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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13326 OF 2023

Ajit Rambhau Jagtap PETITIONER

VERSUS

The State of Maharashtra and Others RESPONDENTS

....

Mr. Nanabhau R. Thorat, Advocate for the Petitioner
Mr. A. V. Deshmukh, AGP for Respondent - State

....

[CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.]

DATE : OCTOBER 26, 2023

ORDER :

1. The Petitioner has put-forth prayer clauses "B" and "C" as under:

> *"B. By issuing writ of mandamus or any other appropriate writ of direction in the like nature Respondents decide my applications dd. 14.09.2022, 21,03.2023, 18.01.2023, 28.06.2023 and 17.10.2022 submitted by petitioner and further direct to take mutation entry as per order passed by Lok-Adalat.*
>
> *C. Kindly be declared and hold that order dtd. 21.07.2023 s illegal and therefore liable to be quashed and set aside and further direct to take mutation entry as per the court order."*

2. The issue before us is as to whether stamp duty can be levied on a compromise decree. By a judgment dated 9th March, 2023, delivered at the Principal Seat in Public Interest Litigation No. 88 of 2021 (Barshi Bar Association V/s State of Maharashtra and Others), this Court concluded in paragraphs No.15 to 21 as under:

> *"15. Section 17 (1) of the Act of 1908 prescribes the documents of which Registration is compulsory. Sub section 2 of section 17 carves out an exception. The documents / instruments enumerated in sub section 2 of section 17 of the Act of 1908 are not compulsorily registerable. The decree or order of the court is covered under section 17 (2) (vi) of the Act of 1908. Under the said provision, any decree or order of a court (except the decree or order expressed to be made on compromise and comprising immovable property other than that which is the subject matter of the suit or proceedings) would not require compulsory registration. Section 17 (2) (vi) of the Act of 1908 carves out the distinction between the property which forms subject matter of the suit and the property that was not the subject matter of the suit but for which the compromise has been arrived at. If the compromise decree involves the immovable property other than the decree involved, such a property would not be exempted and would require registration. If a compromise decree is arrived at in respect of the*

property that is the subject matter of the suit then the compromise decree does not require compulsory registration. The compromise arrived at before the Lok Adalat and the award passed by the Lok Adalat thereto assumes the character of a decree and would also come within the ambit and purview of sub section 2 of section 17 of the Act, 1908.

16. This brings us to the second limb of the matter viz. Payment of stamp duty. The stamp duty payable upon the documents is governed by the provisions of the Act of 1958. The documents in the State of Maharashtra are governed by the provisions of the Act of 1958. The payment of stamp duty on an instrument or partition finds place under Article 46 of the Act of 1958.

17. As a general rule, the stamp duty on an instrument of partition is 2% of the amount or the market value of the separate share or shares of the property. As per the note appended thereto, the largest share remaining after property is partitioned or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares shall be deemed to be that from which the other shares are separated. Proviso (a) and (b) to section 46 further provide for certain exemptions. We would be concerned with proviso (b) in the present case. In view of proviso (b), where the instrument relates to the partition of agricultural land, the rate of duty applicable shall be 100/-.

18. The compromise decree of an agricultural land in respect of property that is the subject matter of the Suit is not required to be compulsorily registered under the provisions of the Act of 1908 and the Stamp Duty on such a document would not be more than 100%. Proviso (c) to section 46 of the Act of 1958 further provides that where a final order for effecting a partition is passed by any Revenue Authority or any Civil Court or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument or partition, and an instrument of partition in pursuance of such order or award is subsequently executed the duty on such instrument shall not exceed Rs.10/-.

19. On reading section 46 of the Act of 1958 in its entirety along with tis provisos, an irresistible conclusion can be drawn i.e. a compromise decree effectuating partition of an agricultural land does not require compulsory registration in view of section 17 (2) (vi) of the Act of 1908 and it would also not require payment of the stamp duty on valuation of the property, but would be governed by the proviso (b) and (c) of section 46 of the Act of 1958.

20. The Circular impugned by the petitioner does not only deal with the decree in case of partition suit but is of general nature that would also include the non-agricultural properties and different modes of transfers through various instruments.

21. The impugned Circular shall be read in a manner that the compromise decree of the court and / or the Lok Adalat in respect of agricultural land that is the subject matter of the Suit is not compulsorily registerable and would not attract stamp duty on the market value of the property but in accordance with the proviso (b) and (c) of section 46 of the Act of 1958."

3. In view of the above, Writ Petition is partly allowed. Impugned order dated 21st July, 2023, to the extent of a direction by the Tahsildar, Majalgaon directing the petitioner to deposit stamp duty on the compromise decree would not survive and to that extent the Writ Petition is allowed and the impugned order dated 21st July, 2023 is quashed and set aside. In so far as first portion of the impugned order, concerning a charge on the property, we leave it to the Petitioner to get the property cleared off the said charge and if an application for carrying out revenue entries is placed before the concerned revenue authority, said authority can consider said aspect on its own merits, by following due procedure.

[Y. G. KHOBRAGADE]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE