IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.88 OF 2021

The Barshi Bar Association ..... Petitioner

Vs.

The State of Maharashtra and Ors. ..... Respondents

Mr.Atul Damle, Senior Advocate i/b Mr.Vaibhav Ugle for the Petitioner

Mr.P.P.Kakade, G.P. a/w Mr.B.V.Samant, A.G.P. for the State

CORAM: S.V.GANGAPURWALA, ACJ &
S.V.MARNE, JJ.

RESERVED ON : MARCH 3, 2023
PRONOUNCED ON : MARCH 9, 2023

JUDGMENT : (PER : ACTING CHIEF JUSTICE)

1 Rule.

Rule made returnable forthwith. By consent of the parties, taken up for final disposal.

2 The Petitioner assails the Circular dated 16.11.2016. Under the said Circular, issued by the Collector cum District Registrar, Solapur, it has been directed that the Sub Divisional Officer and Tahsildar of the Region shall not mutate the Revenue Record on the basis of the unregistered documents and further directing to abide

by the Government Resolution dated 21.04.2018.

3 Mr.Damle, the learned Senior Advocate for the Petitioner submits that the compromise decree passed by the courts or in the Lok Adalat concerning the agricultural lands are not required to be compulsorily registered under the provisions of the Registration Act, 1908 (for short “the Act of 1908”). Reference is made to section 17(2)(vi) of the Act of 1908. The learned Senior counsel further refers to the proviso to section 46 of the Maharashtra Stamp Act, 1958 (for short “the Act of 1958”) and submits that if the instrument relates to partition of agricultural land, the rate of duty applicable is only Rs.100/-.

4 Mr.Damle, the learned Senior Advocate refers to the judgment of the Apex Court in the case of ***Mohammade Yusuf & Ors. vs. Rajkumar & Ors. dated 05.02.2020*** and another judgment of the Apex Court in the case of ***Commissioner of Income Tax, Gujarat vs. Keshavlal Lallubhai Patel***[1]. He also relies upon the judgment of the learned single Judge of this court in the case of ***Arvind Yeshwantrao Deshpande vs. State of Maharashtra and Ors***[2]***.***

5 The learned A.G.P. submits that the nomenclature of the document is not a decisive factor in determining the stamp duty.

1 AIR 1965 SC 866
2 (2003) 3 MLR 1039

The Government Authorities acting under the Act of 1958 are empowered to look into the contents of the concerned instrument to find out the real nature of the transaction and the intention of the parties to find out the correct stamp duty applicable to the same. The Government Circular dated 21.04.2018 clarifies that it is not compulsory to register the memorandum of Family Partition Deed. However, stamp duty under Article 46 of Schedule I of the Act of 1958 is payable under such Family Partition Deed. The said Circular was issued after analysing the judgment of this court in the case of ***Arvind Yeshwantrao Deshpande*** (Supra).

6 The impugned Circular / letter is issued by the office of the Collector, Solapur in view of certain malpractices observed by the office. By subsequent Circular dated 14.08.2018, the office of the Collector, Solapur has clarified the situation. Under the said Circular, it is clarified that the stamp duty is payable under Article 46 of the Act of 1958 in case of partition deeds. In case of partition deed of agricultural lands, stamp duty is Rs.100/- and in case of non-agricultural land, stamp duty as provided under Article 46 of the Act of 1958 is payable.

7 It is further submitted that all decrees involved in conveyance of property shall necessarily attract stamp duty as provided under

the Act of 1958.

8 Every case will have to be evaluated on its own merits. The learned A.G.P. submits that the correct position is explained by the Office of the Inspector General of Registration, Maharashtra State, Pune by its letter dated 24.03.2022.

9 Mr.Damle, the learned Senior Advocate for the Petitioner submits that the Petitioner is concerned with the compromise decree of the agricultural properties passed by the courts or in Lok Adalat.

10 We have considered the submissions.

11 Partition is a division of shares in the inherited property. After the division of the property, each member becomes an independent owner of his share in the property.

12 If a person does not have an existing right in the property or a share, then there would not be a compromise decree of partition. The decree of partition necessarily would be amongst the persons having pre-existing right in the property.

13 Registration of the document and payment of stamp duty are two distinct and separate concepts. The Registration Act elaborates the instruments that are required to be compulsorily registerable

whereas the Act of 1958 prescribes the stamp duty leviable on the instrument requiring registration or otherwise.

14 The *prima donna* grievance of the Petitioner appears to be that the compromise decree as passed by the courts in the suits for partition and separate possession and or by the Lok Adalat, is not compulsorily registerable document under the provisions of the Act of 1908. The Revenue Authorities are insisting for the Registration of the documents and payment of stamp duty as per the valuation of the property for mutating the names in the revenue records.

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 of 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 its 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.

22 Rule is accordingly made absolute in above terms.

23 Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J) **(ACTING CHIEF JUSTICE)**