Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4376 OF 2017

1. **Sreenivasan Valadi Vayyattu** .Petitioner
Age : 71 yrs
resident of B/401, Cottage Land,
Sector 19A, Nerul (East),
Navi Mumbai – 400 706.

Vs.

1. **The State of Maharashtra** through .Respondents
the Collector of Stamps, Thane (City),
Collectorate Bldg., Court Naka,
Thane (West) – 400 601.

2. **The Deputy Inspector General of Registration & the Deputy Controller of Stamps**, Konkan Division, Varai Telephone Exchange, 7th Floor, Mavali Mandal Road,
Dhobi Aali(Lane),
Thane (West) – 400 601.

3. **The Chief Controlling Revenue Authority, (Inspector General of Registration and Controller of Stamps)**, Maharashtra State,
Ground floor, New Administrative Bldg.,
Opp. Council Hall,
Pune – 411 001.

Mr. Govind Javeri, Advocate, for the Petitioner with Mr. Sreenivasan Valadi Vayyattu, Petitioner
Mr. S. H. Kankal, AGP, for Respondent Nos. 1 to 3 – State

CORAM : MADHAV J. JAMDAR, J.

DATE : 28.11.2023

ORAL JUDGMENT

1. Heard Mr. Govind Javeri, learned Counsel appearing

for the Petitioner and Mr. Kankal, learned AGP appearing for Respondent Nos. 1 to 3 – State.

2. The challenge in the present Writ Petition is to the Order dated 20.02.2015 passed by the Deputy Inspector General of Registration and Deputy Controller of Stamps, Konkan Division, Thane rejecting claim of the Petitioner for refund of the stamp duty and the Order dated 17.11.2016 passed by the Chief Controlling Revenue Authority, Pune in Appeal No.67 of 2015 confirming the said Order dated 20.02.2015.

3. It is the contention of learned Counsel appearing for the Petitioner that Deed of Cancellation was executed on 20.08.2012 and same was registered on 01.11.2012 and the Application was filed for refund of Rs. 6,11,600/- immediately within time prescribed under Section 48(1) of the Maharashtra Stamp Act ("**said Act**"), and the said Application was rejected by the impugned order dated 20.02.2015 and the rejection was confirmed by the impugned order dated 17.11.2016. It is his contention that the Application has been filed within time limit, as provided under Section 48(1) of the said Act and therefore, it should have been allowed.

4. On the other hand, it is the contention of Mr. Kankal, learned AGP appearing for Respondent Nos.1 to 3 that the Application for refund is not filed within the time limit.

5. Before considering the rival submissions, it is necessary to set out undisputed factual position which is recorded in the impugned Order passed by the Chief Controlling Revenue Authority, Pune in paragraphs 1.1 to 1.5 which read as under:-

> *"**1.1** Appellant purchased Special Adhesive Stamps of Rs. 6,11,600/- from the office of Sub Post Master, Vashi, New Mumbai on 05/10/2010 for the purpose of execution of document "Agreement for Sale".*
>
> ***1.2** Appellant filed an application for adjudication under 31 of the said Act in the office of Collector of Stamps, Thane City (herein after referred a "Lower Authority"); who numbered the Adjudication case as ADJ/904/2010. He determined market value of the property involved in the document to the extent of Rs. 1,25,79,000/- and has put his Endorsement/Certificate on the document to that effect on 30/11/2010.*
>
> ***1.3** Appellant executed the document on 16/12/2010 and presented it for registration in the office of Sub Registrar, Thane No. 6; who registered it at Serial No. TNN-6-05853/2010 on same day.*

> ***1.4*** *It is the case of a Appellant that as per clause 10 on page No. 17 of the document under sub title 'POSSESSION OF THE SAID PREMISES/UNITS' the builder/promoter was under obligation to give possession of the premises on or before the 30/06/2011. It is the further case of Appellant that he found that said Builder/promoter was not in position to give possession of the said premises to the Purchaser on the agreed date. As such Appellant executed the Deed of Cancellation on 28/08/2012; which was registered at serial No. TNN-2-10298/2012 on 01/11/2012. The Developer returned the amount of consideration of Rs. 66,52,000/- to the Appellant.*
>
> ***1.5*** *Appellant filed an application for grant of refund of stamp duty of Rs. 6,11,600/- in the office of Collector of Stamps, Thane City on 08/02/2013 under section 48(1) of the said Act; who numbered the refund case at serial no. R/63/13."*

6. Proviso to Section 48 of the said Act, as applicable on the date on which the Petitioner lodged his claim reads as under :-

> *"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"***

(Emphasis added)

7. Mr. Javeri, learned Counsel appearing for the Petitioner relied on the decision of a learned Single Judge of this Court dated 14.10.2019 in the case of ***Nirulata Gyandev Sadh v. State of Maharashtra*** reported in ***2019 SCC OnLine Bom 8424*** and more particularly on paragraphs 14 to 17 of the same which read as under:-

> *"14.* ***The fact that the agreement to sell or purchase of the flat was cancelled by a deed of cancellation, is also not in dispute. Petitioner had paid stamp duty towards purchase of the flat. However, when the flat itself was not purchased, which decision was taken well in advance of the date of handing over of possession, it was not justified on the part of the State to withhold stamp duty paid by the petitioner on account of purchase of the flat****.*
>
> ***15****. Learned counsel for the Petitioner has pressed into service a decision of this court in the case of* **Sanman Trade Impex Pvt. Ltd.,** *vs.* **State of Maharashtra***, 2004 SCC OnLine Bom. 747, and contends that it is a matter of right for the Petitioner to claim*

refund of the stamp duty paid for purchase of the flat when it was decided well in advance that there would be no purchase. In such circumstances, claim for refund cannot be said to be outside the scope of the Stamp Act. If the Authorities are empowered to accept stamp duty, then it is not understood as to how claim for refund can be said to be outside the scope of the Stamp Act. That apart, a reasoned order is required to be passed while rejecting refund. The order on the face of it should disclose reasons for rejection of the claim. Merely stating that a claim is outside the scope of the said Act, cannot, under any circumstance be said to be disclosing the reason for rejection of the claim. In the instant case, the authorities had collected the stamp duty under the Stamp Act but when the Petitioner approached for refund of the same, the claim was sought to be rejected on the ground that refund of stamp duty falls beyond the scope of the said Stamp Act which is quite untenable.

16. *Learned counsel appearing for Respondent No. 5, while supporting the case of the Petitioner, has also placed reliance on a Division Bench judgment of this court in the case of* ***M/s. S. K. Realtors*** *vs.* ***Inspector General of Stamps & Controller of Stamps , Maharashtra State, Pune****, reported in 2016 SCC OnLine Bom – 14536. In the said case, this court deliberated upon the purpose behind incorporating section 48 to the Stamp Act and held that in a case, where transaction is not executed, or cancelled before execution, then the State is not entitled to claim revenue for execution of the said document, and that the State, therefore, is under an obligation to refund the amount paid for such purpose. The State cannot resort to profiteering on the basis of a document which is not executed. In the facts of that case, Division Bench while*

> *directing refund of the stamp duty also directed payment of interest at the rate of 6% per annum from the date of deposit.*
>
> ***17**. Having noticed the above, the two orders dated 04.03.2015 and 18.03.2015 impugned, may not stand judicial scrutiny. In both orders, the stand taken by the Respondents is that the claim for refund is inconsistent and contrary to the provisions of section 48(1) of the Stamp Act. As already noted above, Section 48(1) of the Stamp Act deals with the period of limitation. Since the claim for refund was filed within limitation, therefore, to hold that such prayer is inconsistent and contrary to the provisions of section 48(1) of the Act, would be wholly unsustainable. As regards the second ground, in view of the Division Bench judgment, question of refund of stamp duty for cancellation of instrument can no longer be said to be outside the scope and ambit of the Stamp Act."*

(Emphasis added)

8. The aforesaid Order dated dated 14.10.2019 is confirmed by the Supreme Court.

9. Mr. Javeri, learned Counsel appearing for the Petitioner has also relied on the decision of a learned Single Judge of this Court in the case of ***Sanman Trade Impex Pvt. Ltd.,*** *vs.* ***State of Maharashtra***, reported in ***2004 SCC OnLine Bom 747*** as well as the decision of the Supreme Court in the case of ***Committee-GFIL v. Libra Buildtech (P) Ltd.***, reported in ***(2015)***

16 SCC 31.

10. The present case is covered by all the above mentioned decisions. Apart from this aspect, even the Deed of Cancellation and more particularly, Clauses (c) and (d) in the said Deed of Cancellation (page 48 of the Petition) clearly show that there has been a delay of more than two years in handing over possession of the flat. Proviso to Section 48 of the said Act *inter alia* contemplates, 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 and therefore, delay of more than two years in handing over possession is covered by the said proviso. In any case, the Application is filed within a period of about five months from the date of the Cancellation Deed which is well within a period of two years, as contemplated under Section 48 of the said Act.

11. Accordingly, the Writ Petition deserves to be allowed in the following terms.

<u>O R D E R</u>

(i) The Order dated 20.02.2015 passed by the Deputy Inspector General of Registration & the Deputy Controller of Stamps, Konkan Division, Thane rejecting claim of the Petitioner for refund of the stamp duty and the Order dated 17.11.2016 passed by the Chief Controlling Revenue Authority, Pune in Appeal No. 67 of 2015 are quashed and set aside;

(ii) The Petitioner's Application dated 08.02.2013 seeking refund of stamp duty of Rs. 6,11,600/- is allowed;

(iii) The Respondents to pay Rs. 6,11,600/- with interest of 6% per annum from the date of lodging the claim for refund of stamp duty i.e. 08.02.2013 with applicable deductions.

12. The Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)