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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11865 OF 2017

M/s. Sanjona Builders .....Petitioner

V/s.

The State of Maharashtra and others .....Respondents

Mr. Tejesh Dande a/w Bharat Gadhvi , Vishal Navale for the Petitioner
Mr. R. P. Kadam AGP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 10, 2019.

P.C.

Heard respective counsel.

2 On 13/05/2011, present petitioner entered into an Agreement in regard to purchase of land and accordingly based on valuation of the instrument paid the stamp duty.

3 On 13/06/2016, in view of audit objection, a show cause

notice was served on the petitioner thereby calling upon to pay deficit stamp duty of Rs. 17,75,045/-. Basis for said show cause notice was that before the Agreement was registered, the properties in question were not amalgamated and as such, the object was to exchange the properties. Based on entry made in Article 5 (g-a) (i) of the Maharashtra Stamp Act, in addition to the earlier stamp duty of Rs. 4,57,750/- a demand of Rs. 17,75,045/- was made. The aforesaid notice dated 15/06/2016 was preceded with notice dated 22/11/2013 on the same line.

4 The proceedings against the petitioner pursuant to show cause notice dated 22/11/2013 remained dormant upto June 2016. After the petitioner tendered his explanation, an order impugned dated 16/09/2017 came to be passed thereby directing the petitioner to pay stamp duty as was demand of Rs. 18,18,495/-. As such, this petition.

5 This Court while protecting the interest of the petitioner vide a detailed order dated 01/11/2017 has noticed that the petitioner was

never put to notice on the issue of calculation of the deficit stamp duty, based on exchange of 4 parking spaces. The learned counsel for the petitioner has drawn support from both show cause notices issued and also the language employed in the order impugned.

6 This Court has called upon respondent-authority to explain the same, however, respondent-authority by filing reply are unable to explain the aforesaid position. It is as such apparent that the petitioner was never put to show cause notice on the issue of 4 parking spaces which are formed to be basis for ordering payment of deficit of stamp duty.

7 It is worth to observe here that in the order impugned, the authority has in categorical terms, recorded a finding that the date which is relied upon for the purpose of calculation of deficit stamp duty is of Development Agreement and not deed of exchange.

8 As such, what is noticed from the order impugned is, the basis which is relied upon for the show cause notice has been adjudicated

in favour of petitioner whereas on altogether different cause, the deficit stamp duty is saddled, for which admittedly no show cause notice is issued to the petitioner.

9 That being so, in my opinion, case for showing indulgence is made out.

10 Writ Petition as such stands allowed in terms of prayer clause (b).

11 However, this will not preclude respondent-authority from issuing fresh show cause notice to the petitioner.

[NITIN W. SAMBRE, J.]