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

WRIT PETITION NO. 281 OF 2019

Bano Saiyed Parwaz ..... Petitioner.

Vs.

Chief Controlling Revenue Authority & Ors. ..... Respondents.

......
Mr. Ashok Pande for Petitioner.
Mr. Kedar Dighe, AGP for the State.
......

CORAM : K. K. TATED, J
DATE : AUGUST 2, 2019

P.C.

1 Heard Learned Counsel for the parties.

2 By this Writ Petition, under Article 226 of the Constitution of India, petitioner is seeking to set aside the order dated 9.6.2015 in Stamp Refund Case No.78/2015 and order dated 25.02.2016 in Appeal Case No.153/2015 and direction against the Respondent to refund the stamp duty of Rs.25,34,000/- purchased by them.

Few facts of the matter are as under:

3 The petitioner had decided to purchase the property with structure having occupied by 27 tenants bearing C.T.S. No.340.340/1 to 340/14 of Kurla -1 Division situated lying and being Fitwalla Cottage, Fitwalla Compound Bazaar Ward, Old Agra Road, Kurla (West), Mumbai 400 070 from the Vendor by name, Mohammed Hanif Ahmed Fitwala and to that effect, they prepared deed of conveyance between both the parties. The said conveyance had gone for adjudication to Respondent no.1 on 7.5.2014 for payment of stamp duty and Respondent no.1 opined that the petitioner is liable to pay stamp duty of Rs.25,34,350 (Twenty Five Lakhs Thirty Four Thousand Three Hundred Fifty Only) and accordingly, petitioner paid a sum of Rs.25,34,400/- (Rupees Twenty Five Lakhs Thirty Four Thousand Four Hundred Only) to Respondent no.1 by way of stamp duty for the purpose of registration of said conveyance deed. Petitioner made payment of the said stamp duty to Respondent no.1 on 13.5.2014.

4 Though the stamp duty was paid by petitioner to Respondent no.1 on 13.5.2014, said deed of conveyance was not lodged for registration as the vendor of the petitioner, by playing fraud on the petitioner had earlier sold the said property to third party in 1992. Before executing the said conveyance deed, petitioner gave public notice but nobody objected to the transaction. In view of these facts, petitioner decided to cancel the said transaction. Hence, he tried to contact the said vendor but the said vendor was not available. Hence, petitioner also filed complaint with the police authority.

5. The Learned Counsel Mr. Pande appearing on behalf of the Petitioner submits that, the Petitioner purchased the stamps for execution of document. He submits that though the stamps were used by them on conveyance dated 6th May, 2014, the Petitioner decided not to proceed with the said conveyance and cancel the same. Petitioner immediately applied for refund of the said amount on 22nd October, 2014 on-line as per Section 48 of the Maharashtra Stamp Act (Hereinafter referred to as the said Act). He submits that, he tried to contact the seller of the said property to execute the cancellation deed, which is required to be placed on record for refund of the stamp duty, but seller was not available for some time. Hence, the Petitioner filed the complaint with the Police Authority. He submits that, thereafter, the seller executed the cancellation deed dated 13th November, 2014. Thereafter, the Petitioner placed on record, before the Authority, cancellation deed for refund of stamp papers amount. He submits that the Authority rejected their case, only on the ground that the application filed by them was beyond the limitation period as per Section 48 of the said Act.

6. The Learned Counsel for the Petitioner submits that actually, the Petitioner has filed the application online for refund of stamp duty on 22nd October, 2014 and, thereafter, filed the written application on 12th December, 2014 alongwith the documents. He submits that the application filed by the Petitioner on 22nd October, 2014 for refund was within time. These facts were not considered by the authority, hence, the order passed by the authority in the Stamp Refund Case as well as in an Appeal is

required to be set aside.

7. On the other hand, the Learned AGP appearing on behalf of the Respondent vehemently opposed the present Writ Petition. He filed Affidavit in reply to oppose the Petition. The Learned AGP submits that in the present proceeding though the Petitioner filed application for refund of stamp duty on 22nd October, 2014, but actually the cancellation deed executed between the Petitioner and the seller of the said property on 13th November, 2018 i.e. beyond the period of limitation as prescribed under Section 48 of the said Act. He submits that as per Section 48 of the said Act, the application for refund required to be filed within six months from the date of purchase of stamp duty, after cancellation of those documents. He submits that in the present proceedings cancellation deed was executed by the parties on 13th November, 2014, whereas the Petitioner filed application for refund of stamp duty on 22nd October, 2014. This shows that before execution of cancellation document, Petitioner filed application for refund of stamp duty. Same is not maintained in Law. In the present proceeding, the last date for applying the refund as per Section 48 of the said Act was 12th November, 2014 and thereafter, the Petitioner executed the cancellation deed dated 13th November, 2014. On this ground, the application filed by the Petitioner was beyond the period of limitation, therefore, there is no question of entertaining the present Writ Petition.

8. I Heard both sides at length. Admittedly, as per Section 48 of the said Act, the application for refund of stamp duty is

required to be made within six months from the date of purchase of the stamp duty. In the present proceedings, the document was cancelled by the Petitioner on 13th November, 2014 whereas, she has filed the application for refund on 22nd October, 2014 itself. This clearly shows that on the date of filing of the application for refund, the document was not cancelled by the Petitioner. Therefore, that application itself was not maintainable in Law.

9. Though the impugned order was passed by the authority on 9.6.2015 in Stamp Refund Case No.78 of 2015 and order dated 25.2.2016 in Appeal Case No.153/2015, the present Writ Petition filed by the petitioner on 19.12.2018. On the ground of latches, petition is required to be dismissed.

10. Therefore, the order passed by the Authority does not require any interference in the present Petition. Hence, following order:

a. Writ Petition stands rejected.

b. No order as to costs.

(K.K.TATED, J.)