IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1568 OF 2023

M/s. Vandana Enterprises … Petitioner

Versus

State of Maharashtra through Chief
Controller of Stamps, Pune and another … Respondents

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Mr. Nitin Gangal alongwith Ashok Kadam for the Petitioner.
Mr. C.D. Mali, AGP for the State.

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CORAM : N.R. BORKAR, J.

DATE : 25 OCTOBER 2023

P.C. :-

1. The petitioner is a partnership firm registered under the Indian Partnership Act. On 6 September 2012, the petitioner entered into memorandum of understanding with one Akhil Bharat Varshya Bhekh Bara Panth Yogi Avdhut Sampradaya Trust (hereinafter referred to as 'vendor') to purchase land bearing Gut Nos.602/1(pt), 602/2, 602/3 situated at Village Ambiste, Tal. Wada, District Palghar, for total consideration of Rs.2,90,00,000/-. In terms of the memorandum of understanding to execute formal agreement to sell, the petitioner, on 4 November 2015 through its partner Shri Pramod Gajanan Bhoir had purchased stamps of Rs.6,09,100/- from the Office of Sub-Registrar of Assurance, Thane. The parties thereafter executed agreement to sell on 29 April 2016. As the said agreement to sell was later on cancelled, an application for refund of stamp duty was made. The respondent no.2 rejected the said application and respondent no.1 has confirmed the said

order in appeal filed by the petitioner. Both these orders are impugned in this petition.

2. I have heard the learned Counsel for the petitioner and the learned AGP for respondents.

3. The learned Counsel for the petitioner submits that after execution of agreement to sell certain permissions were required, which consumed some time and thus the vendor started demanding more consideration. It is submitted that as it was not possible for the petitioner to pay more consideration, the transaction was cancelled and accordingly, cancellation deed was executed on 14 September 2016. It is submitted that immediately thereafter on 23 September 2016, the application was made to the Collector of Stamps for refund of stamp duty who recommended refund of stamp duty and forwarded it to the respondent no.2, for approval. It is submitted that respondent no.2, however, rejected the said application on erroneous ground that Section 48(3) of the Maharashtra Stamp Act (hereinafter referred to as 'the Act') would be applicable to the facts and circumstances of the case and as the application was filed beyond the period of limitation provided under the said Section, the same cannot be allowed.

4. It is submitted that in appeal though respondent no.1 has held that in the facts and circumstances of the case, Section 48(1) of the Act would be applicable and not section 48(3) as held by respondent no.2 and the application was within limitation, however, refused to entertain the appeal at the instance of petitioner on the ground that stamps were purchased by the partner of petitioner in his individual name. It is

submitted that considering the overall facts and circumstances, respondents need to be directed to refund the stamp duty.

5. On the other hand, the learned AGP has supported the orders impugned.

6. It is well settled that the purpose behind incorporating sections 47 & 48 of the Maharashtra Stamp Act is to ensure that in cases where transaction is not executed, or cancelled, then the State is under an obligation to refund the stamp duty. The State, cannot resort to profiteering on the basis of a document which is not executed or cancelled.

7. It is not in dispute that Pramod Gajanan Bhoir, who purchased the stamps is a partner of the petitioner-firm. Admittedly, the application for refund of stamp duty was made by said Pramod Gajanan Bhoir. The Collector of Stamps recommended the refund of stamp duty. It is not the case of the respondents that the claim for the refund was bogus or false or there was misrepresentation of facts in relation to the claim for refund. The impugned orders therefore cannot be allowed to stand and the same are quashed and set aside. The respondents are directed to refund the stamp duty in accordance with law.

(N.R. BORKAR, J.)

KANCHAN PRASHANT DHURI

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