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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3443 OF 2018

Sunrich Realtors Pvt. Ltd.)
A company incorporated under)
Companies Act, 1956 having its)
registered office at 61/62, Gaya)
Building, 4th Floor, 109, Yusuf)
Meherali Road, Masjid,)
Mumbai 400 003. ... Petitioner

Vs.

1. The State of Maharashtra)
Through the Government Pleader,
High Court, Bombay.)
2. The Chief Controlling Revenue)
Authority, Maharashtra State)
Pune, office of the Inspector)
General of Registration and)
Controller of Stamps,)
Maharashtra State, Pune,)
Ground Floor, New Administrative
Building, Pune 411 001.)
3. Collector of Stamps, Mumbai)
Old Custom House, 3rd Floor,)
Fort, Mumbai 400 001 ... Respondents

Mr. Vinod Pandey i/b S. U. Pandey, for the Petitioner.

Ms. M. S. Bane, AGP for Respondent Nos. 1 to 3.

CORAM : C. V. BHADANG, J.

RESERVED FOR JUDGMENT : JANUARY 3, 2020

JUDGMENT PRONOUNCED ON : JANUARY 6, 2020

JUDGMENT :

1. Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service of notice. By consent of parties, petition is taken up for final hearing.

2. The challenge in this petition is to the orders dated 17th November, 2014 and 23rd October, 2015 passed by the second Respondent refusing to grant refund of stamp duty to the Petitioner on account of cancellation of the document.

3. The brief facts are that Starlight Systems (I) LLP having its registered office at Bandra-Kurla Complex at Mumbai (Developer) had entered into an agreement for sale of a Tenement No. 702 of "B" Wing with the Petitioner (purchaser) for a consideration of Rs. 30,42,45,360/-. Accordingly, an agreement for sale was registered at Sr. No. 5191 of 2010 with the Sub-Registrar at Andheri, Mumbai. It appears that the disputes and differences arose between the parties as to the sale of the said tenement and eventually, the Petitioner agreed to purchase a smaller unit being Tenement No. 303, "B" Wing for a consideration of Rs. 18,97,53,652/-.

Accordingly, a fresh agreement of sale was registered at Sr. No.10249 of 2012. A separate document of cancellation of the earlier agreement for sale was registered at Sr. 10250 of 2012. It is a matter of record that insofar as the first agreement of sell (Sr. No. 5191/2010) is concerned, the Petitioner had obtained a total stamp duty of Rs. 1,51,94,900/- on 4th June, 2010. The record discloses that an amount of Rs. 9,28,59,640/- which the Petitioner had paid towards the first transaction was agreed to be adjusted towards consideration of the smaller unit i.e. Tenement No. 303 of "B" Wing. It is further a matter of record that the Petitioner had paid a stamp duty of Rs. 94,87,700/- on the second agreement (Sr. No. 10249/2012).

4. It is in these circumstances, that the Petitioner approached the second Respondent with an application dated 16th July, 2014 for a refund of the stamp duty paid for the initial transaction in respect of first agreement of sale i.e. Sr. No. 5191/2010.

5. The second Respondent by an order dated 17th November, 2014 refused to grant the refund on the ground

that the case does not fall within the ambit of the proviso to S.48(1) of the Maharashtra Stamp Act ("Act" for short).

6. It appears that the Petitioner challenged the said order in an appeal under S. 53(1A) of the said Act, which has been dismissed by the second Respondent on 23rd October, 2015, as not maintainable. Being aggrieved, this petition is filed.

7. I have heard the learned counsel for the Petitioner and the learned AGP for the Respondents. Perused record.

8. It is submitted by the learned counsel for the Petitioner that the reason articulated by the second Respondent for refusing to grant refund is not justified. It is submitted that the reasons are self-contradictory and self-defeating, inasmuch as the second Respondent has observed that particulars of the alternate smaller premises to be purchased are not given. However, in para 7 of the impugned order has noted that the smaller premises are bearing Tenement No. 303 of "B" Wing, which are agreed to be purchased for a consideration of Rs. 18,97,53,632/- and the Petitioner has also paid the necessary stamp duty on the

same. It is thus submitted that second Respondent was not justified in refusing to grant the refund, particularly when the second Respondent has come to the conclusion that the application for refund was filed within time.

9. Learned AGP has supported the impugned order. It is submitted that the application does not fall within the scope of S. 47(1)(c)(5) of the Act. Learned AGP has referred to the affidavit-in-reply filed by Mr. Dadarao Datkar, Collector of Stamps, Mumbai in order to point out that the Petitioner has failed to demonstrate that the refund is admissible under S. 47 read with S. 48 of the said Act. It is submitted that the fact that there was amicable settlement between the parties in which it was decided to cancel the earlier transaction is not a valid reason for grant of the refund. In the submission of the learned AGP, the Petitioners have failed to demonstrate that the purpose and object of the execution of the first document has not been fulfilled and / or materialised which is *sine qua non* for grant of such refund.

10. At the outset, it is necessary to note that no fault can be found with the order dated 23rd October, 2015 as the

same authority was not competent to hear the appeal. Therefore, the challenge in the petition is only being examined with reference to the order dated 17th November, 2014. This is just to put the record straight. I have carefully considered the rival submissions of the parties.

11. It is a matter of record that vide agreement of sale dated 4.6.2010, the Petitioner had agreed to purchase a Tenement No. 702 of "B" Wing for a consideration of Rs.30 crores and odd and the said document was registered at Sr. 5191/2010 and a stamp duty of Rs. 1,51,191,900/- was paid thereon. It is further a matter of record that vide document registered at Sr. No. 10250 / 2010, the aforesaid agreement of sale was cancelled and the amount of Rs. 9,28,59,640/- which the Petitioner had paid was adjusted towards the sell of a smaller unit. There is a third document registered at Sr. No. 10249 / 2012 by which the Petitioner had agreed to purchase Tenement No. 303 of "B" Wing for Rs. 18 crores and odd on which full stamp duty of Rs. 94,87,700/- is paid on 3rd December, 2012 and the said document *inter alia* stipulates vide clause 4(i) that the amount of Rs. 9,28,59,640/- is paid prior to the execution of the agreement. It can thus clearly be

seen that the said amount paid under the first agreement has been adjusted in the second agreement for the smaller unit.

12. The second Respondent has refused to grant the refund on the ground that description of the smaller unit is not mentioned in the deed of cancellation which is an attempt to evade the stamp duty by suppressing the material facts. Secondly, it has been found that the deed of cancellation at Sr. 10250 / 2012 is executed subsequent to the second agreement of sale in respect of the smaller unit, and therefore, it cannot be treated as a new unit.

13. In my considered view, the reasoning as articulated by the second Respondent cannot be accepted. It is necessary to note that second Respondent has found that the application is filed within time as per the proviso to sub-section (1) of Section 48 of the said Act. However, he has refused to allow the refund on the ground that it is not conclusively established that the earlier agreement of sale has been cancelled. In my considered view, the deed of cancellation at Sr. No. 10250 / 2012 and the second agreement of sale at Sr. 10249 / 2012 clearly establish that first agreement of sale of the year 2010

at Sr. 5191 / 2010 has been cancelled and the case would be governed by S. 47(c)(5) of the said Act.

14. Although S. 48 only provides for limitation for an application under S. 47 to be made, the proviso to sub-section (1) of S. 48 prior to its amendment (by Mah. Act No. 20 of 2015 with effect from 24.4.2015), which is relevant for the purpose reads thus:

“Provided that where an Agreement to sell immovable property, on which stamp duty is paid under Article 25 of the Schedule I, is presented for registration under the provisions of the Registration Act, 1908 and if the seller refuses to deliver possession of the immovable property which is the subject matter of such agreement the application may be made within two years of the date of the instrument or where such agreement is cancelled by a registered cancellation deed on the grounds of, dispute regarding the premises concerned, inadequate finance, financial dispute in terms of agreed consideration, or afterwards found to be illegal construction or suppression of any other material fact, the application may be made within two years from the date of such registered cancellation deed.”

15. It can, thus, clearly be seen that the proviso contemplates cancellation of agreement by registered cancellation deed where period of limitation is two years and

the second Respondent has indeed found that as per this proviso (which was applicable at the relevant time when the impugned order was passed), the application was made within time.

16. In the result, the petition is allowed. The impugned order dated 17th November, 2014 is hereby quashed and set aside. To that extent, Rule is accordingly made absolute in terms of prayer clauses (a) and (b) with no order as to costs.

Sd/-
C. V. BHADANG, J.

Vinayak Halemath

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