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

WRIT PETITION NO. 2026 OF 2015
AND
WRIT PETITION NO. 2443 OF 2015

M/s.Good Value Financial Services Pvt.Ltd. & Anr. ...Petitioners
vs
The Chief Controlling Revenue Authority & Anr. ...Respondents

Mr.Rahul Theckedath with Sheeja John I/b. M.P. Savla and Co. for Petitioners.
Ms.Geeta Shastri, Addl. Govt.Pleader for Respondents.

CORAM : S.C.GUPTE, J.

DATE : 11 APRIL 2019

P.C. :

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

2 This petition challenges an order passed by the Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune ("Controller") under Section 47 of Maharashtra Stamp Act ("Stamp Act").

3 By an agreement dated 31 August 2010 executed between Satra Properties (India) Ltd. and Petitioner No.1 herein, the latter agreed to purchase an immovable property from the former. It is not in dispute that by reason of refusal to perform the agreement on the part of Satra Properties, the instrument executed for transfer of property failed in its intended purpose. Accordingly, the parties, namely, Satra Properties and

Petitioner No.1 herein, executed a deed of cancellation dated 22 September 2010. It is the case of the Petitioners that in the premises, by an application dated 22 December 2010, Petitioner No.2 filing such application on behalf of Petitioner No.1, allowance for spoiled stamp including refund of stamp duty was sought by the Petitioners. The Controller, by his impugned order dated 2 December 2014, dismissed the revision application *inter alia* on the ground that the refund application was submitted by one Jadavji Lalji Shah (Petitioner No.2) in his personal capacity, whilst the original stamp for the cancelled instrument was purchased in the name of Good Value Financial Services Pvt.Ltd. (Petitioner No.1) and the refund application had the signature of one Vipul Chheda and not Jadavji Lalji Shah. The impugned order also says that the application was not filed within six months and thus, the application was beyond time.

4 The Respondent State has produced copies of the original application filed by Petitioner No.2 as well as certified true copy of a resolution passed in connection therewith by Petitioner No.1. The application together with the resolution makes it clear that it was filed on behalf of Petitioner No.1. Petitioner No.2 is a director of Petitioner No.1. In the application, the name of Petitioner No.1 was disclosed as the party purchasing the stamp. The application was signed admittedly by Vipul Chheda. The resolution of Petitioner No.1 accompanying the application clearly states that the original purchase of the property under the instrument of 31 August 2010 was by Petitioner No.1 and it was the Petitioner No.1 which had decided not to purchase the office and hence, requested for execution of the deed of cancellation and executed a deed of cancellation for the same and that Vipul Chheda was one of the

representatives, who had been authorised to sign the deed of cancellation and apply for refund of the stamp duty and for that purpose to sign the necessary affidavit/declaration/agreement and other documents in writing and represent the company before the Collector of Stamp and collect refund of stamp duty. The resolution provided for forwarding of the resolution to the concerned authorities under the signature of any of the following directors of the company, namely, Jadavji Lalji Shah, Mehul Jadavji Shah, Hemang Jadavji Shah. In the face of these documents, it is not possible to believe that Jadavji Lalji Shah, Petitioner No.2 herein, filed the application in his personal capacity. The application disclosed the name of Petitioner No.1 as the person who had purchased the stamp. The application made it clear that it was Petitioner No.1, who had executed the deed of cancellation and was seeking refund of the stamp duty paid on the original instrument of sale. Jadavji Lalji Shah, Petitioner No.2 herein, had the requisite authority to forward the resolution to the stamp authorities. It is the case of the Controller himself that originally it was Jadavji Lalji Shah, who on behalf of Petitioner No.1 with his address same as the address given in the application for refund of stamp duty, had done original franking for the sum of Rs.12,49,050/- from Bank of India, Malad Branch, in the name of Petitioner No.1 company and that it was Jadavji Lalji Shah, who made the subject application for refund of stamp duty on behalf of Petitioner No.1. The application was also accompanied by an affidavit executed by Vipul Chheda setting out the facts referred to above. It was made clear in the affidavit that it was made to put on record that the reason mentioned in the document was the only reason for cancellation and Petitioner No.1 was entitled to take refund of stamp duty as applied under the subject refund application. This puts paid to any controversy as regards the person applying for refund of stamp duty. The person applying for refund was Petitioner No.1 though the application was made on its behalf by Jadavji Lalji Shah. The objection of Controller on the ground that the application was made by Jadavji Lalji Shah in his personal capacity, thus, does not stand scrutiny.

5 Even as regards the alleged objection to the maintainability of the refund application on account of the bar of limitation, it is clear that the case is under Section 48 of the Stamp Act. In clause (1) of Section 48 if the case is covered by clause c(5) of Section 47, that is to say, if the stamp is used for an instrument executed by any party and the intended purpose of the instrument fails by reason of refusal by any person to act under the same, the period of limitation is six months from the date of the instrument and not within six months from the date of purchase of stamp based on the residuary clause. In the present case, the instrument was executed on 31 August 2010 and the application for refund on account of failure under clause c(5) of Section 47 was made on 22 December 2010, i.e. within six months of the instrument; the application was, thus, within time and could not have been rejected on account of the bar of limitation.

6 The Controller of Stamps has, accordingly, made serious errors of law whilst exercising his jurisdiction under Sections 47 and 48 of the Stamp Act and the impugned order cannot be sustained.

7 Rule is, accordingly, made absolute and the petition is allowed by quashing and setting aside the impugned order of the Chief Controlling Revenue Authority dated 2 December 2014. The Respondents are directed

to refund the stamp duty of Rs.12,49,050/- paid on the instrument of sale agreement dated 31 August 2010 to Petitioner No.1.

8 The companion petition, namely, Writ Petition No.2443 of 2015, involves the same issue as discussed above in Writ Petition No.2026 of 2015. As in that case, even here, the agreement for sale between Petitioner No.1 and Satra Properties was subsequently cancelled for the same reason and after executing a deed of cancellation, an application was made for refund of stamp duty paid on the original instrument. The application was rejected on the same ground as noted in connection with that Writ Petition No.2026 of 2015 and the submission of both parties on the legality of the impugned order are also the same. Accordingly, for the same reasons as are discussed in Writ Petition No. 2026 of 2015, Rule is made absolute and Writ Petition No.2443 of 2015 is allowed by quashing and setting aside the impugned order of the Chief Controlling Revenue Authority passed on 2 December 2014. The Respondents are directed to refund the stamp duty of Rs.14,22,850/- to Petitioner No.1.

9 Refunds ordered herein to be made within six weeks from the date of this order. If these amounts are not paid within six weeks, the State shall pay interest calculated at the rate of 10% per annum on the amounts from today's date until payment or realisation.

(S.C. GUPTE, J.)