

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8729 OF 2014

M/S. RAJMUDRA REAL ESTATE PVT. LTD., JALGAON
VERSUS
THE STATE OF MAHARASHTRA, JALGAON

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Advocate for the Petitioner : Shri Bora Satyajit S..
AGP for the Respondent : Shri S.K.Tambe.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th July, 2018

Per Court:

1 I have considered the strenuous submissions of the learned Advocate for the Petitioner and the learned AGP.

2 The learned AGP strenuously submits that since the impugned orders imposing the penalty on the property at issue are passed under Section 32-A of the Maharashtra Stamps Act, the Petitioner has no option but to prefer an appeal under Section 32-B of the said Act and this petition is not maintainable.

3 The learned AGP further submits, on instructions taken from Shri Vijay S. Bhalerao, Joint District Registrar and Collector of Stamps, Jalgaon, present in the Court, that if this Court is inclined to entertain this petition, the amount of Rs.25 lac deposited in this Court along with

accrued interest be transmitted to the Respondent as the impugned order gives rise to recovery of about Rs.80 lac from the Petitioner.

4 The learned Advocate for the Petitioner strenuously submits that the appeal provided under Section 32-B may not be available to the Petitioner as the said appeal can be filed by any person aggrieved by any order determining the market value under sub-section (3) of Section 31 or the order imposing any penalty under Section 32-A. There has been no determination in the instant case since the Petitioner was initially served with the notice dated 23.03.2011 by the Collector of Stamps for submitting his explanation. The Petitioner has tendered the application which has been recorded in the Roznama below entry of 23.03.2011 that he has prayed for extension of time to submit his reply.

5 The learned Advocate for the Petitioner further submits that the Petitioner had preferred Writ Petition No.4792/2011 for challenging the order of the State Government appointing the Enquiry Committee. By order dated 22.07.2011, the learned Division Bench of this Court has stayed the enquiry being conducted by the said Enquiry Committee.

6 The learned AGP submits that Writ Petition No.4792/2011 has nothing to do with the present cause of action and the same does not deserve to be taken into consideration while deciding the present petition.

7 The learned AGP has placed before me a compilation of documents running into 11 pages, which are taken on record and marked

as Exhibit X for identification. He also submits, on instructions from the concerned officer present in the Court, that the notice was issued on 23.03.2011 to the Petitioner pertaining to the instant issue. Thereafter, the impugned orders dated 09.09.2014 were passed regarding all issues involved in this petition.

8 When called upon to state as to whether, any notice was issued to the Petitioner after 23.03.2011 and did any hearing take place in between 23.03.2011 and 09.09.2014, the learned AGP submits, on instructions, that no proceedings were conducted in this period and no second notice was issued to the Petitioner before passing the impugned orders on 09.09.2014.

9 It is, therefore, apparent that in response to the notice dated 23.03.2011, this Petitioner had prayed for extension of time to prepare a reply on the basis of certain documents that the Petitioner was digging out. Roznama dated 23.03.2011 mentions the request of the Petitioner at page 2 in the compilation Exhibit X. However, no further date has been mentioned in the Roznama, inasmuch as, no notice for conveying the next date or for scheduling the hearing in the matter was communicated to the Petitioner.

10 It is thus, obvious from the above that after a long gap in between 23.03.2011 and 09.09.2014, no hearing took place. With such a long space of time, the impugned orders dated 09.09.2014 cannot be

sustained.

11 Insofar as the contention of the learned AGP that a statutory alternate remedy is available to the Petitioner is concerned, it cannot be ignored that this Court, on the first date of hearing on 01.10.2014, directed the Petitioner to deposit an amount of Rs.25 lac in this Court. The said amount has been deposited and therefore, ad-interim protection granted to the Petitioner was continued keeping in view that the amount was deposited on 29.11.2014.

12 It is in these peculiar facts as recorded above and as the file was kept totally dormant from 23.03.2011 till 09.09.2014 and as Rs.25 lac were deposited by the Petitioner in this Court, I do not find it appropriate to now relegate the Petitioner to an alternate statutory remedy since it is crystal clear that the file was dormant and the impugned orders were suddenly passed.

13 Considering the above, this Writ Petition is partly allowed and the impugned orders dated 09.09.2014 are quashed and set aside.

14 The Petitioner shall, therefore, appear before the competent authority, namely, Collector (Stamps) at Jalgaon on 20.08.2018 at 11:00 AM. The said competent authority need not issue a formal notice to the Petitioner.

15 The Petitioner would be at liberty to submit his written say along with all documents on which he seeks to place reliance upon. The

Petitioner would participate in the hearings on the dates on which the competent authority would post the matter.

16 Needless to state, the competent authority shall make a proper recording of the Roznama and shall ensure that the next date and time of hearing in the matter is to be communicated to the Petitioner. So also, after hearing is complete, the competent authority would post the matter on a particular date for passing orders which date shall be conveyed to the Petitioner through the Roznama. After the order is passed, a copy of the said order shall be made available to the Petitioner expeditiously. It goes without saying that the competent authority shall pass a reasoned order while deciding the issue and shall rely upon the relevant provisions of law as the foundation of its order.

17 Since it is obvious that no hearing was conducted and the file was kept dormant, to balance the equities, the amount of Rs.25 lac deposited by the Petitioner in this Court would continue to remain in this Court notwithstanding the disposal of this writ petition. After the competent authority passes its order, the parties are at liberty to move a Civil Application in this disposed off writ petition, in this Court with regard to the amount that is deposited in this Court.