Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2211 OF 2019

Shri Chhatrapati Shivaji Education Society ....Petitioner
Vs.
Chief Controller Revenue Authority
@ Inspector General of Registration
and Controller of Stamps and ors. ..... Respondents

Mr.A.S. Khandeparkar i/b Mr.Dilip Bodake, for the Petitioner.
Mr.C.D. Mali, AGP for the Respondent – State.

CORAM : M. S. KARNIK, J.

DATE : 30th MARCH, 2021

P.C. :

. Heard learned Counsel for the Petitioner. The challenge in this Petition filed under Article 227 of the Constitution of India is to an order dated 13/08/2018 passed by the Chief Controller of Revenue authority and Inspector General of Registration and Controller of Stamps rejecting the application made by the Petitioner for refund of stamp duty. Learned Counsel for the Petitioner pointed out that the Petitioner is a charitable trust. A registered agreement for sale was executed by the Petitioner trust on 16/03/2016 with the purchaser for sale of the trust property for a consideration of Rs.50 crores. The stamp duty payable under the Maharashtra Stamp Act 1958 was determined as Rs. 2.5 crores . The stamp duty was duly paid.

2. It is the case of the Petitioner that the purchaser failed to comply with the terms and conditions of the agreement and failed to pay any consideration under the agreement. Therefore the Petitioner cancelled the agreement by deed of cancellation dated 16/05/2017. The said deed of cancellation was duly signed by authorised signatories of the trust as well as those of the purchasers. Nothing is placed on record to indicate that any consideration was paid over to the Petitioner under the said agreement for sale nor is the case of the Respondent that any consideration was paid. One of the clause of the agreement for sale was that the Petitioner being the educational institution would continue to occupy the premises for 7 years to facilitate them to make necessary arrangement for shifting the educational facilities.

3. Nothing was paid under the agreement towards consideration but it is submitted that amount of Rs.95 lakhs was in fact paid by the Petitioner to the purchaser for documentation

which the purchaser refunded upon execution of the deed of cancellation.

4. The Petitioner therefore applied for refund of the stamp duty paid. The application was made to Respondent No.1 under section 47(c)(5) of the said Act on 10/07/2017. The application for refund is rejected on the ground that the agreement for sale falls within the ambit of the provisions of section 4 read with section 6 of the said Act and as such does not come within the scope and ambit of section 47 to 52 of the said Act.

5. Learned AGP supported the impugned order and invited my attention to the affidavit in reply justifying the rejection of the application claiming refund of stamp duty.

6. To appreciate the controversy, it would be material to refer to provisions of section 4, 6 and section 47 (c) (5) of the said Act which read thus:

> "**4. Several instruments used in single transaction of [development agreement] sale, [lease] mortgage or settlement.—**
>
> (1) Where, in the case of any [development agreement] sale,

[lease], mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, [development agreement] [lease], mortgage or settlement, and each of the other instruments shall be chargeable with a duty of [one hundred rupees] instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument:

[(3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purposes of this section, determine the principal instrument]

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

6. Instruments coming within several descriptions in Schedule I.—

Subject to the provisions of section 5, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties:

Provided that nothing in this Act contained shall render chargeable with duty exceeding [one hundred rupees] a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

Section 47 : Allowance for spoiled stamps

> Subject to such rules as may be made by the State Government as to the evidence to be required, or the inquiry to be made, the Collector may on application, made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned namely :-
>
> (a) ..
>
> (b)..
>
> (c) the stamp used for an instrument executed by any party thereto which --
>
> (1) ..
>
> (2)..
>
> (3)..
>
> (4)..
>
> (5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose."

7. Perusal of section 4 reveals that section 4 would apply to a case where, in case of any development agreement, sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, development agreement, lease, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that Schedule. In

my opinion, section 4 has no application to the facts of the present case. Even if it is the contention of learned AGP that the agreement for sale includes another transaction in that the Petitioner is to pay monthly compensation of Rs.50 lakhs to the purchaser till the possession is handed over, still then in my opinion, section 4 would not apply in the present facts. The possession no doubt was with the Petitioner but the Petitioner did not receive any compensation under the agreement for sale which agreement is cancelled by a deed signed by both parties. The purchaser was factually not in receipt of any monthly compensation. If it is the claim of the Respondent that appropriate stamp duty is payable on the transaction pertaining to payment of monthly compensation of Rs. 50 lakhs, it is for the Respondent to consider and deal with the issue in accordance with law if stamp duty is to be recovered. However, this cannot form the basis for denying the refund of stamp duty under section 47 (c)(5) if the agreement for sale is cancelled by a deed of cancellation.

8. So far as section 6 is concerned, it applies to a case where there are instruments coming within several descriptions in Schedule I. Further section 6 is subject to provisions of section 5. Section 5 stipulates that any instrument comprising or

relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act. No such contingency as is provided in section 6 arises in the present case nor is there any discussion in the impugned order as to how the agreement for sale which is the subject matter of the stamp duty will come within the ambit of section 6.

9. In this view of the matter, the order impugned which proceeds on the footing that 'the agreement for sale comes within the clutches of the provisions of section 4 read with section 6 of the Act and as such do not come within the scope of ambit of section 47 to 52 of the said Act' is clearly unsustainable.

10. In these circumstances, as there was no consideration amount paid under the agreement for sale by purchaser to the Petitioner which agreement for sale was subsequently cancelled, in my opinion, the Petitioner's case squarely falls within the ambit of section 47(c)(5) of the said Act. The impugned order therefore deserves to be quashed and set aside. The Respondent to refund an amount of Rs. 2 crores and

50 lakhs with applicable deductions under the Act & Rules, however, without interest in the peculiar facts of the present case.

11. Writ Petition is disposed of.

(M.S.KARNIK, J.)