IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8964 OF 2017

Rhutu Sunil Mantri .. Petitioner
Vs.
Chief Controlling Revenue Authority
& Ors. .. Respondents

WITH
WRIT PETITION NO. 9051 OF 2017

Rhutu Sunil Mantri .. Petitioner
Vs.
Chief Controlling Revenue Authority
& Ors. .. Respondents

WITH
WRIT PETITION NO. 9599 OF 2017

Siddhant Sunil Mantri .. Petitioner
Vs.
Chief Controlling Revenue Authority
& Ors. .. Respondents

WITH
WRIT PETITION NO. 9659 OF 2017

Siddhant Sunil Mantri .. Petitioner
Vs.
Chief Controlling Revenue Authority
& Ors. .. Respondents

…

Mr. Sahil Mahajan for Petitioners.
Mrs. K.R. Kulkarni, AGP for Respondent Nos. 1 to 3.

…

CORAM : V.L.ACHLIYA, J.
DATE : 21st FEBRUARY, 2018.

P.C. :

1. Rule. Rule made returnable forthwith. By consent heard finally at the stage of admission.

2. By these petitions filed under Article 227 of Constitution of India, the petitioners herein have challenged the orders dated 05.03.2015 passed by the Additional Controller of Stamps, Mumbai- Respondent No.2 and confirmed in appeal by Chief Controlling Revenue Authority, Maharashtra State, Pune- Respondent No.1 vide orders dated 15.02.2017.

3. Fact in brief

In short it is the case of the petitioners that on 30.12.2013 they had paid stamp duty and purchased the e-stamp papers, the details of which are as under :-

Writ Petition No.	Name of Petitioner	E-stamp paper no./ Challan No.	Amount deposited
8964/2017	Rhutu S Mantri	MH001070238208314E	Rs.5,61,200/-
9051/2017	Rhutu S Mantri	MH001068936201314E	Rs.5,35,700/-
9599/2017	Siddhant S Mantri	MH001066643201314E	Rs.5,35,700/-
9659/2017	Siddhant S Mantri	MH001068572201314E	Rs.5,61,200/-

4. Since, the transaction for which the stamp papers were purchased could not be executed, on 30.06.2014 they filed application under Section 47 of the Maharashtra Stamp Duty Act seeking refund of stamp duty. Respondent No.2 rejected the

applications by observing that their signatures on the applications not tallies with their specimen signature recorded with the bank account and the applications were made beyond the period of limitation prescribed under Section 48(3) of Maharashtra Stamp Duty Act, 1958 (hereinafter referred as 'said Act'). Being aggrieved the petitioners preferred appeal before the Respondent No.1. The respondent No.1 accepted the contention of the petitioners that as the period of limitation expired on 29.06.2014 which was a public holiday, the applications submitted by the petitioners on next working day i.e 30.06.2014 were within limitation. However, rejected the applications by observing that their signature on the applications seeking refund of stamp duty not tallies with their specimen signature recorded with their respective bank. Being aggrieved the petitioners have preferred these petitions.

5. Learned counsel for the petitioners assailed the impugned orders with contention that the same are perverse and not sustainable in law. It is contended that in dealing with the application seeking refund of stamp duty filed under Section 47 of the said Act, the scope of inquiry vested with the authority is very limited. The authority is expected to examine as to whether such application is within limitation and one of the instances mentioned in Section 47 of said Act is made out to seek such refund. It is further contended that applications have been rejected without proper inquiry and opportunity of hearing to petitioners. No opportunity was given to petitioners to satisfy that the applications were made within six months and there is difference in signatures

of applicants with their specimen signatures. If the authority had any doubt about the signature appearing on their respective applications, then the authority could have directed to petitioners to appear in person for the purpose of verification. Without affording an opportunity of hearing to petitioners, the Respondent No.2 has rejected their applications. In this background the learned counsel urged to set aside the order and to remand the matter to decide afresh by giving opportunity of hearing to petitioners.

6. On the other hand learned AGP supported the orders and contended that bare perusal and comparison of signatures of petitioners on their respective applications with their respective specimen signatures recorded with their bank accounts make out that the same are not tallies with each other. In this back ground learned AGP submits that the orders passed by Respondent Nos. 1 and 2 calls for no interference in exercise of writ jurisdiction under Article 227 of Constitution of India.

7. On due consideration of the submissions advanced, I am of the view that the impugned orders are not sustainable in law. There is no dispute that e-stamp as referred in para 3 were purchased in the name of respective petitioners on due deposit of amount with the State Bank of India. The fact is also not in dispute that on depositing the amount, the e-stamp papers / challan as referred above were issued on 30.12.2013 in the name of petitioners. The applications were rejected mainly on the ground

that the signature of the petitioners appearing on their respective applications found to be not tallies with their respective specimen signatures recorded with their bank accounts.

8. The stamp papers in questions were purchased in the name of petitioner on 30.12.2013 and the applications seeking refund of stamp duty were received in the office of Respondent No.3 on 30.06.2014. So also, there is no dispute that on 29.06.2014 there was a public holiday and the office of Respondent No.3 was closed. Therefore, the applications as made by the petitioners on 30.06.2014 being filed within six months i.e statutory period of limitation prescribed under Section 48(3) of the said Act, the reasons and finding recorded by Respondent No.2 that applications were beyond period of limitation are not sustainable in law.

9. Now, the next question poses for consideration is whether the finding recorded by Respondent No.2 that there is difference in signature of petitioners appearing on their respective applications with their specimen signature maintained with their respective bank accounts, I am of the view that the order passed by the Respondent No.2 is not sustainable in law as the finding to this effect have been recorded without proper opportunity of hearing to petitioners and that too on the basis of recommendation made by the Respondent No.3.

10. If we consider the scope of inquiry to be conducted

under Section 47 of the said Act then such authority is expected to satisfy itself (i) whether the application is made within the period prescribed under Section 48(3) of Said Act and (ii) whether any instance enumerated under clauses (a) to (c) has been made out to seek refund of stamp duty. Section 47 of the said Act read as under:-

> ***Section 47 : Allowance for spoiled stamps***
>
> *Subject to such rules as may be made by the State Government as to the evidence to be required, or the inquiry to be made, the* ***Collector may on application, made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:-***
>
> *(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;*
>
> *(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;*
>
> *(c) the stamp used for an instrument executed by any party thereto which-*
>
> *(1) has been afterwards found (by the party) to be absolutely void in law from the beginning;*
>
> *[(1A) has been afterwards found by the Court, to be absolutely void from the beginning under Section 31 of the Specific Relief Act, 1963]*
>
> *(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose*

originally intended;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non acceptance of any office thereby granted, totally fails of the intended purpose;

(6) becomes useless in consequence of the transaction intended to be thereby effected by some other instrument between the same parties and bearing a stamp of not less value;

(7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp or not less value;

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument, (except that falling under sub-clause (1A), no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up (to be cancelled, or has been already *given up to the Court to be cancelled].*

Explained – The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.

Thus, the authority vested with the powers to deal with such applications seeking refund of stamp duty filed under Section 47 of the said Act is expected to follow the rules framed by the State Government in conduct of such inquiry. The State Government in exercise of powers coffered by under Section 69 of Maharashtra Stamp Act, 1958 has framed the rules for refund of stamp duty which are known as 'Maharashtra E-Payment of Stamp Duty and Refund Rules, 2013'. The Rule 14 of said rules reads as under

14. Refund

(a) The procedure for refund of stamp duty to be adopted by the Collector against Simple receipt or e-SBTR shall be the same as applicable in case of the impressed stamp under the Act.

(b) The procedure for preparing refund bill shall be as specified by the Finance Department and Directorate of Treasury, from time to time.

(c) The deductions to be made for granting the refund under clause (a) shall be, one per cent of the value of stamp refunded with the minimum of rupees two hundred and maximum of rupees one thousand:

Provided that, there shall be no deduction on refund of wrong or excess amount credited to the Government by the authorised participating banker if so certified by Virtual Treasury Office.

The Bombay Stamp Act Rules 1939 also provides for procedure to be adopted in conduct of inquiry by the authority vested with the powers to deal with the application seeking refund of stamp duty. Rule 21 reads as under:-

> ***21. Evidence as to circumstances of claim to refund or renewal.***
>
> *The Collector may require any person claiming a refund or renewal under Chapter V of the Act, or his duly authorised agent, to make an oral deposition on oath or affirmation, or to file an affidavit, setting forth the circumstances under which the claim has arisen, and may also, if he thinks fit, call for the evidence of witnesses in support of the statement set forth in any such deposition or affidavit.*

11. Thus, if consider section 47 of the said Act and the Rules referred above then the application seeking refund of stamp duty can be made in person or through authorised agent. It also spell out that in conduct of such inquiry, the Collector may call upon such person or his authorised agent to make an oral deposition on oath or affirmation or to file an affidavit setting forth the circumstances under which the claim has been made and if thinks fit he may call upon such person to lead evidence in support of such statement made in deposition or affidavit. Thus, the authority dealing with such applications seeking refund of stamp duty is expected to hold proper inquiry before passing such order. After conducting inquiry if the authority satisfied that one of such instance enumerated in Section 47 of the said Act has been made out and the application is found to be made within limitation then

the authority is expected to pass the appropriate order directing refund of stamp duty.

12. If we consider the facts of the case in hand then the Respondent No.2 appears to have decided the application solely on the basis of the recommendation received from Respondent No.3. Before passing the impugned orders, no inquiry as contemplated under Section 47 of said Act and the rules framed there under has been conducted. If the Respondent No.2 had any doubt as to the identity of a person seeking refund of stamp duty then the Respondent No.2 could have adopted the procedure as laid down under Rule 21 of Bombay Stamp Duty Rules 1939 and directed the petitioners to appear in person for the purpose of verification and to prove their identity. Without giving proper opportunity of hearing to petitioners and following the procedure prescribed for conduct of such enquiry, the Respondent No.2 has passed the impugned orders and confirmed in appeal by Respondent No.1.

13. If we consider the orders dated 05.03.2015 passed in the matters of petitioners by the Respondent No.2, then it can safely stated that orders have been passed without conducting proper inquiry and affording opportunity of hearing to the petitioners. So also, the conclusion drawn that the signature of petitioners appearing on their respective applications not tallies with their specimen signature also not supported with evidence to that effect. In absence of proper opportunity of hearing being given to the petitioners and the orders have been passed without

following the procedure prescribed for conduct of such inquiry, the orders are liable to be set aside and cases needs to be remanded back to Respondent No.2 to decide the same afresh by giving proper opportunity of hearing to petitioners. Hence, the following order.

ORDER

(a) The Writ Petitions are allowed in terms of prayer clauses (i) and (ii) in respective petitions. The impugned orders passed by Respondent Nos. 1 and 2 are set aside and the cases are remanded back to Respondent No.2 for deciding the same afresh after giving opportunity of hearing to petitioners.

(b) The petitioners are directed to appear before the Respondent No.2 on 12.03.2018 at 11 a.m and co-operate in conduct of inquiry by Respondent No.2. On appearance of petitioners, the Respondent No.2 is directed to conduct the necessary inquiry which includes verification and identity of the petitioners to satisfy that they are entitled to seek refund of stamp duty.

(c) The Respondent No.2 is directed to decide the cases afresh without influenced by its earlier order dated 05.03.2015, within six weeks from the date fixed for appearance of petitioners.

14. Rule made absolute in above terms, with no order as to costs.

(V. L. ACHLIYA, J.)