IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3413 OF 2018

Chintamani Realty LLP … Petitioner
V/s.
The State of Maharashtra and ors. … Respondents

Mr. Girish Godbole a/w. Mr. Prakash Shah a/w. Mr. Jas Sanghavi a/w. Mr. Durgaprasad Poojary i/b PDS Legal for the Petitioner.
Mr. A.I. Patel, Addl. Govt. Pleader for Respondent Nos.1 to 3.
Mr. Darshi Jain i/b Ms Divya Jain for Respondent No.5

CORAM : AKIL KURESHI &
S.J.KATHAWALLA, JJ.
DATE : OCTOBER 16, 2019.

P.C.

1] Heard learned counsel for the parties for final disposal of the petition.

2] The petitioner is a limited liability partnership. The petitioner has challenged the action of the respondents stamp duty authorities of attaching the petitioner's bank account under a communication dated 27.2.2018 for recovery of unpaid stamp duty of Rs.31,61,100/- with penalty and interest.

3] Brief facts are as under:

The land bearing CTS No.252 and 252/1 to 29 of village Gundavali ad-measuring approximately 2921 square meters was purchased by one Shri. Anant G. Shah, respondent No.5 herein, from the erstwhile owner B.K. Kapurchand Private Limited on 21.3.2007. As per the then prevailing Government policy, claiming that the purchase of land was for rehabilitation of slum dwellers, the parties to the conveyance had paid stamp duty of only Rs.100/-. However, soon thereafter, the purchaser Anant Shah, respondent No.5, sold the land for a sale consideration of Rs.27 Lakhs on 5.7.2007 to Chintamani Reality Private Limited, a registered company. On this sale deed, full stamp duty was affixed. The Government held a belief that the exemption from payment of stamp duty at the time of execution of the conveyance dated 21.3.2007 was incorrectly claimed and that the document, in view of the conduct of the parties and the contents of the documents, would invite full stamp duty. Proceedings in this respect were therefore initiated against respondent No.5 which culminated into an order dated 16.9.2015 after one round of remand under which the stamp duty demand of

Rs.31,61,100/- with penalty and interest was raised. We are informed that this order of the competent authority has been challenged by respondent No.5 before the appellate authority and such appeal is pending.

4] Pending such appeal, since the stamp duty with penalty and interest were not paid up by respondent No.5, respondent Nos.1 to 3 initiated coercive recoveries thereof. In the meantime, Chintamani Reality Private Limited was converted into a limited liability partnership (LLP for short) and in that capacity it has filed this petition. One of the actions initiated by respondent Nos.1 to 3 for recovery of the said stamp duty was to issue the impugned communication of attachment of the bank account of the present petitioner. This action, the petitioner has challenged in this petition.

5] Pending further hearing, pursuant to the order of this Court dated 2.5.2018, the petitioner had deposited a sum of Rs. 32 Lakhs with the Registry of this Court.

6] In background of such facts, learned Counsel for the petitioner submitted that under no circumstances the petitioner can be held liable for payment of the stamp duty for a transaction entered into by respondent No.5 at the time of previous sale. He drew our attention to Sections 30 and 46 of the Maharashtra Stamp Act, 1958 (the Stamp Act for short) to contend that the primary responsibility to pay the stamp duty is on the purchaser and the recovery thereof can also be made only from the person who is responsible to pay the stamp duty. The petitioner under no circumstances can be stated to be the person responsible for the payment of such duty.

7] On the other hand, learned Counsel for the official respondents, i.e., respondent Nos.1 to 3 submitted that respondent No.5 had purchased the land in question with clear intention to commercially exploit it. The contents of the document as well as his subsequent conduct of selling the land within a short span of about four months would demonstrate this. Respondent No.5 is one of the partners of the petitioner - LLP. The official respondents, therefore, were within the rights to seek recovery of the unpaid stamp duty from the petitioner.

8] Whatever be the relation between respondent No.5 and the petitioner - LLP, insofar as the conveyance deed which gave rise to the disputed stamp demand is concerned, the petitioner cannot be held liable for payment of stamp duty. We may recall, this conveyance deed was executed by B.K. Kapurchand Private Limited in favour of respondent No.5. The petitioner - LLP or its previous composition as a company, therefore, had no concern with this deed of conveyance. In terms of Section 30 of the Stamp Act, in the absence of an agreement to the contrary, the expense for providing the proper stamp duty shall be, in the case of a conveyance is on the grantee. Section 46 of the Stamp Act pertains to recovery of duties and penalties. Sub-section (1) of Section 46 of the Stamp Act provides that all duties, penalties and other sums required to be paid under the Act may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or as the arrears of land revenue. Thus, the recovery of unpaid stamp duty along with penalty and interest would only be made from the person from whom it was due, namely, respondent No.5. Under the circumstances, we are of the opinion that the attachment of the petitioner’s bank account for recovery of such dues of respondent No.5 was wholly impermissible

5] Despite this, we cannot lose sight of the fact that respondent No.5 is a partner of the petitioner - LLP and would obviously therefore, have his right to receive profits arising from the business of the said firm. At this stage, learned Counsel for the petitioner as well as for respondent No.5 jointly stated that the amount of Rs.32 Lakhs deposited by the petitioner - LLP pursuant to the interim order of this Court, may be treated to have been deposited by respondent No.5, the said parties would internally arrange their accounts. Since the appeal filed by respondent No.5 is pending before the appellate authority, we are of the opinion that such deposit of Rs.32 Lakhs by the said respondent pending such appeal, would be sufficient to prevent further recoveries pending such appeal.

6] Under the circumstances, the petition is disposed of with following directions:

(a) The impugned communication dated 27.2.2018 attaching the petitioner’s bank account is set aside. The bank account shall be released from attachment;

(ii) The amount of Rs.32 Lakhs deposited by the petitioner before this Court, which now would be deemed to have been deposited by respondent No.5, would be released in favour of respondent No.2 by the Registry with accrued interest, if any;

(iii) Such amount shall remain deposited with respondent No.2 to be adjusted as per the outcome of the appeal of respondent No.5;

(iv) If there is any impediment in the property card of the land in question inserted by the official respondents, on account of pending stamp duty charges, the same shall be deleted;

(v) Respondent No.5 shall file an undertaking before this Court that whatever the liability that may be decided in such appeal, subject to right to challenge the order, the said respondent shall pay the deficit stamp duty with penalty and interest if any to the department. Such undertaking shall be filed within one week from today;

(vi) The period during which the sum of Rs.32 Lakhs remains with respondent No.2, there shall be no interest liability on respondent No.5, if ultimately any stamp duty with penalty or interest is found payable. However, if there arises a question of refund of this amount or any part thereof, the same shall be refunded by respondent No.2 to respondent No.5 with simple interest at the rate of 7.5% per annum from the date of deposit till actual refund;

(vii) We have expressed no opinion on the merits or de-merits of the pending appeal.

(S. J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**