Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13110 OF 2019

PTC Software (India) Private Limited ....Petitioner
Vs.
Deputy Inspector General of
Registration and Deputy Controller
of Stamps, Pune Division, Pune and ors. ..... Respondents

Mr.Drupad Patil i/b Dheeraj Patil, for the Petitioner.
Mrs.M.S.Bane, AGP for the Respondent – State.

CORAM : M. S. KARNIK, J.

DATE : 18th JANUARY, 2021

P.C. :

. Heard learned Counsel for the Petitioner and learned AGP.

2. Invoking jurisdiction of this Court under Article 226 of the Constitution of India, the Petitioner challenges the order passed by the Deputy Inspector General of Registration and Deputy Controller of Stamps, Pune Division, Pune dated 30/08/2019 which is at page 41 of the Petition.

3. Learned Counsel for the Petitioner invited my attention to the copy of lease deed dated 27/12/2015, more particularly clause 2.1 thereof and submits that the lease was for a period of 10 years. He then invites my attention to the paragraph 2.3 which says that it is mutually agreed by and between the parties that the Lessee shall have the option of renewing the lease for a further period of 3 years by issuing a notice to the Lessor. According to learned Counsel lease effectively therefore is for a period of 10 years. Hence, for the purposes of sub-clause (ii) of Article 36 of Schedule I of Maharashtra Stamp Act, proper stamp duty would be on 25% of the market value of the property. However by the impugned order, the authorities below have determined the stamp duty payable on 50% of market value of the property applying sub-clause (iii) of Article 36 Schedule I of the Maharashtra Stamp Act.

4. Learned AGP submits that in terms of clause 2.3 of the lease deed, the lease deed provided for a renewal of the lease by further period of 3 years and therefore the lease is effectively for a period of 13 years and hence, the authorities below have correctly determined the proper stamp duty payable on 50% of the market value applying sub-clause (iii) of Article 36 of Schedule I of the Maharashtra Stamp Act.

5. Heard learned Counsel appearing for the Petitioner and learned AGP.

6. Article 36 Schedule I of the Maharashtra Stamp Act reads thus :

Description of Instrument	**Proper stamp duty**
36. LEASE, including under lease or sub-lease and any agreement to let or sub-let or any renewal of lease, –	
Where such lease purports to be –	
(i) for a period not exceeding five years.	The same duty as is leviable on a conveyance under clause (a), (b) [or(c)], as the case may be, of article 25, on 10 per centum of the market value of the property.
(ii) for a period exceeding five years but nor exceeding ten years, with a renewal clause contingent or otherwise.	The same duty as is leviable on a conveyance under clause (a), (b) [or(c)] as the case may be, of article 25, on 25 per centum of the market value of the property
(iii) for a period exceeding ten years but not exceeding twenty-nine years, with a renewal clause contingent or otherwise.	The same duty as is leviable on a conveyance under clause (a), (b) [or (c)], as the case may be of article 25, on 50 per centum of the market value of the property.

7. So far as Clause (ii) of the Article 36 is concerned, the same provides that if lease is for period exceeding 5 years but not exceeding 10 years, <u>with a renewal clause contingent or otherwise</u>, proper stamp duty payable is on 25% of the market value of the property.

8. Learned Counsel for the Petitioner submits that the present lease deed is for a period of 10 years with renewal clause and therefore in terms of clause (ii) of Article 36 Schedule I of the Maharashtra Stamp Act, the appellate authority ought to have determined the proper stamp duty on 25% of the market value of the property.

9. In my opinion, the matter needs to be remitted back to the appellate authority for considering the effect of the term ‘with a renewal clause contingent or otherwise’ appearing in clause (ii) of Article 36 of Schedule I of the Maharashtra Stamp Act on the lease deed. This aspect appears to have not been considered by the appellate authority.

10. The impugned order dated 30/08/2019 passed by appellate authority is set aside.

11. The Appeal No. 9 of 2019 is remitted back to the Deputy Inspector General of Registration and Deputy Controller of Stamps, Pune Division, Pune (appellate authority) for deciding the said matter afresh on its own merits and in the light of the provisions of clauses (ii) & (iii) of Article 36 Schedule I of the

Maharashtra Stamp Act.

12. I may not be understood to have expressed any opinion on merits of the contentions or otherwise and the appellate authority is free to decide the issue on its own merits and in accordance with law.

13. The appellate authority is requested to hear and decide the Appeal preferably within a period of 12 weeks from the date of receipt of this order.

14. The amount of the entire stamp duty demanded which has been paid by the Petitioner under protest shall obviously abide by the final orders that may be passed by the appellate authority.

15. Writ Petition is disposed of.

(M.S.KARNIK, J.)