IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8276 OF 2019

Harshit Harish Jain and Anr. ..Petitioners
V/s.
The State of Maharashtra & Ors. ..Respondents

Mr. Bharat Zaveri for the Petitioners.
Mr. C.D. Mali, AGP for Respondent Nos. 1 to 3/State.

CORAM : C.V. BHADANG, J.

DATE : 04 OCTOBER 2022

P.C.

. Rule made returnable forthwith. The learned AGP waives service for the Respondents. Heard finally by consent of parties.

2. This petition can be disposed of on a short count.

3. The Petitioners had entered into an agreement for sale dated 31.08.2014 with the promoter/builder upon paying stamp duty of Rs.27,34,500/-. Clause 11.1 of the agreement stipulated the date of possession of the tenement as 31.03.2017. The transaction did not go through and the parties executed Deed of Cancellation on 17.03.2015 which was registered with the Sub-Registrar on 28.04.2015. This was followed by a Deed of

Rectification of the cancellation Deed, which was registered on 23.05.2016.

4. The Petitioners filed an application for refund of the stamp duty on 06.08.2016. It appears that the third Respondent/ Collector of Stamp recommended such refund. On the basis of the said report, the second Respondent-Chief Controlling Revenue Authority by an order dated 08.01.2018 directed the refund of the stamp duty of Rs.27,34,500/- which order was communicated to the Petitioners. After this, without issuing any show cause notice or granting an opportunity of hearing, the second Respondent by order dated 03.03.2018 has rejected the application for refund on the ground that it is filed beyond the period of six months as provided under Sub-Section 1 of Section 48 of the Maharashtra Stamp Act. The Petitioners filed a representation/appeal before same authority which has been rejected on 16.04.2019.

5. The Petitioners feeling aggrieved is challenging the orders dated 03.03.2018 and 16.04.2019.

6. I have heard learned counsel for the parties. Perused record.

7. The learned counsel for the Petitioners submitted that sub-section 1 of Section 48 was amended w.e.f. 24.04.2015 by Maharashtra Act No. 20 of 2015 whereby the period for seeking refund of the stamp duty was reduced to six months from two years.

8. The learned counsel submits that in this case, the cancellation deed has been executed prior to the said amendment and therefore, it would be governed by the unamended provision prescribing the period of two years and not six months.

9. The learned AGP submitted that the refund is sought on the basis of the rectification deed, which is executed subsequent to the amendment.

10. I have considered the submissions made. It can be seen that the authority below had no occasion to consider this ground, as the impugned order was passed behind the back of the Petitioners. The learned counsel for the Petitioners has also raised one more contention about the second Respondent not being clothed with the power of review.

11. In my considered view, it would be appropriate if the second Respondent reconsiders the matter after hearing the Petitioner and in accordance with law.

12. In such circumstances, the petition is partly allowed. The impugned orders dated 03.03.2018 and 16.04.2019 are hereby set aside. The second Respondent shall decide the application for refund afresh after hearing the petitioners or their representative within a period of eight weeks from the date of the appearance of the Petitioner.

13. The Petitioner to appear before the second Respondent on 17.10.2022.

14. The contentions as raised on behalf of the Petitioners are left open, to be considered by the second Respondent.

15. Rule is partly made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.