R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8523 OF 2019

Faiz Ahmed Sarang .. Petitioner
Versus
Chief Controlling Revenue Authority,
Maharashtra State & Anr. .. Respondents

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- Mr. Prathamesh Vhanmane i/by Mr. Satish Agarwal for Petitioner
- Mr. P.P. Pujari, AGP for Respondents

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CORAM : MILIND N. JADHAV, J.
DATE : SEPTEMBER 08, 2023

P.C.:

1. Present Petition takes exception to the order dated 02.02.2019 (which is at Exh. B [page Nos. 13-16] of the Petition) passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune by which the Appeal filed by the Petitioner came to be rejected.

2. Briefly stated the facts in the present Petition are as under:-

2.1. Petitioner purchased a flat in Mira Road (E), Thane and made payment in respect of of stamp duty of Rs. 4,68,800/- and registration amount of Rs. 30,000/- on 25.04.2016 through IDBI Bank, Bhayander (W) Branch. He obtained the Secured Bank and Treasury Receipt (eSBTR) from the Bank on 25.04.2016. He made photostat copies of the said original eSBTR. However on the same date Petitioner realised that he had misplaced / accidentally lost the original challan / eSBTR. Though he had photostat copies of the original with him, they were of no consequence as the original challan is required to be appended and filed with the office of Sub-Registrar of Assurances which is mandatory at the time of registration.

2.2. Petitioner searched for original challan but could not find it. Hence on 27.04.2016 i.e. 2 days after original challan was lost / misplaced, Petitioner filed a police complaint in the nearest Police Station i.e. Bhayander (West), Thane having jurisdiction in respect of the said eSBTR.

2.3. Copy of the photostat copy of the original eSBTR challan dated 25.04.2016 is appended at Exh. –"C" (Page No. 17) of Petition.

2.4. After the above incident, Petitioner had to register and execute the Agreement for Sale and complete the transaction. Hence Petitioner was compelled to once again pay the stamp duty of Rs.4,68,800/- and registration amount of Rs.30,000/- in respect of same flat for the same transaction which the Petitioner paid on 16.05.2016. Copy of the fresh challan dated 16.05.2016 is appended at Exh. "E" (page No. 20) of the Petition. Petitioner in the meanwhile submitted an online stamp duty refund application on 13.05.2016 (Exh. "F", Page No. 21 of Petition) through the website of Department of Registration of Stamps, Government of Maharashtra and also filed application in physical form on 10.06.2019 (Exh. "G", Page Nos. 22-

23) for seeking refund of stamp duty and registration amount paid under the first challan dated 25.04.2016.

2.5. On 11.07.2016, Petitioner made one more attempt to register for refund of stamp duty online on the same website.

2.6. The Joint Divisional Registrar-I, District Thane / Collector of Stamps by order dated 13.07.2016 rejected the claim of Petitioner for refund of stamp duty and registration amount on the ground that refund was sought on the basis of a photostat copy of the challan . Being aggrieved, Petitioner filed Appeal before the Chief Controlling Revenue Authority (Appellate) Pune on 06.09.2016. By order dated 02.02.2019, the Authority rejected the Appeal stating that unless and until the original challan is deposited in the treasury, refund cannot be given. Hence, the present Petition.

3. *Prima facie,* it is seen that the Respondent No. 1 took almost 3 years to decide the Appeal.

4. I have heard Mr. Vhanmane, learned Advocate for Petitioner and Mr. Pujari, learned AGP for Respondents and with their able assistance perused the entire record and pleadings of the present case. Submissions made by them have received due consideration of the Court.

5. Mr. Vhanmare has placed on record a decision of the Gujarat

High Court in the case of **Gadhavi Mahendrasinh Vs. State of Gujarat & Ors.**[1] in support of his case and submitted that an identical situation had arisen therein wherein stamp duty and the registration charges were paid twice in respect of the same property / transaction and only because of misplacement of the challan, refund claimed by the Petitioner therein was denied. In that view of the mater, Gujarat High Court had directed refund of payment of the stamp duty and the amount of registration charges to the Petitioner exercising its powers under the provisions of Article 226 of the Constitution of India. I have perused the said decision. I see no material difference in the facts of the present case also and the decision given by the Gujarat High Court in the above case.

6. Mr. Pujari, learned AGP has drawn my attention to the affidavit-in-reply dated 13.03.2020 filed by Respondent No. 1 and more specifically paragraph Nos. 6, 9 and 13 thereof. He would submit that even if the Petitioner produces a certified copy of the challan, he would still be entitled to the refund.

7. As alluded to herein above, the missing complaint for the challan was filed by the Petitioner immediately on 27.04.2016. In the facts of the present case, there can be no impediment in allowing the Petition considering the fact that there is no dispute that the

1 Judgment dated 09.03.2010 in Special Civil Application No. 2041 of 2010 (Coram : K.A. Puj, J.)

Petitioner has paid over the exact stamp duty in respect of the same transaction twice over and therefore the Petitioner is entitled for refund in view of the facts in the present case.

8. In view of the above observations and findings, Respondent / Authority is directed to refund the amount of Rs. 4,98,800/- (inclusive of both i.e. stamp duty and registration charges) to the Petitioner immediately within a period of four weeks on production of an authenticated copy of this order or a certified copy of this order, whichever is earlier.

9. Petition is allowed and disposed of in the above terms.

Amberkar

[MILIND N. JADHAV, J.]