

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1417 OF 2023

PLUS BKSP Toll Limited

.. Petitioner

Versus

Collector, Thane District Court Naka and Anr.

.. Respondents

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- Mr. Darius Khambata, Senior Advocate a/w. Mr. Nikhil Sakhardande, Mr. Prithvi Sidhu and Mr. Jasneet Jolly, Advocates i/ by Mr. Yakshay Chheda for the Petitioner.
 - Mr. S.H. Kankal, AGP for the State.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 27, 2023.

P.C.:

1. Heard Mr. Khambata, learned Senior Advocate for Petitioner and Mr. Kankal, learned AGP for the State.

2. Briefly stated that facts are as under:-

3. The impugned order dated 01.11.2022 demands an amount of Rs.44,43,76,100/- as stamp duty on Arbitration Award dated 20.10.2020. Respondents purport to impose stamp duty on the Award under Article 12 read with Article 25(a), Article 36(iii) and Article 55(a)(ii) of Schedule I of the Maharashtra Stamp Act, 1958 (for short “the said Act”).

4. At the outset, it needs to be stated that Respondents have filed Affidavit of the Joint District Registrar Class-1 and Collector of

Stamps who is Respondent No.2 and stated that the document involved in the present Writ Petition i.e. the Arbitration Award is deemed to be an agreement under Section 2(g) of the said Act and in that view of the matter the Award includes the conveyance within the definition of Section 2(g) and is deemed to be executed on the day on which the said final Award was passed. That apart, it is further submitted in the Affidavit-in-Reply that the Award is required to be examined under Section 33 of the said Act and the grievance of the Petitioner with respect to adjudication of the said document regarding payment of stamp duty was heard on 07.02.2014 and the Petitioner will be given a further hearing in that respect.

5. Mr. Kankal, learned AGP would submit that the Application of the Petitioner under Section 33 is pending decision with the Respondents and in that view of the matter, there is no immediate threat to the Petitioner about implementation of the impugned demand order.

6. Mr. Khambata, learned Senior Advocate appearing for the Petitioner would submit that the impugned demand is not only contrary to the provisions of the said Act but also *ultra vires* the said Act and patently illegal. He would submit that the subject Arbitration Award is a monetary Award passed in furtherance of an interim Award dated 26.03.2021 which is placed at Exhibit-B – Page No.39 of the

Writ Petition. He would submit that the final Arbitration Award has decided the quantum of payment. According to him, the Award is neither a conveyance of property which is transferred nor a lease nor a settlement and in that view of the matter, provisions of Article 12 of Schedule I which provide for stamp duty payable in respect of stamping of Award would apply to the said Arbitration Award. He would further submit that under Section 2(g) of the said Act an instrument / document for which there is a specific provision provided under Schedule I stands excluded and Article 12 being one such specific provision therefore applies to the Petitioner's case.

7. I have perused the Arbitration Award dated 20.10.2020 which is placed at Exhibit-D - Page No.100 of the present Writ Petition. It is a monetary Award which is an instrument solely exclusively within the purview of definition of Award as prescribed under Article 12 of Schedule I of the said Act and the stamp duty therefore leviable would be a fixed amount of Rs.500/- only. Article 12 of Schedule I of the said Act provides for payment of stamp duty of Rs.500/- as amended w.e.f. 24.04.2015 for an Arbitration Award. It is not in dispute in the present case that the instrument in question is the final Arbitration Award which is a monetary Award rendered by the learned Arbitral Tribunal. Perusal of the Award itself indicates that it is in respect of the dispute decided by the Arbitral Tribunal which had

arisen as far back as in 2004 – 2005 with respect to four laning of, improvement and maintenance of Bhiwandi – Kalyan – Shilphata Highway. The dispute under Arbitration had arisen from a concession agreement entered into by the parties for the purposes of four laning and improvement, operation and maintenance and toll collection of the said highway.

8. Mr. Khambata has referred to and relied upon the following decisions in support of Petitioner's case, viz; *M/s. Maks Glass Corporation Vs. Bombay Mercantile Cooperative Bank Limited and Ors.*¹ and *Indian Oil Corporation Ltd., Mumbai Vs. Megi Control Systems Pvt. Ltd., Thane*². It is seen that these decisions squarely cover the Petitioner's case.

9. The Affidavit-in-Reply is completely silent in so far as the applicability of Article 12 is concerned as discussed and alluded to herein above. I am not inclined to accept the submissions of the learned AGP as Respondents are attempting to "deem" the Arbitration Award as an agreement within the definition of conveyance as prescribed under Section 2(g) of the said Act and such an action is impermissible in law when the statute does not provide for the same.

10. It is settled law that stamp duty is leviable on the instrument and not on the transaction. It is seen that the Writ Petition challenges

1 2015 SCC Online Bom 4178 – Arbitration Petition No.1380 of 2010

2 2011 (5) Mh.L.J. 892

the demand notices / orders dated 01.11.2022, 20.01.2023 and 30.01.2023 whereby Respondent No.2 despite having received the response from the Petitioner has demanded stamp duty of Rs.44,43,76,100/- under Article 25(a) i.e. stamp duty leviable on a conveyance under Schedule I of the said Act. In the notice dated 01.11.2022 it is stated as under:

“If you do not furnish the disclosure or pay the amount within 15 days from the date of this notice, ex-parte decision will be taken in the case and please not that the said amount will be recovered as arrears of land revenue as per the provisions of Section 46 of the Maharashtra Stamp Act”.

11. There is an imminent threat which has been given by Respondent No.2 in the impugned demand notice dated 20.01.2023 calling upon the Petitioner to appear before itself or an unilateral decision would be taken on the basis of the available information.

12. In view of the above, I am not inclined to accept the submissions made by Mr. Kankal, learned AGP that the Application filed below Section 33 of the said Act by the Petitioner needs to be heard and adjudicated by the Competent Authority.

13. In view of the settled legal position enumerated above, the impugned demand notice seeking to levy stamp duty of Rs.44,43,76,100/- on the Arbitration Award dated 20.10.2020 is not only illegal but wholly unjustifiable in the present case. The impugned order dated 01.11.2022 cannot be sustained and is quashed and set

aside. Also demand notices / orders dated 20.01.2023 and 30.01.2023 (Exhibits 'L' and 'M') are also quashed and set aside.

14. Writ Petition has to succeed.

15. Writ Petition is allowed in terms of prayer clauses 'a' and 'b'.

16. Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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Digitally signed by
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Date: 2023.02.27
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