

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

WRIT PETITION NO.153 OF 2017

Mr.Jagdish Trikamji Gajjar .. Petitioner

vs.

The Collector of Stamp & Anr. .. Respondents

Mr.Sanjay T. Manek for the petitioner

Mr.Asif Patel, Addl.G.P. for the respondent

Mr.Padmakar Rokade,Collector of Stamps (Enforcement), Mumbai
present in court

CORAM : K. K. TATED, J.
DATE : MARCH 8, 2017

P.C.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 226 of the Constitution of India the Petitioner is seeking direction against respondent no.1 to comply the order dated 23.11.2015 passed by Bombay City Civil Court at Bombay below Exhibit-26 in Suit No.8976 of 1994 (High Court Suit No.4120 of 1994) and order dated 20.9.2016 passed by this court in Writ Petition No.1476 of 2016.

3 Bombay City Civil Court, Mumbai by order dated 23.11.2015

below Exhibit-26 in Suit No.8976 of 1994 impounded document i.e. Memorandum of Understanding dated 9.1.1993 and directed Registry to forward the same to the Collector in accordance with the provisions of Section 32-(A)(3) of the Stamps Act for adjudication. Operative part of the said order reads thus:

“ORDER

1. Application Exh.26 is partly allowed.
2. The document i.e. memorandum of understanding dated 9/1/1993 is hereby impounded.
3. The registry of this Court is directed to forward the original & the true copy of the same to the Collector in accordance with the provisions of Sec.32-A(3) of the Stamps Act for adjudication.
4. After the adjudication is made by the Collector the plaintiff to pay the deficit stamp duty and penalty and produce a certificate to that effect before this court.
5. Only after such certificate is produced, the document i.e. the Memorandum of understanding dated 9/1/1993 shall be read in evidence provided that it is duly proved and it is otherwise admissible in evidence.”

4 Though the petitioner provided entire information to the respondent from time to time, they failed and neglected to comply the said order. Hence, petitioner preferred Writ Petition No.1476 of 2016 before this court. This court after hearing both the sides, directed the respondent Collector of Stamps to expeditiously adjudicate the stamp duty payable in respect of Memorandum of Understanding dated 09.01.1993 and carry out the said exercise latest by 30.11.2016. Paragraph 2 of the said order reads thus:

- “2. In response of the said letter dated 09.09.2016, the Learned Counsel for the petitioner has now furnished the documents which were requisitioned by the Collector of

Stamps to the Learned AGP Mr.M.A.Sayed in the form of a compilation. The Learned AGP Mr.M.A.Sayed fairly accepts the said position. The Learned Counsel for the Petitioner also tenders an affidavit placing the aforesaid fact on record as also a compilation of documents which have been furnished to the Learned AGP. The Learned AGP Mr.M.A.Sayed in view of the said compliance done by the Petitioner states that the said documents would now be taken into consideration whilst adjudicating upon the stamp duty payable in respect of the Memorandum of Understanding dated 09.01.1993. Since the suit is pending in the City Civil Court and since the admissibility of the said document hinges upon the said adjudication and payment of stamp duty, thereafter the Collector of Stamp is directed to expeditiously adjudicate the stamp duty payable in respect of Memorandum of Understanding dated 09.01.1993 and carry out the said exercise latest by 30.11.2016.”

5 In spite of the order passed by this court, respondents failed and neglected to comply the said order. Hence, the petitioner preferred the present Writ Petition. During the course of argument the learned A.G.P. for the respondents filed Affidavit-in-Reply dated 7.3.2017 duly affirmed by Padmakar Rokade, Collector of Stamps (Enf.II). In affidavit dated 7.3.2017 respondent no.1 stated that petitioner failed to provide them the exact area, description and other information in respect of the property situated at Pune. In answer to this query advocate for the petitioner submitted that they have already placed on record the development agreement dated 15.9.2006 at page 79 and compilation of documents Exhibit-F at pg 46. Development agreement gives entire description of the Pune property in paragraph 1A which reads thus:

“A) The Party of the First Part are the sole and absolute owners and otherwise well seized and possessed of and sufficiently entitled to all that piece and parcel of land and ground with the structures / sheds standing thereon bearing

S.No.47 Pot Hissa No.14+17+18+20A+19+20B and 22, 24+25 now bearing C.T.S.No.3746 and 3747, Mouje Parvati, Pune, admeasuring an area of 12883.40 Sq.mtrs.more particularly described in the Schedule hereunder written (hereinafter referred to as the said Property).”

6 The learned counsel for the petitioner further submits that along with their letter dated 21.9.2016 and compilation of documents they provided entire material/information to the respondent no.1. Inspite of that on one or the other ground they are avoiding to comply the order passed by Bombay City Civil Court, Mumbai as well as this court.

7 After hearing the advocate for petitioner, the learned A.G.P has taken instruction from the concerned officer Mr.Padmakar Rokade,Collector of Stamps (Enforcement), Mumbai who is present in court, submits that they have all the papers and can comply the order passed by Bombay City Civil Court, Mumbai dated 23.11.2015 and order dated 20.9.2016 in Writ Petition No.1476 of 2016.

8 The learned A.G.P submit that they require four weeks to do so. It is made clear that if respondent no.1 failed and neglected to comply the orders passed by Bombay City Civil Court, Mumbai as well as this court as stated hereinabove within four weeks from today, they have to pay cost of Rs.25,000/- to the petitioner and to face other consequences as this court may deem fit. Hence, following order is passed:

a) Respondent no.1 is directed to comply the order dated 23.11.2015 passed by Bombay City Civil Court, Mumbai below Exhibit- 26 in Suit No.8976 of 1994 and order dated

20.9.2016 passed by this court in Writ Petition No.1476 of 2016 within four weeks from today, failing which they have to pay cost of Rs.25,000/- to the petitioner.

b) Writ Petition stands disposed of accordingly.

Parties to act on authenticated copy of this order.

JUDGE