IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 672 OF 2012

M/s.Morya Ace & Ors. ...Petitioners
vs
The State of Maharashtra & Ors. ...Respondents

Mr.Rohan Kelkar with Piyush Pande, Eram Quraishi and Zahra Baldiwala I/b. Kartikeya and Associates for Petitioners.
Mr.Kedar Dighe, AGP for Respondent Nos.1 to 3.

CORAM : S.C.GUPTE, J.

DATE : 11 APRIL 2019

<u>P.C.</u> :

Heard learned Counsel for the Petitioner and learned AGP for State.

2 The controversy in the present petition concerns remission of stamp duty chargeable *inter alia* under Article 25 of Schedule I appended to the Bombay Stamp Act (now known as "Maharashtra Stamp Act") ("Act").

3 We are concerned in the present petition with two instruments, one described as a "Joint Development Agreement" executed on 19 March 2005 and the other executed on 2 June 2008 and described as a "Supplemental Agreement". Both instruments are executed for the purpose of development of a property as a slum rehabilitation scheme proposed under DCR 33(10) as per Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act. The property is within

Mumbai and Mumbai Suburban Division. The property was originally owned by MHADA (Respondent No.9). The slum rehabilitation scheme on this property was proposed in the year 2004 after formation of proposed co-operative housing society by the occupants of the property. By a development agreement dated 21 March 2004, the occupants engaged Respondent No.4 as a developer for implementation of the scheme. At that date, under a State Government order issued under Section 9(a) of the Stamp Act, a remission was given for stamp duty chargeable under Article 25 of Schedule I appended to the Stamp Act on instruments executed for the purpose of rehabilitation of slums as per the Slum Act within Mumbai district and Mumbai Suburban District. The stamp duty payable was Rs.100/-. The stamp duty on the development agreement of 21 March 2004 was, accordingly, levied. Sometime in 2005, Respondent No.4 approached the Petitioners herein for assistance in carrying out the scheme. On or abut 19 March 2005, the parties, accordingly, entered into a Joint Development Agreement reaffirming the original development agreement recording that the first Petitioner would now be responsible for development on payment of costs. In consideration of the Petitioner firm incurring such costs, the Joint Development Agreement provided for its entitlement to 82% share in the free sale component of the scheme. The Joint Development Agreement was also stamped according to the remission order referred to above and was duly registered with the Sub-Registrar of Assurances. Sometime in May 2006, a Letter of Intent was issued by Slum Rehabilitation Authority for the rehabilitation scheme to the first Petitioner. The tripartite agreement was submitted to adjudication and was issued a certificate of chargeability of stamp duty of Rs.100/- in accordance with the remission order. The stamp duty was paid and the agreement was duly registered. Sometime later, i.e. on or about 2 June 2008, Petitioner No.1 and Respondent No.4 executed a Supplemental Agreement purportedly in view of difficulties faced by the latter in participating in the joint development of the property. The settlement agreement accordingly sought to substitute the clauses pertaining to the respective shares of the parties to the original Joint Development Agreement. The Supplemental Agreement, in particular, provided for Respondent No.4's exit from the scheme and benefits thereunder subject to payment by Petitioner No.1 of a sum of Rs.5.75 crores for costs already incurred. The Supplemental Agreement was also stamped at Rs.100/-. (Though inadvertently two stamp papers of Rs.100 each were used.) On 10 July 2008, the Collector of Stamps (Respondent No.3 herein) impounded the Supplemental Agreement and initiated evasion case contending that it was a development agreement chargeable to duty under Article 5(g-a) of Schedule I appended to the Stamp Act and demanding a duty in the sum of Rs.5,84,990/- and a penalty of Rs.23,400/-. This stamp duty and penalty was paid by Petitioner No.1, according to it, under duress, whereupon a certificate was issued under Section 41 of the Stamp Act and the Supplemental Agreement was duly registered. Sometime later, i.e. about three years of registration of the Supplemental Agreement, i.e. on or about 4 May 2011, an audit objection was raised in respect of stamp duty paid on the Supplemental Agreement and on the basis of such objection, provisions of Section 53A of the Stamp Act were invoked by the Controller of Stamps suo motu demanding an additional sum of Rs.54,18,521/- towards stamp duty and penalty on the Supplemental Agreement. The Petitioners objected to the demand citing *inter alia* the remission order of the State under Section 9(a) referred to above. This order and the demand notices pursuant thereto are the subject matter of the present petition.

4 Section 9 of the Stamp Act reserves power unto the State Government to reduce or remit, whether prospectively or retrospectively, in the whole or any part of the State, duties with which any instruments or any particular class of instruments, etc. are chargeable. The State Government has, in the present case, issued such order, which is published in the Official Gazette. The order is of 19 December 1997. By this order, in exercise of powers conferred by clause (a) of Section 9 of the Stamp Act, the Government of Maharashtra, having satisfied that it was necessary to do so in public interest, has reduced stamp duty payable under Article 5(g-a), 25 and 26 in Schedule I appended to the Stamp Act on the instruments executed for the purpose of rehabilitation of slum dwellers as per any slum rehabilitation scheme under the Slum Act in respect of properties situated within the city of Mumbai and Mumbai Suburban District. There is no doubt, and indeed it is not disputed by learned AGP, that the particular property, which is the subject matter of controversy in the present petition, is situated within the city of Mumbai and Mumbai Suburban District. There is also no dispute that the instrument, with which we are concerned in the present case, had been executed for the purpose of rehabilitation of slum dwellers. The instrument was essentially in connection with a slum rehabilitation scheme sanctioned by Slum Rehabilitation Authority, which was then under implementation. The instrument set out the terms of arrangement between the developers for participating in the slum rehabilitation scheme. The Supplemental Agreement between Petitioner No.1 and Respondent No.4 herein does not contain any transaction different from the Joint Development Agreement executed between them

for the purpose of implementing the slum rehabilitation scheme. The State has accepted the Petitioner's case that the original Joint Development Agreement between Petitioner No.1 and Respondent No.4 was entitled to remission of stamp duty under the order of 19 December 1997. The Supplemental Agreement merely modified a couple of terms of that development agreement and is no way different in nature from the original development agreement. The impugned order of the Controller under Section 53A is on the basis that the agreement amounts to a 'release' as defined in Article 52 of the Stamp Act. Even a release under Article 52 is chargeable to duty provided under Article 25. If there is remission in duty payable under Article 25 for any particular instrument, that remission must apply even to instruments of release which are chargeable to duty under Article 25. If it is termed or to be treated as an instrument of release covered under Article 52, so long it is an instrument executed for the purpose of rehabilitation of slum dwellers as per the slum rehabilitation scheme under the Slum Act in respect of a property situated within the city of Mumbai and Mumbai Suburban District on which the stamp duty is chargeable as per Article 5(g-a) or 25 of Schedule I appended to the Stamp Act, even a release, for that matter, which is to be charged according to Article 25 in the present case, is entitled to remission under the order of 19 December 1997.

5 The audit objection as well as the order of the controller under Article 53A based on such objection, accordingly, cannot be sustained. The Controller of Stamps has committed a serious error of jurisdiction and authority in passing the impugned order and it deserves to be interfered with in the writ jurisdiction of this court.

6 Accordingly, Rule is made absolute and the petition is allowed by quashing and setting aside the impugned order dated 20 August 2011 passed by the Chief Controlling Revenue Authority, Maharashtra State.

7 In view of this order, the deposit made by the Petitioners of 50% stamp duty claimed by way of demand notice towards short levy, in terms of the interim order passed by this court on 10 May 2012, shall be refunded to the Petitioners along with accrued interest, if any.

(S.C. GUPTE, J.)