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D.
Pandit

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6650 OF 2017
ALONGWITH
CIVIL APPLICATION NO.236 OF 2019
IN
WRIT PETITION NO.6650 OF 2017

Meena Shyam Tulsani,
through the Constituted Attorney,
Mr. Shyam J. Tulsani,
residing at 16-B, Shivsagar,
Flat No.503, New Mhada Colony,
off Mahakali Caves Road,
Andheri (East), Mumbai 400093,
and now residing at 3556 12 ST
NW Edmonton, AB Postal Code
T6T0G2, Canada. **....Petitioner/applicant.**

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1. Collector of Stamps, Andheri,
M.M.R.D.A. Building, 1st Floor,
Bandra Kurla Complex, Bandra
(East), Mumbai 400051.

2. The Additional Controller of Stamps,
General Stamp Officer, Town Hall,
Fort, Mumbai 400001.

3. The Inspector General of Registration
and Controller of Stamps,
Ground Floor, Opposite Vidhan
Bhavan (Council Hall), New
Administrative Building, Pune 411001.

4. State of Maharashtra,
through Government Pleader,
High Court, Bombay. **....Respondents/non-applicants.**

Mr. Shreepad Murthy a/w Asim Naphade i/b S.J. Khera for the Petitioner/Applicant.
Mr. S.H. Kankal, AGP for Respondent Nos. 1 to 4.

CORAM: NITIN W. SAMBRE, J.

Judgment reserved on 30th July, 2019
Judgment pronounced on 30th June, 2020.

JUDGMENT:

1] Prayer for amendment made in Civil Application No.236 of 2019 taken out in the above Petition is allowed. Amendment be carried out forthwith. Civil Application is disposed of.

2] Rule. Rule is made returnable forthwith by consent.

3] This Petition is by purchaser of commercial property (office premises), questioning the order passed by Respondent No.1 on 23-08-2011 whereby the Petitioner is called upon to pay an amount of Rs 1,59,250/- towards deficit stamp duty and an amount of Rs 3,38,500/- towards penalty. The Petitioner, feeling aggrieved, approached the Additional Controller of Stamps, Bombay – Respondent No.2, in an appeal under Section 32-B of the Bombay Stamp Act, 1958. The said appeal also came to be dismissed vide order dated 05-07-2013, which is also impugned herein.

4] Against the aforesaid order passed by Respondent No.2, Petitioner preferred Misc Application before Respondent No.3 i.e. Chief Controlling Revenue Authority of Stamps, Pune pursuant to the provisions of Section 32-C of the Act, which came to be rejected on 08-02-2015 as not maintainable. As such, this Petition under Article 227 of the Constitution of India.

5] It is the case of the Petitioner that he has purchased office block admeasuring 351 sq.ft super built up, i.e. 256 sq.ft built up area vide notarized agreement. According to him, the said transaction was entered into way back in 1999 and a stamp paper accordingly was purchased which was franked for payment of stamp duty for Rs 64,000/-. According to the Petitioner, the said document was notarized on 15-12-2005.

6] It is the contention of the Petitioner that the building where the aforesaid office block is located, title certificate of the same was issued on 27-08-1994 whereas registration to the housing Society was granted on 29-03-2006. The Petitioner further claims that the building was in existence prior to 01-04-1965 and as such, the authorities below should have granted proportionate depreciation. The Petitioner further claims that the original agreement of sale which was having franking of Rs 64,000/-, was lost, resulting into lodging a complaint in the Police Station.

7] According to the Petitioner, the authority below i.e. Respondent No.1 has illegally and incorrectly adjudicated the said document dated 15-10-1999 without considering the payment of stamp duty of Rs 64,000/- and without granting depreciation of 40% while valuing the property as the property ought to have been considered to be located in Ward-A (West) -15. According to petitioner, the property should have been valued at Rs 1,675/- per sq.ft i.e. ready reckoner rate of the year 1990-2000. It is also claimed by the Petitioner that in the order of adjudication has incorrectly considered the date of construction of the building as that of 1981 and as such, the benefits are not appropriately passed on.

8] The Petitioner further invited attention of this Court to the information received under Right to Information Act on 28-01-2012 from the Office of the Additional Treasury Officer whereby it is informed that at Franking Serial No.281993 a document was franked for Rs 64,000/- in the name of the Petitioner and Receipt No.58 was issued for the same. The attention of this Court is also invited to the communication issued by the Stamp Inspector, Office of Stamp Collector, Mumbai intimating that on 06-10-1999 a document was franked for Rs 64,000/-, true copy of which was produced for verification, and the said amount of Rs 64,000/- of franking is paid against the Receipt No.58 as referred hereinabove.

9] As such, according to the Petitioner, the authority i.e. Respondent No.1 has failed to consider all the aforesaid documents, as same were not available when the order impugned was passed. The learned Counsel then would urge that even the appellate authority has failed to consider the same and urged that the order impugned is not sustainable and is liable to be quashed and set aside, as same is not in tune with the provisions of the Bombay Stamp Act.

10] While countering the aforesaid submissions, the learned Assistant Government Pleader Mr. Kankal appearing for Respondent Nos. 1 to 4 would support the order. According to him, this Court should be slow in causing interference on the factual matrix of the matter, particularly having regard to the scope of interference under Article 227 of the Constitution of India. Mr. Kankal then would urge that the orders impugned are well reasoned orders and that being so, the court should dismiss the Petition.

11] Considered rival submissions.

12] The Agreement in question came to be executed on 15-10-1999, wherein agreed consideration was Rs 6,40,000/- for a transfer of 365 sq.ft. of super built up area i.e. 256 of carpet area was agreed.

13] It appears that the authority has valued the said property at Rs 17,63,000/- and noticed that the amount of stamp duty which ought to have been paid as per prevailing ready reckoner rate was Rs 1,76,300/-. As such penalty of Rs 3,27,920/- with stamp duty of Rs.1,76,300/- was demanded from the petitioner.

14] It appears that the original document claimed to have been misplaced and the Petitioner further alleged that FIR was lodged with Borivali Police Station.

15] It is the claim of the Petitioner that in August 2006, the deed of confirmation was executed and the authority should have levied 5% of stamp duty instead of 10%.

16] It is required to be noted that the Petitioner was duty bound to produce the original document. However, the Petitioner subsequently gathered information under Right to Information Act and has demonstrated from the communication issued from the Office of the Principal Collector of Stamps on 28-01-2012 that the Petitioner has paid an amount of Rs 64,000/- towards franking against Receipt No.58 on 06-10-1999 i.e. the date of franking. He has also received information under Right to Information Act that the amount of Rs 64,000/- was paid against the document which was franked on 06-10-1999 for Rs 64,000/- vide Receipt No.58. As such, what is the effect of the aforesaid both communications has not been dealt with by the Respondents while passing the orders impugned.

17] Though rightly pointed so by the learned Assistant Government Pleader that the aforesaid two documents issued by the authorities of the State Government were not placed for consideration before Respondent Nos. 1 and 2, however this court cannot be oblivious to the fact that there exists an evidence on record particularly which is part of the record of the Government i.e. Respondents-authorities wherein Petitioner is prima facie able to demonstrate the payment of franking amount of Rs 64,000/- on 06-10-1999.

18] Whether such amount of Rs 64,000/- could be admitted and adjusted particularly in the wake of alleged admission given by the Government authorities under the communication of even date referred supra is required to be appreciated by the Respondent authorities. The findings to be recorded thereon are in the nature of findings of fact and that being so, this Court refrains itself from commenting on as to whether said evidence should be accepted in favour of the Petitioner at this juncture particularly in the light of the provisions of the statute. However it can be noticed that said issue is neither appropriately dealt with by the Respondent No.1 nor by the Appellate Authority i.e. Respondent No.2.

19] Apart from above, what is noticed in the orders impugned is, the Respondents-authorities have rightly considered that the occupation certificate for the building in question was issued on 09-11-1983 and the construction thereof was started in 1981, which is a finding of fact based on the document. As such, the said findings cannot be interfered with. However, in my opinion, the claim of the Petitioner that the authorities ought to have considered the payment of amount of Rs 64,000/- as is admitted in the above referred documents by the authorities has not been dealt with but for simplicitor denying the said claim of the Petitioner for want of production of the original document/Agreement.

20] As such, in my opinion, it was expected of the Respondent Nos. 1 and 2 while passing the orders impugned to deal with the alleged receipt of payment of Rs 64,000/- as is acknowledged, in the aforesaid documents received under Right to Information Act and the effect of such payment of Stamp duty on the liability saddled on the Petitioner of payment of stamp duty and the penalty.

21] The procedure to be followed while dealing with said issue has been appropriately considered by this Court in the matter of *Sunil Banwarilal Lohiya vs. State of Maharashtra* reported in **LEX (BOM) 2005 4-86**. This Court had an occasion to consider the market valuation of the property in the light of provisions of Bombay Stamp (Determination of True Market Value of Property) Rules 1981. Admittedly, the aforesaid issue of alleged payment of stamp duty of Rs 64,000/- has not been dealt with in the light of the said provisions that is the Rules referred above. Appropriate support can be drawn from the observations made in paragraphs 8 of the said judgment. The Respondent Authority has ignored the procedure contemplated in Rule 3 of the above Rules.

22] As such, in my opinion, a case for remand is made out on the issue as to whether the payment of amount of Rs 64,000/- in the form of franking could be accepted and whether appropriate adjustment in the valuation can be ordered.

23] As such, the orders impugned referred above dated 23-08-2011 passed by Respondent No.1, 05-07-2013 passed by Respondent No.2 and 08-02-2015 passed by Respondent No.3 are hereby quashed and set aside.

24] The matter is remanded to Respondent No.1 for deciding same afresh only on the ground of the acceptance of franking amount of Rs 64,000/- as is reflected in the communication dated 20-01-2012 and 11-12-2018 passed by the Additional Treasury Officer Mumbai and the Inspector of Stamps, Mumbai respectively.

25] The Petitioner to appear before the competent authority on 31-08-2020 with written notes of arguments and shall not seek any adjournment. The Respondent No.1 thereafter is directed to decide the claim of the Petitioner within a period of three months thereafter. In the meantime, there shall be no coercive steps against the Petitioner in the matter of recovery of stamp duty.

26] The Writ Petition as such stands partly allowed in the above terms. Rule is partly made absolute accordingly.

(NITIN W. SAMBRE, J.)