IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATER JURISDICTION

WRIT PETITION NO. 3890 OF 1997

1. Shri Jaiprakash Sitaram Goel,
"Gangotri", 577-A/3, Gultekdi,
Pune 411 037

2. Rohinton Jamshedji Mehta,
212, San-Mahu Commercial Complex,
5, Bund Garden Road,
Pune 411 001

3. Nitin Dwarkadas Nyati,
10/7, Anand Society,
Off Shankershet Road, Pune 411 037

All carrying on the business in
Joint Venture under the name and
Style of M/s. Goel Nitron Associates,
having its office at San-Mahu Commercial
Complex 5, B und Garden Road,
Pune 411 001 …... **PETITIONERS**

...VERSUS...

1. The State of Maharashtra,
through the Principal Revenue
Secretary, Government of
Maharashtra, Mantralaya,
Mumbai.

2. The Dy. Inspector General of
Registration & Dy. Controller of
Stamps, Pune Division-cum-
Controller of Stamps, Pune.
Pune 411 001…

3. The Inspector General of Registration
and Chief Controlling Revenue Authority
Maharashtra State, Church Road,
Pune ... **RESPONDENTS**

Shri S.R.Nargolkar a/w Ms. Seema Chopda a/w Mr. T.R.Yadav, counsel for Petitioners.
Shri S.L.Babar, Assistant Government Pleader for Respondent nos. 1 to 3

CORAM: N.W.SAMBRE, J.
DATE : 1st AUGUST, 2019.

1] This petition questions the impugned order dated 1st December, 1994 passed by the Deputy Inspector General of Registration and Deputy Controller of Stamps, Pune Divison, who is also the Controller of Stamps, Pune, so also the order dated 13th May, 1996, passed by the Inspector General of Registration and Chief Controlling Revenue Authority, State of Maharashtra. The petition has further sought for refund of the excess stamp duty of Rs.63,000/- alleged to have been paid by the petitioner on the indenture dated 7th May, 1994, along with interest at the rate of 18% per annum.

2] The facts necessary for deciding the present writ petition are as under;

Land admeasuring 1953.70 sq.mtrs., bearing City Survey No. 3, Bund Garden Road, Pune, together with structure thereon which could be popularly identified as “Empire Cinema” was leased by the Jahangir Couple to

K.M.Modi on 6th May, 1953, for a period of 3 years. The same was further renewed for a period of 3 years thereafter.

3] Modi's in whose favour temporary lease for a period of 3 years was created continued in possession and sublet the same to Western India Theatres Limited.

4] An agreement dated 9th August, 1971 was executed between K.M.Modi and Western India Theatres Limited. A license was granted in favour of M/s. Empire Exhibitors for exclusive operation, management and conduct of the said cinema business for a period of 10 years at a composite licence fee of Rs.2,40,000/- to be paid in 120 equal installments of Rs.2,000/- each.

5] The Empire Exhibitors as such were put in possession of the said business and property who continued their operation.

6] The dispute ensued in between the parties resulting into initiation of civil litigation.

7] The parties to the civil dispute came to certain settlement wherein M/s. Empire Exhibitors with consent of successor entitled of original lessee and Western

India Theatres, sub-lessee, agreed to sell and assign in favour of the petitioners, which is formed to be an associate, agreed to purchase the business from the original assigner with goodwill, the running concern together with the benefit of sub tenancy right, the furniture, fixtures, telephone connection etc., on a consideration of Rs.1,00,000/- for fixtures and Rs.8,00,000/- in lump sum towards the assignment of business and tenancy right.

8] Accordingly, an instrument came to be executed between the parties in favour of the petitioner on 7th May, 1994, and the same was registered on 16th May, 1994.

9] The respondent No.2 during the course of inspection of office of Sub-Registrar noticed that the aforesaid instrument registered on 16th May, 1994, was inadequately stamped as the provisions of Article 5(g-d) (ii) A and Article 25 (a) of Scheduled-I of the then Bombay Stamp Act, were came to be violated and as such order impounding of the same under Section 33 of the Act.

10] A show cause notice was served on the petitioners calling upon them to pay deficit stamp duty of Rs.8,89,000/- with penalty of 10 times of the aforesaid amount on 28th July, 1994.

11] The petitioner replied to the said notice, resulting into passing of the impugned order dated 1st December, 1994, whereby it was held that the instrument relates to the transfer of tenancy right, so also transfer of immovables and therefore stamp duty of Rs.9,76,500/- under the aforesaid provision was payable. As such respondent No.2 vide impugned order directed deposit of deficient stamp duty of Rs.8,89,500/- after deducting stamp duty of Rs.19,000/- which was already paid and also directed payment of Rs.88,98,000/- in the form of 10 times penalty of the stamp duty as contemplated under Section 39 of the Bombay Stamp Act.

12] The petitioner feeling aggrieved preferred Revision Application No. 5 of 1995, before the respondent No.3 under the provisions of Section 53 of the Bombay Stamp Act. The Revisional Authority vide impugned order dated 13th May, 1996, dismissed the revision. As such, this petition.

13] Heard respective counsel at length. The submissions of Shri Nargolkar, learned counsel for the petitioners are, perusal of the document registered on 16th May, 1994, would reveal that the document was appropriately stamped, rather the petitioner has paid an excess stamp duty of Rs.63,000/- to which the petitioners are entitled for refund. The learned counsel then would urge that the provisions of Section 25A even if are attracted, transfer of sub tenancy is incidental to the transfer and assignment of the business rights including goodwill, as such no separate valuation of tenancy is reflected in the document under question. In view of above, it is claimed that both the authorities below have committed an error apparent on the face of record in ordering payment of stamp duty and penalty. According to him, the recitals in the deed of assignment of business does not speak of any transfer of immovable property, rather only interest in the tenancy even if it is transferred, that by itself would not attract the higher stamp duty under Article 25 (b) of the Act. He would further urge that the calculation of the stamp duty is after appropriate valuation of the rights which are transferred including the goodwill and the assignment of business and that being so, the order impugned is not sustainable. He would try to impress upon this court, based on terms of the deed, so as to convince that what was transferred was the running business and goodwill. The transfer of the interest in the tenancy was only incidental to the aforesaid assignment of business and goodwill. He would draw support from the judgment in the matter of *Anil Purushottam Kakad .. Vrs. .. Tax Recovery Officer and* *others*, delivered in Writ Petition No. 3691 of 1988, decided on 2nd March, 1993, by the learned Single Judge of the High Court of Bombay at Principal Seat. The submissions are, the issue is squarely covered by the aforesaid judgment, as such, according to him, the petition is liable to be allowed.

14] While countering the aforesaid submissions, the learned Assistant Government Pleader Shri S.L.Babar, would urge that both the authorities have concurrently held against the petitioners, as the petitioners have suppressed the assignment of tenancy rights as could be easily noticed from the recitals in the document in question. According to him, the contents in the document if read as a whole in the light of the provision of Article 25 AA, particularly Clause (5), it can be easily inferred that there was intention to avoid payment of stamp duty. As such, he has sought dismissal of the writ petition.

15] Considered the rival submissions. On 28th July, 1994, the petitioners were served with a show cause notice by the respondent No.2, thereby intimating that the document under question was under-valued as same was not valued in accordance with the amendment to Article 25, particularly Clause (5) to Article 25.

16] In reply to the said show cause notice, the petitioners have admitted the execution of document on 7th May, 1994, which includes assignment of business, goodwill and tenancy rights of the premises mentioned therein. As such the petitioners in categorical terms in reply to the show cause notice have admitted that there was an assignment of tenancy rights of the premises mentioned in the deed executed on 7th May, 1994.

17] The petitioner then has claimed that the business is a movable property and assignment of business is a conveyance of movable property fall under Article 25(a) of Schedule-I of Bombay Stamp Act, 1958. The petitioners thereafter admitted that they are ignorant of the provisions of the statute, particularly Article 5(g-d). The petitioners also claimed to be ignorant to the amendment brought into the Article which covers even the applicability of the Act to transfer of tenancy rights.

18] Though the petitioner initially claimed that the transfer of assignment of tenancy is incidental to the assignment of business and forms part of the business and as such the transfer of tenancy cannot be separated from the other assets, however, in view of the amendment to the Bombay Stamp Act, 1958, the authorities have rightly considered and rejected the contention that the transfer of tenancy is incidental to the transfer of main business.

19] The third respondent while confirming the order of second respondent which are impugned in the present petition, was conscious of the fact that the judgment in the matter of *Anil Kakad*, cited supra, will be of hardly any assistance, particularly when the statute has undergone the change.

20] When confronted, the counsel of the petitioners is unable to explain as to how after the amendment to the Bombay Stamp Act, particularly insertion of Clause (5), which provides for the levying of stamp duty even on transfer of tenancy right, needs to be ignored in the facts of the case in hand.

21] Once the petitioners have admitted that there was a transfer of tenancy rights, however, such transfer was incidental to the transfer of main business rights, that by itself will not entail the petitioners to claim that they are not liable to pay the stamp duty on the transfer of the tenancy rights.

22] Both the authorities have concurrently finding of assignment by way of the recitals employed in the document which was inappropriately stamped. The authorities then proceeded to adjudicate the claim put forth by the petitioner in the light of the show cause notice and its reply by the petitioner, and based on the acquisition of tenancy right in immovable properties, the admissions given thereto. The authorities then proceeded to consider the claim of the petitioners of not entitled to pay stamp duty on the transfer of tenancy rights in the backdrop of the provisions of Article 25(a) of Scheduled-I and also the amendment effected from 1st May, 1994, by insertion of Clause 5 (g-d) in Schedule-I of the Act, which provides for the payment of stamp duty at the rate of Rs.500/- per sq.meter of area of the tenanted portion in case of transfer of the tenancy of immovable property.

23] It is further worth to observe here that the dominant object of the document of transfer is also to transfer the tenancy rights in the immovable property. The certain recitals of the document were very much considered by the authorities below.

24] In the aforesaid background, the claim put forth by the petitioners that the issue is squarely covered by the judgment of the Bombay High Court in the matter of *Anil Kakad*, cited supra, is at all not established. Rather the admission given by the petitioners that there was a transfer of tenancy right and the petitioners were ignorant of the amendment to the Stamp Act whereby the payment of stamp issue is made applicable on the transfer of tenancy right vide amendment effected on 1st May, 1994, has rightly prompted both the authorities to reject the claim put forth.

25] That being so, no case for interference in extra ordinary jurisdiction is made out. The petition as such fails. It is dismissed.

JUDGE

Rvjalit