IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10088 OF 2018

Mr. Rajeev Nohwar ...Petitioner
Versus
Chief Controlling Revenue Authority,
Maharashtra State, Pune
and others. ..Respondents

....

Mr. Dormaan J. Dalal, Advocate for the Petitioner.
Mr.S.H. Kankal, AGP, for Respondents No.1 to 6.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd NOVEMBER, 2018

P.C.

1. Heard Mr.Dormaan J. Dalal, learned counsel for the petitioner and Mr.S.H. Kankal, learned A.G.P. for respondents No.1 to 6, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 27.9.2016 passed by respondent No.2, Deputy Inspector General of Registration and Deputy Controller of Stamps, Pune Division, Pune as also the order dated 2.4.2018 passed by respondent No.1, Chief Controlling Revenue Authority, Maharashtra State, Pune. By these orders, the Authorities below have dismissed the application made by the petitioner for refund

of stamp duty of Rs.8,44,500/-.

3. On 24.4.2014 the petitioner booked a flat in "Lodha Belmondo", Pune, namely, flat No.24, 20th floor for Rs.1,68,88,095/-. On 15.7.2014, the petitioner paid Rs.33,91,795/- representing 19.9% of the total sale consideration. In pursuance thereof, M/s. Shahjanand Hi Tech Construction Pvt. Ltd. (now known as M/s. Pavala Dwellers Pvt. Ltd.) issued an allotment letter to the petitioner. On 14.8.2014, the petitioner paid Rs.1,58,28,211/- out of total consideration of Rs.1,68,88,095/-. On 16.8.2014, the petitioner purchased E-Stamp (MTR GRM NoMH0023603832014155) of Rs.8,44,500/- for agreement to sale from IDBI Bank, Pune.

4. It is the case of the petitioner that the petitioner moved five consumer complaints before the National Consumer Redressal Commission, New Delhi. By order dated 6.5.2016, the National Consumer Redressal Commission, New Delhi directed the opposite party therein to either execute the agreement within four weeks in addition to a compensation of Rs.10,00,000/- or refund the entire amount which they have received, namely, Rs.1,58,28,221/- along with simple interest of 12% per annum in addition to compensation of Rs.10,00,000/-. The petitioner opted for refund of the amount instead

of executing the agreement within four weeks.

5. On 11.7.2016 the Developer paid back the amount with interest and compensation. On 16.7.2016, the petitioner made application for refund of purchase of E-Stamp paper of Rs.8,44,500/-. By the impugned orders, the Authorities below have dismissed the application on the ground that the said application is filed beyond the period prescribed under Section 48(3) of the Maharashtra Stamps Act (for short, 'Act').

6. In support of this Petition, Mr. Dalal invited my attention to Sections 10, 47, 52 and 52A of the Act. He submitted that the petitioner's case does not fall either under Section 47 or Section 52 and is squarely covered by Section 52A of the Act. Section 52A of the Act lays down that notwithstanding anything contained in sections 47, 50, 51 and 52, when payment of duty is made by stamps or in cash as provided under Sub-section (3) of Section 10 or Section 10A or Section 10B, and when the amount of duty paid exceeds rupees five lakhs, the concerned Collector shall not make allowance for the stamps, or the cash amount paid under the Challans, which are spoilt or misused or not required for use, but shall, after making necessary enquiries, forward the application, with his remarks thereon to (in the present

case) the Deputy Inspector General of Registration and Deputy Controller of Stamps of the Division. In the present case no such procedure was followed. Admittedly in the present case the amount paid by the petitioner exceeds Rs.5,00,000/- and the payment of duties made in terms of Section 10(3)(v) of the Act. The petitioner has also filed additional affidavit raising this contention. He, therefore, submitted that the petition requires consideration.

7. On the other hand, Mr.Kankal supported the impugned orders. He submitted that Section 10(3) prescribes the mode for payment of duty chargeable on instruments. Section 47 deals with allowance for spoiled stamps. Section 52 deals with allowance for stamps not required for use. Section 48(1) lays down that the application for relief under Section 47 can be made within the period prescribed in sub-section (1) or sub-section (2) thereof. Sub-section (3) of Section 48 lays down that in any other case within six months from the date of purchase of stamp. He submitted that admittedly in the present case e-stamps were purchased on 16.8.2014 and the application for refund of said amount of e-stamps is made on 16.7.2016 which is beyond the period of six months. There is also no provision for condonation of delay in filing the application for refund of the duty on the instruments. He, therefore, submitted that the authorities below

rightly passed the impugned order rejecting the application for refund of the duty on the instruments.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the petitioner had purchased e-stamps of Rs.8,44,500/- on 16.8.2014. Section 10(3)(v) reads thus :

> "**10. Duties how to be paid**
>
> xxxxx
> xxxxx
>
> **(3)** Notwithstanding anything contained in sub-section (1), the Chief Controlling Revenue Authority, shall, by notification in the Official Gazette, specify the instruments in Schedule I in respect of which the duties chargeable, as specified in column 2 of the said Schedule shall be paid,--
>
> xxxxx
> xxxxx
>
> **(v)** by e-payment;
>
> xxxxx
> xxxxx"

9. Section 48 of the Act reads thus :

> "**48. Application for relief under section 47 when to be made**
>
> .
> The application for relief under section 47 shall be made within the following period, that is to say,--

(1) in the cases mentioned in clause (c) (5), within six months of the date of the instruments:

Provided that, where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I, is registered under the provisions of the Registration Act, 1908 (XVI 1908) and thereafter such agreement is of cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation deed;

(2) in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instrument.

(3) in any other case, within six months from the date of purchase of stamp."

10. Mr. Dalal submitted that the case is not covered either by Sections 47 or 52 and is covered by Section 52A of the Act. Section 52A(1) of the Act reads thus :

"**52A. Allowance for duty**

(1) Notwithstanding anything contained in sections 47, 50, 51 and 52, when payment of duty is made by stamps or in cash as provided for under sub-section (3) of section 10 or section 10A

> or Section 10B, and when the amount of duty paid exceeds rupees five lakhs, the concerned Collector shall not make allowance for the stamps, or the cash amount paid under the Challans, which are spoilt or misused or not required for use, but shall, after making necessary enquiries, forward the application, with his remarks thereon, to-
> (a) the additional controller of stamps for the cases handled by the collectors working in the Mumbai City District and Mumbai Suburban District; and
> (b) the concerned Deputy Inspector General of Registration and Deputy Controller of Stamps of the division for the cases handled by the Collectors other than those mentioned in clause (a)."

11. Mr. Dalal submitted that as the payment of duty is made as provided under sub-section (3) of section 10 of the Act and the amount exceeds Rs.5 lakhs, the concerned Collector cannot make allowance for the stamps, or the cash amount paid under the Challans, which are spoilt or misused or not required for use, but shall, after making necessary enquiries has to forward the application with his remarks thereon to the Deputy Inspector General of Registration and Deputy Controller of Stamps of the Division. In my opinion, Sections 47, 48, 52 and 52A is required to be construed harmoniously. Even application under Section 52A also will have to be made within six months from the date of the purchase of the stamps in view of the express language

employed in Section 48(3) of the Act. It is only after making application within the prescribed period of six months the procedure contemplated under Section 52A is required to be followed. Admittedly, in the present case, the application is not made within six months from the date of purchasing the stamps. In view thereof, I do not find that the Authorities below committed any error in passing the impugned orders. Hence the petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)