

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9956 OF 2016
WITH
CIVIL APPLICATION NO.628 OF 2017
ALONG WITH
CIVIL APPLICATION NO.629 OF 2017
IN
WRIT PETITION NO.9956 OF 2016

WP NO.9956 OF 2016

Dalmia Bharat Sugar & Industries Ltd.	..	Petitioner
Vs.		
The State of Maharashtra and Others.	..	Respondents
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C.A. NO.628 OF 2017

Sangli District Central Co-operative Bank Ltd.	..	Applicant/ Intervenor
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In the matter between

Dalmia Bharat Sugar & Industries Ltd.	..	Petitioner
Vs.		
The State of Maharashtra and Others.	..	Respondents
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C.A.NO.629 OF 2017

Ninaidevi Sahakari Sakhar Karkhana Ltd.	..	Applicant/ Intervenor
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In the matter between

Dalmiya Bharat Sugar & Industries Ltd.	..	Petitioner
Vs.		
The State of Maharashtra and Others.	..	Respondents
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Shri G.S.Godbole i/b Shri Shriniwas S. Patwardhan for the Petitioner.
Shri Umesh R. Mankapure and Shri R.A. Naik for the Applicants in CA No.628 of 2017.

Shri Ashutosh M. Kulkarni along with Sarthak Diwan for the Applicants in CA No.629 of 2017.

Shri Manish Pabale, AGP for the Respondents.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 17TH MARCH 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. The parties were put to notice that the Petition will be disposed of finally at the stage of admission. It may be noted here that we have also heard the submissions of the Applicants in Civil Application No.628 of 2017 and Civil Application No.629 of 2017.

2. The controversy involved in this Petition is very narrow. With a view to appreciate the controversy, a brief reference to the facts is necessary.

3. The Petition concerns a Co-operative Sugar Factory established under the Maharashtra Co-operative Societies Act, 1960. It appears that the said Sugar Factory had availed of certain financial facilities from the Maharashtra State Co-operative Bank Limited. The

proceedings were initiated by the said Bank under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the said Act of 2002”). The certificate of sale dated 1st September 2014 was issued in favour of the Petitioner in exercise of powers under the Security Interest (Enforcement) Rules, 2002 (for short “the said Rules of 2002”). A copy of the certificate of sale is annexed at Exhibit-A to the Petition.

4. The grievance in this Petition under Article 226 of the Constitution of India is as regards the communication/order dated 30th December 2015 issued by the Sub-Registrar of Assurances, Class-II, Shirala, District- Sangli by which the said Officer refused to register the aforesaid sale certificate in accordance with the provisions of the Indian Registration Act, 1908 (for short “the Registration Act”). The first ground set out therein is that the document was not lodged for registration within the time stipulated under the Registration Act. A decision of the Division Bench of this Court in the case of ***M/s. Nestor Builders & Developers Pvt. Ltd and Another v. State of Maharashtra and others***¹ is referred which holds that on conjoint reading of Sections 23, 23A and 25 of the Registration Act, if document is not presented within a period of four months for registration, the same can be accepted provided delay is bonafide and not intentional. In the facts of the case before the Division Bench of this Court, it was held that there

¹ 2015(6)Bom.C.R. 190

was a delay in disposal of the Application made for adjudication before the Collector. The Sub-Registrar observed that the decision of this Court is confined to the facts of the case. The second reason given is that he has received objections to the sale certificate from Sangli District Co-operative Central Co-operative Bank Limited (the Applicant in Civil Application No.628 of 2017) as well as Ninaidevi Sahakari Sakhar Karkhana Ltd.(the Applicant in Civil Application No.629 of 2017) as well as others. He observed that there is an entry of encumbrance in 7/12 extract.

5. The learned counsel appearing for the Petitioner heavily relied upon the decision of the Division Bench of this Court in the case of *M/s. Nestor Builders & Developers Pvt. Ltd and Another* and submitted that the law laid down therein ought to have been applied by the Sub-Registrar which holds that if there is a bonafide delay in presentation of the document, the delay can be condoned. He invited our attention to the various factual aspects by pointing out that an Application for adjudication of the stamp duty payable on the sale certificate dated 1st September 2014 was made on 29th September 2014 under Section 31 of the Maharashtra Stamp Act, 1958 (for short “the Stamp Act”). On 18th April 2015, an order was made by the third Respondent declining to make adjudication on the grounds stated therein. The said order was challenged by the Petitioner by preferring

an Appeal on 5th May 2015 which was allowed by the second Respondent by an order dated 30th June 2015. On the basis of the order of the Appellate Authority, on 5th August 2015, the adjudication was made as regards the stamp duty payable on the sale certificate. According to the case of the Petitioner, after making payment of the stamp duty adjudicated upon, an attempt was made by the Petitioner to make online registration of the sale certificate. However, the said Application could not be processed. On 1st September 2015, an Application was made by the Petitioner requesting for exclusion of the time required for processing the adjudication of sale certificate. An Application was made on 8th October 2015 by the Petitioner to the fifth Respondent (Inspector General of Registration and Controller of Stamps) seeking directions to the Sub-Registrar of Assurances for registration of the sale certificate. Reliance is placed on the letter dated 16th October 2015 issued by the fourth Respondent - Sub-Registrar to the Joint District Registrar seeking his guidance. The Petitioner is also placing reliance on the direction issued by the fifth Respondent on 21st November 2015 and by the third Respondent on 3rd December 2016 under which, according to the Petitioner, a direction was issued to register sale certificate.

6. There is a reply filed by Mrs. Anuja Anand Narinrekar, In-charge Collector of Stamps, Sangli. In the affidavit, it is stated that the

order of adjudication was passed on 5th August 2015 and the adjudicated amount of stamp duty was deposited by the Petitioner vide challan dated 14th August 2015. On the basis of the said deposit, an endorsement as contemplated by Sub-section (2) of Section 30 of the Stamp Act has been made on the document. Reliance is placed on the letter dated 30th December 2015 issued by the Sub-Registrar by which attention of the Petitioner was invited to Rule 44 of the Maharashtra Registration Rules, 1961 governing the transfer of Government land allotted to a Sugar Factory. Reliance is also placed on the Circular dated 23rd August 2006.

7. The learned counsel appearing for the Petitioner in support of the Petition relied upon a decision of the Division Bench of this Court in the case of *M/s. Nestor Builders & Developers Pvt. Ltd and Another*. His submission is that the Applicants in both the Civil Applications have no locus. He pointed out that the Applicant in Civil Application No.628 of 2017 has made incorrect statements. He pointed out that at no stage, any objection was raised by the said Applicant before the impugned order/communication was issued. He pointed out that the first letter of objection is addressed by the Applicant in the said Civil Application No.628 of 2017 on 18th October 2016 to the Tahsildar. He pointed out that even the Applicant in another Civil Application No.629 of 2017 has no locus.

8. Relying upon several decisions of the Apex Court and this Court, he would urge that the Authorities under the Registration Act cannot make adjudication on any issue regarding title. The learned AGP supported the impugned communication/order.

9. The learned counsel appearing for the Applicant in Civil Application No.628 of 2017 invited our attention to the annexures to the Civil Applications and the orders passed by the Debt Recovery Tribunal, Pune. The learned counsel appearing for the Applicant in Civil Application No.628 of 2017 accepted that when the relevant sale certificate was issued, there was no restraint order from any Competent Court or Competent Authority. He submitted that considering the Circulars which are annexed to the affidavit-in-reply of the State Government, there is every justification for the Registering Authorities to have refused the registration of the document. His submission is that the rights of the Applicant will be affected. More or less similar submissions are made by the learned counsel appearing for the Applicant in support of the Civil Application No.629 of 2017.

10. We have given careful consideration to the submissions. The first ground on which the fourth Respondent has declined to

register sale certificate is that the document was not lodged for registration within the stipulated period. This issue is no longer *res integra* in view of the decision in the case of ***M/s. Nestor Builders & Developers Pvt. Ltd and Another***. After considering the entire scheme of Stamp Act and after considering the Sections 23, 23A and 25 thereof, the Division Bench in the case of ***M/s. Nestor Builders & Developers Pvt. Ltd and Another***, held thus:

“11. Having examined the relevant provisions of the Registration Act and applying the above principles of law as laid down by the Supreme Court, we are of the considered opinion that the time taken by the Collector of Stamps for adjudication is required to be excluded by the respondents in accepting the said document for registration. It would thus be appropriate that in the facts of the present case the respondents are directed not to take into consideration the period from 11 May 2012 to 18 February 2013 which was spent in the adjudication of the said document and excluding the said period, register the petitioners' deed of conveyance.”

(Underline supplied)

11. The fourth Respondent was bound by the said law laid down by a Division Bench of this Court. In the present case, the date of sale certificate is 1st September 2014. The order of the Appellate Authority at Exhibit-C shows that the Application for adjudication under Section 31 of the Stamp Act was made on 29th September 2014. As disclosed in the Petition, by an order dated 18th April 2015, the said Application was not entertained and that is the reason why a Statutory

Appeal under Sub-section (3) of section 32 of the Stamp Act was preferred on 5th May 2015. The said Appeal was allowed by an order dated 30th June 2015, a copy of which is annexed at Exhibit-C to the Petition. On the basis of the direction issued by the Appellate Authority, an order was made by the third Respondent on 5th August 2015 making adjudication of stamp duty payable on the sale certificate. As noted earlier, in the affidavit-in-reply, these facts are not disputed. In fact, the affidavit-in-reply states that on 14th August 2015, stamp duty was paid and necessary endorsement was made on the sale certificate. The said endorsement was made on 26th August 2015. Thus, from the date of the Sale Certificate till 26th August 2015, there is a valid explanation for not tendering the document for registration as is clear from the admitted facts. Immediately on 1st September 2015, the Petitioner made an Application to the Sub-Registrar requesting him to register the Sale Certificate. By the letter dated 16th October 2015, the Sub-Registrar informed the Petitioner that guidance was sought from the higher officer and action will be taken after obtaining the guidance from the higher officer. Thereafter, the communication dated 30th December 2015 which is impugned in this Petition was issued.

12. Thus, there was a complete explanation for the delay in lodging the Sale Certificate for registration and even on the basis of the admitted facts, as reflected from the affidavit-in-reply, the said delay

can be said to be bonafide. Therefore, the first ground mentioned in the letter dated 16th October 2015 does not survive.

13. In the impugned communication, it is observed that there are encumbrances recorded on 7/12 extract in respect of the land subject matter of sale certificate and there are objections raised by the aforesaid Applicants in the Civil Applications and others. We may note here that there was a Maharashtra amendment made in the form of Section 22A of the Registration Act vide Act No.24 of 1938 read with 35 of 1958. Section 22A reads thus:

“22A. Documents registration of which is opposed to public policy.-- (1) The State Government may, by notification in the Official Gazette, declare that the registration of any document or class of document is opposed to public policy.

(2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable.”

14. We may note here that a similar Rajasthan Amendment incorporated was challenged before the Rajasthan High Court. The said amendment was held to be unconstitutional and was struck down. The said decision was affirmed by the Apex Court in the case of *State of Rajasthan and Others v. Basant Nahata*².

2 (2005)12 SCC 77

15. As far as Section 22A introduced by the Maharashtra Act No.24 of 1938 is concerned, by the Maharashtra Act No.10 of 2012 which came into force on 25th May 2012, Section 22A has been deleted. In clause (h) of Sub-Rule (1) of Rule 44 of the Maharashtra Registration Rules, 1961, there was a provision made for giving effect to Section 22A. For the sake of completion, we may note here that by the Notification dated 27th June 2006, Clause (e) was added to Sub-Rule (1) of Rule 44 covering a transaction which is prohibited by any existing Act of Central or State Government.

16. Though a submission was sought to be canvassed by the learned counsel appearing for the Applicant in Civil Application No.628 of 2017 that the registration of document will be opposed to the public policy, the said argument deserves to be discarded as Section 22A is no longer on the Statute Book. Moreover, Sub-section (1) of Section 22A clearly provides that only if a Notification published in the official gazette declaring that registration of any document or class of document is opposed to any public policy, the question of refusal of registration of document will arise.

17. In short, the submissions canvassed by the learned counsel appearing for the Applicants in the Civil Applications are based on the

issues regarding title to the property subject matter of sale certificate. At this stage, we may make a useful reference to the decision of the Apex Court in the case of *Satya Pal Anand v. State of Madhya Pradesh and others*³, and in particular, what is held in Paragraph 41, which reads thus:

“41. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In Park View Enterprises, it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.”

18. Coming back to the impugned communication, reliance was placed on Clause (e) of Sub-Rule (1) of Rule 44 of the Maharashtra Registration Rules, 2005. The Notification dated 27th July 2006 published in the official gazette on 22nd July 2006 incorporates Clause (e) (which is in Marathi) and Clause (i) (which is in English). Clause (i) reads thus:

“44(1) Before accepting any document for registration, a registering officer may not concern himself with its validity, but shall ascertain –

- (a)
- (b)
 - (i) that, if the transaction which is intended by the document, is prohibited by any existing act of Central or State Government, then the true copy of requisite permission or No Objection Certificate from the Competent Authority under the said act, has been attached along with the document, and that, the document is not written in contradiction with any vital term or condition mentioned in that permission or No Objection Certificate.”

19. On plain reading of Clause (i), we fail to understand how the Sub-Registrar of Assurances could have invoked the said clause (i). Sub-Rule (1) of Rule 44 of the said Rules of 1961 provides that before accepting any document for registration, a Registering Officer may not concern with himself with its validity but should ascertain various factors which are set out in Clauses (a) to (i). Clause (i) will apply when transaction covered by the document is prohibited by a Central or State Statute. If it is prohibited, the Registering Officer will have to ascertain whether requisite permission from the Competent Authority under the relevant enactment has been obtained and has been attached to the document. The Registering Officer will have to also ascertain whether the document is contrary to any of the terms and conditions mentioned in the No Objection Certificate granted by the Competent Authority. In the present case, neither the State Government nor the Applicants in the Civil Applications have shown any such statutory prohibition.

20. The learned counsel appearing for the Applicants submitted that a direction may be issued to the Sub-Registrar of Assurances to take into consideration the objections raised by the Applicants.

21. As held by the Apex Court, the Registering Officer under the Registration Act has no power to adjudicate upon the issue of title to the property. As held by the Apex Court in the case of ***Satya Pal Anand***, the function of the Registering Officer is purely administrative and not quasi judicial and he has no right to decide whether document presented for registration is executed by a person having title as mentioned in the instrument. Therefore, no such direction as sought by the Applicants can be issued.

22. Therefore, the Petition must succeed. However, we must note here that we have not made any adjudication on the issue of title to the property subject matter of sale certificate or the legality of the sale.

23. Hence, we pass the following order:

ORDER :

- (a) The impugned order/communication dated 30th December 2015 is hereby quashed and set aside;

- (b) We accept the statement made by the learned counsel appearing for the Petitioner that the original sale certificate dated 1st September 2014 has been submitted in the office of the fourth Respondent along with the letter dated 1st September 2015 and the said certificate is not taken by the Petitioner;
- (c) At this stage, the learned counsel appearing for the Petitioner states that the original certificate was returned to the Petitioner. We direct the representative of the Petitioner to remain present in the office of the fourth Respondent on 10th April 2017 and produce original certificate for registration.
- (d) We direct the fourth Respondent to accept the sale certificate produced by the Petitioner and to register the same in accordance with the Indian Registration Act, 1908 provided all other requirements of law are satisfied by the Petitioner;

- (e) We reiterate that registration of the said document shall not be refused on the basis of the grounds set out in the impugned communication dated 30th December 2015 (Exhibit-J to the Petition);
- (f) We make it clear that we have not made any adjudication on the issue of title to the property subject matter of sale certificate and, therefore, all contentions raised by the Applicants in the Civil Applications are kept open;
- (g) The Rule is made absolute on above terms;
- (h) Both the Civil Applications are disposed of on above terms;
- (i) The fourth Respondent to act upon an authenticated copy of this judgment and order;