IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14002 OF 2022

Balaji Estate Agency and Ors. ... Petitioners
versus
The State of Maharashtra and Ors. ... Respondents

Mr. Vilas B. Tapkir, for Petitioner.
Mr. S.H.Kankal, AGP for State.

CORAM: N.J.JAMADAR, J.

DATE : 17 AUGUST 2023

P.C.

1. Heard the learned Counsel for the parties.

2. This Petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order dated 22 July 2020 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune, in Appeal No.44 of 2018 under Section 53 (1-A) of the Maharashtra Stamp Act, 1958, whereby the Appeal preferred by the Petitioners came to be dismissed by affirming the order dated 3 January 2018 passed by the Collector of Stamps, Pune Rural, under Section 32A(4) of the Act determining the deficit stamp duty of Rs.67,750/- and penalty of Rs.1,46,340/- thereon.

3. The Petitioner No.1 is a partnership firm. Petitioner Nos.2 and 3 are its partners. Under the Sale Deed dated 8 March 2011, Vandana Prakash Pawar and Rahul Suresh Pawar had purchased a land admesuring 1H 34R out of Survey No.692/1

situated at Mauje Dhoksanghavi from the then holders thereof and to which the Petitioners were the consenting parties as the development agreement in respect of the said land was executed by the then holders in favour of the Petitioners. By a registered Power of Attorney executed on 27 June 2011 the purchasers professed to constitute Petitioner Nos.2 and 3 herein – original developer / consenting parties, as their attorneys conferring thereby diverse powers. A stamp duty of Rs.500/- only was paid on the said instrument. A notice came to be issued to the Petitioners on 7 April 2015 by the Sub-Registrar of Assurances contending that deficit stamp duty and registration fees were paid on the aforesaid instrument of Power of Attorney. The Petitioners were called upon to deposit a sum of Rs.90,400/- within 30 days. The Petitioners gave reply to the said notice contending, inter alia, that the stamp duty was leviable under Article 48 (f) (ii) (a) of Schedule I, as the power of attorney was given to the close relatives.

4. The Sub-Registrar of Assurances, Talegaon Dhamdhere referred the matter to the District Collector of Stamps. The Petitioners filed a written statement before the District Collector of Stamps.

5. By an order dated 3 January 2018, the Collector of Stamps, Pune Rural, held that stamp duty was required to be paid on the instrument in accordance with the provisions contained in Article 48 (f) (ii) (b) of the Stamp Act, as under the instrument the agents were authorized to sell or transfer immovable property.

6. Being aggrieved, the Petitioners preferred an Appeal under Section 53(1-A) of the Act before the Chief Controlling Revenue Authority, Maharashtra State. The latter found no merit in the appeal and dismissed the same by the impugned order.

7. Mr. Tapkir, the learned Counsel for the Petitioners would urge that the instrument in question is the power of attorney simplicitor without any authorization to sell the property covered thereunder. The power of attorney in question would be governed by clause (h) of Article 48 and not clause (f)(ii) (b), resorted to by the authorities under the Stamp Act,1958.

8. Relevant part of Article 48 reads as under :

Description of Instrument	**Proper Stamp Duty**
48. Power of Attorney not being a Proxy ………	
(f) (i) When given for consideration and authorizing to sell an immovable property	The same duty as is leviable on a Conveyance under clause (a), (b) or (c) as the case may be, of Article 25 on the market value of the property.
(ii) When authorizing to sell or transfer immovable property without consideration or without showing any consideration, as the case may be -	
(a) If given to the father, mother, brother, sister, wife, husband, daughter [son, grandson, grand-daughter or father, mother, brother or sister of the spouse]; and	
(b) in any other case	The same duty as is leviable on a Conveyance under clauses (b) [or (c)] , as the case may be, of Article 25, on the market value of the property].

(h) in any other case	[five hundred rupees] for each person authorized].

9. The authorities below have held that upon a proper construction of the power of attorney in question, it falls within the ambit of clause (f) (ii) (b) as the persons in whose favour the power of attorney has been executed have been authorized to sell the property thereunder.

10. The aforesaid position was sought to be controverted by Mr. Tapkir. An endeavour was made to take the Court through the relevant clauses of the power of attorney to draw home the point that the instrument would fall within the residuary clause (h).

11. I am afraid to accede to the aforesaid submission. First and foremost, it is imperative to note that in the Reply to the notices under Section 32A(4) of the Act, a stand was taken that the instrument would be covered by Clause (f) (ii) (a) as the power was given to the near relatives. From the own showing of the Petitioners, it becomes evident, the persons in whose favour the power of attorney has been executed do not satisfy the closed category of relations specified in sub-clause (a) of clause (f) (ii). Secondly, the endeavour of Mr. Tapkir to show that under the said power of attorney, the agents were not empowered to sell the property is belied by the recitals therein. It is trite, to gather the real nature and import of the document, it is required to be read as a whole and one clause cannot be read in isolation and torn out of context.

12. Clause 25 (page 50 of the Petition) makes it explicitly clear that the power of attorney was to operate as an irrevocable power of attorney, would not come to an end even upon the death of the executants and would bind their legal representatives and would continue to operate till all the plots/flats were sold and the names of the prospective purchasers entered to the respective plots/flats. This clause if considered in conjunction with clauses 5 and 29, referred to by the Collector of Stamps, unmistakably indicates that the attorneys were authorized thereunder to sell or transfer immovable property on the strength of the said instrument. No fault, therefore, can be found with the impugned order.

13. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)