

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1934 OF 2018
IN
WRIT PETITION NO. 12753 OF 2016
WITH
CIVIL APPLICATION NO. 436 OF 2018
IN
WRIT PETITION NO. 12753 OF 2016**

K. P. Baney (since deceased) .Applicants
through its Lrs.

IN THE MATTER BETWEEN

K. P. Baney (since deceased) .Petitioner
through its Lrs.

Vs.

The Chief Controlling Revenue Authority, Pune .Respondents
& ors.

**WITH
CIVIL APPLICATION NO. 1935 OF 2018
IN
WRIT PETITION NO. 11208 OF 2016
WITH
CIVIL APPLICATION NO. 435 OF 2018
IN
WRIT PETITION NO. 11208 OF 2016**

Ravi Mahbubani .Applicant

IN THE MATTER OF

Ravi Mahbubani .Petitioner

Vs.

The Chief Controlling Revenue Authority, Pune .Respondent

& ors.

Mr. Rompal Singh Kohli a/w Ms D. Jain, Advocate, for the Applicants **in all matters**

Mr. S. H. Kankal, AGP, for the Respondents – State **in all matters**

CORAM : REVATI MOHITE DERE, J.

DATE : 23.10.2018

P.C.

. Heard learned counsel for the parties.

2. The Applicants in both the Petitions pray that the Respondent No. 1 be directed to comply with the order dated 08.09.2017 passed by this Court (Coram : M. S. Sonak, J.) in W. P. No. 12753 of 2016 and W. P. No. 11208 of 2016, by registering the Agreement dated 25.04.2013 and report compliance of the same to this Court.

3. Learned counsel for the Applicants in both the aforesaid Petitions submits that whilst admitting the aforesaid Petitions, this Court (Coram : M. S. Sonak, J.) vide order dated 08.09.2017 granted liberty to the Petitioners (Applicants) to pay the disputed demanded amount & penalty to the Respondents, so

that the Petitioners' (Applicants') deeds and documents (conveyances) can be registered. It was observed that such payment will be without prejudice to the rights and contentions of the Petitioners (Applicants) and it was made clear, that in case the Petitioners (Applicants) succeed, the Respondents would be duty bound to refund the amounts so paid by the Petitioners (Applicants) without prejudice, with interest, as may be determined by this Court.

4. Learned counsel for the Applicants submitted that pursuant to the order dated 08.09.2017, the Applicants paid the disputed demanded amount of stamp duty alongwith penalty in compliance with the order dated 08.09.2017, without prejudice to their rights. Learned counsel for the Applicants submitted that even after paying the disputed amount of stamp duty alongwith penalty, the Applicants' documents were not registered. He submitted that when the Applicants made separate Applications to the Respondents, the Respondents returned the Agreements to the Applicants without registering the same.

5. Learned AGP submits that the Applicants' Applications for registration of the documents will have to be decided in terms of Section 25 of the Registration Act, 1908. He submits that the Applicants would be bound by the provisions of Section 25 of the said Act and as such, would have to pay fine as contemplated therein, in addition to the stamp duty & penalty.

6. Pursuant to the statement made by the learned AGP, on the last date, learned counsel for the Applicants has tendered the undertaking of both the Applicants. The said undertakings are taken on record and marked as "X" and "X-1" for identification. By the said undertaking, the Applicants in Clause (5) have stated as under :-

"5. I hereby undertake to abide by the orders and directions of this Hon'ble High Court in so far as applicability of section 25 of the Registration Act, 1908 and the consequences / liabilities arising therefrom without prejudice to the right of the Applicant / Petitioner to challenge the same."

7. Having regard to the Order dated 08.09.2017 and the

fact that the said Writ Petitions have been admitted and are pending, the question, whether any fine is payable under Section 25 of the Registration Act at the time of registration of the documents, is kept in abeyance, till the aforesaid Petitions are decided. At the time of final hearing of these Petitions, the issue of payment of fine under Section 25, if imposed, can be decided.

8. Learned counsel for the Applicants submits that the Applicants will be bound by the orders passed by this Court with regard to applicability of Section 25, of course subject to their right to challenge the same, in the event an adverse order is passed.

9. Accordingly, the Sub Registrar, Mulshi, District – Pune to register the documents of the Applicants, since the Applicants have deposited the demanded stamp duty as well as penalty, without prejudice to their rights, as directed by this Court vide order dated 08.09.2017, without insisting on payment of fine, if any under Section 25 of the Registration Act. As noted above, if fine is payable under Section 25, the payment of the same is kept

in abeyance, till the aforesaid Writ Petitions are finally decided. All contentions of all parties with respect to Section 25 of the Registration Act are kept open.

10. As noted above, all contentions with respect to applicability of Section 25 of the Registration Act, in the facts of the present case are kept open, and the same will be decided finally when the main Writ Petitions are heard. The Sub Registrar shall register the documents as expeditiously as possible and in any event within four weeks from the date of receipt of this order. A copy of the said order to be kept in the main Writ Petitions. Accordingly, the Applications are allowed & disposed off on the aforesaid terms.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)