheraj and 4 others, thus, came to own 1295 sq. yards of the larger property, which is the suit property. By a Will executed by the mother of Jhaverchand Kheraj, her 40% share in the suit property devolved upon three trusts, one for the benefit of Jhaverchand himself and two for the benefit of his sons, Ketan and Kiran. As a result of the failure of the object of the trust, the trust created in favour of Ketan was dissolved on 17 April 2005 and in its place an association of persons came to be formed. That association of persons, which included Jhaverchand, his wife and his two sons both individually and as trustees, owned the interest held earlier in the suit property by the dissolved trust. After Amratbai, wife of Jhaverchand expired, her share devolved upon Jhaverchand and his two sons as legal heirs of the deceased Amratbai. That is how the present owners of the suit property, namely, Jhaverchand and his two sons in their respective individual capacity and as association of persons and trustees of the two trusts referred to above came to own the suit property. That is how they executed the conveyance transferring their title in favour of the first petitioner society. The conveyance indicates that about 17 units in the building existing on the suit property have been retained by the owners. The dispute in the present matter concerns the incidence of stamp duty, if any, payable on these 17 units. As a matter of law, it is not disputed that if owners of the suit property had constructed additional flats in the existing building and retained some of the additional flats whilst conveying the property to a transferee, no stamp duty would be payable on the value of the retained flats. The basis of the adjudication order is that it was not a case of “Owners” of the building retaining the flats in question, but transfer of the flats to a separate entity. This was the subject matter of the controversy, for which the matter was remanded to the adjudicating authority.

3 In its impugned order, the adjudicating authority has surprisingly come to a conclusion that the conveyance executed had no recital in respect of formation of the trusts, who are shown as owners of the suit property. This conclusion is clearly contrary to the record. The conveyance categorically recites how the present owners of the suit property, namely, Jhaverchand, his two sons and the two trusts came to own the suit property, which was being conveyed to the society.

4. The conclusion of the adjudicating Authority that the society has allotted commercial as well as residential units to individual members, namely, Ketan Jhaverchand and others and not the trusts as owners of the suit property, also does not appear to be correct. The share certificates are shown in the name of 'Ketan Jhaverchand & others'. These others must include trustees of the two trusts, beside Jhaverchand and his two sons in their individual capacity. Anyway, to obviate any controversy on this count, Learned Counsel for the Petitioners submits that his clients shall have the relevant share certificates amended, so as to include the names of all the owners who are shown as vendors in the conveyance. The statement is accepted.

5. It is clear from the forgoing discussion that 17 residential /commercial units are retained by the owners of the suit property, whilst transferring the suit property to the first petitioner-society. Once this is accepted, clearly no stamp duty is payable on the value of the units retained by the owners. In the premises, the impugned order of the adjudicating authority will have to be set aside. Rule is, accordingly, made absolute in terms of prayer clause-(a). The impugned order dated 16 February 2016 passed by Respondent No.1 in Revision No.91 of 2013 is quashed and set aside. The Petitioners are directed to send rectified share certificates to the adjudicating authority within six weeks from today.

(S.C.GUPTE, J.)