IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2318 OF 2018
WITH
NOTICE OF MOTION NO.437 OF2018
IN
WRIT PETITION NO.2318 OF 2018
WITH
CHAMBER SUMMONS NO.231 OF 2018
IN
WRIT PETITION NO.2318 OF 2018

Meena Khetan ....Petitioner
vs
The Collector of Stamps And 4 Ors. ...Respondents
WITH
WRIT PETITION NO.2341 OF 2018

Vijay S. Khetan ....Petitioner
vs
The Collector of Stamps And 4 Ors. ...Respondents
WITH
WRIT PETITION NO.2342 OF 2018

Anushree Vijay Khetan ....Petitioner
vs
The Collector of Stamps And 4 Ors. ...Respondents
WITH
WRIT PETITION NO.2512 OF 2018

Anuj V. Khetan ....Petitioner
vs
The Collector of Stamps And 4 Ors. ...Respondents
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Mrs. Rajni Iyer, Senior Counsel, a/w. Mr. Deepak Chitnis, Ms. Sonali Dalvi and Mr. Yash Joglekar, i/b. M/s. Deepak Chitnis Chiparikar & Co., for the Petitioners in all perditions.

Mr. Kedar Dighe, AGP, for Respondent Nos. 1 to 3 in all petitions.

Mr. Vinod Joshi, a/w. Mrs. Lata Patne and Ms. Krutika Patil, i/b. Mr. Vinod Joshi, for Represented No.4 in all petitions.

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CORAM : S.C. GUPTE, J.

DATED: 4 APRIL 2019

P.C.:

WRIT PETITION NO.2318 OF 2018

. Heard learned Counsel for the Petitioner and learned AGP for the State. This writ petition challenges orders passed by Respondent No.2 on 24 July 2014 and 14 June 2018 and demand notices issued in pursuance thereof.

2. The subject matter of controversy concerns benefit of a notification issued by the State Government under Section 9(a) of the Maharashtra Stamp Act, 1958 (“Act”) on 12 June 2007. By this notification, 75% of stamp duty chargeable on instruments mentioned therein was remitted on a condition that such instrument was executed by an Information Technology Unit or a Bio-tech Unit for starting a new unit in an Information Technology Park or Bio-tech Park in Non-public Sector Group and Group B areas classified as such under a scheme framed by the Government, known as “Package Scheme of Incentives 2007”. For the purposes of this remission, “Information Technology Unit” or the “Bio-tech Unit” meant unit so certified by any 'Implementing Agency' specified under clause (2) of Package Scheme of Incentives 2007. Joint Director of Industries was the Implementing Agency in this case. The Petitioner, accordingly, obtained a certificate

from Joint Director of Industries. Based on this certificate, pursuant to an application for adjudication made by the Petitioner, benefit of remission of stamp duty was granted to the Petitioner by the stamp authorities. The Petitioner, accordingly, made payment of stamp duty and the instrument was registered. It appears that after about 4 years of payment of such stamp duty and registration of the document, Controller of Stamps *suo motu* initiated an enquiry under Section 53A of the Act, wherein the first impugned order dated 24 July 2014 was passed holding *inter alia* that the subject sale agreement was not eligible for remission and directing the Petitioner to pay a sum of Rs.12,13,200/- against short levy of stamp duty. The Petitioner challenged this order before a Division Bench of this Court in a writ petition. The Division Bench, by its order dated 29 June 2017, quashed the impugned order. The Division Bench, however, made it clear that in the event Respondent No.2 intended to proceed against the Petitioner by invoking the provisions of Section 53A of the Act, he should do so only after giving show cause notice and opportunity of hearing to the Petitioner. It is the grievance of the Petitioner that without any show cause notice and without giving any hearing, an order was passed by Respondent No.2 reinstating its order originally passed, holding the sale agreement executed by the Petitioner to be deficit in stamp duty in the sum of Rs.12,13,200/- and demanding such deficit duty along with penalty of Rs.22,56,552/-. This order (i.e. the second impugned order dated 14 June 2018) has been challenged in the present petition.

3. It is not in dispute that the order of 14 June 2018 was passed without issuing any show cause notice. What is, however,

submitted by the State is that the Petitioner knew the State's case against her and could well have shown cause. There is no merit in the contention. The Division Bench order of 29 June 2017 had quashed the order of Respondent No.2 reserving liberty unto him to take action under Section 53A of the Act against the Petitioner only after issuing a show cause notice and giving an opportunity of hearing to the Petitioner. After this order was passed, the only notice issued by Respondent No.2 to the Petitioner was a notice of hearing. It simply communicated the date of hearing to the Petitioner. There is nothing in this notice or any further communication issued by Respondent No.2 to the Petitioner to suggest any proposed order or basis of action under Section 53A of the Act.

4. Secondly, there is no hearing granted pursuant to the order of the Division Bench. The notice of hearing was issued on 16 May 2018, calling upon the Petitioner to show cause at a hearing to be held on 22 May 2018. In response, the Petitioner sought time on the ground that it was a Court vacation and its Advocate was out of the Country. It appears that the date of hearing was deferred from 22 May 2018 to 29 May 2018. One is at a loss to know why there was such crying urgency for fixing a date of hearing, particularly, considering that the Division Bench order reserving liberty was passed as far back as on 29 June 2017, but the first notice of hearing was given on 16 May 2018. Be that as it may, it is the Petitioner's averred case that the notice of the hearing rescheduled on 29 May 2018 was received by her after the date of hearing, i.e. on 2 June 2018. The State is unable to show that the notice was received by the Petitioner any time before. Without any hearing the authority appears to have proceeded and passed the impugned order. This was clearly

impermissible having regard to the Division Bench order of 29 July 2017.

5. Effectively, therefore, the record of the case indicates that the impugned order was passed without giving any show cause notice to the Petitioner and without according her any opportunity of hearing. Not only has there been a fragrant breach of principles of natural justice, but a defiance of the order passed by Division Bench on 29 June 2017. This cannot be countenanced.

6. The petition is accordingly allowed and Rule is made absolute by quashing and setting aside the impugned order dated 14 June 2018 and the demand notices issued in pursuance thereof on 18 June 2018 and 10 June 2018. In case the Respondent State has taken any coercive step in pursuance of the order of 14 June 2018, or demand notices issued in pursuance thereof, the same shall be vacated and undone forthwith.

WRIT PETITION NO.2341 OF 2018
WITH
WRIT PETITION NO.2342 OF 2018
WITH
WRIT PETITION NO.2512 OF 2018

7. These petitions raise common issues and are practically on the same footing as the petition decided above. The response of the State to these petitions is also the same. For the reasons stated in the order passed on Writ Petition No.2318 of 2018 as above, even these petitions are allowed and the orders and demand notices impugned therein are quashed and set aside. As in case of Writ Petition No.2318 of

2018, if the Respondent State has taken any coercive step in pursuance of the orders and demand notices set aside as above, the same shall be vacated and undone forthwith.

8. In view of the disposal of the writ petitions, the miscellaneous proceedings taken out therein do not survive and, accordingly, Notice of Motion No.437 of 2018 is also disposed of.

(S.C. GUPTE, J.)