IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10547 OF 2017

D.B.R. Constructions Pvt. Ltd. ..Petitioner
V/s.
The Inspector General of Revenue
& The Chief Controller of Stamps & Ors. ..Respondents

Mr.Simil Purohit a/w Mr.Arshil A. Shah for the Petitioner.

Mr.Y.D. Patil, AGP for Respondent Nos.1 to 4-State.

CORAM : C.V. BHADANG, J.

ORDER RESERVED ON : 04/02/2020

ORDER PRONOUNCED ON : 06/02/2020

P.C.

1. The challenge in this petition is to the judgment and order dated 25th April 2017 passed by the respondent No.1 in Appeal No.72 of 2010. By the impugned order the respondent No.1, while dismissing the appeal filed by the petitioner has confirmed the order dated 27th September 2010 passed by the respondent No.2, Collector of Stamps, refusing to grant refund of a stamp duty of Rs.11,50,000/-.

2. The brief facts are that the petitioner had entered into an agreement (Styled as a Development Agreement) on 23rd June 2009 for which the petitioner had paid a stamp duty of Rs.11,50,000/-. The said agreement was registered in the office of the Joint Sub Registrar, Thane. According to the petitioner on account of the rise in prices in the real estate market, the transaction fell through and the owner refused to deliver possession of the said property. In such circumstances, by a deed of cancellation dated 24th December 2009, the agreement dated 23rd July 2009 was cancelled. The cancellation deed is also registered in the office of the Joint Sub Registrar, Thane.

3. The petitioner in such circumstances, filed an application before the respondent No.2 on 29th March 2010 seeking refund of the stamp duty. According to the petitioner the claim of refund is covered by Section 47(c)(5) of the Maharashtra Stamp Act ('Act' for short). It was the specific case made out that the agreement dated 23rd July 2009 was a 'development agreement-cum-agreement of sale' and therefore the limitation for claiming refund is governed by the proviso to Sub-Section 1 of Section 48 of the said act.

4. The respondent No.2 by an order dated 27th September 2010 refused to grant the refund on the ground that the application is not filed within six months. The respondent No.1 in appeal has confirmed the said order. Hence, this petition.

5. I have heard Mr.Purohit, the learned counsel for the petitioner and the learned Assistant Government Pleader for the respondents. Perused record.

6. The learned counsel for the petitioner strenuously urged that the agreement dated 23rd July 2009 is a development agreement-cum-agreement for sale. The learned counsel has taken me through the recitals of the said agreement and in particular the opening paragraph and paragraph No.16 in order to submit that it is an agreement for sale, as well, entered into by the owners in favour of the petitioner. It is pointed out that within five months of the said agreement the owners backed out and therefore the transaction could not be fructified as a result of which the deed of cancellation came to be executed on 24th December 2009. It is submitted that both these documents are registered documents. In the submission of the learned counsel for the petitioner, the authorities below, have misread the agreement to hold that it is a development agreement.

It is submitted that the authorities below, erred in holding that the limitation for claiming refund in such a case would be six months. In the submission of the learned counsel for the petitioner the matter is governed by the proviso to Sub-section 1 of Section 48 where the period for claiming refund is six months, from the date of the registration of the cancellation deed. It is pointed out that the application for refund in this case is filed within the period of six months from the registration of the cancellation deed and thus the refund could not have been disallowed on the ground of limitation. The learned counsel was at pains to points out that for the purpose of the stamp duty a 'development agreement' is at par, with a conveyance and attracts stamp duty as per Article 25 of Scheduled-I of the said Act and therefore the proviso was squarely applicable. It is submitted that the possession was never delivered as has been recorded in the cancellation deed. It is submitted that the document has to be read as a whole in order to gather intention of a parties to decide the nature of the agreement.

7. The learned Assistant Government Pleader has supported the impugned order. It is submitted that the recitals in the development agreement are clear and it is a development agreement and not an agreement for sale. It is submitted that even

otherwise the agreement recites that the possession was delivered and therefore the proviso to sub-Section 1 of Section 48 cannot apply. It is submitted that the matter would be governed by Section 48(3) of the Act.

8. I have given my anxious consideration to the rival circumstances and the submission made. The question is whether the limitation in this case would be governed by proviso to Sub-Section 1 of Section 48 as claimed on behalf of the petitioner which is six months, from the date of the registration of the cancellation deed or whether it would be governed by Sub-Section 3 of Section 48 where the period of limitation is six months from the date of purchase of the stamps. In the present case it is not in dispute that the stamps were purchased on 22nd July 2009 and the agreement which is styled as a 'development agreement', was executed on 23rd July 2009 and it has been cancelled on 24th December 2009. It is further a matter of record that the application for refund was made on 29th March 2010. Thus the relevant dates are not in dispute. The matter essentially turns upon the construction and interpretation of the document which is styled as a development agreement. It is now well settled that for the purpose of the construction/interpretation of a document, the document has to be

read as a whole, in order to gather the intention of the parties. For this purpose, with the assistance of the learned counsel for the parties, I have gone through the development agreement and it is not possible to accept that it is an agreement for sale as claimed on behalf of the petitioner.

9. The learned counsel for the petitioner in particular has referred to the following recitals :-

> *"AND WHEREAS after due deliberations and negotiations, the Owners have agreed to grant the rights of development of and construction on the said property, with a view ultimately of conveying the said property in favour of the Developers or their nominee/s and the Developers have agreed to purchase and acquire the rights of development of and construction on the said property, from the owners with a view ultimately of conveying the said property in favour of the developers or their nominee/s, on certain terms and conditions and for the consideration appearing hereinafter."*

And paragraph 16 which reads thus :-

> *"16. That the owners specifically and/expressly covenants with the Developers and bind themselves to execute a Deed of Conveyance and/or sale unto and to*

and in favour of the Society of the Purchasers of the premises of the proposed building by joining the person concerned as the necessary and/or confirming party, if required."

10. The contention is that the document envisage transfer of the property even in favour of the petitioner or its assignee. The said contention in my considered view cannot be accepted as paragraph 16 clearly records that the owners had bound themselves to execute a Deed of Conveyance and/or sale upto and to and in favour of the society of the purchasers of the premises of the proposed building. Even in a case where a particular document has some recitals to indicate that the developer was also entitled to get the property transferred in his own name, attempt will have to be made to see, as to what is the predominant purpose and the nature of the agreement. If the said agreement is perused in this context there cannot be any manner of dispute that in the first place it is a development agreement or at the highest it is predominately a development agreement and not agreement for sale.

Section 48 of the Act which is relevant for the purpose reads thus :

> ***48. Application for relief under section 47 when to be made.** -*
>
> *The application for relief under section 47 shall be made within the following period, that is to say.-*
>
> *(1) in the cases mentioned in clause (c) (5), within [six months] of the date of the instruments:*
>
> *[Provided that] where an Agreement to sale of immovable property, on which stamp duty is paid under Article 25 of the Schedule I, is registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation deed];*
>
> *[2] In the case when for unavoidable circumstances any instrument for which another instrument has been submitted cannot be given up to be cancelled, the application may be made within six months after the the date of execution of the substituted instrument.*
>
> *[3] In any other case, within [six months] from the date of purchase of stamps.*

11. It can thus be seen that where it is an agreement for sale the matter would be governed by the proviso to Sub-section 1, otherwise it would be governed by Sub-section 3 of Section 48. The proviso to Sub-section 1 of Section 48 requires four conditions to be satisfied (i) That the stamp duty on the agreement for sale of immovable property is paid under Article 25 of the Schedule-I

(ii) That the said agreement is registered under the provisions of the Registration Act (iii) Thereafter the agreement is cancelled also by a registered cancellation deed for whatsoever reasons and (iv) such cancellation is before taking possession of the property, which is subject matter of the agreement.

12. Even assuming for the sake of argument that the agreement dated 23rd July 2009 is an agreement for sale still the last mentioned condition that the agreement is cancelled before taking possession is not satisfied in this case. The learned counsel for the petitioner submitted that possession was never delivered. However the recitals in clause 8 of the said agreement are clear and they read thus :-

> *"8. That the owners have simultaneously upon execution hereof has handed over the vacant, open, and physical possession of the said property to the Developers, for implementing the Developmental Scheme and activities thereon."*

13. It can thus clearly be seen that the agreement on which the stamp duty is paid of which the refund is now sought, itself records that the possession was delivered. Merely because the cancellation deed records that the possession was not delivered

would not be decisive. The possibility of such a recital being made in the cancellation deed in order to bring the matter within the purview of the proviso to Sub-section 1 of Section 48, cannot be ruled out.

14. I have carefully gone through the orders passed by the authorities below and they do not suffer from any infirmity. At any rate, the view taken by the authorities below is a plausible view based on the material on record.

15. It is now well settled that the jurisdiction under Article 227 of the Constitution of India, is neither appellate nor revisional in nature. It is essentially supervisory. It is aimed at ensuring that the Courts and Tribunals subordinate to this Court, act within the bounds of their authority and the orders passed do not result into manifest injustice. I do not find that there is any irregularity much less material irregularities in the exercise of the jurisdiction and powers, by the authorities below, so as to require interference under Article 227 of the Constitution of India. The petition is without merit and it is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.