IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1545 OF 2022

M/s. Tanaya Realty Pvt. Ltd. ...Petitioner
Versus
State of Maharashtra and Ors. ...Respondents

…

Mr. Viral Vora, for Petitioner.
Ms. M.S. Bane, A.G.P., for Respondents - State.

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CORAM : SANDEEP V. MARNE, J.
DATE : OCTOBER 06, 2023.

P.C.:

1. The challenge in the present Petition is to the orders dated 17 January 2015 and 14 September 2020 passed by the Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps, Pune (**CCRA**) rejecting the application of the Petitioner for refund of stamp duty.

2. It is Petitioner's case that though the Agreement for sale was executed for consideration of amount of Rs.6 Crores and though the cheques were issued in respect of that amount, they were actually nothing was encashed. It is their further contention that the construction of the building was not completed and therefore there was no question of delivery of possession of the flat.

3. Petitioner further contends that on account of his inability to arrange funds for encashment of the said cheques, a Deed of Cancellation came to be executed on 15 May 2014 by which the entire transaction for purchase of the flat in question was cancelled by the parties.

4. The CCRA has proceeded to reject the application for refund of the stamp duty essentially on the ground that the reason specified by the Petitioner in his refund application is in variance with the reason for cancellation of the transaction stated in the Cancellation Deed.

5. The learned counsel for the Petitioner would submit that, though the Deed of Cancellation records payment of consideration of Rs.6 Crores, in fact the said amount has not been paid by the Petitioner to the vendor. He would say that there is evidence in the form of bank entries to demonstrate this assertion. He would further submit that non delivery of possession can also be proved by placing reliance on issuance of the occupancy certificate subsequent to the Deed of Cancellation. He would submit that under Rule 21 of the Bombay Stamp Rules, 1939, the CCRA is empowered to take evidence with regard to the circumstances of claim to refund. He would submit that the Petitioner is willing to lead evidence to show that no part of agreed amount of consideration of Rs.6 Crores has actually been paid to the vendor and that the

possession of the flat was never delivered to the Petitioner.

6. As on the relevant date, the Proviso to Sub-Section 1 of Section 48 reads thus:

> “ **48. Application for relief under section 47 when to be made.** - The application for relief under section 47 shall be made within the following period, that is to say.-
>
> (1) in the cases mentioned in clause (c) (5), within [six months] of the date of the instruments:
>
> Provided that where an Agreement to sell immovable property, on which stamp duty is paid under Article 25 of the Schedule I, is presented for registration under the provisions of the Registration Act, 1908 and if the seller refuses to deliver possession of the immovable property which is the subject matter of such agreement the application may be made within two years of the date of the instrument or where such agreement is cancelled by a registered cancellation deed on the grounds of, dispute regarding the premises concerned, inadequate finance, financial dispute in terms of agreed consideration, or afterwards found to be illegal construction or suppression of any other material fact, the application may be made within two years from the date of such registered cancellation deed”

7. Perusal of the Proviso to Sub Section 1 of Section 48 as it stood prior to 24 April 2015 would show that in case of a refusal by a seller to deliver possession of immovable property, application for refund can be made within a period of two years from the date of execution of the instrument. On the other hand, if the parties proceed to execute Deed of Cancellation, such an application can be filed within a period of two years from the date of execution

of Cancellation Deed. For the later contingency of execution of Cancellation Deed, the parties are required to prove that the reason for cancellation of the transaction is dispute regarding premise concerned, inadequate finance, financial dispute in terms of the agreed consideration or the premises being found to be illegal construction or suppression of any material fact. In cases relating to refusal by the seller to deliver possession, apparently it is not necessary for the party applying for refund of stamp duty to prove happening of the events for the latter contingency. Be that as it may, Petitioner wants to lead evidence with regard to circumstances leading to cancellation of the transaction in question. It appears that the CCRA is vested with power to require parties to lead evidence.

8. In such circumstances, I am of the view that the Petitioner deserves to be granted an opportunity to lead evidence both with regard to failure to handover possession of the flat in question by the seller as well as his defence of inadequate finance for failure to pay any part of consideration to the seller. With a view to enable the Petitioner to lead evidence as per Rule 21, it would be necessary to remand the proceedings to CCRA by setting aside the impugned order.

9. Accordingly the Writ Petition is disposed of by setting aside orders dated 17 January 2015 and 14 September 2020 passed by the CCRA, Pune. The refund application filed by the Petitioner stands restored on the file of CCRA Pune, who shall provide an opportunity to the Petitioner to lead evidence as per Rule 21 of the Bombay Stamp Rules, 1939 and take a decision afresh, without being influenced by his previous decision or any of the observations made in the present order. Writ Petition is accordingly disposed of.

(SANDEEP V. MARNE, J.)