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

WRIT PETITION NO. 1721 OF 2019

Samir Narain Bhojwani .. Petitioner
Vs.
State of Maharashtra
& Ors. .. Respondents

Mr.P.S. Dani, Senior Advocate a/w. Mr. D.V. Deokar, Mr. Pinakin Modi i/b M/s. Parimal K. Shroff and Co. for petitioner.

Mr.Himanshu B. Takke, AGP a/w. Mr. Hemant Haryan, AGP for respondent Nos.1 to 3-State.

CORAM : N.J. JAMADAR, J.
DATE : 12TH DECEMBER 2019

P.C.

1. Heard the learned counsel for the parties.

2. This petition assails an order passed by the learned Additional Controller of Stamps on 4th April 2019, whereby, the appeal preferred by the petitioner under section 32-B of the Maharashtra Stamps Act, 1958 came to be dismissed. This is the second round of litigation before this Court.

3. Initially, the Collector of Stamps, Mumbai had adjudicated the stamp duty in respect of the conveyance executed on 20th February

2016. The said order was challenged by the petitioner in the appeal before the Additional Commissioner of Stamps, being Appeal No. GEO/32-B/33/2017. By judgment and order dated 1st July 2017, the said appeal came to be dismissed and the appellate authority concurred with the adjudication made by the Collector of Stamps. The said order was challenged by the petitioner in Writ Petition No. 2379 of 2017.

4. A Division Bench of this Court, by order dated 16th April 2018, remanded the matter back to the authority for a fresh consideration, after considering petitioner's contention. The Collector of Stamps was directed to adjudicate the stamp-duty in respect of the subject transaction after hearing all concerned independently on its own merits. The order dated 16th April 2018 reads as under :-

> *"1 Both respondent Nos.2 and 3 while fixing the stamp-duty did not consider the petitioner's contentions. Some justification for the same is given in the affidavit-in-reply filed on their behalf. However, it is a settled position in law that the reasons cannot be supplied by tendering affidavit after filing the petition. In the above circumstances, Ms. Chavan, learned AGP fairly stated that the impugned order be set- aside and the matter be remanded to the respondent No.3- Collector of Stamps, Andheri, for reconsideration.*
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> *2. In view of the concession given by the learned AGP, we allow the petition. Consequently, the impugned orders dated 2nd August, 2016 and 6th October, 2016 passed*

> *by the Collector of Stamps, and order dated 1st July, 2017 passed by the Additional Controller of Stamps, are quashed and set-aside and the matter is remanded back to the respondent No.3-Collector of Stamps, Andheri. The respondent No.3 shall adjudicate the stamp-duty in respect of the subject transaction after hearing all concerned independently on its own merits and in accordance with law as expeditiously as possible and preferably within a period of six weeks from the date of receipt of this order.”*

5. Though the petitioner was provided an opportunity of hearing, it is the contention of the petitioner that the order of this Court has not been complied with in its letter and spirit and the same order is passed by the appellate authority.

6. From the perusal of the order passed by the appellate authority, especially the reasons which weighed with the appellate authority, while passing the orders dated 1st July 2017 and 4th April 2019, it becomes evident that the reasons read the same. The only additional material which has been taken into account is the consideration of the original record and the order dated 8th January 2019 passed by the Collector of Stamps. It is the grievance of the petitioner that the petitioner had no opportunity to urge the points regarding consideration of the order dated 8th January 2019.

7. It appears that the authority has not decided the matter afresh on its merits in conformity with the directions of this Court by order dated 16th April 2018.

8. It would, therefore, be in the fitness of things to direct the appellate authority to afresh decide Appeal No. GSO/32-B/43/2018, after providing an effective opportunity of hearing to all concerned and dealing with the contentions to be raised by the petitioner. Hence, the petition deserves to be allowed to this extent.

9. Hence, the following order :

(i) The impugned order dated 4th April 2019 passed by the Additional Controller of Stamps, Mumbai stands quashed and set aside.

(ii) The Appeal bearing No. GSO/32-B/43/2018 stands remanded back to the respondent No.2-The Controller of Stamps, Mumbai for a fresh decision.

(iii) The respondent No.2 shall decide the appeal in respect of the subject transaction, after hearing all concerned independently and after dealing with the contentions to be raised by the petitioner, on its own merits, and in accordance with law.

(iv) The appellate authority shall endevour to decide the appeal as expeditiously as possible, and preferably within a period of three months from the date of uploading this order.

10. The petition stands disposed of in the above terms.

[N.J. JAMADAR, J.]